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HUQOOQ-E-NISSWA: MUSLIM WOMAN AND HER RIGHTS IN COLONIAL NORTH INDIA

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ABSTRACT

This paper is an attempt to understand the rights of Muslim women in colonial India. It focuses on the interplay of estrangement between colonial legal rights and the religious Islamic rights related to women. Women enjoyed a variety of rights under customary law when Islam, as a religious, social, and legal system, emerged in Arabia. The difficult process of how Islam affected pre-existing social norms has been studied skillfully and in-depth by many historians. However, there has been far less attention to how Muslim personal laws overlooked many Muslim rights during the colonial period. It can be observed generally that reform in Islamic law during the colonial period lessened numerous injustices against women and gave them significant and previously unheard-of rights regarding marriage, divorce, and inheritance.

Hence, this paper examines Muslim personal laws in colonial India to understand the legal rights of Muslim women. It also looks at alternative sources like Urdu periodicals and novels to understand how Muslim women understood their 'rights.'In general, the paper's main concern is to comprehend how Muslim personal law came to be regarded as a 'sacred place' for Muslims, as I look at the interactions between Indian Muslim women and the law in colonial north India.

KEYWORDS–Huqooq-e-Nisswa, Customary law, Muslim personal law, etc.

In my paper, I refer to Muslim women as subalterns since they have been denied access to power and influence, even within the elite levels of society. However, data from the colonial era on Muslim women demonstrate that efforts were made to elevate Muslim women within society, even if these efforts were only directed at affluent elite Muslim women.

INTRODUCTION:

Laila Ahmed wrote that in Islamic history, "theconstructions, institutions, and modes of thought devised by early Muslim society that form the core discourse of Islam have played a central role in defining women's place in

Muslim societies"[1]One important issue related to the Muslim community in India today is the legal rights of Muslimwomen. The reform of Muslim Law as it pertains to women has been the subject of debate within the community and outside the community.[2].

An important theme to address is the construction of Muslim women as either liberated or oppressed by their law. In both instances,the law is seen to occupy a distinctive role in Muslim society. Examining the legal sphere throughout the colonial period is important todetermine the validity of these stereotypes about Muslim women, which were and are still prevalent in India.[3].

Muslim women have many rights afforded by their religion, but male-dominated society and the Islamic clergy did not accept them as they should have. Therefore, women raised their voices against the customary laws framed by society, arguingthatthey were comfortable for men but not for women. During the nineteenth century, some Muslim reformers spoke about the worst condition of women in their published materials.For instance,***Rashid-ul-Khairi*** always wrote in the journal (?)***Ismat*** thatmen should give women the right to***khula***(divorce),otherwise a day will come when Muslim women will leave Islam and Muslim men will be responsible.[4]

THE HUQOOQ-E-NISSWA (WOMEN'S RIGHTS) ISSUE:

The question of the rights of Muslim womenemerged conspicuously during the 1920s.The political and economic changes that had taken place in the 19th century forced the reformers to reassess the status of women and bring about change by advocatingfor the education of women and raisingthe age of marriage. The Indian women's movement sought to develop a broad political, social, and economic agenda in which legislative changes were at the cutting edge of social change[5].

The distinction between ascribed status refers to the attributes individuals are born with in terms of community, religion, economic, political, and legal rights, and achieved status, which refers to changes made by individuals through education or other achievements is us. In dealing with women in a minority community (that is, not politically dominant) based on cast, color, religion, and language,it is important to examine the social position of the community vis a vis othercommunities because in a threatening social environment, internal divisiveness may be suppressed in errand group unity and the desire of women for change may be discouraged or may take place even as rhetorical support continues for traditional customs associated by the group.[6].

This distinction, along with the abovementioned indicators, brings out both the pressures that enforced differentiation can place on women in minority communities and the extent of change and adaptation taking place, which counteract many aspects of traditional differentiation.

Historically, the movement for the emancipation of Indian women in the 19th century was primarily directed at Hindu women due to the custom of widow immolation, the treatment of Hindu widows, the prejudice against the

[1]Ahmed, Laila. 1992,Women and Gender in Islam, Yale University Press, pp.1.
[2]https://temple-news.com, Perez. Tyler, Mainstream Media: Include Muslim Women, 13 Feb,2018.
[3]Muhammad, Deeqa,2012, Gender, Islam and 19t-Century Brava: A Brief Note, Bildhaan: An International Journal of Somali Studies vol,12 pp.106.
[4]Khairi, Rashid-ul,1934, Ismat, Delhi pp.7
[5]Hussain,Sabiha,2006,Muslim Women's Rights Discourse in the Pre Independence period, Centre for Women Development Studies, Delhi, pp.23.
[6]Ibid pp. 26.

education of women in child marriage, and the seclusion of women.The activities of reformers, the education of women, and the formation of women'sgroups served to increase the need for legislative changes in the status of women.[7].

The anomalies in the status of Muslim women increasingly came in for attention, since their legal rights appeared to be eroded due to customary laws that many Muslim communities followed, and it seemed that a restoration of the ***Shariat***law would help Muslim women obtain their legal rights.The passage of legislation to restore Muslim women's rights was, therefore, welcomed both by women active in the social reform movement and by Muslim political leaders[8].

The issue of women's rights was raised effectively by two organizations, namely the ***Women's Indian Association*** formed in 1917, and the ***All-India Women's Conference,*** formed in 1927. Both had established to discuss issues particularly related to women and their social and legal disabilities. The main concern of women's organisations was to make reforms to the legal status of women.The child marriage controversy caused them to view women's legal status as a serious problem, and from it grew demands for improvements in women's rights to Divorce, Inheritance, as well as control of property[9].All the 1930s, to press their demands, women's organisations formed committees on the legal status, undertook studies of the laws, talked to lawyers, published pamphlets on women's position, and encouraged various pieces of legislation to enhance women's status.[10]

The 1930s saw Imperial Legislative Assembly Billsbeing introduced such as the Hindu Women's Right to Property Bill an amendment to the Child Marriage Restraint Act, a bill to allow inter-cast Marriage, the Hindu Women's Right to Divorce Act, the Muslim Women Personal Bill, the Prevention of Polygamy Bill and The Muslim women Right to Divorce Bill, all as a piecemeal approach to improving women's status and can better their conditions.[11].

For Muslim reformers, women were symbolic not only of all that was wrong with their culture and religious life but also of all that was worth preserving.If women personified the plight of their community: its backwardness, its ignorance of the faith, its perilous cultural and historical viability, they were also at the core of family life, the potential purveyors of ethical values and religious ideals. For Muslim reformers, consideration of women's position in the family and plans for women's education included discussions of household customs and rituals of purdah and Islamic law as it pertained to women[12].

The women's organisationsthoughtwe were more in supportof setting a women's agenda that dealt only with the rights and protection of women without being affected by other considerations.Womenlevied pressure on both the British government and the Congress party to incorporate their demands in policy matters.

There werestrugglesamong reformers, conservatives, community leaders, and government or women leaders as to who would set the agenda for women. Both the national level parties, The Indian National Congress and Muslim

[7]Forbes,Geraldine, 1996, Women in Modern India: The new Cambridge History of India,vol 4th,Cambridge University Press, pp.10.
[8]Op. cit. Hussain, Sabiha, pp. 27.
[9]Lateef,Sahida,1990, Muslim Women in India Political and Private Realities1890s-1980s,University of California,PP.17-18
[10]Ibid.pp20-22.
[11]Op.cit. Hussain, Sabiha, pp.26-27.
[12]Minault, Gail,1998, Secluded Scholar:Women'sEducation and Muslim Social Reform in Colonial India,Oxford University Press,pp.14.

League attempted to set the goal of removing the legal disabilities for women, but only a few members agreed that women 's legal rights deserved the highest priority[13].

The Muslim League established the Jinarja Hedge Committee on the Legal Disabilities of Women, openly stating that they had no objections to the formation of a committee so long as the committee limited its investigation to Hindu law. Jinnah, however, steadfastly supported Bhupender Nath Basu's Special Marriage Amendment Bill (1912), which provided legal cover for marriages that were not in Hindu and Muslim law, eventhoughit angered the Muslim League.[14].

Begum Shahnawaz appealedto Hindu and Muslim women to work together for the benefit of all Indian women[15]. The All-IndiaWomen'sConference, the Indian Women's Association, and the National Council for Women opposed the idea of separate Electorates, which dividewomenalong a communal base. These three organisations subsequently dispatched a telegram to the British Prime Minister condemning separate electorates[16].

Begum Jahan Ara Shahnawaz (who later became a member of the *Anjuman Himayat-i-Islam*)devoted all her efforts towards the cause of women. She passed a resolution against polygamy in the session held in Lahore in 1918. She pointed out that Indian unity was only possible through its women, and in a message to SouthIndian women, she made an appeal that all women work together for the upliftment of Indian women[17].

The All-India Women's Conference, the Women's Indian Association,and the National Council of Womenpresented a joint memorandum to the Indian Franchise Committee and sent their representatives to give evidence before the committee. They included *Dr Reddi, MrsH.amid Ali, Begum Habibullah, Rajkumari Amrit Kaur, and Lakshmi Menon*. They spoke in support of joint electorates for women, and when, despite their united stand, the white paper on the Indian constitution proposed to divide women into communal constituencies, the three women's organisations met in Bombay and sent a telegram to the British Prime Minister deploring separate electorates.[18].

The telegram was signed by *Sarojini Naidu* and *Begum Shahnawaz,* and the Indian Franchise committee reported that "in every province women, including some strict purdah came forward as witnesses either representing an organisation or individually asking for an extension of opinion tothe contrary, written or oral, from the women themselves[19].

MargaretCousins, reporting on the Karachi session of the AIWC, noted that Muslim women held the trump card and could have walked out of the meeting if they had not agreed on a resolution calling for joint electorates, but they did not. Among the Muslim delegates to the conference were *Lady Hidayatullah*, *Mrs Tyyabji*, *Mrs*

[13]Op.cit.Lateef,Shahida,pp.13
[14]Jagdeesan,P, 1991 Secularising the Institution of Marriage with Particular Reference to Tamil Nadu, Journal of Indian History Congress vol.52 pp.771-777.
[15]Ali,Azra Asghar and Tariq Shahnaz, Begum Jahanara Shahnawaz and The Socio-Cultural Uplift of Muslim Women in British India, Journal of the Research society of Pakistan, vol 45, No 2 July-Dec 2008, Research Society of Pakistan, pp. 124
[16]Ibid, pp 127-28.
[17]Op. cit. Ali, Azra Asghar, Tariq Shahnaz, pp 123.
[18] Mishra, Yuthika, Women's Rights and the Archive of the All-India Women Conference, Journal of Advance and Scholarly Researches in Allied Education, Vol XI, No.XXI,April-2016, pp.6
[19]Roy, Renuka, All India Women Conference file no 84, Feb 1946, Roshini, pp. 4

*Haroon,Mrs.H. Hamid Ali,*and *MissFerozuddin*[20].This spirit of joint action on women's issues was repeatedly demonstrated. Muslim women in Madras were members of both the Madras Muslim Ladies Association, formed in 1928, and the Women's Indian Association[21].

The 1933-34 Annual Report indicates that *MrsNazir Hussain* and *Begum Rehrmat-un-Nissa,* the Muslim Ladies Association, were on the ExecutiveCommittee of the Women's Indian Association, a flourishing organisation with 23 hubs and 4,000 members.[22]

THE REFORMATION OF MUSLIM PERSONAL LAW DURING THE COLONIAL PERIOD-

Human society will always require leadership to achieve a civil state of society. A society occasionally creates its laws, and other times it follows the laws of other civilisations. But first, let me define the term "law". There are two distinct views on what constitutes law: Law may be regarded as having divine origins, like Hinduism and Islamic Law, before becoming man-made, like our Indian Constitution.

What is the Islamic understanding of the law, then? Justice Mahmood responds that "it is to be noted that Hindu and Muhammadan law is so deeply interwoven with religion that they cannot easily be dissociated from it"[23]Is the appropriate response. Islam has a doctrine of certainty (***Ilm-ul-Yaqeen***)[24]Regarding the subject.

WhereverMuslims went to settle, they followed their own culture and Islamic rule, which depends on the sharia. When we talk about *Sharia,*we have to know what Sharia is the meaning ***Sharia*** is the common pronunciation of an Arabic word, which has the literal meaning of a water hole, or a path of water, hence a clear path. As a technical term means the canon law of Islam, the totality of Allah's commandments. Each one of such commandments is called ***Hukum,*** [25] the law of Allah, and its inner meaning is not easy to grasp.**Shariat**restrainsall human actions[26].

Muslim law as it exists today is the result of a continuous process of development during the fourteen centuries of the existence of Islam. The classical theory consists of the Quran's express injunctions, the legislation introduced by the Sunnah of the Prophet, and the opinions of jurists of the past. The Muslim personal law is based on four schools of Sunnijurisprudence, which are well known and considered equally orthodox as following ***Hanafi, Maliki, Shafi, and Hanbali*** schools. Shias follow a different set of lawsthat are called the ***Imamat.***[27]and the ***Taqleed system***[28].

Coming down to the times of Muslim supremacy in India, we find that as the Mughals were *Hanafis,*the *Qazis* appointed by them administered the Hanafi law. Hanafi law was, in the Mughal times, the law of the land. This continued till the establishment of British rule, when the influence of English common law and equity principles became more apparent.[29].

[20]Op.cit. Mishra, Yuthika, pp.4
[21]Stri-Dharma, women's Indian association, Madras, 1935. pp.22.
[22]Women's Indian Association Memorandum II on the Status of Women: in the proposed new constitution of India, May 1933.
[23]https://indianKanoon, Inayatullah vs Gobind Dayal on 9th Feb,1885, ILR 7.
[24] To know with certainty an immortal or an object without seeing its state and essence.
[25]It is an Arabic term that means commandments here it'sused as Khuda ka Hukum or Hukum-e- Elahi.
[26]Fyzee,Asaf.A.A, Editedby Mahmood Tahir,1949, outlines of Muhammadan Law, oxford university press, edition 5,pp.10.
[27]Imamat is a shi'a belief that all Imam should be spiritual descendants of the prophet Muhammad.
[28]An Arabic term denoting the conformity of one person who does qualify for independent reasoning is called Mujtahid.
[29]Siddiqi, Mazhruddin, 1992, Women in Islam, Rima Publishing House, Delhi, pp. 141-42.

By the tenets of their school or sub-school, persons who belonged to the Muslim persuasion were subject to Muslim law as a branch of personal law. Islamic law's basic and uncomplicated effect was seen everywhere throughout the early years of British rule. However, Muslims in India have never strictly adhered to Sharia law; instead, they and the colonial government have made modifications and adaptations.[30].

In the beginning period of East India Company rule, the legal system remained under the influence ofindigenous norms, which were codified by the British in Regulation 2nd of 1772, which stated that "in all suits, regarding inheritance, succession, marriage and cast and other religious usages or institutions the laws of the Quraan concerningMohammedans and those of the *shastras*concerning Gentoos, shall be invariably adhered to".[31]

Muslim law was applied to Muslims in BritishIndia as a matter of policy. When combined with forces within Muslim society, British interventions in indigenous legal systems also placed greater emphasis on religious and legal texts as the definitive source of law. This trend of textualisation had already existed within Muslim society; there had been a tradition of legal scholarship from the pre-colonial period in which religious leaders attempted to make their followers obey the rules of the sharia.[32]. Aderson Islamic

In the late nineteenth century, a new kind of scripturalist Islam developed in the centre of reform, such as Deoband and Aligarh, which relied heavily on the use of textual sources and which emphasised compliance with the sharia by the masses as well as the elites as central to the maintenance of Muslim identity.[33].

One of the major obstacles to the colonial government's attempts to codify Muslim law was the striking dichotomy between theory and practice. Muslim women were theoretically given considerable rights in the sharia regarding marriage and inheritance, but the majority of Indian Muslims did not adhere to all parts of the sharia as numerous communities, particularly those who have converted from Hinduism, combined Islamic and non-Islamic practice. Eventually, the British emphasised the importance of texts over customary practice and tried to apply a single set of Islamic rules clearly and consistently, upholding the sanctity of the Sharia and making it applicable to all Indian Muslims.[34].

SUBALTERN MUSLIMWOMEN'SRIGHTS UNDER THE BRITISH GOVERNMENT OF INDIA

Despite the many centuries of Muslim rule, the community did not adopt the sharia as a basis of law, women's rights in the Shariat were rarely complied with or enforced, and even their right to divorce and widow remarriage suffered.[35].Therefore, it was not till the turn of the century, when concerns for ethnic differentiation and identity had become important, that the Shariat was evoked.

Women's groups, both Muslim and others, pointed out that Muslim women did have rights under Shariat and urged the community to support the application of that lawto improve the status of women. Consequently, they

[30]Ibid, pp. 141-144.
[31]Deutsch,Karin. A, 1998, Muslim Women in Colonial North India circa 1920-1947: Politics, Law and Community Identity, University of Cambridge, pp.56.
[32]Michael, R. Aderson ,1990, Islamic Law and Colonial Encounter in British India, Chibli Mallat and Jane Connors eds, Islamic family law, London: SOAS, PP.165.
[33]Tahnavi, Ali.Ashraf, 1981, Bahishti Zewer, Islami Tablighee Mission 419, Delhi, pp. 5
[34]Op.cit. Deutsch, Karin, pp. 57.
[35]Andrews, S.C.F,1939, The True India: A Plea for Understanding, Routledge Revivals, London, pp. 103.

supported the passage of the Shariat Act in 1937 and the Dissolution of MuslimMarriages Act in 1939. The enactmentof both legislations was endorsed by women's groups as having furthered the cause of women[36].

Muslim activists in India were influenced by Indian reformers and by social change in Muslim countries. Even as Muslim reformers in other countries were pleading for a change in India,***Hali, i***n his poem ***Chup kiDaad*** (ode to the silent), and ***Maulvi Nazir Ahmed*** through his novels stimulated the process of change. The MuslimWomen's Educational Conference,in recognition of the importance of women's education, had established a special section for women at the turn of the century.[37].

The Muslim woman thinks that her birth, position in society, and status are all ordained by God.[38]. The Qur'an has outlined her conception of death, but that was not by her rights, which is why they sought to apply Sharia law rather than customary law. Here, I will discuss some key concerns with Muslim women's rights as follows:

Muslim Women's Education Rights-Islam has placed a high value on knowledge acquisition. The idea that knowledge is limited to religious knowledge has acquired traction over the last 300–400 years. As a result, religious education took precedence. The madrasas provided five years of instruction for both boys and girls (Schools in the mosques). Afterwards, the boys pursued very basic occupational training, while the girls stayed at home to take care of the family and prepare for marriage by receiving home-based wifehood training. This does not negate the existence of intellectuals, erudite men, poets, and artists within Muslim communities. The one thing that is emphasised in this instance is how little religious leaders support education. During the Mughal era, women from the noble and wealthy classes received an education, and erudite widows taught young girls.

The advantages of education were not available to the women of the labour classes in either urban or rural settings. There are numerous causes behind Muslim women's low educational attainment. Women were intended only for housekeeping and reproduction. As there were child marriages, the schooling of the girls nearing the age of maturity was discontinued. What little education the girl obtained was mainly religious. There were no opportunities for continuing the study at home. The girl could not acquire worldly knowledge as she did not go out of the house. Apart from all these factors, poverty and lack of knowledge of the significance of education contributed to the underdevelopment of their power of learning and discretion.

Muslim men began to realise in the 19th century how important women's education was. Muslims have recently demonstrated some interest in education. Seeing young women and girls from different religious backgrounds enrol in schools and universities inspired them. Urdu literature, magazines, and newspapers contributed to the daily expansion of world knowledge. Despite this, Indian social reformers were preparing to enhance the status of Indian women, and the British government was likewise keen to educate Indian women.

Thus, with the support of Indian Muslim social reformers, Muslim women under British control also had excellent possibilities to learn and write. Madrasas and girls' colleges began to appear in a variety of locations. Shaikh Abdullah & Muhammadi Begum opened the first girls' college in Lahore, while Maulana Hali opened the

[36]Anderson, J.N.D, 1959, Islamic law in the Modern World, New York University Press, New York, pp. 22.
[37]Mirza, Sarfaraz Hussain, 1969, Muslim Women Role in Pakistan Movement, Research Society of Pakistan, Lahore, pp. 8
[38]Op. cit. Sidqqui, Mazheruddin, pp,13.

second one in Panipat. Despite this, the lack of enough female teachers prevented these colleges from operating effectively.

Muslim Women's Inheritance Rights– presently, there are two schools of thought in respect of the Law of Inheritance (*Huqooq-E-Virasat*). They are known asthe Hanafi Law of inheritance and the Shia Law of inheritance. They apply to Sunnis and Shias, respectively. The heirs to a Muslim's estate are of three classes. Those who Share, residuary, and Distant Kindred. Those who are entitled to a prescribed share of the inheritance are called (***Haqdaar***)sharers. Those who take no prescribed share, but succeed to the Residue after the claims are satisfied, are called Residuary. And those relatedby blood who are neither sharers nor residuaryare known as Distant Kindred.[39].

Males and females have equal rights over the property. For example, a Muslimdied,leaving a son and a daughter. The estate will be divided into three equal portions, the son obtaining two and the daughter one. However, because of her sex, the daughter does not suffer from any disability in dealing with her share of the property. She is the absolute master of her inheritance. The same rule applies to a window or a mother.[40].

Some British Indian provinces in India completely disregard the rights of women to inherit property from their parents since they do not follow the Islamic law governing inheritance. In his book ***Musalmaan aurat keHuqooq*** and ***Ismat***magazine, ***Alama Rashidul Khairi***emphasised the issue of Muslim women's inheritance rights not being provided for by sharia law. "The government of Punjab has barred women from parents' property, which is not justified by Islam. If Punjabi Muslims and the government of Punjab do not change their repressive behaviour towards women, they will be held guilty ofMuslim women's apostasy"[41].

For instance, Alama wrote *in Ismat* 1934-(*Aurat ke instead par ye shor-o-fugha aur qanoon ki koshish bhi mard ka tasloot hai, agr iman se dekha jaye to ye ek qism ka zulam hai, maie mimbaran-e-assembly se ilteja Karta hoon ki who baje is tasnia-o-aoqaat ke is qanoon ki tarf twaja farmaye jisne khudai ahkam ke khilaf musalmaan ladkiyo ko tarka-e-pedari se mahroom kiya hai aur rawaj ko Imaan smjha)*[42]The apostasy of women is the subject of excessive argument and shouting on one side, while the endeavour to enact a law on the other is likewise a form of manliness. I implore the assembly members to protest this rule, which goes against God's decree, deprives these girls of their parents' property, andrecognises the custom as shariah.

The colonial state, after the annexation of Punjab in 1849, had to make a declaration that native institutions and practices shall be upheld as far as they were consistent with the distribution of justice to all classes.[43].

The Punjab region, particularly the ruler areas, was inhabited by various customary laws. Consequently, section 5 of the Punjab Law Act 1872 laid down the precedence of native law over Hindu and Muslim law regarding

[39]Kozlowski,c. Gregory, 1985, Muslim Endowments and Society in British India, Cambridge University Press, UK, pp. 36-37.
[40]Op. cit. Fyuzee and Mahmood Tahir, pp.316-17.
[41]Khairi, Rashid-ul,1938,Musalmaan Aurat ke Huqooq, Ismat book agency, Delhi,pp. 8-10.
[42]Khairi, Ismat, "Musalmaan Ladkiyo ka Arya Hona"Issue 1934 july, pp. 16.
[43] Op. cit. Kozlowski, c. Gregory, pp.96-97.

succession, special property of female betrothal, marriage, divorce, dower adoption, guardianship, minority, wills, legacies, gifts, partition,and any religious usage and institutional purpose.[44]

Similarly, in the Oudh Law Act 1876 (section 3), N.W.F.R. Reg. 7 of 1901 (section 27), and the Central Province Law Act,1875,customs were given precedence over personal law.[45].

However, things were not all that clear in U.P. The Bengal, Agra, and Assam Civil Courts Acts of 1887 enforced personal Law and made no mention of custom, while the Oudh Law laid down a similar provision confirming the primacy of custom. According to an Allahabad case, customary evidence was not admissible, but the Privy Council eventually construed this part to mean that local custom superseded personal law.[46]

Inthe case of ***Muhamed Riasat Ali* 1893**, the Oudh Privy Council recognised a local custom for Muhammadan widows to take a life interest in an equal share in the whole of immovable property left by their deceased husband, whereas the high court of adjoining North-western Provinces had ruled to the contrary in 1871[47]. The drive by a specific segment of the Muslim leadership to persuade other Muslims to reject Sharia has intensified the conflict between customary and Quranic law.[48]

Right to Determine Muslim Woman's Life-Muslim law permits divorce and subsequent remarriage and permits women to select their spouse. However, customary law did not permit this, and the majority of Muslim women were forced into marriage against their will, even if they were aware of their right to make their own decisions.[49]. For instance**, *Sahzadi***, the protagonist ***in Nazir Ahmed's Ayami*** novel, says that- (*suna hai mere liye Amma Jaan kisi Maulvi ladke ko psand kar rahi hain Kaise batau ki Maulvi Mujhe bhate Nahi agr kuch bolti hun to khengi kaisi besharam ladki hai jo apne rishte ke bare me bol rhi hai*.[50](I have heard that Amma Jaan is choosing a maulvi for me. How can I tell her that maulvis are not my preference for a life-mate without making her feel that I am a shameless girl who is discussing her marriage proposal? Sir Roland Wilson noted that in most Muhammadan communities, the legal freedom of women is to some extent nullified in practice among the upper classes by seclusion. He added that it was rare for Muslim girls to have a deciding voice in the matter of their marriage.[51].

Girls typically did not influence the choice of husband and generally accepted the arrangements that were made by them. The only cases of women choosing their partners occurred with younger women such as *Rashid Jahan*, *Ismat Chugtai*, and *Hajra Begum*. Who was part of the progressive writers' movement[52]

The right to family planning for Muslim Women-in Islam primarily discusses contraception concerning marriage and family. Islam, as a social system and civilisation, views the family as the fundamental building block of society. The husband and wife are recognised as the primary family members in the Quran, which

[44]Chowdhry, Prem, Emerging Patterns: Property Rights of Women in Colonial and Post-Colonial South-East Punjab, Journal of Punjab Studies, Centre for Sikh and Punjabi Studies, California, Vol,20,2013 pp.111-112
[45]Ahmed, Hilal, R.K Mishra,&K.N. Jehangir, Rethinking Muslim Personal Law Issues, Debatesand Reforms, Routledge Taylor Francis Group, London,pp 17.
[46]Ibid, pp 18-19.
[47]https://indianKanoon.Org, Riasat Ali vs Hasin Banu, 1893, I.L.R 21.
[48]Op. cit. Deutsch, A. Karin, pp. 60.
[49]Op. cit. Minault, Gail, pp.16-17.
[50]Ahmed, Nazir, 1881, Ayyami-Aqabi, Anjuman-e- Taraqqi-e-Urdu, Delhi pp.20.
[51]Wilson, Roland. Knyvet, 1921, Anglo Muhammadan Law, Kessinger Publishing, USA, pp.56.
[52]Woodsmall, Ruth. Frances, 1936, Moslem Women Enter ANew World, Geroge Allen&Unwin Ltd, London,pp.97.

regards marriage as a sacred institution. The Quran makes no mention of birth control, nor does it forbid a husband or wife from spacing out or limiting the number of pregnancies they have. Family planning is therefore regarded as acceptable in Islam by the vast majority of Islamic jurists. Since God is All-knowing and Islam is believed to be eternal, these jurists contend that the Quran's silence on the subject of contraception does not indicate that God chose to omit anything.[53].

The proponents of family planning also note that coitus interruptus, or withdrawal, was practised at the Prophet's time by his companions. The majority of theologians from almost all schools of Islamic jurisprudence agree that withdrawal is permissible with a wife's consent. Dr Omarnspecifically referred to the following quotes from the Quran:

Allah desires for you ease; He desires no hardship for you. (Al- Baqra sura 2: 185)

And has not laid upon you in religion any hardship. (Al- Majj Sura 22: 78)

Thus,Islam would be sympathetic to family planning if spacing pregnancies and limiting their number made the mother more physically fit and the father more financially at ease. Particularly since these actions do not violate any prohibition in the Quran or the Prophet's tradition[54]. If excessive fertility leads to proven health risks for the mother and children, economic hardship and embarrassment for the father, or the inability of parents to raise their children properly, Muslims would be allowed to regulate their fertility in such a way as to reduce these hardships.

As a result, Muslim social reformers took the initiative to change Muslim men's and women's attitudes toward family planning issues. As a result, Muslim women were able to better understand the topic of family planning through writings published in Ismat, Khatoon, and other female journals that frequently addressed it under titles like *Bachcho ki Parvarish, Jitni Chader Utna Pair, Kamsini Ki Shadi, etc*.[55].

Mehar: A Special Right for Muslim Women- bride price was prevalent in Arabia before the advent of Islam. The practice was similar to one at once time among Hindus. The bride's father used to appropriate the money for himself. It did not belong to the bride. Muhammad ameliorated the condition of women by stipulating that it should go into the hands of the bride.[56].

Meher (Dower), under the Muhammadan law, is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage and even where no dower is expressly fixed or mentioned at the marriage ceremony, the law confers the right of dower upon the wife.[57].

In addition, the heavy dowries (Mehar) promised at the time of marriage also acted as a check on the practice of divorce for Muslims. As the census report noted, "Even if a man is asked by her relation to divorce his wife, he normally refuses as it generally involves the loss of property and expectations[58]. Nazir Ahmad noted that, with a view to checking divorces, the practice has arisen of making the husband promise more than he would be able to

[53] Fahimi, Farzaneh Raudi, Islam and family planning, 2004, PRB (Population Reference Bureau), Washington Dc USA. Pp. 2.
[54]Op. Cit, Fahimi. Farzaneh Raudi, PP. 3.
[55]Ismat, Vol, 01, Issue. No, 1, June 1908, Daftar-e-Ismat, Delhi, pp 1.
[56]Subbamma, Malladi,1988, Islam and Women, Sterling Publishers Pvt. Ltd. Delhi, pp. 30.
[57]Mahmood, Tahir & Mahmood, Saif, 1941, Introduction to Muslim Law, Universal Law Publishing, Delhi, pp. 105.
[58]Census of India (1911), Volume 15th : United Provinces of Agra and Oudh. Allahabad: Government press 1912, PP, 223-4.

afford[59]. However, the practice of giving large amounts of Mehar did become an issue in cases that were brought to court, either in cases of death or divorce, as the amount in contention could be larger than the entire property of the husband. A solution was attempted as part of the Oudh Laws Act 1876,which established the supremacy of customary law in Oudh, which limited the amount of Mehar payable in such cases according to the assets of the husband.[60].

Divorce Privilege for Muslim Women-the following situations allow for the dissolution of a Muslim marriage. The marriage would be dissolved by either party's death, conversion of the husband or wife to another religion, the wife's rejection of the union if she was married when she was under the age of fifteen, after reaching puberty but before consummating the union, or the presence of a supervening prohibition.[61]

The dissolution of marriage by the consent of the spouses is a peculiar feature of Islamic Law. BeforeIslam, the wife had practically no right to ask for a divorce. It was the***Quranic*** legislation that provided for this form of relief.[62].

According to ***Fatwa-a-Alamgiri***,"when married parties disagree and are apprehensive that they cannot observe the bounds prescribed by the divine laws, that is, cannot perform the duties imposed on them by the conjugal relationship, the woman can release herself from the tie by giving up property in return, in consideration of which the husband is to give her ***Khula.[63]*,**and when they have done this, a ***Talaq-ul-Bain[64]***would take place."[65] Muslim women traditionally enjoyed the right to divorce, unlike women of other religions,who were not permitted to seek the dissolution of marriage by apostatising from Islam.[66].

Since the Hanfi Law, followed by most Indian Muslims usually enforced was more conservative than the Maliki Law on the issue of divorce, apostasy was the route that many Muslim women took to dissolve failed marriages.[67]. The Ulema suggested a law that would empower Muslimjudges to dissolve a marriage on the initiative of women in certain circumstances. Religious scholars in the 1920s and 1930s concluded that the issue of apostasy might be resolved by adopting particular provisions of the Maliki Law on the matter.[68].

The remark made during the parliamentary debate that actual Islamic law banned the automatic dissolution of marriage based merely on apostasy was widely accepted by the government. Additionally, the draft had a clause that would have made Maliki law tenets applicable to all Muslims.[69].

During the course of the debate, Mr Aney, a member from Berar, pointed out that by using the legislature to reform Muslim law, the law was being secularised, and government courts should be allowed to judge cases.

[59] Ahmad, the Bride's Mirror, (Mirat-ul-Aroos), pp, 56.
[60]North-Western Provinces Native Newspaper Reports-1899, Allahabad: NWP & Oudh Government Press, PP.649.
[61] Op. Cit, Subbamma, Malladi, pp.47.
[62]Quran, sura2nd Aayat 229, translated by Maulana Farmaan Ali.
[63] Khul is an Arabic term also called khula is a procedure through which a women can give a divorce to her husband by returning the Mehr (dower) or something else that she received from her husband.
[64] it is an Irrevocable Divorce means that the marriage had never happened with consent of the person. generally given written manner.
[65]Fatwa-e- Alamgiri, Cited by Ameer Ali, 1986, Muhammadan Law, Kitab Bhavan, India, vol II, pp. 506.
[66] Op. Cit,Mahmood, Tahir & Mahmood, Saif, pp.137.
[67] Nair, Janaki, 1996,Women and Law in Colonial India: A social History, National Law School of India University, Bangalore,pp.193.
[68]Ibid, 194-95.
[69]Samiuddin, Abida&Khanam.R, 2002, Muslim Feminism and Feminist Movement South Asia, Global Vision Publishing House, Delhi, Vol,1, pp.120-121.

Therefore, no need for a special Kazi[70].As a result, the Muslim Marriage Dissolution Act of 1939 was passed. Because it was not acknowledged by the government that a Muslim judge could only annul a Muslim marriage[71].

The Jamiat-al-Ulema even declared the new bill to be against Islam. Ironically, only women had to contend with the additional defence against heretic marriage dissolution, which undermined the advancements made by women under this act in getting a judicial dissolution of marriage.[72].

Rights to Maintenance of Muslim Women- The term of maintenance ***Nafaqa*** includes food and lodging, and, in the case of the wife, the use of a separate apartment to which no one except the husband is entitled, and the cost of maintaining one female servant of the choice of wife. A person can earn if he can maintain himself or provide maintenance to any relations specified as per Muslim law by doing work that is suited to his health and position in life.[73]. A Muslim wife is entitled to maintenance under three heads:

- According to the Islamic Law

- Under the agreement at the time of marriage by the wife or by herguardian on her behalf, provided that the agreement is not contrary to Islamic principles and public morality.

- Under section 125 of the Criminal Procedure Code in colonial India[74].

A wife can claim maintenance according to Islamic law, provided certain circumstances exist and certain conditions are fulfilled. The wife must have attained an age at which she can render conjugal rights to the husband. Even if she has the means to maintain herself,in the event of the above terms being observed, she can exercise her rights to maintenance, and the widow should also be provided for[75].

As the Quran says," In the case of those of you who are about to die and leave behind them wives, they should bequeath unto their wives a provision for the year without turning them out, but if they go out of their own accord, there is no sin for you in that which they do of themselves within their rights. Allah is mighty, wise.[76]."

The divorced woman gets maintenance from her husband only during the period of waiting, ***Iddat.***[77]**.** A special provision is made in respect of those women with children below the age of two years. Mother shall suckle their children for two years, that is, for those who wish to complete the suckling.[78].

The parties to the marriage could determine the maintenance payable to the wife by an agreement, provided such an agreement was not opposed to any law or public policy or Islamic law. It is customary in Muslim families

[70]Op. cit. Shaheeda Lateef, pp.72.
[71]Ibid, pp.73.
[72]Op. cit. Nair, Janaki, pp.196.
[73] Op. cit.Fyzee, pp.173-74.
[74]Op. cit. Subbamma, Malladi, pp. 59.
[75]Ibid, pp. 60-61.
[76]Quran, sura *2nd Baqra*(The Cow), Ayat,240.
[77]In Islam, Iddah or Iddat is the period a woman must observe after the death of her husband or after a divorce, during which she may not marry another man.
[78]Op.cit. Siddiqi, Mazheruddin, pp.74-75.

of rank, especially in upper India, to fix a personal allowance for females. This is called ***Kharch-i-Pandan.***[79]Or allowance for ***Mewakhori***.This resembles the pin money of the English wife.[80].

Provision has been made in the personal law prevalent in the country for maintenance to deserted wives. Besides, a deserted wife is given the right to claim maintenance under Section 125 of the Criminal Procedure Code.The amount of maintenance shall not exceed rupees 500 per month.[81].It has been standard practice for Muslim males to divorce their wives anytime the wife decides to assert her rights to avoid having to pay maintenance. As a result, the government amended section 127 of the Criminal Procedure Code to incorporate clause (3)[82].

Muslim women's rights to Guardianship-Guardianship is of two kinds. One relates to the guardianship of the person of the minor and the other to the property of the minor. The mother is entitled to the custody (Hizanat) of her male child until he has completed the age of seven years and her female child until she has attained puberty. The right continues to be with her even though she is divorced by the father of the child,unless she marries a second husband, in which case the father has custody[83].

In default of the legal guardians, the court has the right to appoint a guardian, keeping in view the welfare of the minor. But no woman, unless appointed by the court, is entitled to act as a guardian of the property of a minor child. No doubt she can keep the minor children in her custody during the later years to bring them up. During the later years, they will pass into the custody of the father.

A woman who has borne the child in her womb for more than nine months has no right over the child except that she is bound to labour further for it. There can be no greater fraud on women. The conditions that were obtained in the seventh century AD do not exist now. The world is changing. If anybody maintains that those holy principles are still the best, it must be due either to ignorance and blind faith or fraud. One thing is certain. The mother has no right to be the guardian of the person (except for a few years) or the property of the minor.[84]. During the colonial period,Muslim women were becoming aware of their rights, and when they demanded these rights from the British government, the government tried to make various types of laws.

The Purdah Nashin-related privilege laws-As was previously mentioned, Islamic law's theoretical rights for Muslim women were limited by traditions surrounding marriage and inheritance. Nonetheless, the British did support some aspects of Islamic law, enabling Muslim women to assert their legal rights in court. Kozlowski observes that Muslims looked to the ulema for guidance on matters of religion or ritual and that the ulema was expected to issue fatwas outlining proper Islamic behaviour.[85].

However, Muslims looked to the British courts for resolution of material disputes, particularly those involving property. Since most of these women belonged to the propertied classes and so practised purdah, interacting with the colonial legal system may not have been simple for them. Colonial officials seemed to have

[79] Gail, Minault,1998, Women's Magazines in Urdu as for Muslim Social History, Indian Journal of Gender Studies 5:2 Sage Publication, Delhi, pp.203-204.
[80]Ibid, pp. 205-206.
[81]Op. cit. Subbamma Malladi, pp.62.
[82] Ibid, pp.63.
[83] Op. Cit, Tahir Mahmood, PP. 160.
[84] Op. Cit, Malladi Subbamma, pp. 79.
[85]Kozlowski, Muslim Women and the control of the property in North India" in J. Krishnamurty ed. Women in colonial India: Essays on Survival Work and the state, Delhi, Oxford University Press, 1989, pp, 125-26.

recognised this difficulty and gave Pardahnashin women special status under the colonial legal system, which was intended to protect their position[86].

Cases affecting Muslim women can be broadly divided into two categories: those about marriage-related matters like divorce and dowry, and those involving inheritance, real estate rents, and mortgages. The colonial authority granted women in purdah or pardahnashins a unique legal status that allowed them to receive preferential treatment under the law. Pardahnashins, as described by the Privy Council in the precedent-setting case of Munshi Buzlur Rahim v. Shamsunissa Begum, were women "shut away in seclusion, partly because of their race, partly of their social position.[87]"

The privileges of Pardanashin were delineated by the Civil Procedure Code of 1882. In terms of court appearance, they were exempt from personal appearance in court in all civil cases where they were to be examined by a commission and represented by an agent. In criminal cases where their testimony was vital, they were to be examined by a judge in his chambers or an almost empty courtroom. Women were allowed to come to court in a Palki, which was then carried into the courtroom and gave evidence from within their mode of conveyance, as seen from one missionary's statement that "if the pardah lady's evidence is required at a court of law, she is carried thither in a fast-closed palki. Some woman acquainted with her is directed by the magistrate to look in and see whether the right woman is within those closed curtains, and the invisible one's testimony is then taken.[88]"

For women who observed strict purdah, being heard in public was almost as shameful as being seen, and thus a court had to be cleared before such a woman would agree to testify. Another article suggested that Pardanashin women be exempted from being locked up in a police station and that, except for major offences, their evidence should be taken, and then only if they were found guilty should they be forced to come to court[89].

In matters about contracts and deeds, particularly those involving the transfer of property, *Pardanashins* were also legally protected. To prevent women from signing away their property, the burden of proof in these cases was shifted to the opposing party to demonstrate that the woman was acting voluntarily and intelligently and that she had not been forced to sign the contract.

CONCLUSION

To accurately assess the position of marginalised Muslim women in Indian society, one must address the challenges from an intellectual standpoint. Let's look at the state of Muslim women in India now. They have a legal right to an education, but their social and economic circumstances are not good. Few Muslim women take advantage of this right, which is granted to them by both their religion and the Indian constitution. This issue faces each of us. Since women experience more injustice and discrimination than any other group in society, due to this perspective, male novelists in nineteenth-century Urdu fiction frequently portrayed women as nagging wives, disobedient, and oppressed by their husbands, such as *Shahzadi's* mother and *Sadeqa's* mother.[90]. Whereas female authors portrayed Muslim women as compulsive, vulnerable, etc.

[86]Ibid, pp 126.
[87]J.N. Mukherjee and N.N. Mukherjee, 1906, the Law relating to Pardanashins in British India, Calcutta: R. Cambray and Co. pp2-5.
[88]Barnes, Irene, 1897, Behind the Pardah : The story of CEZMS Work in India, London, Marshall Brothers, PP, 42.
[89]Ibid, pp, 45.
[90] Ahmed, Nazir,1869,Roya-e-Sadiqa, Anjuman-e-Tarrqqi-e-Urdu,Delhi,pp.96-97.

Ismat always wrote about the concerns of ***Tarka-e-pedari.***[91]Theright to ***khula,*** and the majority of Urdu periodicals consistently raised their voices in support of women's rights and demanded reformation in Muslim personal law from the British administration. Another was ***Tahzib-e-Nisswa,*** which addressed the appalling state of Muslim women's education. The next one was ***Khatoon*** magazine, which was published in Aligarh and depicted the sad state of Muslim women in both their homes and society. These periodicals promoted the ideal of competent domesticity, brought up significant social concerns, and enabled Muslims living under purdah to feel less alone and educated.

However, by writing about it, these Urdu magazines were successful in changing Muslim society, and they continued to put pressure on the British administration to support Muslim personal law over customary law.

The discussion above makes it evident that Muslim women enjoyed several rights during the colonial era, but certain of them were particularly common and helped to preserve the distinct identity of Muslim culture. If we speculate that this was happening as a result of patriarchal ideology also having an impact on Indian Muslim society, it would not be incorrect to note that customary law was being used to attempt to deny Muslim women access to their religious freedoms. As a result, Bazm-e-Khawateen[92]Member*Shahnaz Sidrat* stated that"*once women understand their Islamic rights, they will also understand their rights as citizens"*[93]

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[91] Tarka-e-pedari is a Persian term which means property left by the father.
[92]Bazm-e-khawateen means women's club, is an educational, social, cultural, and religious voluntary organization for Muslim women.
[93]Tschalaer, Mengia. Hong, 2017, Muslim women's quest for justice: Gender, law, and activism in India, Cambridge University press.

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