CHAPTER-III

Muslim Personal Law in India and Women: A Critical Analysis

In this chapter, an attempt has been made to study the origin and development of Muslim Personal Law in India and the status and rights of women in Muslim Personal Law. In addition, the movement for change in the Muslim Personal Law since independence and the issue of Shah Banu Case and the subsequent demand for a Uniform Civil Code have also been discussed in this chapter.

Muslim Personal Law in India has sources from Islamic laws and religion. For a proper understanding of the development in these laws, a brief reference to the conditions prevailing in pre-Islamic Arabia is necessary. During Prophet Muhammad's time, there were numerous tribes, unstable local governments, and traditional tribal rules. At Medina, Prophet Muhammad assumed the functions of legislator, administrative general and judge. And many *Suras* (chapters of the Quran) containing rules about fasting, prayers, social laws covering marriage, divorce etc, belong to the Medinese period. Therefore, on many issues the solutions are found in the revelations of the Holy Quran, which became the most important source of law. Thus, Islamic law was introduced by Prophet Muhammad through the Holy Quran and under his own directions during his lifetime. The overall spirit of the laws was embodied in reforms in the then existing practices, such as introduction of females as heirs, prohibition of usury and abolition of infanticide especially of baby girls. The background and spirit that lies behind the introduction of the Muslim Personal Law should always be kept in mind while interpreting any portion of the law.[1]

[1] Patel, R. (2009, October 31). Indian Muslim women, politics of Muslim personal law and struggle for life with dignity and justice. *Economic and Political Weekly*, *XLIV*, pp.44-45.

Personal laws operate in matters related to inheritance, marriage, divorce, maintenance, and adoption, which are regarded as personal issues. Shariat or Muslim law in India does not apply to crimes. Despite differences among them, the personal laws of all communities are seen to be discriminatory towards women.

Muslims are often wrongly perceived as a homogeneous block of people with uniform religious laws governing them. However, it is very often ignored that Muslims worldwide have many different practices, and have a large number of variations in laws governing them within different Islamic countries and regions.[2] In the Sunni Islam there are four different schools of jurisprudence-Hanafi, Shafi'i, Hanbali and Maliki. Moreover, there are several schools in the Shi'ah Islam as well. The Ja'fari or the Ithna Ashari, the Isma'ilis school and the Zaidi School[3] falls under Shia Islam.

The Sunni Islam bases Shariah-besides the Quran-on Sunna (i.e., the sayings and doings of the Holy Prophet), Qiyas (analogy) and finally Ijma (consensus). However, except the Quran, the remaining three sources, i.e., Sunna, Qiyas and Ijma are controversial. Some *hadith* (sayings of the Prophet) are acceptable by some, while they are rejected by others. Some *hadith* are considered weak and some of doubtful origin and some outright forgeries. Qiyas (analogical reasoning) varies from jurist to jurist. There is controversy about Ijma as well. The crucial question is whose Ijma? Whether of the jurists or the Ulema or of the entire community? Also, has Ijma ever been possible? Have all Ulema, let alone the entire community, ever developed consensus on any issue? There are hardly any instances of this nature in the history of Islamic jurisprudence. Thus, it will be seen that except the Quran which is divine and there are no textual

[2] Ibid, p.45.
[3] Engineer, A. A. (Ed.). (2001). *Islam, women and gender justice*. New Delhi: Gyan Publishing House, pp.25-26.

differences about it, the three other fundamental sources are human and hence seem controversial.[4]

DEVELOPMENT OF MUSLIM PERSONAL LAW IN INDIA

During Muslim Period

A handful of Muslims first appeared in India on the Malabar Coast as Arab traders during the seventh century AD. They married Malabari women and the descendants of these unions are known as Mopillas (Moplahs) or Malabari Muslims. In 711 AD, Sindh (a province in the Indian sub-continent, now part of Pakistan) was invaded by the Arab Governor Muhammad bin Qasim, but his influence did not extend beyond Sindh due to the surrounding harsh desert area. In the eleventh and twelfth centuries, Muslim influence increased in the region in the form of Turkish invasions. Later, under the aegis of the Delhi Sultanate, Islamic domination spread all over Northern India, and by 1320 it had reached the Southern corners of the country. During the Mughal rule, Muslim control spread throughout the whole of India, and so it was during the thirteenth century, after the capture of Delhi by Turks and Afghans, that the Muslim community in India became well established.[5]

Muslim Law (Shariat) was first introduced to the Sultanates of Afghan and Turkish rulers and entered India around the twelfth to the thirteenth century A.D. The Muslim Sultans who invaded India were Hanafis. They relied upon the *Ullamas* to be the religious and legal arbitrators. The new Sultanates followed the basic law of Islam, the Shariat, as interpreted by the *Ullama* in the royal courts. The Mughol emperors were Hanafis and the Qazis appointed by them administered the Hanafi law. It is through this channel that the Shariat was established in India. The text books of Hanafi law are based on

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[4], Ibid, p.26.

[5] Mistry, B. M. (2005). Muslims in India: A demographic and socio-economic profile. *Journal of Muslim Minority Affairs*, *25* (3), p.399.

Fatwas compiled during Aurungzeb's regime and the *Hedaya (*the guide).[6] As the Muslim rulers were strangers to this country, they did not accept Hindu law for themselves, nor did they abolish the Hindu system of law altogether. Hindu law was allowed to be reserved for the Hindus and Mohammedan rulers did not interfere in the personal law of the Hindus. During the Mughal period, the Islamic law was the law of the land. Not only the civil law but also the criminal law then in force was the Islamic; law and judiciary enforced and administered these laws. However, the non-Muslims had the freedom to follow their own religion or customary law in matters of marriage, inheritance, etc.[7] Though the Mughals had carved out a huge empire and established a well organised criminal justice system, they refrained from introducing a uniform family code. Though some of the Mughal rulers as well as their other Muslim predecessors did occasionally come in the way of Hindu religious practices by destroying their temples, they seldom tampered with the Hindu personal law. Even Akbar who tried to proclaim his new syncretistic religion, *Din-i-Illahi,* did not fiddle with the Hindu personal law. For example, he allowed the practice of *sati* (immolation by a Hindu widow on the pyre of her husband) to continue, though it was morally repugnant as well as prohibited in *Shari'ah*, according to which the practice amounted to suicide and therefore was not permissible in Islam.[8] Moreover, Muslim rulers have permitted different law systems even for Muslims allowing indigenous customs and usages in the areas of Islamic personal law.[9]

During British Period

In a multi-cultural society like India, there is divergent system of personal laws. When the British established their hegemony over

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[6] Agnes, F. (2004). *Law and gender inequality: The politics of women's rights in India.* New Delhi: Oxford University Press, p.31.
[7] Deshta, K. (1995). *Uniform civil code: In retrospect and prospect.* New Delhi: Deep and Deep Publications, pp.13-16.
[8] Thapar as cited in Ghosh, S. Partha.(2009). Politics of personal law in India: The Hindu-Muslim dichotomy. *South Asia Research, 29* (1), p.1.
[9] Raju. M. P. (2003). *Uniform civil code: A mirage*?. Delhi: Justice and Peace Commission, and Society for Medial and Value Education, P-20.

India, they more or less continued the Muslim pattern of judicial administration. But in the course of time, the Britishers consolidated their position and they completely changed the criminal law. They introduced their own system to deal with the various matters of civil law. Legislative immunity was granted to certain specified topics of Hindus and Muslims Laws, which they considered, were deeply interwoven with religion. The Britishers did not want to hurt the religious feelings of the Indians. Interference in religious matters, they considered was not at all conducive to their friendly relationships with Hindus and Muslims or their political stability.[10]

The British rulers from the very beginning followed a policy of non-interference in the religious matters of the Indians. The Charter Act of 1753 exempted the Indians from the jurisdiction of the Mayor's courts and directed that all disputes should be determined by the Indian themselves, unless both parties submitted themselves to the jurisdiction of the court.[11] Warren Hasting's Regulation Plan of 1772 established a judicial system whereby civil, criminal and commercial law were made uniform, while family law and the laws relating to certain property transactions were left to the respective religious law of the Hindu and Muslim communities. The regulations guaranteed the continued validity of Islamic law in matters of family law, inheritance and succession. Religious law was understood as those laws which found in the Brahminic Shastras for the Hindus and in the Quran for the Muslims.[12]

However, from 1860 onwards the British embarked on a process of codification as a way of establishing certainty and uniformity in the law. Although prior to this period the court system was rationalised and there were attempts to systematize the law, it was only after the

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[10] Deshta, K. (1995). *Uniform civil code: In retrospect and prospect*. New Delhi: Deep and Deep Publications, p.17.
[11] Ibid, p.20.
[12] Narain, V. (2001). *Gender and Community: Muslim women's rights in India*. London: University of Toronto Press, P.13-14.

Crown took over the governance of India from the East India Company in 1858 that significance progress was made. Islamic criminal law was entirely abolished and replaced by British based law; Islamic laws of evidence were replaced by colonial British rules; and slavery was abolished.[13] Thus, Muslim criminal law was replaced by the Indian Penal Code of 1860 and the Criminal Procedure Code of 1898. Muslim law of evidence was replaced by the Indian Evidence Act of 1872. This put a host of matters of personal law under the purview of modern legislation. In the same year, the Contact Act was enacted and applied equally to all Hindus and Muslims alike. The Child Marriage Restraint Act of 1929 laid down the minimum age for marriage. Muslim law left unfettered, complete and exclusive rights to the husband to divorce his wife, and confers none of the wife whatsoever, the Dissolution of Muslim Marriage Act of 1939 began the process of redressing the balance by enabling the wife to initiate the proceedings too on specific grounds.[14]

Though there have been various changes, reforms, law commissions, and so forth, through the years, the basic systems of "personal law" continued to be in operation until the time of independence.[15]

Post Independence Period

This was the backdrop when independent India called upon to address the issues of personal laws. The Constituent Assembly of India devoted considerable time to the subject, debating the question of a uniform family code. Prior to partition it had been the constant propaganda of the Muslim League that Muslim personal law would not be respected in post-independent India. Against this background, Jawaharlal Nehru persuaded the Constituent Assembly not to press

[13] Ibid, pp. 13-14.
[14] Ghosh, S.K. (1987). *Muslim politics in India*. New Delhi: Ashish Publishing House, p.50.
[15] Raju. M. P. (2003). *Uniform civil code: A mirage*?. Delhi: Justice and Peace Commission, and Society for Medial and Value Education, p.22.

for a Uniform Civil Code. Ultimately, placing the subject in the list of Directive Principles of State Policy, rather than including it among the Fundamental rights, was a compromise that seemed to satisfy all. The Constitution of India of 1950, Article 44 thus reads: The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."[16]

The Muslim Personal Law (Shariat) Act, 1937 was enacted by the British government in India, as a part of the Government of India Act 1935. After independence, the Constitution of India has maintained the law as it existed during the time of its introduction. Under the Constitution, Muslim law has been recognised only in respect of marriage and divorce, infants and adoption of minors, intestacy of wills, successions, joint family and partitions. Shariat or Muslim law does not apply to crimes.[17]

Religion and personal law in India are more or less closely intertwined. The communities most concerned with the connection between religion and personal law are the Hindus and the Muslims. For Hinds, since the incorporation of much of their personal law in the national civil code in the 1950s, the relationship of their religion to their personal law has become attenuated, this allows a scope to certain Hindus to focus on Muslim personal law. For Muslims, the connection between religion and personal law is very strong. Their personal laws were not incorporated into the common civil code.[18]

Discriminatory Aspects of Muslim Personal Law in India

Discrimination against women under personal law is a crucial factor in maintaining their subordination to men and in sanctioning the inequality of women within the family and in society. Although

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[16] Ghosh, S. Partha.(2009). Politics of personal law in India; The Hindu-Muslim dichotomy. *South Asia Research, 29* (1), p. 5.
[17] Patel, R., Op. Cit., p. 45.
[18] Austin, Granville. (2001). Religion, personal law and identity in India. In Geralad James Larson (Ed.), *Religion and personal law in secular India.* Delhi: Social Science Press, p. 15.

personal law is only one form of discrimination, it constitutes a significant source of disadvantage for Muslim women.

The provisions of Muslim Personal Law relating to men-women relationships are most repressive to women. Women's unequal position in marriage is reflected in the practice of polygamy, whereby a Muslim man can keep up to four wives. A man can also divorce without giving reason and without any witness just pronouncing divorce verbally. He is even not required to pay maintenance beyond the period of *Iddat*. In matters of inheritance, a Muslim woman is entitled to only half of what her brother gets.[19]

The Dissolution of Muslim Marriage Act, 1939 entitled Muslim women to decree for dissolution of marriage on anyone or more of the following grounds namely:-

1) The whereabouts of the husband are unknown for a period of four years.
2) Husband has failed to provide maintenance for two years.
3) Sentence of imprisonment on husband for a period of seven years or more.
4) That the husband has failed to perform, without reasonable cause his marital obligations for a period of three years.
5) That the husband was impotent at the time of marriage and continues to be so.
6) That the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease.
7) That she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years.
8) That the husband treats her with cruelty.

[19] Bhatty, Z. (1993). Socio-Economic status of Muslim women. In Zakia A. Siddiqi and Anwar Jahan Zuberi (Eds.), *Muslim women: Problems and prospects*. New Delhi: M. D. Publications Pvt. Ltd, p. 14.

The enactment definitely improved the status of Muslim women. But all the grounds for divorce are subject to proof and judicial scrutiny whereas a man need not assign any reason for divorcing his wife. This is far from the requirements of equality of sexes.[20]

A notable advance was Section 125 of the Code of Criminal Procedure enacted in 1973. This, for the first time, gave a statutory right to all women including Muslims to maintenance from the husband after divorce. Unfortunately, Rajiv Gandhi deprived Muslim women from this right under the pressure of conservative Muslim opinion.[21]

Inequality is equally glaring in the law relating to guardianship. Father is regarded as the primary and natural guardian of his minor children. The mother is only entitled to the custody of her child until the age of seven and of her female child until she attains puberty. But the right of custody is subject to the supervision of the father and this right, too, lapses after her marriage.[22] All these clearly shows that Muslim women are in a disadvantageous position in Muslim Personal Law as practised in India in matters of marriage, divorce and maintenance.

The Shah Bano Case and the Issue of Uniform Civil Code

In April 1985, India's highest judicial court, the Supreme Court, gave a momentous judgement-the grant of maintenance to Shah Bano, a divorced Muslim woman. Seen as a threat to the Islamic Law (Shariah), the verdict evoked strong passions and led to a massive agitation among Muslims. Alarmed by its intensity, the government enacted legislation- the Muslim Women Protection of Rights on

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[20] Puri, B. (June 8, 1985). Muslim personal law: Questions of reform and uniformity be delinked. *Economic and Political Weekly*, *20*, (23), p. 989.
[21] Farooqi, V. (1993). Muslim women's right to equality and the problems today. In Zakia A. Siddiqi and Anwar Zahan Zuberi (Eds.), *Muslim women: Problems and prospects*. New Delhi: M.D. Publication Pvt. Ltd, p. 29.
[22] Puri, B., Op. Cit., p. 989.

Divorce Bill, 1986 to mollify. But its provision proved to be retrogressive. Article 14 of the Constitution which guarantees equality before law was overruled by Article 15 which safeguards freedom of religion. Besides, a secular law-Section 125 of the Criminal Procedure Code- which guaranteed maintenance to indigent women was amended to exclude Muslim women from its purview.[23]

The brief facts of the Shah Bano Case[24] were that Shah Bano Begum was married to Mohd. Ahmed Khan in 1932. In 1975, Shah Bano was driven out of her matrimonial home after 43 years of marriage. For two years she was paid maintenance of Rs.200 per month, but after that it was stopped. Thereafter in 1978, Shah Bano filed a petition against Ahmed Khan under section 125 of the Cr. P.C before the Judicial Magistrate, Indore, for the maintenance Rs.500 per month. In 1978 while the application was still pending, Ahmed Khan divorced her by irrevocable triple *talaq.* The husband argued that since he had divorced his wife, he was under no obligation to provide maintenance for her. He further contended that he had been paying maintenance of Rs.200 per month for the last two years, besides depositing a sum of Rs. 3000 as *mahr* during the period of *Iddat* as required by the Muslim law.

In August 1979, the Judicial Magistrate, however, sanctioned and ordered a paltry sum of Rs. 25 per month to be paid to Shah Bano as she was unable to maintain herself. In July 1980, the High Court of Madhya Pradesh enhanced the maintenance from Rs. 25 to Rs. 179.20 per month in revision. It was against this verdict that Ahmed Khan filed an appeal in the Supreme Court asking to be exempted from payment of even this paltry sum, because as a Muslim he was governed by his personal law according to which a man has to pay maintenance to his divorced wife only up to the period *Iddat,* that

[23] Hasan, Z. (Jan-7, 1989). Muslim identity, Muslim women bill campaign and the political process. *Economic and Political Weekly*, *24*, (1), p. 44.
[24] *Mohammed Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945; 1985(2) SCC 556.

is three menstrual courses after the divorce in case she is subject to it otherwise three lunar months. The Supreme Court dismissed his appeal and upheld the maintenance order under section 125 of the Criminal Procedure Code. The judgement generated much debate among different groups and the demand for Uniform Civil Code started tremendously.

The nation- wide agitation it unleashed was compared to the Khilafat agitation of the 1920's. Truely, in proportion and significance, the comparison is valid; but it fails as per as intent and consequences are concerned. The Khilafat agitation brought about Hindu-Muslim unity and strengthened movement for Indian freedom. The present agitation arising from the Shah Bano Case, on the contrary, has sharpened the Hindu-Muslim cleavage and has weakened the integrity of the country. Secularism, too, is a casualty-almost by default.[25]

The controversial Shah Bano Judgement delivered by Chief Justice Y.V. Chandrachud (for the full bench comprising of five judges) in 1985, apart from affirming the right of a divorced Muslim women, also commented upon Islam and interpreted the Muslim Personal Law while deciding a right under a secular and uniform statute. The call for a U.C.C. and the comments on the Quran evoked a communal backlash.[26] In this way the issue of women's rights became secondary.

The Shah Bano case divided the Muslim community at the beginning, further polarised Hindus and Muslims, and created strange alliances separately within the two groups. Muslim women's groups who came out in support of Shah Bano were overwhelmed by the political clout of the All India Muslim Personal Law Board. Even the supposedly secular Congress Government of Prime Minister Rajiv Gandhi abandoned secularism and the commitment to establishing a

[25] Enginner, A. A. (1987). *The Shah Bano controversy*. Hyderabad: Orient Longman, p-1.
[26] Agnes, F., Op. Cit., p. 102.

Uniform Civil Code in the face of the Board's opposition to the Supreme Court ruling. On the other hand, the traditionally anti-Muslim and fundamentalist Hindu organisations found in the Shah Bano Case a convenient cudgel to attack the " secular" Congress Government and Muslim leaders. Overnight, they became the champions of gender equality for Muslim women and their liberation from oppressive Muslim men. Finally the demonizing of Islamic religion and culture by Hindu fundamentalists drove a number of Muslim women's groups into silence; some even became the reluctant supporters of Muslim religious leaders. Shah Bano herself came out to reject the Supreme Court ruling in public and to affirm the traditions of her community, blaming her ignorance for the litigation: "Most of us read the Quran but don't understand it. I was ignorant when I fought the case all these years. The *maulvis* have now told us that it would be un-Islamic if I accepted the judgement."[27]

Muslim fundamentalists organised a huge campaign against the Shah Bano decision. A large number of Muslims were mobilised across the country to stage demonstrations. In response, women's organisations, progressive Muslims and civil liberties organisations joined together to support the Shah Bano judgement. Despite strong opposition, Parliament passed the Muslim Women Protection of Rights on Divorce Bill 1986-which denied Muslim women the right to maintenance under section 125 of the Criminal Procedure Code.

The provisions of the Muslim Women (Protection of Rights on Divorce) Bill, 1986, are important to note since this bill both provides for Muslim women exclusively and at the same time is a bill enacted not by the Muslim community itself but by parliament. It provides for a reasonable and fair maintenance for the divorced woman by her husband during the period of *Iddat*. Where she maintains children born to her she is to be provided maintenance for two years from the

[27] Philips, A. (2011). Shariah and Shah Bano: Multiculturalism and women's rights. *Anthropologica*, *53* (2), p. 282.

birth dates of the children. She is to be provided the sum or *mahr* agreed to be paid to her at the time of her marriage according to Muslim law. And she is to have returned to her all properties or gifts given to her before or at the time of the marriage by relatives, or friends, or her husband and his relatives and friends. If she is unable to support herself, other provisions are made for her support. As a last resort, if neither the husband nor her family or her heirs are able to provide the support, support should be provided by the State Wakf Board. It seems clear that this legislation makes provisions that go beyond Muslim laws commonly practiced and these provisions are mandatory upon the former husband and others. Failure to fulfil these requirements can result in fines and or jail sentences up to one year.[28]

Opposition to the Common Civil Code

According to Asghar Ali Engineer, there are mainly three categories of people who oppose the idea of the enactment of a common civil code. The first category comprises of fundamentalist and communalist Muslims. The second category comprises Muslims who are neither communalists nor fundamentalists, it includes the Muslim intelligentsia. And the last category comprises non-Muslims who feel that a uniform civil code should not be enacted in a hurry.[29]

The first category, namely, fundamentalist and communalist Muslims want to follow their religion blindly, caring nothing for its true spirit. They have turned a blind eye to the newly emerging realities. According to them, the medieval jurists resolved these matters once and for all and there is no need to have a fresh look at any of these laws formulated in their time. They don't want to take into account the fact that the great jurists of classical Islam differed among themselves on practically every important issue. There were

[28] Baird, D. R. (2001). Gender implications for a uniform civil code. In Gerald Larson (Ed.), *Religion and personal law in secular India*. Delhi: Social Science Press, pp. 156-157.
[29] Engineer, A. A. (2008). *Rights of women in Islam* (3rd edition). New Delhi: Sterling Publishers Private Limited, pp.198-201.

numerous school of jurisprudence and they also completely ignore the progressive principle of *ijtihad* (the creative reinterpretation of law). They are hardly concerned with the plight of women. They are more concerned with ritual piety than with the spirit of justice. Any talk of justice for women infuriates them, and they feel Islam is under attack from its enemies. Muslim women have suffered terribly because of such a rigid attitude.[30]

The second category of opponents of a common civil code comprises Muslims who are neither communalists nor fundamentalists, it includes the Muslim intelligentsia. For them a common civil code is not acceptable for reasons other than religious ones. They feel the Hindu communalist's campaign, demanding a common civil code, has been an aggressive one. They also feel that nothing is being done to check the frequent occurrences of communal riots in India, in which hundreds of Muslims perish. Those who are concerned with a common civil code on grounds of secularism should be more concerned about these riots, as they question the very existence of Muslims. It is not merely a question of doing justice to their women. And what about women who become widows in riots, and women who are raped?[31]

The last category of supporters of personal laws comprises non-Muslims who also feel that a uniform civil code should not be enacted in a hurry. They feel that we must view the question in the concrete conditions which obtain in India. We should not merely think of secular ideas. Practical situations are always far from ideal ones. A uniform civil code may be desirable but is certainly not practicable at this stage. Unless the Muslims themselves are prepared to accept it, we cannot impose it upon them. To do so would be undemocratic, even if it were a secular act. It would be construed by some as a totalitarian measure. Change, to be acceptable, must be brought

[30] Ibid, p. 199.
[31] Ibid, p.200.

about in a democratic manner. The community most affected by it should be the first to be taken into confidence. What would be more desirable would be to codify the Muslim law and enact a comprehensive bill. And since many communalists Hindus have been pressing for such a measure the Muslims have come to resent it. Moreover, successive central governments have also given assurances to Muslims that a common civil code would not be enforced unless the Muslims are ready to accept it.[32]

Balraj Puri maintains that the issue of personal law is closely linked with the Muslim urge for identity. The near unanimity among the Muslims of the country against a uniform law is more a reflection of this urge than of their obscurantism. Similarly, most of the clamour for a common law by the Hindus is motivated by a desire for cultural and political uniformity rather than for reform of the so-called retrograde features of the Muslim law.[33]

The religious personal laws are justified under the right to religious freedom and the state's commitment to the protection of group rights. The state is committed to a policy of secularism in the so-called private sphere, but allegedly does not interfere with religious laws in the so-called private sphere, even when these laws conflict with constitutional guarantees. Muslim women are simultaneously included and excluded from equal citizenship, as the state's guarantee of equality does not extend to the private sphere of the family. Thus, Muslim women are explicitly discriminated against within the family, and the state does little to enforce constitutional guarantees of equal citizenship in the family as part of its commitment to a policy of multiculturalism and accommodating Muslim group rights.[34]

The case for reform

Keeping in account the slippery ground on which demands for Uniform Civil Code is situated, many feminists started demanding

[32] Ibid, p. 201.
[33] Puri, B., Op. Cit., p. 987.
[34] Narain, V. (2013). Muslim women's equality in India: Applying a human rights framework. *Human Rights Quarterly, 35* (1), p.95.

reforms in personal law. MPL have often been criticized by the Right wing political groups. UCC runs the risk of being a weapon in the hands of the communal right and be hijacked by it. In absence of a UCC, a reconciliation mechanism should be worked out. In such cases, communities should be encouraged to reform their personal laws. Over a period of time, there have been reforms in personal laws of Parsees, Christians and Hindus, but the same cannot be said about Muslims. However, scholars like Asghar Ali Engineer have pointed out that it is possible to interpret Shariah in such a way to make it more acceptable at present time. The need is to have more women as decision makers in the realm of personal law. Many Islamic countries have given women rights and believe that Quran does not deny rights to women. Courts in Bangladesh and in Lahore creatively interpreted the Quranic verse and provided maintenance for divorced women for life.[35]

Few positive developments in the sphere of personal law need to be taken into account of. In July 2013, the Bharatiya Muslim Mahila Andolan set up the first all women Shariah court in Mumbai. And they plan to establish similar courts in a number of other places as well. Post Shah Bano Shariah laws have been interpreted in many cases for the benefit of women. Examples are the Danial Latifi case and Shamim Ara case. Many newer groups like All India Muslim Women's Personal Law Board and other NGOs have often challenged the authority of AIMPLB. With the spread of literacy older orthodoxy is being challenged. To make multiculturalism work, it is essential to give greater space to the liberal progressive elements within communities. So in a situation where Uniform Civil Code is difficult to achieve, a process needs to be initiated to introduce reforms in the personal laws.[36]

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[35] Sultana, P. (2014). Muslim Personal law and the status of women in India: A case for reforms. *The Chronicle*, *2* (1), p.30.
[36] Ibid, p. 30.

To sum up, during the Muslim rule in India, the Muslim rulers administered Islamic law in criminal matters. However, in personal matters different religious communities were allowed to practice their own personal law. Thus, Muslims were governed by Muslim personal law whereas the Hindus were allowed to follow their respective laws in the personal matters. So the presence of different personal laws can be seen in practice during Muslim rule in India. During British rule, though the British government changed the procedures of criminal law they did not interfere with the personal laws of the Hindus and Muslims. An attempt was made to codify the personal laws by Britishers during their last years, the basic systems of "personal law" continued to be in operation until the time of independence. The two important legislations related to Muslim personal law during the British period were, the Shariat Act 1937 and the Dissolution of Muslim Marriage Act, 1939. After independence, the Constitution of India has maintained the law as it existed during the time of its introduction. The policy of the government of India since independence is non-interference in the matter of personal laws of the Muslims. Though a substantial amount of legislation on some of the personal laws has been enacted, the various personal laws in existence in India are proof of this policy of the Indian government. Under the Constitution, Muslim law has been recognised only in respect of marriage and divorce, infants and adoption of minors, intestacy of wills, successions, joint family and partitions. Shariat or Muslim law does not apply to crimes.

It is also alleged that there are certain provisions in the Muslim personal law in India which are not in accordance with the principle of gender equality. Provisions like oral divorce, polygamy, inheritance and maintenance after divorce seems to be discriminatory towards women. Besides, it is observed that after the judgement of Shah Bano Case (where Supreme Court sanctioned maintenance order under section 125 of the Criminal Procedure Code), Muslim fundamentalists

organised a huge campaign against the Shah Bano decision. A large number of Muslims were mobilised across the country to stage demonstrations. In response, women's organisations, progressive Muslims and civil liberties organisations joined together to support the Shah Bano judgement. Despite strong opposition, Parliament passed the Muslim Women Protection of Rights on Divorce Bill 1986- which denied Muslim women the right to maintenance under section 125 of the Criminal Procedure Code. Since the Shah Bano Case there is a growing demand for a uniform civil code in the country. The issue of Muslim personal law has been communalized and politicized to the extent that any voice of meaningful reform in it is either ignored or opposed.