



Role of Muslim Women's Rights Under their Customary rights and Legal rights of India.

Abstract-

This Article deals with Constitutional rights and customary rights of Muslim women and also study about legal rights under different laws; whereby Those laws which have direct influence one's Muslim women's right are part of research.

Rights under this Chapter through applied to all women in India and also, they are available for Muslim women. The Indian constitution guarantees fundamental liberties to all citizens, regardless of ethnicity, nationality, religion, caste, or gender. Punishments for violating these rights are defined in the Indian Penal Code and other legislation. An individual's fundamental rights are protected by the courts, but they can be directly approached by the Supreme Court of India for final justice under Article 32 if they have been violated. We may trace some of our current rights back to the Declaration of Human Rights, the Constitution of the United States, and the Bill of Rights. The Indian constitution recognizes the following essential rights¹:

1. Right to equality (Articles. 14-18)
2. Right to Freedom (Articles. 19-22)
3. Right Against exploitation (Articles. 23-24)
4. Right to Freedom of Religion (Articles. 25- 28)
5. Cultural and Educational Rights (Articles. 29-30), and
6. Right to Constitutional remedies (Articles. 32-35)

Customary law is "customs that are accepted as legal requirements or obligatory rules of conduct, practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they are laws²."

In Indian law, custom is considered a major source of law. Because of this, when India's Constitution went into effect, any earlier legislation that were in conflict with it were declared null and void. ³According to the Indian Constitution, "law" includes "custom or usage having the power of law in the territory of India." ⁴The Indian courts have only accepted custom as law if it is (1) "old or immemorial" in origin, (2) "reasonable in nature and continuous in usage," and (3) "certain. It has been held by the Courts that the phrase "old or immemorial" means that a custom must "derive its power from the fact that it has attained the force of law by long usage⁵."

1. "Fundamental rights in India" – news · newspapers · books · scholar · JSTOR (June 2021) https://en.wikipedia.org/wiki/Fundamental_rights_in_India
2. Garner, B. (ed.) (1999) Black's Law Dictionary, 7th ed., St Paul, Minnesota: West Publishing Company
3. IndiaConstitution1950, Article-13(1), and Legislative department <http://lawmin.nic.in/coi/coiason29july08.pdf>.
4. Ibid. art. 13(3)(a).
5. B.J. Krishnan, Customary Law, in Seminar (Aug. 2000), available at <http://www.india-seminar.com/2000/492/492%20b.%20j.%20krishnan.htm>.

2. Rights protected under Constitution of India

Rights guaranteed by the Indian Constitution are referred to as Fundamental Rights in the United States. The vital for the intellectual, moral, and spiritual growth of residents of India are these fundamental rights. Individuals' existence and overall growth depend on these rights, hence they are referred to as "fundamental rights". Part III of India's Constitution (Articles 12 to 35) contains these guarantees⁶.

1. Rights to equality include the prohibition of discrimination on account of race, religious belief or affiliation, gender or place of birth, equal opportunity in employment, elimination of untouchability, and eradication of positions of authority⁷.
2. Free speech, assembly, union, and cooperative rights are all included in the right to freedom of expression. Other freedoms include the freedom to migrate and live anywhere, and the right to engage in any profession or occupation.
3. The right against exploitation prohibits all forms of forced labor, child labor and trafficking of human beings.
4. Religion encompasses freedom of conscience, free profession, free practice, and free propagation, freedom to govern religious affairs, and freedom from some taxes as well as freedom from religious instruction in certain educational institutions⁸.
5. Rights to culture, language, and script, as well as the freedom of minorities to create and govern educational institutions of their choosing, are all protected by the Cultural & Educational Rights Declaration.
6. The right to constitutional remedies is present for enforcement of fundamental rights.

Article 21 (the Right to Freedom) safeguards citizens' lives and liberties, and that includes their right to privacy⁹.

The Supreme Court of India recently upheld the right to privacy as a new right. It ensures the safety of people's personal information and data.

6. "Fundamental rights in India" – news · newspapers · books · scholar · JSTOR (June 2021) https://en.wikipedia.org/wiki/Fundamental_rights_in_India.
7. Ibid
8. Ibid
9. "Fundamental rights in India" – news · newspapers · books · scholar · JSTOR (June 2021) https://en.wikipedia.org/wiki/Fundamental_rights_in_India

Because human dignity and personal growth are intertwined, the constitution was amended to include fundamental rights. People who drafted our constitution believed that democracy was meaningless unless the government protected civil liberties such as freedom of speech and religion. ^{[10] [11]} A democratic society's citizens should have access to public opinion-forming tools as a result of their belief in democracy's basic role in the governance of public opinion. To this purpose, India's constitution provides citizens the right to freedom of speech and expression as well as other liberties.

The Supreme Court¹² or the High Courts can be contacted by anyone, regardless of race, creed, caste, or gender, to enforce their fundamental rights. It is not necessary for the person who has been wronged to start contact with the other party. Anyone can sue on behalf of those who cannot afford to do so on their own, as long as they do so for the greater good. "Public interest litigation" is the legal term for this type of dispute.

Human rights are safeguarded and abuses are avoided thanks to these fundamental rights. Amenities are available to all citizens, regardless of their socioeconomic status. This shows that India is indivisible. In spite of the fact that some fundamental rights are available to everyone, others are only available to Indian citizens¹³.

¹⁴To live and practice any religion is a fundamental freedom that all people have. As a non-resident Indian citizen, you are not entitled to freedom of expression or the ability to live and establish anywhere in the country. Public employment is not equal for Indian citizens living outside of India¹⁵.

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10. The state, Ishani. "The state". Legal Thirst.
 11. The term "State" includes all authorities within the territory of India. It includes the Government of India, the Parliament of India, the Government and legislature of the states of India. It also includes all local or other authorities such as Municipal Corporations, Municipal Boards, District Boards, Panchayats etc. To avoid confusion with the term states and territories of India, State (encompassing all the authorities in India) has been capitalized and the term state (referring to the state governments) is in lowercase.
 12. Laski, Harold Joseph (1930). Liberty in the Modern State. New York and London: Harpers and Brother
 13. "Bodhisattwa Gautam vs. Shubhra Chakraborty; 1995 ICHRL 69". www.worldlii.org, World Legal Information Institute. Archived from the original on 22 November 2005. Retrieved 25 May 2006. This was the case where Public interest litigation was introduced (date of ruling 15 December 1995).
 14. Tayal, B.B. & Jacob, A. (2005), Indian History, World Developments and Civics, pg. A-25
 15. "Citizenship (Amendment) Bill, 2003" (PDF). rajyasabha.nic.in/, Rajya Sabha. p. 5. Archived from the original (PDF) on 25 April 2006. Retrieved 25 May 2006

3. Constitutional Rights to Women:

The rights and safeguards enshrined in the constitution for women in India are listed below:

1. "The state shall not discriminate against any citizen of India on the ground of sex [Article 15(1)]."
2. "The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women [Article 15(3)]."

3. “No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex [Article 16(2)].”
4. “Traffic in human beings and forced labour are prohibited [Article 23(1)].”
5. “The state to secure for men and women equally the right to an adequate means of livelihood [Article 39(a)].”
6. “The state to secure equal pay for equal work for both Indian men and women [Article 39(d)].”
7. “The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength [Article 39(e)].”
8. “The state shall make provision for securing just and humane conditions of work and maternity relief [Article 42].”
9. “It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women [Article 51-A(e)].”
10. “One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women [Article 243-D (3)].”
11. “One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women [Article 243-D(4)].”
12. “One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women [Article 243-T(3)].”
13. “The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide [Article 243-T(4)].”

4. Women's Customary Rights in Muslim Jurisdictions

For the first time in religious history, Islam recognized women as legal entities and accorded them all of the same rights as males. Islam freed women from slavery, granted them equal rights, and recognized their inherent worth as unique human beings. Introducing property, ownership, inheritance, and education rights for women in Islam enhanced their lot in life.

Women's rights are equivalent to men's obligations according to the Qur'an, which makes a startling claim. This verse, according to prominent Qur'anic scholar Maulana Abul Kalam Azad, is a statement of female equality¹⁶.

In light of this fundamental Quranic mandate, Shariah laws must be modified. In spite of ulama and jurist opposition, this fundamental concept has remained unresolved to date. Because the Quranic injunctions on women immediately undermined the ostensible authority of men and declared women equal to men in every way¹⁷, they were not acceptable in a particular society.

Individual choice, personal freedom, and religious toleration are all pillars of liberal political theory, which is based on the idea that everyone has certain rights. To those who come from this tradition, the idea of collective rights is fraught with peril since it fails to understand the complexities of conflict and variety within the group. Individual rights can accommodate group interests, however, as liberals have begun to emphasize in recent years¹⁸.

As a result of the 1937 “Muslim Personal Law (Shariat) Application Act” and later enactments known as the civil code act, all Muslims must adhere to Muslim law. As specified by this act of parliament, Islamic Personal Law covers all aspects of succession, marriage, divorce, guardianship, and property rights. Personal law in the Islamic faith is based only on the Quran, Sunnat, and Hadith (traditions / sayings of the Prophet Mohammed, PBUH)¹⁹.

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16. Naqvi Aliya, (2014), Researcher Thesis; Women’s rights and personal laws a comparative study, University of Rajasthan https://shodhganga.inflibnet.ac.in/bitstream/10603/148573/11/11_chapter%206.pdf
 17. Ibid
 18. Taylor, C, ‘Examining the Politics of Recognition’, in Gutmann, A (ed), Multiculturalism, 1994; Kymlicka, W, (ed) The Rights of Minority Cultures, (1995) Oxford: Oxford University Press.
 19. Naqvi Aliya, (2014), Researcher Thesis; Women’s rights and personal laws a comparative study, University of Rajasthan https://shodhganga.inflibnet.ac.in/bitstream/10603/148573/11/11_chapter%206.pdf

5. Legal Rights; Under Different Laws

This Article deals with Constitutional rights and customary rights of Muslim women and also study about legal rights under different laws; whereby Those laws which have direct influence one’s Muslim women’s right are part of research. The Muslim Personal Law (Shari at) Application Act, 1937 All Muslims in India are governed under the Muslim Personal Law (Shariat) Application Act, 1937. This law covers all aspects of Muslim matrimony, including succession, inheritance, and charitable giving²⁰. In accordance with the Muslim Marriages Dissolution Act of 1939,²¹ Muslim women can get a divorce under certain circumstances, and women who have been divorced by their husbands have certain rights and are provided for in various ways.²² Regardless of one’s religious background, the state of Goa’s Civil Code is binding on all citizens of the state. Under the 1954 Special Marriage Act, Muslims who wed under this law are free from these regulations²³.

Mohd. Ahmed Khan v. Shah Bano Begum; In the Shah Bano case of 1985, these anti-discrimination statutes were in dispute. Mohammed Ahmed Khan, better known as Shah Bano, was her husband. Shah Bano was ejected from the residence because Khan had many children with a second wife. Her first request for monthly maintenance was initially set at Rs. 500 per month, but this was decreased to Rs. 200 per month upon signing the separation agreement²⁴. She engaged an attorney as a result of the fact that she had never received any contributions. Clearly, Khan was the driving force behind Shah Bano’s divorce, as he dictated exactly how much money she would receive, when she would receive it, and how he would distribute it. Bano’s decision to go to court illustrates her ambition to pursue other goals and the underlying difficulties in Muslim family life²⁵.

Noor Jahan Vs E. Tishchenko, AIR 1941 Cal.582, In this case The Calcutta High Court has held that as regard marriage and divorce the Shariat Act required the court to apply Muslim law only if both the parties are Muslims if there for only one of them is a Muslim the act will not apply²⁶.

Ashraf Alli Vs. Mohamed Alli, AIR 1947 Bom 122. The Bombay High Court has held that testamentary trusts and testamentary Waqfs are covered by Section 2, of the Act, and therefore involving such trusts or Waqfs, and that Section 3 of the Act, is not applicable in such cases²⁷.

20. Roy Chowdhury, Arijia (4 May 2016). "Shariat and Muslim Personal Law: All your questions answered". The Indian Express. Indian Express. Retrieved 1 December 2017.
21. "The Dissolution of Muslim Marriages Act, 1939". indiankanoon.org.
22. "Maintenance for Muslim women". The Hindu. 2000-08-07. Archived from the original on 26 November 2016. Retrieved 1 December 2017.
23. "Religious conversion: HC query raises more question marks - Times of India". The Times of India. Retrieved 1 December 2017.
24. Mohd. Ahmed Khan v. Shah Bano Begum AIR 1985 Vatuk, Sylvia. A Rallying Cry for Muslim Personal Law: The Shah Bano Case and Its Aftermath.
25. In case of Noor Jahan Vs E. Tishchenko, AIR 1941 Cal.582 Calcutta, High Court.
26. In case of Ashraf Alli Vs. Mohamed Alli, AIR 1947 Bombay 122
27. Ibid

6. The Dissolution of Muslim Marriages Act, 1939

Act of 1939 dissolving Muslim marriages the consolidation and clarification of Muslim law rules relating to divorce suits by Muslim law married women and the removal of uncertainties as to the effect of a married woman renunciation Islam on her marriage bond are the goals of this Act.

Reasons for a divorce decree to be issued, A Muslim woman who is married has the right to request a declaration of dissolution of her marriage for any or all of the reasons listed below:

Judicial Separation under Muslim Law

Grounds for Judicial Separation

In Ms. Jordan Diengdeh v. S.S. Chopra²⁸ the apex court observed that the grounds for divorce under Section 2 of the Dissolution of Muslim Marriage Act shall be the grounds for application for judicial separation as well. Accordingly, the grounds are:

1. "If the husband is missing and his whereabouts are not known for more than 4 years. For instance, if the husband is serving in the armed forces and went missing on a mission or if confident information is received that he has died in a battle but he returns after 5 years. In these cases, judicial separation can be obtained."
2. "If the husband does not maintain his wife and neglects her needs and requirements for a period of two years or more, the wife can apply for judicial separation."
3. "If the husband is convicted for any offence punishable with the minimum punishment of 7 years of imprisonment or for any other offence where he has been sentenced for 7 years of imprisonment, the wife can claim Judicial Separation."
4. "If the husband has abstained from fulfilling his marital obligations such as taking care of his wife and children, meeting the emotional and physical needs of the wife, for a period of three years or more, judicial separation can be obtained."
5. "If the wife finds out that her husband is impotent and the information was not disclosed to her during the marriage, she can file for judicial separation."
6. "If the husband suffers from leprosy or any other form of venereal disease which is likely to be communicable²⁹."

28. In case of Mr. Jorden Dien Ideh V. S.S. Chopra, AIR 1985 SC 935
29. Aakriti Vikas | March 4, 2020 Article on Judicial Separation under Muslim Law <https://www.legalbites.in/judicial-separation-under-muslim-law/>

7. “If the husband married to a girl below the age of 15 years and the girl has repudiated or withdrawn herself from the marriage before attaining the age of 18 years, she can claim judicial separation.”

8. “If the husband commits cruelty upon the wife, habitually beats her and tortures her, the wife can plead for judicial separation³⁰.”

During a judicial separation, the wife is responsible for her own maintenance and does not receive the dower money back. The dower remains in the husband's possession until a divorce decree has been obtained in a proper manner by both parties¹⁹¹. When a woman is unable to support herself after a divorce, the Punjab and Haryana High Court ruled in Sohan Lal v. Kamlesh (AIR 1984 P H 332) that she is entitled to maintenance from her husband. As a result, Muslims are covered by the rule³¹.

Mohd. Amin V. Mst. Himma Bibi, AIR 1931 lah 134, The agreement by which the delegation of power to pronounce Talaq by the husband is made will be binding on the husband and such Talaq, though made by the wife under her delegated power, is a Talaq by the husband and has the same effect of Talaq as a Talaq pronounced by the husband himself³².

In case of Nafizunnissa V. Bodi Rahman, 2001, IC 642; that the husband would not abuse or assault the wife and would stay with her in parent's house for three years during reconcile period³³.

In Munshee Bazul-ul-Raheem V. Lateefutoon-Nissa³⁴, the Privy Council describe: It is possible to get rid of your marriage by Khula, which is when the wife offers or promises to give the husband something in exchange for her release from her marriage obligations. Wife's bargaining positions are up for grabs if they agree to release their dyn-Mahr and other rights in exchange for the husband's benefit, which they can do by agreeing to do so.

According to the Fatawa-i-Alamgiri³⁵

“A Talaq-ul-Bain can be performed after the lady has given up some of her possessions in exchange for the husband's promise to give her a Khula. When a couple disagrees and worried that they won't be able to stick to the boundaries set by divine law, the marriage is doomed”.

30. Aakriti Vikas (March 4, 2020) Article on Judicial Separation under Muslim Law <https://www.legalbites.in/judicial-separation-under-muslim-law/>.

31. In case of Sohan Lal v. Kamlesh (AIR 1984 P H 332), the Punjab and Haryana High Court

32. In case of Mohd. Amin V. Mst. Himma Bibi, AIR 1931 Lah 134,

33. In case of Nafizunnissa V. Bodi Rahman, 2001, IC 642

34. Munshee Bazul-ul-Raheem V. Lateefutoon-Nissa, the Privy Council (1861) 8 MIA 379.

35. The Fatawa-i-Alamgiri, I, 669.

10. Maintenance of wife under the Criminal Procedure Code, 1973

In Previous paragraphs researcher have explain many codified laws which are available and directly relate to Muslim women's rights, same like there is also important to know Maintenance of Muslim wife under the

Criminal Procedure Code, 1973; There was no Provision of maintenance in Muslim Law, which could be done after this Act was made.

The Code of Criminal Procedure, 1973 does not define the term 'Maintenance.' The rules for the sustenance of wives, children, and parents are found in Chapter IX of the Code of Criminal Procedure. The general definition of 'maintenance' is to keep something in good working order. The legal definition of 'maintenance' is a regular payment of money (alimony) to a former spouse, wife, or partner, especially if they had children together. The responsibility of supporting a spouse, children, and elderly parents who are unable to do it on their own belongs to everyone³⁶.

Muslim woman entitled to maintenance under Criminal Procedure Code

Divorced Muslim women have the right to claim support under Section 125 CrPC, even after the iddat period has expired. Because she can support herself, the husband's obligation to provide for her ends when her iddat period ends. It's possible, however, that she'll need support in that area. Section 125 has an overriding effect on personal law in case of conflict between the two, Mohd. ³⁷Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556.

Muslims who remarry or have a mistress are required to pay maintenance to their prior wives, who have the right to live independently. This maintenance is due as of the day they remarry or takes their mistress. No matter what faith he follows, a husband cannot rid himself of responsibility by promising to take back and support his wife, ³⁸Abdul Ghafoor Vs Begum Subanu (1987) 2 SCC 285.

Divorced Muslim woman can claim maintenance from State Wakf Board

Muslim women who are divorced and unable to support themselves can turn to the State Wakf Board for financial assistance under Section 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, and claim that their relatives are unable to assist them. If relatives have enough money to pay maintenance, they can be made parties to the lawsuit ³⁹Syed Fatima Nachi v. T.N. Wakf Board, (1996) 4 SCC 616.

36. Gaurav Kumar (Dec19, 2019) a 2nd-year student of BVP-New Law College, Pune. In this article, he covers "Proceedings for maintenance of wives, children and parents". <https://blog.ipleaders.in/proceedings-for-maintenance-of-wives-children-and-parents>.

37. In case of Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556.

38. Begum Subanu v. A.M. Abdul Gafoor, (1987) 2 SCC 285.

39. In case of T.N. Wakf Board v. Syed Fatima Nachi, (1996) 4 SCC 6164.

11. Rights under Muslim Personal Laws; They are not codified yet recognized: -

“Status of Women in Indian Society

Women's Status in Indian Society”

There are many rights under Muslim Personal Laws for Muslim Women's rights but they are not codified yet recognized in Social and Cultural rights of Muslim women.

The status of women in society can be used to assess a civilization's worth. The respectable role given to women is one of numerous characteristics that contribute to India's ancient culture's glory. Women's status in India has deteriorated significantly as a result of Muslim influence. Even Islam has given so many rights to women but their rights to equality with males were taken away from them. There is no doubting that women in India have

achieved significant progress over the last fifty years, but they still face numerous obstacles and societal evils in a male-dominated culture⁴⁰.

Legal Rights of Muslim women in India: -

1. “Dowry Prohibition Act (1961) The giving or receiving of dowry from women before, during, or after marriage is prohibited.”
2. “Maternity Benefit Act (1961) limits women's work in particular establishments for specific times before and after childbirth, as well as providing maternity benefits and other advantages.”
3. “Equal Remuneration Act (1976) provides for payment of equal remuneration to both men and women workers for the same work or work of a similar nature. It also prevents discrimination on the ground of sex, against women in recruitment and service conditions⁴¹.”
4. “Family Courts Act (1984) provides for the creation of Family Courts to expedite the resolution of family conflicts.”
5. “Indian Penal Code (1860) There are laws in the law to protect Indian women against dowry death, rape, cruelty, kidnapping, and other crimes.”
6. “Code of Criminal Procedure (1973) has certain safeguards for women like the obligation of a person to maintain his wife, arrest of a woman by female police and so on⁴². Thus the legislation also contains many rights and safeguards for women.”

40. Ms. Upasana Borah, (July 11, 2019) Article on Legal Rights of Muslim Women, <https://indianlegalsolution.com/legal-rights-of-muslim-women/>

41. Ibid

42. Ms. Upasana Borah, (July 11, 2019) Article on Legal Rights of Muslim Women <https://indianlegalsolution.com/legal-rights-of-muslim-women/>.

12. Conclusion

Role of Muslim women’s rights regarding Customary and their legal rights were play an important role in women’s life to dignified it.

Under Muslim Law some rights were not assumed so they violate the fundament rights of women that’s why some part was codified under Muslim Law.

Even though Islam's numerous regulations have improved women's status, they still face discrimination. Family comes first for Muslim women, just like it does for every other woman. However, Muslim women have become a point of dispute despite our constitution guaranteeing equality before the law and equal protection under the law. They need to be treated equally with everyone else.

There is no one above or below the law. The law binds everyone equally. However, Muslim personal law has not seen as much change as Hindu law or the laws of the State of J&K. A significant number of cases heard by the higher courts ended with far better and satisfying results. To ensure the safety of women of all faiths, legislation should be passed by parliament. They should be made available.

People look to the next generation for inspiration in order to build a better country than the one they live in right now. So, education, which gives future generations power, should always be a nation's top priority. Right to

Education can only be enforced at the national level now through compulsory education, or free compulsory elementary education. However, efforts to construct an educational system in India that guarantees complete access, equality, and high-quality education have fallen short due to widespread poverty and societal prejudices. Another cause for concern is the incapacity of marginalized sectors of the population to reduce dropout rates.

A significant number of cases heard by the higher courts ended with far better and satisfying results. To ensure the safety of women of all faiths, legislation should be passed by parliament. Instead, they should work hard to improve women's well-being by providing opportunities for them to grow, educate themselves, and be respected.

Right to live with equality and dignity is every Human's rights. Same like women; its very important responsibility of government to focus on Muslim women condition and make policy to improve their condition in every spare of life in India.

Thus the judiciary also played a vital role to emphasize on women condition my given good judgement.

