

**MUSLIM WOMEN AND THEIR RIGHTS OF
DISSOLUTION OF MARRIAGE: A COMPARATIVE
STUDY IN HYDERABAD AND DELHI**

**Thesis submitted to
Jamia Millia Islamia**



**In partial fulfilment of the requirements of the award of the
Degree of Doctor of Philosophy**

Law

By

Anam Wasey

Under the supervision of

Prof. Kahkashan Y. Danyal

Faculty of Law

Jamia Millia Islamia

New Delhi

Chapter 9

CONCLUSION AND SUGGESTIONS

There is a conflict among laws between the *shariah* law and the Muslim personal law of India. It also violates equality before law and equal protection of law contemplated in the Constitution of India.

In a country like India, there are people belonging to multiple religions and thus, it has opted to be a secular State. It is the right of every citizen here to be safeguarded against injustice, bigotry and inequity on grounds of religion, race, caste, gender and birth place, etc. In certain scenarios, is it legitimate and excusable to allow a particular personal law to be continued in a prejudiced manner under the claim that they have the right to be administered by their own personal law however prejudiced it may be, especially in a case scenario where the basis of such law is highly equitable and non-discriminatory? The answer should be a big ‘no’. The basic reason behind bias on the basis of gender existent in the Muslim personal law and the desecration of the true *Shariah* law in the matter of marriage and divorce is the absence of a codified Muslim personal law in India and lack of education and awareness among Muslims.

There is unfortunately no doubt that Muslim law prevalent in India at present, is far from Islam’s actual idea of equal protection of law and equality, social justice and pride and dignity of the individual and unity of people, the traits and principles clearly enshrined in the Qur’an. The inspiring equality of men and women in the eye of the Almighty is something that has been clearly stated in it. The latter provided mankind with the notion of equality of men and women. In the Holy Qur’an, the conception of justice is quite central and of great worth and significance. The idea of justice is so thoroughly in depth in the Qur’an that no field has been excluded where it is not applied including the matter of conjugal remedies. The most foundational ethics of Islam expounded in the Holy Book of Muslims, are compassion, benevolence and justice.

The Qur’an envisages the equality of gender and there are enough instances and materials to prove the same. The verses of the Qur’an declare gender equality and hence, it is its actual motive.

Thus, it can be seen that gender justice is innate in the Qur’an and teachings of the Prophet (PBUH), however much of the true spirit of justice and equality was misplaced when the Islamic scholars legislated under the impact of their own social code and ethos. It is ill-fated

that the Qur'an gave women equal status but in all Muslim societies, they were deprived of their rightful place and their rights were taken away in the name of Islam. It is a profound mockery and tragedy that the Holy Qur'an, in spite of its solid assertion of human balance and the requirement for equity to the entirety of God's creations, has been deciphered by various Muslims as authorizing different types of human disparities. The progressive injunctions of the Qur'an are interpreted by the schools of Islamic law and theology to suit the patriarchal structure of the society and act as a detriment to women's rights in marriage and divorce. There is thus a wide gap between theory and practice, law and facts.

The status of women in Islam is free and holds a respectable position. Muslim law not only establishes their right to lead their life in the best possible manner they wish to live in, but also gives them the authority to choose whom they wish to marry, right to get their dower (*mahr*), right to maintenance, that too decently by their husbands, right to dissolve their marriage, if life is difficult beyond control with her husband. Islam has given them the right to inherit from their father, husband and son, as well. This reformation came with a great purpose and prospect. The purpose was to liberate and free the other half of the humanity from suppression, exploitation and the clutches of injustice. The condition of women was in a deplorable state at a time and Islam reformed it remarkably bringing them at par with the society. The reforms are of great eminence to the discourse of women as per the legal status. Nonetheless, it opens a door for discussion on the effect of these rights and freedom, upon men.

The surge of divorce by Muslim men presently is alarming and of great concern. In fact, the divorce rate among Indian Muslims is scandalous which gained impetus after the legislation relating to the Triple *Talaq*. The mention of or referral to the word (*Talaq*) divorce became so cheap and common that in some marriages, arguments end with this word with the husband threatening the wife with it. The same was found in the survey too that women are divorced even for the petty and smallest of reasons. Islam considers marriage, an extremely desirable institution and a sacred union, therefore, the conception of marriage is the rule of life and divorce is merely an exception to that rule. It is a fallacy validating that a Muslim male enjoys a monocratic power to dissolve his marriage by unilateral pronouncement of *talaq*. Islam permits divorce, but it also emphasises on it being a measure to be undertaken only when there is no other alternative and that when the situation is beyond control. It must be the last resort. The Qur'an clearly lays down the procedure of divorce that is fair, just and gives time to the couple to make efforts of reconciliation. Muslims as well as non-Muslims have

always been under a big misconception regarding the right of Muslim males to divorce without any reason and get rid of their wives and their obligations towards them. This is not in any way, in consonance with the *Shariah* law. The methods of *Talaq-us-Sunnat* must be resorted to by the husband, only if all attempts to reconcile fail. It is a method that has been approved by the Qur'an and the Holy Prophet (PBUH). Methods of *ila*, *lian* and *zihar* are not that prevalent in India, however, there are a few cases of *mubara'at*.

Islam has given women equal privileges and rights as men to dissolve their marriages. This must be understood and Muslims must get aware of this fact, both men and women.

It is evident and clear that Muslim women have been empowered with the rights to dissolve their wedlock both through the court or without the intervention of the court. Muslim law gives to the wife the right of *khula*, i.e. dissolution of her marriage, a position at equal standing with *talaq*. A husband who is fully convinced of an irretrievable breakdown of his marriage and for dissolving it resorts to the pronouncement of *talaq*, similarly a wife having the same sentiment and persuasion may also dissolve her marriage by adopting the method of *khula*. But dismally, the Muslim personal law in India does not permit a woman the right to resort to *khula* without her husband's consent. Thus, naturally, most of the husbands exploit their wives and extract much higher compensation, than justified. Although, *Shariah* has given Muslim women the privilege of out-of-court divorce, but still in the patriarchal structure of the society like ours, the right of *khula* has practically been withdrawn. *Khula* is, unfortunately, considered to be a method of dissolution of marriage by mutual consent. The way it is practised in India, it gives the power to make the final decision to the husband. Though, in many countries like Pakistan, Bangladesh that are our neighbouring countries and were covered under our laws (The Muslim Personal Law (*Shariat*) Application Act, 1937 and The Dissolution of Muslim Marriages Act, 1939) it has clearly been stated and reiterated by the courts that *khula* is the absolute right of the wife. So, even if the husband is not in agreement of divorce, the wife still can dissolve her marriage by judicial *khula*.

Talaq-e-Tafweez as a method is the least talked about issue of Muslim law. It is almost invisible. Only a small percentage of the Muslim population has just heard the term *talaq-e-tafweez*, but have absolutely no idea as to what it means. There is, unfortunately, so much stress on the methods that help a husband initiate divorce that the fact that a wife too has the power to dissolve a marriage loses all the attention. *Talaq-e-Tafweez* is an extremely healthy and a practically valuable procedure that must be incorporated in marital agreements and

nikahnama. It is vital as Islam has always stood for women empowerment and *talaq-e-tafweez* gives women that empowerment. It is hardly practiced because it is a process barely known to anyone. It has absolutely no mention in television debates on divorce laws of Muslims, newspapers, journals or any other debates involving legal scholars and other knowledgeable persons or Muslim leaders and hence, people are ignorant towards it. There is no remark or indication towards it. Even the Muslim Personal law scholars do not speak of it. Therefore, there is a need to bring this useful process into light and have positive and worthwhile discussions over it, as to how to incorporate the same into the process of dissolution of marriage in an out-of-court procedure.

Judicial divorce i.e. *faskh*, has developed in the recent times and the Dissolution of Muslim Marriages Act, 1939 is being resorted to by women in large numbers. Cases like, *Shamim Ara*, *Shayara Bano* and *Iqbal Bano* etc. are some of the major judicial pronouncements that gave women the encouragement and power to approach the courts for their rights and justice. The Act of 1939 was a boon in the history of *Shariah* law in India as well as in the lives of Muslim women. This method has not only safeguarded their right to dissolve a failed marriage but in cases when this method has been clubbed with the Muslim Women (Protection of Rights on Divorce) Act, 1986, it protects their rights and interests after their divorce, such as dower, maintenance and child custody.

The role of judiciary holds great significance as its role to interpret the law is directed towards the citizens, personally and directly. The role of judiciary has seen a tremendous growth, right from where it gave judgements that distorted the principles of Islam regarding divorce and marriage to the judicial pronouncements where it upheld the true spirit of Islam and the principles and rules enshrined in the Holy Qur'an. Cases like *Shah Bano* of 1986, *Shamim Ara* of 2002 and *Shayara Bano* of 2017, encouraged various Muslim women who were hesitant to approach the court, now reach up to them for justice and upliftment of their rights that have been given to them by Islam, but unfortunately, have been curbed and hushed by the patriarchal structure of the society.

After going through a study of the consequences of divorce, it can be concluded that women face financial, emotional, psychological and social issues, whether the divorce is initiated by her or by her husband. Firstly, she faces the negative reactions of the community and friends, undergoes mental and social pressure and fights for financial sources for a stable life. When nuptial ties are broken, a woman needs to go somewhere. She expects to be supported

financially, materially, emotionally. Even though it is her absolute right, she still has to fight for maintenance and dower. She has to go through an exhausting and emotionally draining legal battle for the custody of her children. Divorce results in numerous disqualifications for the women experiencing it. It can be said that the evil of divorce and the miserable consequences it has on divorced women is very much real and factual. Divorce brings unpredictability, trouble and disorder in a woman's life. It leads to various life-altering deviations that affect parental welfare and security and the influence of these changes on parental comfort and well-being is interceded by a range of contextual and personal factors. It creates various deviations from the normal life.

When we look at the international scenario of Muslim divorce law and analyse it, we can see that majority of the nations have either banned triple *talaq* or have not approved it in their legal system. Philippines, Egypt, Morocco, Sudan, Jordan, Iraq, UAE, Yemen, Syria and Kuwait have simply banned and derecognised the concept of triple *talaq*. Even three pronouncements in one go is considered as a single revocable divorce. In countries like Lebanon, Morocco, Kuwait, Jordan, Egypt, Iraq, Sudan and Syria, *talaq* is not effective if pronounced in the state of intoxication, insanity, provocation, depression, duress or anger. The so-called process called *halala* stands abolished in these countries. In the Malaysian law, if *talaq* is revoked by the husband it has to be registered with the authorities of the State. In countries like Jordan, Iraq, Syria and Maldives, even the husband has to approach the court to get a divorce. In Malaysia, Indonesia, Algeria, Somalia, Yemen and Tunisia, husband cannot get divorce without the intervention and permission of the court. Reconciliation efforts are first ensured by the court in all these countries. In Pakistan and Bangladesh, even the husband has to notify *talaq* to the competent authority and then the matter goes to the Arbitration Council as laid down in the Muslim Family Laws Ordinance of 1961. Without the prior permission or subsequent involvement of a court or *Kazi*, arbitrators, civil officials, *talaq* does not become effective in various countries. Violation of these legal rules leads to penal action. Also, the method of *khula* is adopted and practised in its true sense and spirit. In countries like Libya, Mauritania, Qatar, Philippines, Algeria, Egypt, Sudan, etc. *khula* is a part of their legislations as per the Islamic law. In Pakistan and Bangladesh, it has been ruled that *khula* is a woman's right and it does not depend on husband's consent for its enforcement. In Malaysia, courts come forward to arrive at a settlement and fix a consideration if the parties fail to do so. Women have been given the same grounds almost in all the nations to dissolve their marriages as the ones laid down in The Dissolution of Muslim

Marriages Act, 1939. In almost all the countries, the court has to attempt reconciliation between the couple in all suitable case scenario as per the procedure laid down in Chapter IV, Verse 35 of the Qur'an. In several countries like, Jordan, Kuwait, Yemen, Egypt, Iraq, Qatar and Syria, women who get divorced arbitrarily and have no sources to maintain themselves and their children are maintained by their husbands even after divorce. In Bangladesh and Pakistan, it has been pronounced by their apex courts that a divorced woman has to be maintained by the husband divorcing her till she remarries. It can be clearly seen that many nations have modified and codified Muslim personal law in their countries keeping in mind the changes and developments in the society, without challenging or hindering the basic tenets of Islam laid down in the Holy Qur'an or *Ahadith*. Muslims in India must see and admit to the fact that it is not a sin to bring about modifications in the law of *shariah* until and unless it challenges the very essence and spirit of Islam.

Speaking of the empirical research, when the survey was being carried out, most of the respondents were not able to understand the difference between the existent personal law and the true law of Muslims. This unfamiliarity and lack of knowledge and information is a serious disadvantage and the biggest loophole as it prevents them from challenging the delusions of Muslim law. Major section of the respondents, i.e. the Muslim women in both Delhi and Hyderabad, had no idea about their rights of dissolution of marriage given to them by Islam and Muslim law. Some were familiar with the terms but are living with misconceptions as to the meaning of those terms. Women were arbitrarily divorced by their husbands without any reasons. This issue was and still is of great concern. There is a necessity to make not just women but both the genders aware of the discrepancies that are prevalent between the principles laid down in the religious texts and the ones being actually implemented and followed. Lessons must be taken from other nations as to how they keep a check on the acts of divorce by the husband and the role that courts play in upholding the true spirit of Islamic law relating to divorce and maintenance.

Suggestions

There is a vital need to bring about certain modifications required in the Muslim personal law in India in order to address the question of gender justice. It is necessary to be strong about the change that is desired. Starting from the premises of necessary or facultative civil code, an agreement and consensus seems to be gradually emerging among Muslim Social Reform Organisations and reformists regarding the need to bring amendments in Muslim law.

Remarkable changes in Muslim law are possible beyond reasonable doubt by adopting progressive methods, without violating the Qur'an.

So, after a thorough study on the subject, here are some vital issues that need reform and suggestions that might help bring about the necessary changes to bring Muslim law in its true sense and spirit i.e. progressive:

1. Awareness:

Based on the survey analysis, we found that Muslim women are not aware of the methods of dissolution of marriage given to them by Islam. There is no awareness about *khula*, *talaq-e-tafweez*, *faskh* and *mubara'at*, despite the fact that it is compulsory to study the teachings of the Qur'an and Islam. Thus, it is important to encourage the young Muslims to not just read the Qur'an but also read its translation and commentaries, so that it is easy to interpret it in its true sense and spirit. Qur'an, its translations and commentaries must be available in people-friendly languages.

There must be a mass campaign to educate the Muslim society. Ignorance is no longer a bliss, especially in these circumstances, where women are deprived of their rights and men usually exploit it. Hence, the basic principle of Islam of gender equality is hampered. As, literacy rate in the Muslim society is now gradually increasing, these guidelines must be printed and both girls and boys must gain knowledge of their privileges, powers and duties resulting from marriage.

Booklets and pamphlets on marriage and divorce rights must be distributed for free to create such awareness. It must be printed in several languages to cover as much population as possible. All India Muslim Personal Law Board must work hand-in-hand with the NGOs and other agencies working towards the betterment of Muslim women and gender justice, in organising awareness campaigns, surveys and seminars. They must ensure the accessibility and participation of maximum number of Muslims in such endeavours.

2. Codification:

The Muslim Personal Law in India is in no way a uniform legal system. While majority of the countries and all other religious sections in India, including the minorities other than Muslims, have codified their personal law and to a large extent have uniform laws

of personal status and succession, Muslim law is in a tormented state of being a complicated and unbridled presentation. Even in this state, Muslim Personal Law is not applicable to the entire Muslim community, in like situations. Organisations like All India Muslim Personal Law Board (hereinafter referred to as AIMPLB) and Islamic *Fiqh* Academy must initiate a process to codify Muslim personal law by not only engaging the religious scholars but also jurists and sociologists. During this process, they must keep in mind that the basic human values and rights cherished by Islam must not be violated. Matters of personal status like marriage, divorce and inheritance must be codified so that it is easy for the courts to decide. Hence, a Commission must be established that consists of sociologists, leaders, jurists, scholars, judges, lawyers and *ulemas*. Both men and women must be participants in it. This Commission must be founded to elicit the public opinion of the majority of Muslims on the matter of codification and modifications of the Muslim personal law.

3. The Muslim Women (Protection of Rights on Marriage) Act, 2019:

The Triple *Talaq* Act of 2019 was passed after the *Shayara Bano* judgement of 2017 has been a long-awaited one especially by the Muslim women. But this Act has various flaws that cannot be ignored. Some of these shortcomings in the Act are:

❖ Criminalisation of the practice

The purpose of the Bill is to safeguard the constitutional morality and dignity of women and to provide gender justice, equity and equality. But the Bill ends up criminalising a civil law. The penalisation of the act of *talaq* under sections 3 and 4, while anticipating to secure married Muslim women, confronts some legal and operational reproach-

- Since the matrimonial bond under law of Islam is a civil contract, the Bill must abide by the civil procedure.
- Moreover, scholars and jurists have suggested that the legislation should have included the offence under the ambit of Protection of Women from Domestic Violence Act, 2005 instead of completely criminalising the offence. In this manner, women would receive much more benefits such as protection against violence, right to residence in matrimonial home which are not available under this Act of 2019.
- Scholars have also questioned how *talaq-ul-bidat* can be termed an offence under sections 4 and 7 given that it has been made void as per section 3. The Supreme

Court has already struck down *talaq-ul-bidat* and declared it inoperative and illegal ab initio. One of the fundamental maxims of criminal jurisprudence is “*nullum crimen sine injuria*”. It means that no person can be punished for an act that does not prove to be significantly harmful to anyone. Even after the *Shayara Bano* judgment of the Supreme Court in 2017, if any *talaq* takes place or any harassment of a woman takes place, there is no need for a fresh criminal provision as the following provisions can be availed by the aggrieved woman:

- Section 498A of the Indian Penal Code, 1860
- Protection of Women from Domestic Violence Act, 2005

❖ Discriminatory in nature

Under this law, Muslim men can be prosecuted even without agreement of the wife, due to the declaration of the illegality. But in case of similar crimes within other religions, males cannot be prosecuted without the assent of the wife. This would be differential and discriminatory treatment of men belonging to different religions. The three-year jail term for the husband particularly when in no other religion is there such severe punishment for uttering three words is very harsh.

❖ Removal of judicial lapse

The Act, under its Section 7, declares the pronouncement of *talaq* a cognizable offence, implying that the police have the power to arrest the husband without any warrant and initiate investigation without seeking permission from the court of law. This opens up the prospect of the law being misused against Muslim men.

❖ Custody and Maintenance

Section 3 of the Act enshrines that *talaq* has been declared void, inferring that *talaq* cannot result in divorce and separation. Yet, it further discusses matters that are post-divorce pertaining to custody of children that are minor and subsistence allowance under sections 5 and 6. Since triple *talaq* has been declared void, effectively and legally, the husband-wife relationship still exists. The marriage isn't over, then how can the question of maintenance arise. The shocking lack of clarity on who would provide maintenance to the wife once the husband is in jail. Also, clauses 3, 5 and 6 contradict each other. Clause 6 of the Act, violates the provisions of the Guardians and Wards Act, 1890. According to the Act, only the District Courts have the jurisdiction to decide matters relating to the guardian or ward. But in the Act, it is the Magistrate who has been authorised to provide the custody of a child of a family.

It is very important to point out that this Act is virtually shutting the doors on any possibility of reconciliation that is a significant pre-requisite of divorce upheld several times by the Supreme Court of India.

4. Intra-Religious Dialogue:

An intra-religious dialogue must be initiated within the community consisting both men and women to create awareness about gender issues. Women have been absent from religious discourse since we remember. It is interesting to note that women were part of policy-making and had their say in religious discussions and decision-making during the time of the Holy Prophet (PBUH) and later on in the period of Caliphate. An instance from the time of the second caliph Hazrat Umar is that he wanted to limit the amount of dower (*mahr*) to a certain level. A woman opposed to it saying that how can one bring changes in something that was not changed by Allah or His Prophet (PBUH). Hazrat Umar took her advice and did not make any such modification. Hence, one can imply that if women were involved in the religious discourse then, why not today.

5. Chapter IV, Verse 35 of the Qur'an:

“If you fear any breach between a man and his wife, appoint one arbiter from her family and one arbiter from his family. If they both want to set things right, God will bring about a reconciliation between them: He is all knowing and all aware.” Reconciling people is among the most noble morals. The *Shariah* urged it in more than one occasion as Allah Almighty says in Chapter VIII, Verse 1, “So fear Allah and amend that which is between you”. The Prophet (PBUH) too said that reconciling people is the best charity. Reconciliation is an innate part in the procedure of divorce in Islam. It has been clearly stated in the Qur'an that divorce is the last resort when things go beyond control and it must be preceded by attempts of reconciliation. It is only through these considerations that we can advance a reflective understanding of the Quran's emphasis on reconciliation accompanied by justice. The Qur'an advises mediators and peacemakers to reconcile between two parties quarrelling with each other with absolute justice and equity. Hence, it is extremely necessary to convey to the Muslims, both men and women, about this procedure of divorce that has been clearly explained in the Qur'an. With this awareness, people can follow the exact procedure, naturally, decreasing the number of cases of instant triple *talaq*.

6. **Triple Talaq:**

The matter relating to reform of Muslim personal law in India has for a certain period of time, been a battle-field between the liberal and the traditionalistic elements of the society. Triple *talaq* or *talaq-ul-biddat* is a process that has been banned in almost all the countries and has now been banned in India too, after the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019. Though this Act has several loopholes, it has penalised the act of instant triple *talaq*. Majority of the nations have derecognised and abolished this practice of triple *talaq*. Several countries, like Maldives, etc. have codified their family laws assuring that no divorce can take place without the approval of the court. Countries like, Pakistan and Bangladesh have brought the concept of arbitration under Muslim Family Law Ordinance of 1961. This way they have indirectly removed the concept of instant triple *talaq*. These modifications in the laws indirectly stress on the approved form of divorce of *Talaq-e-Ahsan*. It is still necessary to create awareness about this method and the ill-effects of this procedure.

7. **Khula:**

Khula is a completely misunderstood process. Unfortunately, in India, this method has been misinterpreted and practised in a manner that favours men. The practise in India, gives husband the power to take the final decision whether he agrees to the divorce and consents to it or not. *Khula* is meaningless, if the consent is required. It is like ‘you give with one hand and take back with the other’. Pakistan and Bangladesh have ruled and reaffirmed several times that *khula* is a woman’s absolute right which is independent of the husband’s consent. Countries like Egypt, Sudan, Philippines, UAE, Morocco and Kuwait, etc. have included *khula* in their legislations. Women must be made aware of the true spirit and procedure of *khula*. They must have knowledge of the fact that if the husband does not give her *khula*, she has every right to solicit help and move for dissolution of marriage with or without her husband’s consent. Codification of Muslim personal law too, will help in bringing about the true definition of *khula* and the process to initiate and go through it. The AIMPLB should work on it and bring the law of *khula* at par with Pakistan and Bangladesh.

8. *Talaq-e-Tafweez*:

Repeatedly laid down, *talaq-e-tafweez* is a method that has almost zero recognition in India. It is an extremely unpopular method as people are not aware about it at all. But, one who studies this procedure gets to understand the progressive nature of this method and how it makes the process of dissolution a smooth one, without any interventions and hinderances. Awareness about this method is extremely important in the Muslim society. In the past, AIMPLB was supposed to bring out a model *nikahnama*, but failed. But an attempt must be made again to bring out the same that includes a clause relating to *talaq-e-tafweez* and the *Qazi* must explain it to both the bride and the groom at the time of *nikah* and the bride must be asked whether she wants to fill the clause regarding *Talaq-e-tafweez*. It must be made very clear, and not just in case of *talaq-e-tafweez*, but in every method of divorce, that just like presence of *qazi* is required at the time of *nikah*, similarly his presence must be made mandatory at the time of divorce.

9. *Shariah Courts or Darul Qaza*

This institution has been working in India in one way or the other for a very long time. In several Indian states, there are Muslim Marriage Registrar and *Qazi*, that are state approved. *Imarat e Shariah*, one of the *shariah* courts has clearly laid down on their website that *Darul Qaza* has been founded to decide the disputes of the Muslims with marriage, divorce and other personal law matters as per the laws of *Shariah*. They intend to do so to protect Muslims from long, exhausting and costly procedures of general courts and that the disputes are solved harmoniously. But again, there is a big question mark on their legal status. It is not sanctioned under our Constitutional scheme. But this doesn't mean that the presence and reality of these *Shariah* courts or for that matter the delivering of *fatwas* is unlawful. It is an informal system for the delivery of justice with an ambition to bring agreeable settlements suiting both the parties to the dispute. The decision is in the hands of the persons concerned to whether accept it or reject it. A group of people in India gives it a status of a mediation entity and a form of Alternative Dispute Resolution (hereinafter referred to as ADR) mechanism. Holding it to be an institution that is fully adaptable to the profile and need of the community, they say that *Darul Qaza* is an essential ADR method whose role is complementary to the formal judicial bodies and that by settling private disputes of such a big community, it complements the judiciary of India. Hence, they must be strengthened and given a legal sanction like *Lok Adalats*. This would help in getting

over with the fear and concerns of the community of interference in their personal laws. This suggestion can be supported by Section 89 of the Code of Civil Procedure, 1908, where Courts can refer the matters for arbitration and mediation. Also, as per Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 the rule of decision in cases relating to marriage, divorce, inheritance, etc. where the parties are Muslims shall be the Muslim personal law. The various forms of divorce under Muslim law demand a comprehensive knowledge of the principles of Islam that are duly satisfied by the *Qazi* of the *Darul Qaza*. Many cases have already been dealt by them. But this institution will help in bringing a number of cases out from the courts' docket. They are much more time-efficient and cost-effective and are easily approachable as they operate locally. The *qazi* handling the matters must ensure the welfare of both the parties. We can also have supervision by the judicial system of India to back the decisions and make them reliable and authentic.

10. Summary Trial

As the concept of summary trials seeks to uphold the legal maxim "Justice delayed is justice denied", it must be allowed to the women who seek justice under the 1939 Act. This Act of 1939 must be given the same effect as Section 125 of the Code of Criminal Procedure, 1973. It must be clearly laid down that the husband must be present when summoned by the court, otherwise he shall face criminal liability. Summary trials must be initiated in these matters to help women save their time, money and they shall also be protected from the harassment of exhaustingly long trials.

11. Remarriage of Widows and Divorcees

Islam is a religion that has promoted and encouraged remarriage of divorcees and widows. There have been various instances of women remarrying after their husbands divorced them or died, since the time of the Holy Prophet (PBUH). But, the social structure in India is not like Arab, where divorce is not a stigma. In India, divorce is a source of disgrace and humiliation. It is such a big dishonour, that if an aunt in the family is divorced, the nieces in the family face problems at the time of their marriage. Hence, remarriage isn't easy in India. Hence, the competent authorities must make provisions of remarriage for widows and divorced women for better settlements. The ones who are homemakers and have no source of financial stability and no other

provisions to maintain themselves must be given special attention. There must be agencies like the local *Waqf* Boards to help such women stand up to their feet.

12. Education of Women:

“*Iqra Bismii Rabbika Allazi Khalq*. Read! In the name of your Lord who created all the things”.

The first sine qua non that was announced by Islam through Qur'an was not the five tenets of Islam but it said “*Iqra*” i.e. to read. This itself implies the importance of education in Islam. The Holy Prophet (PBUH) made it obligatory for every Muslim, irrespective of the gender, to gain knowledge and educate themselves. The Messenger of Allah (PBUH) clearly said that one should acquire knowledge from the mother's lap till his/her grave. The first word that was revealed to him by the Almighty was *Iqra*, which means to read. Verse 20:114 of the Qur'an is a supplication asking Allah to increase one's knowledge. The following *Hadith* notes:

“When a man dies, his acts come to an end, but three, recurring charity, knowledge by which others benefit, or a pious man, who prays for him.” (Sahih Muslim, Book 12, *Hadith* 4005)

Therefore, importance of education is explicit in the Qur'an and *Hadith*. Every Muslim must ensure his/her education. It is an absolute right that Islam affirms without any gender discrimination. The Muslim population that cannot afford education for themselves and later on their children, then it is the job of the competent authorities to make sure that each Muslim gets a chance to acquire both the religious and worldly education and knowledge. There must be participation of Muslim children at the elementary level. Gender parity must be considered and the attendance of girls must be ensured. According to Islam, acquiring education is a sacred duty. Therefore, attention must be given to increase their enrolment, improving the physical amenities in schools, preserving the student-teacher ratio, adversative socio-cultural and economic veracities as these are the keys in removing the Muslim society's educational backwardness.

The personal law of Muslims operative in India, presently requires a thorough revision, codification and reformation in accordance with the Quranic principles and in tune with the changing needs of the community and society. This is the desire, essentiality and a major goal. Such changes and reforms would not tantamount to meddling with or altering the

shariah, nor would it infringe the religious freedom guaranteed by the Constitution of India. On the contrary, it would meet the principle and precept of gender justice and gender equality conceptualised and envisioned by the Holy Qur'an and the Constitution of India.