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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**WHITE BLACK LEGAL: THE LAW JOURNAL**

# **SECULARISM AND FREEDOM OF RELIGION AS AN INTEGRAL PART OF INDIA'S REGIME**



**Submitted By:**

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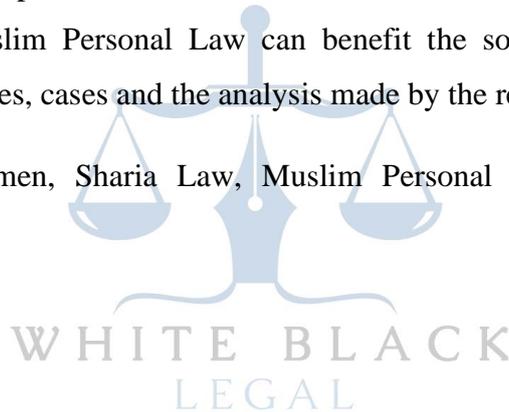
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**ABSTRACT:**

As time has passed by, society has bloomed on the preface of education. There was an impressive change in innovation, technology, communication and various other elements that straightforwardly affected human advancement. In such a dynamic society, it is essential that laws of the land are amended to seem relevant to the society. In a country like India, where the society is constantly growing, the government should ensure to take measures regarding the same. With various religions, castes and cultures accumulated in one nation itself, the legal framework should be able to cater to every need of each citizen. Islam is one such religion that takes up a majority in the nation. In the desperate need to provide the Muslims

with a relevant law that governs them, certain acts have been put into action. However, in the recent times it has been observed that these acts do not comply with needs and demands of the Muslim community. The women especially, have been suffering in discrimination, as the Muslim laws in the country are Sharia laws. Sharia laws though claim to be Quranic in nature, has been adulterated with the teachings and customs of various religious leaders and scholars. Talaq and Halala are two prime examples of man-made customs that are pejorative in nature, as they rob women of their basic rights and happiness. Therefore, it is more than crucial to amend laws to provide justice to the Muslim women. An ultimate solution to this issue would be the codifying of a Muslim Personal Law in accordance to the present laws of the land. This would not only ensure a just mechanism to deal with different religions, considering the already existing Hindu laws; but also ensure the safety of rights of the Muslim women in specific. Through this paper, the researcher hopes to not only highlight the problems of injustice faced by the Muslim women, but also try and offer adequately sufficient solutions. This paper aims to focus on the issues related to Sharia law and how the implementation of a Muslim Personal Law can benefit the society as a whole; through references to various articles, cases and the analysis made by the researcher.

**Keywords:** Muslim Women, Sharia Law, Muslim Personal Law, Quran, TripleTalaq.



### **Introduction to Islam:**

As the second most famous religion universally and in India, Islam has a surmised of more than 1.6 billion devotees<sup>1</sup>. This extensive number can be considered because of the religion's serene lessons. Being a Semitic religion, Islam trusts that there is one genuine God, and staying with his lessons can prompt a fruitful and prosperous life. Islam shows basic and delightful esteems; to be thoughtful to poor people and to regard ladies. In any case, as it is stated, one spoiled apple can ruin the whole barrel; thus the confounded lessons of certain religious pioneers have turned a quiet religion to one that is seen as overbearing by a larger part of the general public. By contaminating this religion, the lives of numerous have been detracted from the surface of this world. 'Jihad'<sup>2</sup> is an Islamic expression that alludes to the battle of oneself against transgression, however as far back as Islam has been defiled with insidious guidelines, Jihad has transformed into an equivalent word for fear and terrorism.

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<sup>1</sup> <http://www.telegraph.co.uk/news/2017/03/01/islam-will-largest-religion-world-2070-says-report/>

<sup>2</sup> Quran 49 :15

A genuine believer can and will affirm that these issues are exclusively in light of the fact that one hasn't perused the Quran completely. Indeed, even in the Islamic community, numerous have admitted that individuals select and pick verses from setting and control it to fulfil their impulses and likes. This irrational practice has caused an incredible degree of oppression ladies. It is expressly specified in the Quran, that be it man or lady, if a devotee is honest in his ways, they will be compensated in like manner and no there will no space for foul play. Be that as it may, as time has passed, certain 'Mullahs' and religious pioneers has turned the importance of specific verses to separate ladies. The Quran has a high respect of ladies, and in truth even has a whole Surah (Chapter) devoted for ladies. A couple of verses that can demonstrate this are as per the following:

1. Quran 4:19 - This verse forbids a man to exert force on a woman or treat her harshly.
2. Quran 2: 228 - This verse states that women have the same rights of men.
3. Quran 16:58-59 - This verse condemns parents who are grieved by the birth of a girl child.

Prophet Mohammed (P.B.U.H), the adored delegate of Allah, said in his Farewell Pilgrimage to "Watch your obligation to Allah in regard to the ladies, and treat them well". His significant other, Khadija<sup>3</sup> was and keeps on being a symbol in the Islamic history. She was a solid lady, who completed her dad's business after his chance on earth. She was greatly well off and thrived in each trade she completed. In spite of the fact that she was Prophet Mohammed's manager and 15 years his senior, she moved toward him through a companion with a proposition to be engaged. An unmistakable understanding on Islamic history can enable one to distinguish numerous more people like Khadija. Be that as it may, in the present-day Muslim ladies tend to impact the world forever by being casualties of female foeticide, dowry deaths and abusive behaviour at home. A religion that advances such uniformity ought to never be the motivation behind why ladies endure the way they do in India. For this very reason, it is fundamental to set up a classified Muslim law, in order to secure the Muslim ladies.

### **Reasons to implement a Muslim codified law in India:**

In April 1978, Shah Bano<sup>4</sup> left a mark on the world as she stood up and battled for her rights after her separation. Her better half who chose to separate from her out of nowhere, left her stranded with five children and in a condition of deprived livelihood. As indicated by Section 125 of the Criminal Procedure Code<sup>5</sup>, a man is obliged to give upkeep to his spouse and

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<sup>3</sup> Khadija: The First Muslim and the Wife of the Prophet Muhammad - By ReşitHaylamaz

<sup>4</sup> Mohd. Ahmed Khan vs Shah Bano Begum And Ors: <https://indiankanoon.org/doc/823221/>

<sup>5</sup> Section 125 of the Criminal Procedure Code

children on the off chance that she can't accommodate it herself. Along these lines, when Shah Bano moved toward the court under this arrangement, the court passed the judgment to support her. Be that as it may, her significant other who was likewise learned in law, declined to pay upkeep after the 'Iddat' (period a lady should watch after her better half has separated from her) in spite of the directions of the Supreme Court. Upheld with solid restriction by essential and very respected religious scholars; the Supreme court's choice was at long last struck down and Shah Bano's significant other was let free. Aside from enraging women's activists the nation over, this case additionally raised a concern for the need of a Uniform Civil Code to be built up in the nation. Article 44 of the Indian constitution<sup>6</sup> alludes to this and states that "The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". In spite of the fact that this may appear to be perfect on paper, it is almost difficult to actualize. India is to a great degree huge nation with numerous differing religions, castes and divisions – and its claim to be a common state would be a by and large a lie if the nation worked affected by a uniform common code. Indeed, the presence and significance given to the Hindu individual law isn't just fuelling a radical 'Hindutva' development, yet in addition ends up being uncalled for and unfair to alternate religions. Islam being the second most prevalent religion in India constitutes more than 13% of the populace, thus it is only just to codify an individual Muslim law. Having said that, another real issue that must be tended to is; a large portion of the Muslim laws that are in presence at this moment are Sharia laws. The cutting-edge Muslims are dissenting this, as Sharia law isn't exclusively in view of the Quranic lessons but on the other hand is taught with different lessons and traditions that has ended up being critical towards ladies. Since these lessons are taken from four distinctive Islamic schools of law, they shift in understanding and usage in various groups. Subsequently, the Muslims in India require and request a law overseeing them, that is exclusively made inside the structure of the Quran. As indicated by recent gatherings held all over the nation, the Muslims are likewise open to instilling Sunnah (lessons of the Prophet) into the law that would represent them. They trust that is high time to put behind traditions and lessons realized by these different Islamic schools of law and demand that the Muslim Personal Law ought to be in understanding to the dynamic social condition. For example, the Sharia law expresses that a young lady's hand can be offered in marriage, once she achieves adolescence, however in India the base age for a young lady to be married is 18. In circumstances like this, the more modern Muslims are resolute on picking the better choice,

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<sup>6</sup> Constitution Of India, Article 44

that is the rule that everyone must follow. Despite the fact that clearly the codification of an equitable and reasonable Muslim Personal Law may achieve a few fears, it is a most extreme prerequisite for the nation and it's future. Muslim women are qualified for equity in all parts of life as their fundamental established right. Despite the fact that there are an extensive variety of subjects to cover when actualizing such laws, the accompanying can be given significance while planning laws with respect to ladies:

1. The Sharia law that enables young ladies to be married when they accomplish pubescence ought to be pronounced unlawful and the rule that everyone must follow ought to win; with the base period of marriage for the young lady being 18, and for the boy being 21.
2. Polygamy is specified just once in the Quran, concerning giving a business to widowers who lost their spouses in the Battle Of Uhud<sup>7</sup>. Since it isn't applicable to this time and age any longer, polygamy ought to be restricted in the nation.
3. NikahHalala, that was begun as a training just in the midst of a little group of the Sunni Muslims has now picked up significance. Be that as it may, this training ought to be proclaimed illegal as it corrupts a lady. The training impedes a lady to re-wed her officially separated from spouse, until and unless she culminates a marriage with another man, and the second man dies or separates from her.
4. NikahMuta, effectively clarified as 'Pleasurable Marriage' enables a man to wed a lady for a said term of time, after which the marriage is viewed as void. This training is injurious and not in any way Quranic in nature, and consequently ought to be viewed as an offense.

**Comparative study of international laws versus national laws that directly affect Muslim women:**

A greater part of the Middle East and numerous more nations, for example, Pakistan, Bangladesh, Malaysia and so forth maintain a Codified Muslim Law. As said before, since the majority of the Muslim laws set up are affected by different Islamic schools of law, there are massive varieties in the directions took after by every nation. Saudi Arabia, celebrated for having one of the strictest laws universally, have as of late started revisions that are genius women's activist. A nation that required a male to go with a lady for every one of her exercises, now urges them to drive without male companion. Other

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<sup>7</sup> Quran 4:3

Islamic nations, for example, the United Arab Emirates have been liberal from the very begin. Ladies are dealt with in standard with men, and both the sexual orientations appreciate level with rights under the steady gaze of the law. Malaysia is a nation that religiously takes after the Sharia law but then guarantees to engages ladies. Ladies are urged to seek after their instruction and to take up honourable callings. Nations like Turkey and Tunisia boycott polygamy regardless of being vigorously populated Muslim nations. India like most nations, takes after the Sharia law<sup>8</sup> yet is oppressive in nature when contrasted with the others. It was amid the British administer in India, when the Sharia law initially appeared. Otherwise called the Anglo-Mohammedan law, this was an edgy measure by the British to run the general population as indicated by their religious and social standards, with a specific end goal to satisfy people in general and forestall social distress. They counselled regarded religious scholars and made laws in light of their suggestions. The British built up a legitimate framework that guaranteed all the procedural laws were as per the British Laws and the substantive law were as per the Muslim Laws. Continuously, judgements progressed toward becoming points of reference and proposals ended up enduring laws and thus the Sharia law was built up. It was right now, a while before India picked up significance that the primary authority Muslim Act came into picture. The Muslim Personal Law (Sharia) Application Act, 1937<sup>9</sup> covers the ambit and extent of progression, marriage, separate, and numerous more themes exclusively in view of religious convictions and traditions. Not long after, The Dissolution of Muslim Marriages Act,1939<sup>10</sup> was defined. This demonstration was principally instituted to illuminate and evacuate any vulnerabilities with respect to marriage, strategies for separate, support, dower and iddat period. Just about 5 decades and a disputable case with respect to upkeep later, Rajiv Gandhi's administration choose to pass The Muslim Women (Protection of Rights on Divorce) Act, 1986<sup>11</sup> keeping in mind the end goal to secure ladies against issues after separation. The act came into existence for the most part because of the commotion caused by the Shah Bano case.

### **Critical analysis of Sachar Committee and Triple Talaq:**

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<sup>8</sup> An Introduction to Islamic Law - By Wael B. Hallaq

<sup>9</sup> The Muslim Personal Law (Sharia) Application Act, 1937

<sup>10</sup> The Dissolution of Muslim Marriages Act,1939

<sup>11</sup> The Muslim Women (Protection of Rights on Divorce) Act, 1986

Indeed, even with the current alterations, women still face an extraordinary measure of segregation. In this manner, it is essential that the government makes vital move to give equity to these ladies. India has already made due move as to Muslims and has fizzled and prevailing in the same. The Sachar committee<sup>12</sup> is a vital development in the Muslim lawful history and demonstrates to one, that if the directions by the legislature are not actualized appropriately, it can cause open tumult. In any case, then again, Triple Talaq is a case of giving equity and driving the nation to a more quiet and mainstream state. An individual basic examination of both these noteworthy occasions are as per the following:

i) Sachar Committee:

Due to lack of reliable information, a notification was issued by the Prime Minister's Office in order to find out about the social, economic and educational status of Muslims. A seven-member committee was formed for the above mentioned and was headed by Justice (Retd.) Rajindar Sachar. The notification was issued on March 2005, and the committee submitted their report in an unusually short span of time, that is, November 2006. The report stated that the Muslim community was lagging behind most other communities in respect to basic development indicators. Amongst a number of observations, it was also duly noted that,

- Exclusive schools for girls, especially at the primary level were scarce in number in the Muslim localities.
- Hostel facilities provided alongside educational institutions were inadequate in number. This proved to be a hinderance for the girls to easily obtain their education.
- Muslim women who worked in their own homes amounted to a whopping 70% as compared to rest of the women homemaker population, that only amounted to 51%.

For the highlighted observations, the following recommendations were made:

- 'Girls Only' Primary schools and residential Kasturba Gandhi Balika Vidyalaya should be increased by a large extent, especially in areas with a substantial Muslim population.
- Campaigns to create awareness about the importance of education should be carried out, in order to hike the literacy rate of women.
- A specific micro-finance scheme can be established to foster the development of Muslim women homemakers.

Though these particular recommendations sound ideal, the entire Sachar Committee was accused of falsely generating information and so many of these ideal recommendations were

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<sup>12</sup> Sachar Committee Report : <http://www.minorityaffairs.gov.in/reports/sachar-committee-report>

not followed through. The Sachar committee portrayed the Muslim Community much lower than Dalits in respect to certain development indicators. This was thought to be scornful by a majority of the society, considering the fact that the Muslim dynasties ruled India for ages with an excess amount of power. The Sachar Committee brought to the table, a report that was distorted in terms of information, and by doing so, deprived the community of beneficial measures.

ii) Triple Talaq:

Triple Talaq, also known as Talaq-E-Biddat is a form of divorce that is practiced amongst the Muslims that was recently declared unconstitutional. This form of divorce allows a husband to divorce his wife by simply stating “Talaq, Talaq, Talaq”. It can be done orally or can be in the form of writing. In the most recent times, men have even divorced their wives by a simple text message stating triple talaq. In the Muslim Marriage Act (1939), many amendments were made, and certain parameters were established by which a woman can divorce her husband. However, the unfair method practised by men to divorce their wives i.e. triple Talaq, was still prominent. It should be realized that this method is practised by disciples of the Hanafi school of law and is not a Quranic teaching. Though there has been public unrest in regard to this practise for quite a while, the ‘Shayara Bano Vs. Union Of India’<sup>13</sup> case helped accelerate the process of making this practise unconstitutional. When her marriage was ended abruptly through means of a speed post, and her children were taken away from her, a furious and hurt Shayara Bano, with a few other women approached the court in order to establish the act of ‘triple talaq’ as an offence. Though faced with many hurdles, she was able to win this battle for women and feminists across the nation. Through this decision of the government, many women no longer live in fear of having their marital tie abruptly broken, and the nation is one step closer to being a country that dispense equal rights to every citizen.

### **Recommendations for improving status quo of Muslim women:**

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<sup>13</sup> Shayara Bano vs Union Of India : <https://indiankanoon.org/doc/115701246/>

After a detailed research on the concerned topic, it is not difficult to conclude that the status quo of Muslim women in India needs dire attention and aid. The Bharatiya Muslim Mahila Andolan (BMMA)<sup>14</sup> is an association that believes the same. The BMMA is an organisation led by Muslim women and supported by feminists and individuals concerned about the rights of the Muslim women. They believe in the actuality of a Muslim Personal Law that adheres to the values of the Indian Constitution. If their letter to the Prime Minister consisting of noteworthy recommendations are taken into consideration and Muslims from all over the nation come together to formulate a Muslim Personal Law, not only will it provide justice to the Muslim women by improving their status quo but will also promise the citizens of a secure and equitable nation.



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<sup>14</sup> <https://bmmaindia.com/2017/09/08/bharatiya-muslim-mahila-andolan-seeks-comments-of-concerned-citizens-on-the-draft-of-the-proposed-muslim-family-law/>