

## MATRIMONIAL LAWS AND MUSLIM WOMEN

By

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The Holy Quran is the main source of Mohammedan Law and very preachings of Islam are to condemn Gender Discrimination, and Injustice, which assures the rights of women and safeguards and protect the women from all sort of atrocities, but it is seen that the women are the victims of Gender Discrimination by way of some Mis-interpretation and Abuse of the Real Law laid down, in a day to day practical life of Muslims. Implementation of the laws laid down and the abuse of process of law in practical which lead to the increase of various problems. There are other sources of Mohammedan Law they are *Abadees*, *Ijmaa* and *Qiyas*, and the four schools are *Maliki*, *Shafei*, *Hanbali* and *Hanafi*. It is a matter to be discussed here that there were only Mohammedans who were the followers of the Prophet Mohammed and only after the death of the Prophet Mohammed there was a bifurcation of two sects as Sunnis and Shias, it is clear here that when there was no bifurcation in the life period of the Mohammed and there is a change taken place after his death hence there can be the incorporation of personnel opinions of the companions of the companions of Prophet Mohammed as it is a human tendency to incorporate his own views in his work. Now the time has come where we cannot even assume how the views of Mohammedans are changing and how many sects have been formed so far.

Solemnization of marriage is an important social function amongst the followers of all religious and communities, and apart from its individual significance, because the healthy working of the institution of Marriage is the cradle of happiness of the families comprising every society.

Mohammedan Law recognises the marriage (Nikah) not merely as a civil contract, but also a mutual bondage between the man and woman which herald the rise of Love and affection, which also begins a life of responsibility. They become one unit entrusted by a spirit of duty and act with a very high order in the process of fulfilling that responsibility.

Nikah is contracted for life. When under the prescribed rules a Muslim enters into contract of marriage with a Muslim woman, both parties are obliged to put up with each other for life. If sometimes there is some bitterness between the two, they should reason with self and learn to cope with bitterness. This is essential for living together in harmony.

Nikah (Marriage) may not be considered as a civil contract as through GPA a third party cannot be allowed to act either as spouse, father or mother and hence the talak given through GPA should also be looked into.

The Messenger of Allah has advised men in various ways to put up with their wives. It is stated in a Hadees:

*“La Yafruk Momin V’a Mominatan In Kariha Minha Khulukhan Raziya Minha Akbara”*  
That is, “No man should bear ill-will towards a believing woman, for if he resents some trait in her, he might be pleased with some other trait in her”.

He also taught the women not to demand divorce, but try to put on with there husbands. It is quite obvious that when the opinions of the brothers and sisters among

themselves do not co-inside they have conflicts, though they are born of same parents, How can we assume that two different members from different atmosphere and family altogether would co-inside with our own opinions and they do not have any conflict in their attitudes. If they don't bear with each other and do not mould their nature to tide over conflict, they cannot exist together. In such a relationship the question of separation will crop up every other day. After divorce, the children will be devastated. One or both parties will be deprived of the society of their children. So as far as is humanly possible a couple should put up with each other for life.

A Mohammedan male is permitted to have four wives at a time, provided there are certain conditions and circumstances which has to create a necessity for such marriages. The messenger of Allah stated that A man may marry four wives but it is good to have only one. But in practice it is seen that it has become a mockery of this provision. Unfortunately most of the Muslim men know that they can have four wives but they do not even speak about the circumstances on which they are allowed. There are occasions where several fake marriage and divorce certificates issued.

Divorce arises out of spite. That is why it is stated in Hadees:

“*Abghazulbalaalu Ilaa Allaahul Talaq*” that is, of the lawful things the most spiteful and contemptible in the eyes of Allah Almighty is divorce.

Talak is the exercise of Absolute power of pronouncing unilateral (One-Sided) divorce on his wife by the husband. *Ameer Ali* Remarks (*Ameer Ali* Mohammedan Law)” He (the Prophet) restrained the power of divorce possessed by the husband and towards the end of his life went so far as practically to forbid its

exercise by the men without the intervention of a Judge”.

Similarly, there are many verses in the Quran recognising divorce-

“And if a wife fears ill-usage or aversion on the part of her husband, then shall it be no fault if they can agree with mutual agreement, for agreement is best”. (The Quran IV,127, VI35)

Regarding the recognition of unilateral divorce in Mohammedan Law, *Abdur Rahim* says that with a view to regulating the matrimonial relations, predominant position to the husband is allowed.

“Because generally speaking, he is mentally and physically superior of the two and some theorists would treat that Dower payable to the wife as consideration for the alienation of her matrimonial freedom?

“Technically, the power of the husband to give Talak is absolute, but, virtually and in practice, it is restrained within definite bounds by the numerous for Mulla which are attached to its exercise”.

“Under the Quran, the marriage state is to be maintained as far as possible and there should be conciliation before divorce”, therefore, the Quran discourages divorce and it permits only in extreme cases after pre-divorce conference. Therefore, a Mohammedan Husband cannot divorce his wife at his whim and caprice. But still it was seen that frequently by way of letter, phone or fax Talaq is pronounced and the Khazis who are appointed under Khazis Act recognises and confirm the same without even going into the real procedure laid down and the same is neither restrained nor seen as an offence. Though it is a grave offence towards the illiterate, innocent Muslim women, who are time and again victimised in the hands of atrocities in the name of

religion and law. In the present days it is seen that there is developments in regard to various aspects under Mohammedan Law. Based upon the present Scenario and as per the demand of the changing society in the Interest of justice and also the welfare of the society, several Fatwas were issued by various Ulemas and further developments were taken place in the Mohammedan Law. Very recently New Fatwas were issued with regard to the aspects dealing with Bank Interest, Family Planning, Blood Donation, Organs plantation *etc.* Similarly for the sake of welfare of Muslim women the aspect relating to the Matrimonial Safeguards has to be developed so as to check the measures of Gender discrimination as it is highly forbidden by the Islamic Law itself. There should be measures taken to check the effect of mis-interpretation and ignorance which lead to a sort of injustice.

There are several practical incidents where women given in marriage to NRIs who hardly stay here for few days after marriage with the wife and they hardly attend them for two or three times in a span of five years and she will be sent to parents house and one fine morning she gets a confirmed Talak (Talak-e-Bain) through post from a recognized Khazi which is pronounced in a letter sent to a GPA and the GPA proceeds before Khazi and the Khazi, holds the amount of Mahr and Iddat with him, it is not known under which provision. And ultimately the woman along with two kids has to collect the amount or to run from pillar to post for her future life.

Dower is an amount to be paid to wife and her parents with a respect towards wife. It is usually seen that in many cases that no prompt dower is paid, in most of the cases there is a deferred dower which

is also given either at the time of divorce or on the death of Husband, wife has to relinquish the dower to be paid to her.

It is a well known fact that either a Divorcee women or Widow will not get married in 90% of cases approximately, as the society itself tries to avoid them. Hence theoretically the law relating to Re-marriages of Divorcées and Widows is entertained. In practical sense women would not come forward, and if they come forward society would not come forward, it appears we are purely Indians here. Law speaks about early disposal of maintenance matters which are not really implemented.

It is a time to check the measure of certain irregularities where it was seen that though the evil practice of Dowry is basically not recognised by the Mohammedan Law, in India it was seen that the Indian Muslim women are also victims of Dowry, though it is highly forbidden by the Islamic Law, on one hand there is a practice of Dowry on the other hand there is a rigidity towards the developments of Matrimonial Laws which are in the interest of justice and welfare of the Muslim Society. There should be a realisation with regard to this aspect and to suggest a change into the Matrimonial Laws for the betterment and welfare of the Muslim women and their rights towards their status under Mohammedan Law.

We see a problem in the way one mind is conditioned to think. We reached a paradoxical stage where procedure is given precedence over the substantive rights. In the process we have, momentarily forgotten that the realization of justice is the basic function of law and justice system shall strive to achieve justice.