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## **MUSLIM WOMEN'S VOICES IN THE DEBATE ON PERSONAL LAW IN INDIA AND BANGLADESH**

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**Abstract:** This paper examines the voices of Muslim women in India and Bangladesh against the unequal clauses of Muslim Personal Laws and customary practices, as well as against state and community-level repression located through law and policies. I specifically researched Mumbai-based organisations, including Majlis, Bharatiya Muslim Mahila Andolan (BMMA), Bebaak Collective, Aawaaz-e-Niswaan (A-e-N), and CORO for Literacy, in India. In Bangladesh, the organisations and NGOs being studied are Ain-o- Salish Kendra (ASK), Bangladesh Mahila Parishad, and Bangladesh Legal Aid and Services Trust (BLAST). This study makes a two-fold argument. First, Muslim women in India and Bangladesh are approaching the different unofficial judicial institutions in large numbers against the discrimination and oppression they face in their family and community, confronting Muslim Personal Law. Further, women organisations, Muslim women's organisations, and NGOs have a long persisting understanding that male-dominated religious boards or NGOs dismiss women's voices and fail to address their issues and grievances regarding Muslim Personal Law. My study confirms that by providing a productive space for litigation and effective solutions to grassroots-level Muslim women, several women's organisations in India and Bangladesh brought structural changes. By so doing, in both regions, these organisations have presented a challenge to well-entrenched religious groups in the community traditionally seen as the sole leaders and decision-makers. The Muslim women organisations in India by qualifying Muslim women as Islamic judges (Qazis) ensured a gender-neutral perspective in a range of informal and unofficial community or religious dispute settlement bodies. Second, in Bangladesh, despite the progressive reforms carried out in the sharia laws for Muslim women, the actual implementation hardly took place.

**Keywords:** Muslim women's organisation. Muslim Personal Law. Gender justice. Statutory courts. Religious boards. Women Qazis. Dispute settlement bodies.

## **AS VOZES DAS MULHERES MUÇULMANAS NO DEBATE SOBRE A LEI PESSOAL NA ÍNDIA E EM BANGLADESH**

**Resumo:** Este artigo examina as vozes das mulheres muçulmanas na Índia e Bangladesh contra as cláusulas desiguais das Lei Pessoal Muçulmana e práticas costumeiras, bem como contra a repressão estatal e comunitária localizada

através de leis e políticas. Pesquisei especificamente organizações sediadas em Mumbai, incluindo Majlis, Bharatiya Muslim Mahila Andolan (BMMA), Bebaak Collective, Aawaaz-e-Niswaan (A-e-N), e CORO for Literacy, na Índia. Em Bangladesh, as organizações e ONGs em estudo são Ain-o- Salish Kendra (ASK), Bangladesh Mahila Parishad, e Bangladesh Legal Aid and Services Trust (BLAST). Este estudo desenvolve um duplo argumento. Primeiro, as mulheres muçulmanas na Índia e em Bangladesh estão se aproximando em grande número das diferentes instituições judiciais não oficiais contra a discriminação e a opressão que enfrentam em sua família e comunidade, enfrentando o Lei Pessoal Muçulmana. Além disso, organizações de mulheres, organizações de mulheres muçulmanas e ONGs têm um persistente entendimento de que os conselhos religiosos ou ONGs dominados por homens rejeitam as vozes das mulheres e não abordam suas questões e reclamações em relação à Lei Pessoal Muçulmana. Meu estudo confirma que, ao proporcionar um espaço produtivo para litígios e soluções eficazes para as mulheres de origem muçulmana, várias organizações de mulheres na Índia e em Bangladesh trouxeram mudanças estruturais. Ao fazer isso, em ambas as regiões, essas organizações apresentaram um desafio a grupos religiosos firmemente estabelecidos na comunidade e tradicionalmente vistos como os únicos líderes e tomadores de decisão. As organizações de mulheres muçulmanas na Índia, qualificando as mulheres muçulmanas como juízas islâmicas (Qazis), asseguraram uma perspectiva neutra de gênero em uma série de comunidades informais e não oficiais ou órgãos de resolução de disputas religiosas. Em segundo lugar, em Bangladesh, apesar das reformas progressivas realizadas nas leis da sharia para as mulheres muçulmanas, a implementação real quase não ocorreu.

**Palavras-chave:** Organização de mulheres muçulmanas. Lei Pessoal Muçulmana. Justiça de gênero. Tribunais estatutários. Conselhos religiosos. Mulheres Qazis. Órgãos de solução de litígios.

## 1. Introduction

This paper is based on the field work conducted on Muslim women's opinions, views, expressions in the personal law debates and entitlements, in the urban and rural background, in notable organisations and NGOs, through surveys, Focus Group Discussions, case studies and the experiences of the litigants who have sought legal help through filing cases and complaints, and have made appeals for redress at the various judicial levels for maintenance or to acquire entitlements, rights related to marriage, divorce, property, succession and custody of children.<sup>2</sup> In addition, unstructured interviews of advocates practicing family law, women activists, scholars, Muslim women clerics are also included.<sup>3</sup> I

specifically researched Mumbai-based organisations, including Majlis, Bharatiya Muslim Mahila Andolan (BMMA), Bebaak Collective, Aawaaz-e-Niswaan and CORO (Committee of Resource Organisations) for Literacy, representing Muslim minority women on personal laws in India; and Ain-o-Salish Kendra (ASK), Bangladesh Mahila Parishad and Bangladesh Legal Aid and Services Trust (BLAST) in Bangladesh, working for Muslim women (and women from all religious, caste and ethnic background).

Consequently, this paper critically examines the popular assumptions and customary practices responsible for the relative deprivation of Muslim women through Muslim Personal Law, and the ways in which Muslim women in India and Bangladesh negotiate with the facets around personal law and make their presence felt in the debate of group and community rights and mainstream women's movements.

## **2. Muslim Women's Voices in the Women's Movement and Debates on Personal Law**

The modest number of Muslim women approaching the different judicial institutions of the state against the discrimination and oppression they are facing in their family and community, confronting Muslim Personal Law, are being observed in my study, in India and Bangladesh, countering several scholars argument from their reading of the legal and socio-cultural status of Muslim women that many women are intimidated into suffering in silence rather than seeking legal help (PEREIRA, 2002; BASU, 1999; NUSSBAUM, 1999).<sup>4</sup>

Muslim women are becoming increasingly prominent participants in the Muslim public sphere in both countries. Women activists informed in the interviews that in the training sessions, campaigns, counselling session's women meet each other and discuss among themselves and take the information about the choices and strategies available for themselves. The age groups of 18-35 years old women are raising their voice assertively against the discrimination they are facing in the family. They intervene vehemently when their husband and in-laws tell lies in front

of the female Qazis (cleric) in the *sharia adalat* (Islamic court) (in the context of India). They are aware of the options they have in their hand in preparation for their complaints and what are their rights. However, in my study in India, it has been observed that very few women over 40 years of age are coming up with their grievances in these organisations. The understanding of living half of their lives tolerating the discrimination, economic dependence, uncertainty of the future and lack of awareness in the rural background are restraining them from taking an action against the oppression they are facing.

It is also important to mention here that in India, the number of women who approach the courts, police station and other state authorities when faced with oppression or discrimination is relatively small in comparison to those approaching *sharia adalat*, *darul qaza* (Islamic court) or any other religious authority. It is rare of Muslim women in both countries going directly to file a civil suit or making a criminal complaint against her husband and in-laws, unless she is desperate in her situation and led by the women organisation, NGO or a family member who is familiar with the police or judicial system. Moreover, in both regions, even when a grassroot level woman decides to file a case in the court to receive her rights and entitlements, she finds it is too costly, in money and in time, to pursue it further and many give up in between the whole procedure. The pluralistic legal system in a range of other less formal and unofficial community, legal aid bodies in women organisations, or religious dispute settlement bodies provide the common grassroot level Muslim women productive, comfort space and quicker solutions, in both regions.

There is a long persisting understanding of the Muslim women organisations in India and women's rights organisations in Bangladesh, in regarding the male dominated boards or bodies, and NGO's that take no account of the voice of women and fail to address the women's issues and grievances regarding Muslim Personal Law, which is not a true reflection of the intention of the Quran and its mentioned rights for women. Several Muslim women's organisations in India

brought structural changes by qualifying Muslim women as Islamic judges (*Qazis*) who ensure a gender-neutral perspective in a range of informal and unofficial community or religious dispute settlement bodies.<sup>5</sup> By so doing, these organisations have presented a challenge to well-entrenched religious groups in the community traditionally seen as the sole leadership and decision makers, which they claim that larger women's movement could not do for Muslim women. Nevertheless, most of the Muslim women organisations and NGOs are maintaining contacts with the progressive minded (male) *Qazis*, *Imams*, and seeking cooperation of the empathetic ones among them when trying to help the women in distress. These progressive (male) *Qazis* in India are also making their own networks towards developing relationships with these women organisations, principally for their economic purposes.

This study perceived that the historically disadvantaged position of grassroots level Muslim women in the domestic and overall social situation impact on the treatment towards them by the court in both regions. In short, grassroots Muslim women are being awarded meagre and minimal alimony and maintenance amounts in the courts, and face long delays in resolving cases, in receiving justice; further, they do not have equal rights to matrimonial property or natal property. Women litigants in Mumbai's Bandra and Thane Family Courts reported that their maintenance petitions have been pending for more than three to four years. One of the litigants and an activist of Bebaak Collective, Anjum Khan says,

Going to court, a woman hardly gets anything ("*court ke pass jake kya milti hain, tarikh pe tarikh milti hain*"). Today I am also struggling with my case; the date of hearing comes after two-three months. They should listen to what a woman needs to say regarding her claims and demands. Since 2012, the case is going on, and now I have got only Rupees 25,000 (KHAN, 2019, interview).

Another litigant Shamshad Abdur Rahman states that the case has been filed one and half years ago and only six months back, the court has given order to pay Rs. 4000 maintenance to her (Rs. 2000 for her and Rs. 2000 for her daughter)

per month, by her husband. In addition to lying to the court about his salary, that he only earns Rs.15,000, her husband also refused to provide the court with any information regarding his bank account or provide evidence in the form of a bank statement and an income certificate. She further states that her husband paid only Rs.2000 per month for the last four months. The court asked him to pay Rs. 16,000 together for four months maintenance, three times in a year. But till now he paid in three installments total Rs. 22,000, where he was supposed to pay Rs. 48,000. Her lawyer did not even inform this and does not want to inform this to court, despite she requested him to do that several times. Her lawyer is asking her to beg her husband to pay the maintenance, which she refused to do. According to her, she has come to court to claim her rights against the discrimination and oppression that happened to her and her child. And according to the law it is her rights, she asks, "Why should I beg?" Despite the court ordered him the meager amount to pay to her and her daughter, her husband is not even paying that, "Does not it come under the law to force him to pay what has been ordered, or to punish him if he fails to do that?", she asks (RAHMAN, 2019, interview).

In both societies, there is a huge distinction between the written law and the law as it is practiced, in terms of what the law actually does, when women seek relief from the courts against the discrimination and oppression they face in their family. Women face difficulty in availing the provisions being given in law; women are regularly encouraged to withdraw property share or reduce the amount of maintenance or allowance. The attitude of the lawyers and judges are responsible for the difficulty women face in availing justice in legal arena, in a courtroom space despite being argued by the eminent lawyers like Flavia Agnes that a good legal strategy can bring justice to women (Interview, Flavia Agnes; July 2019). It is being argued by the women litigants in both nation states that the judiciary always believes what a man says in contrast to the distressed deserted woman regarding his earning when courts decide the maintenance amount for her and her children. Further, due to the belief in preserving the institution of

marriage and bridging the differences, judiciary is always putting the onus or the burden on women to save the marriage alone and to do compromise, to adjust despite knowing the woman's point of view and her harassment history. The gender power asymmetries in men and women are manifested and the burden of adjustment and compromise falls primarily on women. Judiciary asks the women to give more chances, to resume living with the men and in-laws who have subjected them to long-standing harassment and violence.

In addition, Muslim men typically refuse to pay any maintenance or costs after the *iddat* period if their ex-wives do not have any children with them. Moreover, the maintenance demands made in the family courts, unofficial legal bodies, and *sharia adalat* led by lawyers, counsellors and female *Qazis* hardly include divorced women's alimony; mostly the amount includes children's support expenses only.

The specific nature and source of the discrimination and oppression that eventually led to the filing of a case in *sharia adalat*, informal dispute settlement bodies or in the family court in both regions have certain similar patterns in both regions. Both psychological and physical abuse of wives by husbands and in-laws are frequently reported in the complaints by the women interviewed in *sharia adalat*, counselling session and in family courts. Complaints about in-laws, especially mother-in-law and sister-in-law are common; husband's and in-laws' dissatisfaction were her alleged neglect of, or poor skills in housekeeping, cooking or childcare, her arguing with or talking back to them, failing to show sufficient respect and obedience towards husband's parents; their complaints also referred to dowry harassment. Women are being harassed based on the quantity or quality of the dowry items the in-laws received and subjected her to demands of extracting additional money and goods from her natal house. The failure of her family to have provided sufficient dowry at the time of marriage or refusal due to inability to meet further monetary demands i.e., cash for setting up new business, buying vehicle or household appliances, acquiring land, and building house or

selling natal house property and give cash, financing husband to secure work in the Middle East or Gulf states, were frequently informed by women as causing mistreatment by husband and in-laws. Women in this sample are living apart from their husbands, have been thrown out of the house, deserted along with children. Most of these marriages lasted for a brief period before she is kicked out of the house. In addition, women are expected to handle all home chores, however, accused her of being lazy. Furthermore, she was prevented from spending time alone with her husband and was forbidden to visit her natal house on festivals or in times of illness. Women who made complaints said that their husbands complained about going to their birthplaces too frequently or without asking permission. Also, women were told that there is lot of intervention of their natal family members in their married life. Another common complaint in these cases is being taunted for food, refusing to provide adequate or any food, husband's suspicion towards his wife, and accusations of adultery, spying on her, stalking her whenever she left the house, even on legitimate and authorised outings, following her to her place of employment and creating a public scene, demanding her to quit her job in case of working, despite her earning being the family's main source of income, misappropriating her jewellery or other possessions. In CORO for Literacy, the activists mention a case where the husband does not allow the wife to take bath for a whole week, as he thinks if she is bathed, she will attract other men's attention. Another instance included a woman with a 16-year-old son who became involved with drugs and bad company. As a result, a lot of nights he does not come home and stays in an industry premises beside the "jhopri" (temporary hut). She has to go and find her son there most nights but her husband thinks she is meeting somebody else. Due to that suspicion and assumption, he beats her black and blue. Other common allegations against the husband include contracting other marriages without informing the previous wife or wives, alcoholism, and gambling. Conflict with the husband's mother, sister and other female in-laws often led to marital problems, even when the couple's relationship



had started off on a solid footing. Verbal harassment is being reported to have escalated to physical abuse in the matter of time, and eventually led to throw the woman out of the house, stop giving any allowance or maintenance, and sending her back to the members of her natal house.

Most litigants and complainants belong to the lower-middle income strata. Their husbands are employed in low-paying occupations- tailor, weaver (*zari* work), auto, cab, taxi, and truck driver, call centre employee, salesman, traders of small business and low-ranking government servants. Some of the women interviewed are employed outside the home, although some who had been separated, deserted by their husbands for a long time, are intermittently earning small amounts doing home based work of embroidery, sewing, preparing food items, taking tuition; also some of them are working as cleaners, house caretakers, selling clothes and cosmetics house to house, as a garment factory employee, working as tailor, working as paid activist in NGO or voluntary organisations, and so on. Most of these women pronounced their marriages as having been arranged by their parents. Most of these women are educated till school standard. A lot of time the prospective in-law's family provided false or misleading information about the groom and themselves, on their income, employment, and previous marital history. Also, natal house hardly collected proper information of the whereabouts, or checked the credentials of the information provided to them. Most of these women were married off and became mothers before they were 18 years old. The case studies show that the educated women are married off to less educated men than them. Further, at the grassroot level, a girl's education is not continued, and they are not being encouraged to study more than school standard and are married off. In the case of boys, they by themselves do not want to continue their studies and drop out of school before finishing even if their parents want them to study. The "*mehr*" (is the obligation, in the form of money or possessions paid by the groom, to the bride at the time of Islamic marriage) amount offered is negligible for all the women in the sample; and despite "*mehr*"

supposedly handed over to bride promptly at the time of wedding not a single woman in sample received it at the time of their wedding. They cited that the amount of “*mehr*” has been decided by their male family members. Further, the gender roles and the ‘appropriate’ division of labour are very prominent in the family of Muslim women. Members of both the natal and the in-law families hold the firm belief that a woman’s duty as the daughter-in-law of that family are to marry young, have children, and take care of all household duties. Further, deep concerns about female modesty puts hindrances by the community and the family to Muslim women from seeking public employment, outside home. These structural factors being as influential as ideology made by family and community in keeping women in an economically dependent role, and under the protection and guidance of a male family member, which resulted in their having lack of education, job skills, experience, and no respect in the family. This leaves them in tolerating the violence against her in the family and being cheated in receiving her entitlements.

Moreover, the strong gender preference is evident in the case studies. The husband and in-laws family typically are asking for the child’s custody only when it is a male child. Besides, women are being discriminated, tortured, and abandoned and solely accused and blamed for giving birth to a girl child.

In India, the stigma of divorce falls heavily upon the Muslim women. In practice it is difficult to find a man willing to marry a divorced woman, especially if she is no longer young and had children in her previous marriage. At the same time, the women who faced oppression in their first marriage seemed to anticipate encountering the same situation in the second marriage. Therefore, they would choose not to take such a risk, and prefer being alone and look after their children mostly without getting any allowances, expenses from their husbands. Conversely, when a man goes for a second, third or fourth marriage, he still desires to marry an unmarried (*kunwari* or *kunavari ladki*) maiden girl. BMMA’s case studies reveal that there are Muslim men who are married with two

living wives, as when the first wife was abandoned by the man, the woman came to the organisation and filed a case against her husband. The man was pressured to maintain both of his women, but apart, and to pay for their maintenance and expenses equally. BMMA also claims that they ensure that if a woman wants to stay with her husband, he has to give allowance and maintenance to her, and if she does not, then her husband has to pay a considerable sum of money, give back her jewellery and dowry, among other things.

In almost all the cases in both counties, it has been observed that women are the troublemaker for another woman in the family. For an example, mother-in-law, sister-in-law, husband's elder brother's wife against the daughter-in-law in the family and vice versa. The reason can be their complete financial dependence on male members and the feeling of insecurity towards losing that financial support and expenses, food, shelter, and so on. Poverty, lack of education and lack of awareness prompt these women to take part in the patriarchal force against another woman, in the family. Further, men in the family keep the conflict alive between his wife and his mother or sister, as Mumtaz Shaikh, activist from CORO for Literacy, points out that men get benefitted from the conflict among women in the family, and they keep themselves away from intervening in a constructive manner. She states that these battles and disputes in the family strengthen their position as the patriarch rule maker (SHAIKH, 2019, interview).

This study confirms in both societies that most of the separated and divorced Muslim women facing discrimination and oppression by in-laws, received emotional support as opposed to financial support from their parents and siblings, and other natal family members, once the latter became aware that they were experiencing marital problems. The family members helped the women to confront her husband and in-laws, brought her and her children back to their home, tried to get some help from a community committee, informal dispute settlement body, *Jamaat* (Islamic community gathering or assembly), or *Qazi*,

*sharia adalat*, and family court or accompanied her to police station to file a complaint.

According to Sylvia Vatuk's research from 2017, Muslim males are hesitant to use the Muslim Personal Law provision that permits extrajudicial divorce because of the stigma associated with divorce and the challenge of finding a new wife. However, my study counters the argument, as in all the instances I studied, husbands already pronounced divorce or are planning to give one sided divorce to their wives. Women litigants have also mentioned that their husbands are married already or are planning to marry again. Due to the extreme poverty and lack of education among Muslim women, Muslim men are not having any difficulty to find another wife despite being already married. However, this is important to mention here that after the triple *talaq* ordinance 2018 in India, Muslim men are restraining themselves from giving one sided *talaq*, but that did not stop them deserting or kicking women out of the marital home with the children. Muslim men are simply abandoning their wives when they wish to end the relationship and this way of freeing oneself from any financial obligation is as prevalent as the practice of triple *talaq* (a customary practice which allowed a Muslim man to divorce his wife in minutes just by saying "*talaq*" [divorce] three times), among the poor and less educated. Additionally, Vatuk states that Muslim men in India forced their wives to seek "*khul*" (means the dissolution of the marriage bond, at the instance of the wife, in terms of an agreement between the spouses according to Islamic Law) divorce because it was difficult for them to find new wives. This study refutes this claim because it has been observed that in cases where Muslim men forced their wives to seek "*khul*" divorce, they were released from all financial obligations to their divorced wives (sometimes they force the women to waive their rights to retain custody of children, if women ask for maintenance or financial support for her children). Vatuk discussed the percentage of women receiving "*mehr*" when verbal triple *talaq* was instantly pronounced, despite the men coming from backgrounds where they are unable

to pay. However, the question of whether the minimal "*mehr*" amount (or the *iddat* amount) was sufficient for a woman to survive has been completely ignored. "*Mehr*" amounts are set so low and *iddat* (period of waiting and chastity which a Muslim woman is bound to observe after the dissolution of her marriage due to the death of her husband or by divorce before she can lawfully marry again) payments are also minimal and seemingly almost standardised, bearing little relation to the ability of the husband to pay. Vatuk also did not distinguish between what is "Islamic law" according to her and what is "*Hanafi* School of law" and she did not verify the credential of what has been told to her regarding rules and norms by the *Qazis*; in the matters of "*mehr*" (when it should be paid); triple *talaq* (practiced as laid down in Quran as against what happens in customary practice and is validated); maintenance (she mentions it is inappropriate to receive regular support payments from ex-husband, since this would keep an ongoing social relationship with her ex-husband) (VATUK, 2017, p. 46, 48, 52, 56, 68). Consequently, the author avoids making a clear distinction in her work between the customary practices and the Quranic laws when it comes to the issues of Muslim women in the family and how these distinctions are impacting Muslim women's lives. Moreover, her arguments and statements on the low rate of occurrence of polygamy, triple *talaq* and deserting of wife by Muslim men; Muslim Personal Law in customary practices not being a real hindrance towards the advancement of Muslim women's rights; and accepting AIMPLB pronouncements regarding women issues at face value, are all problematic. Despite the declaration that her findings have drawn upon the individual experiences of Muslim women with marital difficulties who sought help from civil and religious authorities, or local NGO's, we hardly find these accounts in her study, except there are five-six accounts of the activists of some organisations.<sup>6</sup>

The narrations of the findings are mainly done based on the consultation with the *Qazis* (male). Her claim of reflection in the study of having discussions with other Muslim male and female, who are relatives, neighbours, close friends,

acquaintances of these distressed women, are also not found. In the later chapter on Muslim women's movement in her work, a half-hearted attempt is made towards the narration of the trajectory of Muslim women's movement from 1980's and the formation of Muslim Women's Rights Network and the reasons behind its dissolution; further, the genesis of new organisations for Muslim women's rights and entitlements are done in an incomplete and derailed manner (VATUK 2017). The author's understanding of "feminist" in terms of Indian Muslim women activists is quite problematic since she claims that

despite sharing with self-identified feminists 'a theoretical perspective and a practice that criticises social and gender inequalities, aims at women's empowerment, and seeks to transform knowledge', they shy away from adopting the label for themselves. (VATUK, 2017, p. 179-180).

Here, she fails to understand that Indian Muslim feminists are rejecting the western definition of feminism but not shying away from considering themselves as feminists.

### **3. Restructuring the Muslim Personal Law in India and Bangladesh: Developments in Legal Arena**

Even though the amendments in civil and personal law are being carried out for the rights and entitlements of Hindu women in India, for Muslim women the case has been different. The Muslim Women (Protection of Rights on Divorce) Act, passed in 1986, diluted the Supreme Court's revolutionary verdict in the "Shah Bano case" (Mohd. Ahmed Khan Vs. Shah Bano Begum, 1985, 2 SC C556) and it denied utterly destitute Muslim divorcees the right to alimony from their former husbands. The Shah Bano case challenged Muslim Personal (*Sharia*) Law and triggered a debate, paved the way for Muslim women's fight for justice. The Muslim women were in the forefront of struggles mobilised by women's organisations to secure and safeguard their rights. Spearheading the crusade

against the Shah Bano judgement was the All India Muslim Personal Law Board, which has no representation of women issues. Besides, in the event, newspapers and media (and some scholars too) invariably focused on the Board's action and women's voices were completely silenced in the institutional sphere.

Many progressive women hailed the idea of a uniform civil code but worried that their own activism on this issue could facilitate the Hindu nationalists' more communally oriented advocacy of the same cause. The religious and ideological divisions (can be attributed to their diverse perceptions of their interests) among women over the Shah Bano case diluted the political force of their demands.

The political parties who opposed to reform in personal laws emphasised the laws' religious basis and the dangers of intervention and those in favour of reform stressed the harmful effect of personal laws on national unity. Therefore, in their own ways, both stressed the national unity argument, albeit differently (HASAN, 1998), and the intrinsic value of women's equality for both was not the main concern.

However, the recent past scenario in the legal platform is a landmark judgement which was delivered in August 2017 against the instant triple *talaq* practice (THE INDIAN EXPRESS, 2017), when triple *talaq* victim Shayara Banu approached the Supreme Court in 2016 for justice, demanded ban on unilateral divorce, practices of "*nikahhalala*" (is a customary practice that requires a woman to marry with another man in order to return to her first husband) and polygamy (THE INDIAN EXPRESS, 2016). Further, in April, 2016, Jaipur resident Aafreen Rahman filed her petition to protest the sudden divorce which her husband sent through speed post (India Today, 2016). In December 2017, citing the Supreme Court judgement and cases of triple *talaq* in India, the government introduced The Muslim Women (Protection of Rights on Marriage) Bill, 2017. The Bill proposed to make triple *talaq* in any form-spoken, in written, or by electronic means-illegal and void. Punishment for breach of the law was proposed to include up to three years imprisonment for the husband pronouncing triple *talaq*. The Bill

was reintroduced and passed by the Lok Sabha and by the Rajya Sabha in July 2019. The Act stands to be retrospectively effective from 19 September 2018 (Choudhury and Prabhu, 2017; The Economic Times, 2019; Lok Sabha India Website, 2019). The Muslim Women (Protection of Rights on Marriage) Act has already been the subject of several legal challenges from Muslim religious organisations, which see the law as disproportionate and a political move against minorities. The Act has also divided opinion among Indian women's organisations, and Muslim women's groups in particular.

On the other hand, the legislature in former East Pakistan, that is contemporary Bangladesh, amended some significant sections of the Muslim *Sharia* Act 1937 and Muslim Family Laws Ordinance, 1961, to accommodate certain liberal values. This includes the criminalisation of verbal *talaq* and remarriage without the written consent of the spouse, the legal entitlement of economically vulnerable women with children to maintenance after divorce for more than three months, custody of children for women, and soon (KAMAL, 2015; 2004). Prior to the amendments in *Sharia* (Islamic canonical law based on the teachings of the Quran and the traditions of the Prophet [*Hadith* and *Sunna*], prescribing both religious and secular duties and sometimes retributive penalties for lawbreaking) law, woman had to undergo "*Hilla*" (intervening marriage) once divorce was verbalised. According to the amendment in Section 7(6) Ordinance, 1961, the divorced parties can remarry without performing any such intermediary arrangement i.e., "*Hilla*" (KAMAL, 2004). This amended *Sharia* law is known as the "Muslim Personal Law".

There exists, thus, a liberal legal platform for Muslim women in Bangladesh through personal law and statutory law. However, the lack of enforcement of these has hindered empowerment of women in most cases.



#### 4. Muslim Women Rights Organisations on Triple Talaq Verdict in India

Regarding the codification of Muslim Personal Law and the recent Supreme Court verdict, and later passing of the law against instant triple *talaq* by the current government, the organisations like BMMA positioned itself in favour of it arguing that a law would be meaningless without deterrence. BMMA points out that in other cases any violation of civil law is a criminal offence, or else there is no effectiveness of it (SOMAN, 2019). Based on the cases coming to them, BMMA points out that triple *talaq* has been taken place despite the Supreme Court judgment banning it. Hence, only giving a judgment on triple *talaq* is not enough or the final solution. In this context, when a law is being made and it's being violated, there should be reprimanding the person who violates it. BMMA called it a hypocrisy of the women's movement that it accepts the criminality of all civil causes of the other laws but when it comes to Muslim women and when they are demanding criminalising the Act since the marriages are being terminated according to the will and time of the men, it is not being considered as a heinous offence. BMMA accused of such lone empathy, compassion only for Muslim men [*"sriph Muslim admi o ke liye itna sahanubhuti women's movement main kabse aane laagi?"*, (Interview, Noorjehan Shafia Niaz; June, 2019)] and not for Muslim women, in the women's movement. Some of the organisations like Bebaak Collective and Aawaaz-e-Niswaan are questioning the rationality of making the practice a criminal offence and how a woman would be benefitted in receiving her entitlements (maintenance, allowance) when the maintenance provider is in jail or behind the bar. There are arguments made by Majlis, Bebaak Collective, Aawaaz- e-Niswaan and lawyers like Veena Gowda, of being "too early" or "not the favourable time" for blatant challenges to the authority of the religious community leaders or demanding for the reforms of Muslim Personal Law as it may have the unfortunate consequence of providing a rallying point for a new patriarchal unity (NAIR, 2005; VATUK, 2017, p. 155) of majoritarian directions and come in service of a motivated authority to fulfil their desires, agenda of making

the minority community men more vulnerable; and further distracting attention from more pressing issues faced by the Muslim community. Majlis and Veena Gowda also think that conservative religious bodies are no more aggressive than they were earlier, regarding their point of view on women's rights, which makes it unfounded conditions for the demands of reform in this political juncture. This study questions this understanding of whether the women's movement was being directed only against the religious and conservative bodies or much larger issues of contesting the discrimination and oppression of women in the family or community?

### **5. Perspective of Women Rights Organisations and Feminists on Uniform Family Code in Bangladesh**

Regarding the debates and movements around Uniform Family Code (UFC) in Bangladesh, they are slightly different from India as there is hardly any assertion or apprehension from the women's groups or by the progressive feminists in drawing up and ratifying the formulated code (in 1993) would be an imposition of majoritarian religious standards on minority communities. The difference of legal treatments under pluralist religious legal system have been perceived by feminists in Bangladesh as the intrinsic cause of gender inequalities prevalent in the personal laws of different religions in Bangladesh. In this matrix of problems, the demand for a secular Uniform Family Code for all citizens irrespective of sex, religion or ethnicity containing the ideals of equality provisions of the Constitution and international guarantees in all matters relating to the personal spheres has got pace. On the other hand, the demand for such a Uniform Family Code has encountered strong opposition and resistance by the traditionalists who believe that the religious laws are divine revelations and no one has the authority to alter it. Nevertheless, it is significant to inform here that movement around Uniform Family Code could not mark its space within the broader framework of women's movement. The results of my study, which involved talking to the respondents, show that the UFC movement is mostly an urban one because few people in rural

areas, where women's organisations have branches, are aware of it. However, recently the women organisations are fighting for necessary reforms against the specific unequal clauses of personal law for minority women rather than the demand of UFC. The difficulties have been faced by the women's movements, lobbying for a legal system that ensures equal rights for women, and the biggest challenge came from the communities themselves and the male leadership.

## **6. Conclusion**

According to the aforementioned findings of my study, women's organisations in both nations have been vocally calling for the reform of Muslim Personal Law and the enactment of legislation that are gender-just for women. Although, in India there are differences of opinion, in their demands, and it can be undoubtedly said that the women's movement towards advancing the rights and entitlements of the Muslim women are divided and fragmented. The grassroots level organisations for Muslim women's rights are experiencing lack of support and not an equal footing in the mainstream women's movement. Moreover, there is tremendous lack of resource for some of these women organisations, who took a sound (firm) decision to not become an NGO, facing obstacles to carry on the voluntary work and service among women. First of all, these women organisations are operating in their specific political terrain and ideology. Second, "reform from within" argument does not include women's voices and demands for their rights and entitlements against the oppression or discrimination they are facing in the boundary of Muslim Personal Law. As a result, women's problems are getting sidelined and not considered as the "priority".

Muslim women have had their rights and entitlements subordinated to the "greater cause" of community rights, and the communities in question have presented their group rights as conflicting with and in opposition to women's rights, in both regions. Such considerations on the part of community leaders and some progressive women organisations are informed by dominant socio-cultural

presumptions, derived from religious traditions, which continue to see women as dependent on men. Furthermore, both nation-states current political beliefs have put a question mark towards the sincerity and the ulterior motives behind the steps being taken recently for women's advancement.

There are organisation, activists, and lawyers who in their arguments always make a comparison of Muslim women's experience of discrimination with that of women governed by Hindu Personal Law in India. The significant question that arises why is it necessary to always compare with other community women facing discrimination or oppression? Even when the women from other communities are facing the discrimination and oppression, the rate of recurrence, veracity of the observed oppression, violence, and discrimination in their personal law that Muslim women are facing does not fade away. Also at the same time the comparison does not help them solve their redress, distress and despair. Even if the women from other communities are facing the specific oppression and discrimination, my study questions why Muslim women must face the same?

The common ground where all the women organisations and activists in both countries are agreeing to is that legal reforms are doubtless to offer rights and entitlements against the oppression and discrimination women are facing, however, it will not be enough unless other social changes like economic independency, education, and other important rights as an equal citizen of the state accompany it. The progressive rights for women in Quran like "*ikararnam*" (marriage agreement) and deciding the "*mehr*" or "*den mohar*" amount by herself are not given to them in actuality, making it difficult to execute in favour of women. A woman in the family and community is not in a position to set conditions for herself in the marriage, demanding "*mehr*" or "*den mohar*" amount in the form of gold, property, bigger amount of cash, since her position in the family and community are decided by her economic dependence on her male family members in both natal and in-laws house, where she has been considered as a burden.

As a final point, this study demonstrates that to provide a productive space for litigation, and effective, quicker solutions to problems of grassroots level women, women's organisations in India and Bangladesh have set up a range of informal and unofficial dispute settlement bodies. With the accessibility of social justice lawyers and free legal advocacy facilities, these women's organisations have generated a pro-poor litigation environment and made a difference in terms of achieving legal empowerment and mobilisation for economically susceptible and marginalised women. By providing a productive space for litigation, and effective solutions to problems of grassroots level women, these organisations have presented a challenge to well-entrenched male-led religious groups in the community, traditionally seen as the sole leadership and decision makers.

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## NOTE

1. Maitree Devi (mrinmaymaitree@gmail.com) has completed her Ph.D on "Minority Voices in Women's Movements in India and Bangladesh: A Comparative Study of the Debates on Personal Laws", in Comparative Politics and Political Theory (CCP&PT), School of International Studies I, Jawaharlal Nehru University, New Delhi.
2. Various judicial levels expressly include unofficial community or religious dispute settlement and family court litigation for maintenance or to acquire entitlements and rights.

3. Mostly the women activists in the sharia adalat and peer counsellors in the counselling sessions, initially came to these organisations seeking assistance with their own problems in the family and then stayed on to use what they had learned to help others; and became a part of the women's movement.
4. The statistics that follow will refute that claim: In India, in the sharia adalat, conducted by BMMA, total cases were filed in 2016, 2017 and 2018 are 229 (31 cases of triple talaq; 35 cases of polygamy); 189 (6 cases of triple talaq; 32 cases of polygamy) and 150 (2 cases of triple talaq; 28 cases of polygamy) respectively. In 2016, 2017 and 2018 cases solved were 61; 114 and 60 respectively. In 2017, alimony received by the women litigants are Rs. 16, 25,000 and 64 tola jewellery; in 2018, total alimony received by the women litigants are Rs.6,02,000 and 18 tola jewellery. In the duration of January to June, 2019, BMMA had received total 55 cases (1 case of triple talaq; 9 cases of polygamy) and out of that 20 cases were solved. In Bangladesh, the statistics provided by Ain-o-Shalish Kendra shows that in 130 cases filed by the women litigants in their dispute settlement body, the amount of maintenance and den-mehr collected from the opponent party or respondents (by the body) was 70, 48,501 BD Taka, in (January-December) 2019, in comparison to the 53 court cases initiated by the organisation, the collected amount of maintenance and den-mehr was 33, 51,417 BD Taka. In (January-August) 2020, the legal assistance provider dispute settlement body of ASK has collected 16, 18,100 BD Taka, for the women litigants.
5. It is pertinent to mention here that Muslim women rights-based organisations and NGO's in India do welcome women from all religion to come to them with their complaints, considering the purpose of promoting gender equality cannot be sectarian.
6. Vatuk's work claims of drawing the insight upon anthropological fieldwork and qualitative perspective during 1998-99 in the city of Chennai [family courts- court of law that deals with cases involving family law (subject to change religion to religion), such as marital disputes, divorce, maintenance and entitlements, child custody, adoption, guardianship, and so on], and in 2001 in Hyderabad [Dar-ul-Qazats (same like Darul Qaza)]. She studied the organisations named Aawaaz-e-Niswaan, Bebaak Collective and BMMA in the Muslim women's movement.