



Agenda for final Law Review Consultation on the Rights of Muslim Women- Reviewing Muslim Personal Law

The National Commission for Women in pursuance of its mandate under section **10(1)(d)** to review legal and constitutional safeguards pertaining to women had decided to review **Rights Of Muslim Women- Reviewing Muslim Personal Law**.

In this regard the Commission has conducted law review consultations to relook the Indian Muslim personal law in order to formulate specific recommendations for amendments and enhance the outreach of the legislation for women and strengthen their stance in the society.

The law review consultation is being organized to review and analyse the legal reforms to advance the status of women and. to protect the interest of Muslim women considering gender inequality and violation of their constitutional rights. Through these consultation, the Commission endeavoured to seek views, suggestions and opinions of stakeholders from all over India.

In order to incorporate viewpoints from diverse sectors and stakeholders from different regions in the process of suggesting comprehensive changes in the law relating to the subject, the Commission conducted regional level consultations for Eastern, Northern, Western, North Eastern Region and Southern region on 11.12.2022, 17.12.2022, 10.01.2023, 16.01.2023 and 06.03.2023 in association with National University of Study and Research in Law, Ranchi, National Law University, Shimla, National Law University Institute, Bhopal, North East Hill University, Shillong and Tamil Nadu Dr. Ambedkar Law University, Chennai respectively.

The Commission has culled out major recommendations and key issues highlighted by eminent panelists in the Regional Consultations. These issues are crucial in analyzing the law and revamping its position.

Points of Discussion

A. Codification of Muslim Personal Law

Muslim Personal Law should be interpreted in wider sense and in accordance with the Fundamental rights and constitutional rights of the women. In no case customary law

should prevail over statutory laws. There must be codification of Muslim Personal Law. Personal law should reflect the constitutional mandate of gender equality in the society and there should be enough space given to Muslim Women's voice in politics and other administrative matters. There is need to ensure that the codification of Muslim family law is based on the Constitution and the Quran.

B. Marriage and Divorce

1. **Polygamy:** Muslim men are allowed to have up to four wives under Muslim Personal Law, which places Muslim women in polygamous marriages at a disadvantage. They often face emotional and financial exploitation, and lack of social acceptance. The principle behind polygamy in ancient time has no relevance in contemporary times. Muta marriage has been used as a tool to take advantage of Muslim Women in the name of the rituals while minors and orphans have been the victims most of the time. Renouncing these practices would be best in favour of muslim women.
2. **Unequal grounds for divorce-** The grounds for the divorce available to women are often more limited than those available to men, which can make it difficult for women to obtain a divorce on equal terms. The Dissolution of Muslim Marriage Act, 1939 is applicable to Muslim Women for obtaining judicial divorce whereas men have the option of extra judicial divorce as per the Muslim personal law. Deliberation is required on whether the Act should be applicable on both men and women equally in order to prevent such extra judicial divorce leading to destitution and vagrancy for helpless wives.
3. **Uniformity in age limit for Marriage-** Age of marriage of a Muslim woman is considered to be puberty and otherwise 15 years under the personal law. The legal age for marriage is 18 years for women and 21 years for men according to the Prohibition of Child Marriage Act, 2006. Marriage below this age is considered to be a child marriage, which is an offence. A person who has attained the age of puberty is biologically capable of reproduction. However, the same does not imply that the said person is mentally and psychologically mature to engage in sexual acts and consequently, bear children. Deliberation is required to streamline the personal law in this regard with Prohibition of Child Marriage ACT, 2006.
4. **Uniform Application Of Penal Laws-** In case of minor Muslim women, who contract marriage before attaining the age of majority, irrespective of what is professed in personal law. For the enforcement of the fundamental rights of Muslim women, who are below the age of 18 years, guaranteed under Articles 14, 15 and 21 of the Constitution of India, it is important that provisions of the Protection of Children from Sexual Offences Act, 2012, the Indian Penal Code, 1860 and the Prohibition of Child Marriage Act, 2006 to Muslim women, who have contracted a marriage before attaining the age of majority i.e., 18 years.

5. **Practice of Halala-** The concept of Halala which means in order to get remarried to their former husband, the women enter into Halala marriage i.e. marriage with another man, who consummates the marriage and has to seek divorce the next day. This Halala marriage is a grave violation of women's dignity in the name of religion.
6. During the iddat period, Muslim women cannot marry and have to live in the house of their in-laws which violates their personal liberty.

C. Issues related to inheritance rights of Muslim Women

7. **Unequal Inheritance rights-** under Muslim Personal Law, a son is entitled to twice the share of a daughter in the inheritance of the father's property. If there are more than one daughter then all of them will get only 2/3 of the share. Daughter is also excluded in some areas because of customary practices or special statutes. Likewise, the Rule of Primogeniture. Watan Act ,1886(Bombay), The Oudh Estate Act, 1869 follows the rule of primogeniture for devolution excluding the daughter from inheritance.

D. Issues related to Guardianship

8. **Rule of Guardianship-** The natural guardian of a child under Muslim law is considered to be the father only and the mother is not considered as a natural or other guardian even after the death of the father. The father is considered to be the only natural guardian of the child even if the custody of the child is not with him,then also he has control over all the decisions relating to the child.
