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Role of all india muslim personal law board in reforming muslim personal law

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Abstract

In a holistic study (Chowdhury, 2021), for many centuries, the debate on the superiority of the Indian constitution against the country's religious morality, customs, practices, and traditions accompanying it has been a defining feature of post-independence jurisprudence. Co contrary to the personal laws of other major Muslim-majority nations, such as Pakistan and Bangladesh, India's laws lacks a standardized codification (Deb, 2019). As a result, the All-India Muslim Personal Law Board and its position on revising Muslim personal laws in India are the focus of this article.

The Supreme Court's precedent-setting rulings in favour of women's access to the Sabrimala temple and the abolition of criminal penalties for violations of Section 377 make it clear that constitutional morality takes precedence over religious morality. The question facing the Supreme Court and legislators more broadly is whether or not the practices that flagrantly violate the fundamental right to equality of millions of Muslim women under Muslim Personal Law, about their counterparts from other religious dominions, is any more tenable in the constitutional scheme of India.

This article takes a look at the position taken by the All-India Muslim Personal Law Board (All India Muslim Personal Law Board) on issues of discrimination based on genders, such as polygamy and the choice to enter puberty.

This paper aims to comprehensively cite and analysed such gender discriminatory practices sanctioned under personal law and suggest reformative measures to deal with the same, arguing that the problem of gender inequality afflicting various personal laws stems from a deep-seated patriarchal mind-set of society and agencies like the All-India Muslim Personal Law Board.

Keywords

Polygamy, Marriage laws, Women's rights, Gender discrimination, All India Muslim Personal Law Board, and Constitutional morality

I. Introduction

A. Historical background

The All-India Muslim Personal Law Board is a legislative body representing Muslims in India. The body's creation in the year 1972 was in the city of Mumbai, Maharashtra, and its foundation was laid and introduced in the year 1973 in the city of Hyderabad. Following the freedom movements in India, Muslim communities from all over India, from various schools of thought, joined in to establish a common platform to defend the Muslim Personal Laws in India. The foremost joint forum or meeting to establish or adopt the board was held in Deoband, Uttar Pradesh, where the Convention to adopt the All-India Muslim Personal Law Board was entrenched. The founder President was Hazrat Maulana Qari Taiyab Qasmi, and the General Secretary was Hazrat Maulana Syed Shah Minnatullah Rahmani.

The All-India Muslim Personal Law Board was created to establish rules or laws for the Muslim communities in India to follow. According to the Board, no other law should govern the matters of Indian Muslims for as long as the Board is present. The Founders of the Board believed that Islam is the only guidance that the actions of Indian Muslims actions should adhere

To. The followers of Islam should only be provided comprehensive guidance by Islam, and no other source of law should govern the actions of the Indian Muslims. The ideology of the board's Founders helped establish the efficient application of Islamic Laws and the adoption of the All-India Muslim Personal Law Board. The present Head of the Board is Maulana Syed Raabe Hasani Nadvi.

The primary aim and objective of the Board are to take significant steps towards defending the Muslim Personal (Shariat) Act 1937. The All-India Muslim Personal Law Board shall take efficient steps towards better implementation of Muslim Personal Law and always protect the Indian Muslims' interests. The Board encourages goodwill, brotherhood, and cooperation between Muslims in all sects and schools of thought and cultivates camaraderie and harmony amongst each other to preserve and protect Islamic Law. The Board's principal role is to facilitate the use of Muslim personal law in India, which involves various Action Committees, organizes campaigns and educational programs relating to Board decisions, and

raises awareness of Muslim Personal Laws. The Board also promotes understanding amongst Indian Muslims about the rights and duties mentioned under Muslim Personal Laws. It encourages citizens to be law-abiding within the State and central legislations by conducting various activities to promote and protect the value of the Muslim Personal Law. Of en, the Board has veered away from its core mission and goal to protect the Shariat from any state or civil society intervention by opposing any reform measures suggested by the Legislatures.

The Board was an all-gender inclusive body, yet there was no equal representation of women Ulemas. Therefore, it was thoroughly criticized by Islamic feminists and Islamic Scholars. The led to the formation of the All-India Muslim Women's Personal Law Board, which, in its first 'Adalat (extra-judicial court) session held in the city of Lucknow at the start of 2005, recorded 166 instances of women seeking counsel on marriage and divorce problems. Ac ording to research by Live Law (Malviya, 2022), the All-India Muslim Women's Personal Law Board has petitioned the Supreme Court for redress in light of such egregious wrongdoing.

B. Role of All India Muslim Personal Law Board and Judicial Decisions by Courts

India is a country with various cultures and religions cohabiting with each other. Ho ever personal laws have always been characterized by profound discrimination against women and women's rights viz-a-viz their male counterparts. Although most other personal laws have incrementally been ratified, keeping up with the necessary changes in society. Mulim Personal laws continue to be against such significant reformations stating that the changes would destroy specific traditional values and undermine the cultural heritage of Islam in India (Puri, 1985 & Mandal & Dhawan, 2016).

One of the examples of such blatant discriminatory practices still existing in Muslim personal law in India is polygamy. Po game is such a structure of marriage whereby a man can contract more than one marriage simultaneously. There are two types of polygamy. One type is polygamy, where a man marries more than once, and another is polyandry, where a woman can marry more than one man. "Restricted polygamy is allowed in Islam; polyandry is forbidden entirely."¹ Though Islam permits polygamy, it has laid down various conditions, which, in practice, are very difficult to adhere to. Following the text of the Quran, below are the prominent conditions required to be fulfilled for a man to enter a polygamous marriage:

- A man shall have sufficient financial resources to suffice all his wives equally and their respective families.
- Finally, a man should be attentive to total fairness and equality among each family in every aspect without any partiality. Hi, physical strength

¹ In this study, the author will use polygamy as it is the only form practised widely. "P lygyny means that a man can marry more than once and twice, whereas Polyandry means a woman can marry more than once, which rarely happens in some parts of India only."

should allow him to fulfil the sexual cravings of each of his women.²

. The Muslim Personal Law (Shariat) Application Act, 1937, has not undergone any review for reform made by the Legislature. Instead, it has objected and taken a step backwards in terms of gender progressive laws by negating the Judicial responses of the Apex Court.³ "The Muslim Women (Protection of Rights on Marriage) Act, 2019 is the only reformative legislation adopted post-independence." Muslim Personal law, in many aspects, continues to follow the same puritanical practices which have become obsolete in the 21st Century and are also seen as a gross violation of fundamental rights granted by the Indian Constitution. "The All-India Muslim Personal Law Board has been redundant for such reforms of Muslim Personal Law in the fear that the reform may change the basic value of Muslim Law in India as we know it." This obstinance to reform and evolution has affected the followers of Islam, one of the most progressive religions, when it was founded around 600 AD. The worst victims of the obstinance to reform have been Muslim women. "Muslim women were removed from the ambit of secular law of maintenance by the Parliament in 1985."⁴ One of the primary reasons for such abstinence to reform is the patriarchal attitude of the All India Muslim Law Board and its insistence that Muslim law is beyond reform. To cite a few examples during the hearing of the infamous Triple talaq judgment in *Shayara Bano v. Union of India and Others* (2016)⁵, the AIMLB justified the law of triple talaq by mentioning in their affidavit that men have greater strength to control their emotions. Therefore, for example, its justification mentioned below of instant triple talaq as articulated in paras 66 and 78 (c) of the counter affidavit:

According to para 66 and 78(c) of the All-India Muslim Personal Law Board petition, when the wife and the husband do not want to live in severe discord, and because taking the legal route through legal compulsions is too time-consuming, separation proceedings and expenditures. The husband can use illegal, immoral methods of killing or burning her alive in these instances. Of course, a husband who is not afraid of God can do something against a wife he hates. Since he is only with her at night-time when it is dark. His crime is more likely to be concealed. Before, the number of women being abused and tortured is constantly rising. (Lasong, Joseph, et al 2020)

No empirical data was put forward by the All-India Muslim Personal Law Board to substantiate its claim that men would resort to killing their wives without triple-talaq.

It is unimaginable that someone familiar with the Quran would even contemplate the prospect of "a better solution than" instant triple talaq or costly

² The Quran states that "...then marry [other] women, who seem virtuous to you, two or three or four; and if you fear that you cannot do them justice, then one [only]...." See Surah Nisa' 4:3, Verses of Quran.

³ "See *Shayara Bano and others v. Union of India and others*, Writ Petition (C) No, 118 of 2016. In this case, the All-India Muslim Personal Law Board refused to acknowledge the court's decision by negating defences."

⁴ See *Mohammed Ahmed Khan v Shah Bano Begum* 1985 S.C.R. (3) 844

⁵ Writ Petition (C) No. 118 of 2016

and lengthy separation proceedings in court. The All-India Muslim Personal Law Board's intransigence and claim that Muslim law and the customs and practices accompanying it is above and beyond judicial interpretation by the Supreme Court are pretty ludicrous as the country's Apex court has every right to delve into every personal law and religious practice accompanying it as has been made abundantly clear by the Sabarimala judgment. Furthermore, Islam, over and above everything, attempts to establish an egalitarian society. The rights given under Islam to woman in its formative years were far more than the rights woman under any other religion enjoyed, so the Apex court has every right to check and criminalize practices which erodes or strike against the basic tenet of Islam, namely equality.

In *Yasmeen Zuber Ahmed Peerzada &Anr. v. Union of India (2019)*⁶ a Public Interest Litigation⁷ (P.I.L.) was filed on Mar 26 2019, because of the vague reasons cited by the Imam for not allowing women to enter the mosque. The P.I.L. challenges those gender-biased practices such as prohibiting the entry of women inside mosques as unconstitutional. "The petition argues that such practices brazenly violate the fundamental rights under Articles 14, 15, 21, 25, and 29 of the Constitution." The petitioners also argue that The Holy Quran and the Hadiths do not include gender-discriminatory practices that prevent Muslim women from joining men during prayers in the mosque. Finally, the petitioners also point out that such customs or practices barring women from entering mosques or temples contradict Article 44 of the Indian Constitution. "The Sabarimala Temple's practice to prohibit menstruating women to enter its inner sanctum was amended by the Apex Court in September 2018". The petitioners claim in the present situation that religious practices should not be used as a defence against women's worship rights and their dignity. This was admitted by the Supreme Court and notified to the Central Government, the Sunni Waqf Board, and the All-India Muslim Personal Law Board on Apr 16 2019. However, the Apex Court is yet to decide the case.

Polygamy has been widely practised in India for almost 72 years since the country gained its freedom. Although India has outlawed the custom for people of other faiths, it continues to be legal for Muslim males to wear face coverings. Even before India gained her freedom, polygamy was widely practised. Before its independence, India enacted a law prohibiting polygamy among all faiths save Hinduism. "In contrast to countries with a majority Muslim population, such as Tunisia or Turkey, countries with a majority Muslim population that restrict polygamy include Afghanistan, Morocco, Algeria, Indonesia, Iran, and even neighbouring countries like Pakistan, Bangladesh, and Sri Lanka. Only in India, Malaysia, the Philippines, and Singapore, Muslim males have unrestricted rights to form polygamous marriages." The most recent NFHS data in India shows a 2.1% frequency of polygyny among Christians, 1.9% among Muslims, 1.3% among

⁶ WP (C) 472/2019

⁷ A Public Interest Litigation or P.I.L. or Social Action Litigation is litigation filed in a court of law to protect the "Public Interest." "Any matter where the interest of the public at large is affected can be redressed by filing a Public Interest Litigation in a court of law such as Pollution, Terrorism, Road safety, Constructional hazards, etc." A PIL can be filed under Article 32 of the Indian Constitution in the Supreme Court and Article 226 in the High Courts of India.

Hindus, and 1.6% among other religious groups. After studying NFHS⁸ Data from 2005–2006, 2015–2016, and 2019–2020, researchers from the International Institute of Population Studies in Mumbai, which also conducts the NFHS surveys, came to the following conclusion: Overall, older women, those without a high school diploma, those living in rural areas, and those with lower socioeconomic status were more likely to enter into polygamous unions. It showed that variables outside location and faith also influenced this marriage. According to a recent news item (Nagarajan, 2022), the percentage of women reporting polygamous ranges from 6.1% in Meghalaya to 2% in Tripura. These states are all located in the northeast and have significant indigenous populations. Moreover, the rate is much greater in places like Bihar, Jharkhand, Orissa, and West Bengal. In most of India's states, including Chhattisgarh, Andhra Pradesh, Telangana, and Tamil Nadu, the Muslim population has a greater polygyny rate than the Hindu population.

While the report highlights Indian Muslim's non-inclination to indulge in polygamous marriage as the Muslim men in other countries, the existence of such a misogynous provision, which violates Articles 14, 15, 21, and 25 of the Indian Constitution directly, is hard to understand, as proven with the help of various judicial decisions discussed further in the paper.

Personal laws are derived from religion, faith, and culture; without these attributes, one cannot assume faith and belief. Therefore, it is assumed that the right to polygamy is only available to those of a particular religion or faith on the fundamental basis of belonging to the same religion. Polygamy is one such right that a Muslim male can assume based on being a Muslim. However, it has been time and again held by courts that the right to polygamy is not absolute but one riddled with qualifications. A Muslim man can exercise his right to polygamy only if he can meet these qualifications, including the obligation to maintain his wives equitably. The Supreme Court reaffirmed this point in the Shayara Bano case and again in Khursheed Ahmad Khan v. State of U.P. (2015).⁹ If the high requirement is not met, the State legislation grants the Muslim wife the ability to file for divorce and receive alimony. In 2015, the Supreme Court affirmed the Central Civil Service (Conduct) Rules that ban bigamy for Muslim male central government workers. In this scenario, aspects of Muslim Personal Law already exist within a framework formed by secular factors like rationality, equality, and state policy, rather than being anchored purely in religion. Which strengthens the case for monogamy as a positive societal change.¹⁰ As a result, polygamy is a rare exception rather than the norm.

The judicial system interprets the law very differently from the Muslim clerics. To be more precise, the All-India Muslim Personal Law Board has opposed any such interference of the court and has maintained that these practices are

⁸ "The National Family Health Survey (NFHS) is a large-scale National survey and analysis conducted on the sample of households chosen through all parts of India. Conducted by Ministry of Health and Family Welfare, Government of India in association with the International Institute for Population Sciences serving as the zenith agency."

⁹ Khursheed Ahmed Khan v. State of U.P., (2015) SCC 105

¹⁰ The Central Civil Services Conduct Rules, 1964. Rule 21. Restriction Regarding Marriage.

linked to the Quran. The any discussions on reform are not open to question. (O the discussion about polygamy, courts have often taken the help of amicus curie and have come to decisions time and again. In 2017 the Supreme Court allowed the Former Minister of the Union, Mr Salman Khurshid, to be the amicus curiae in hearing a batch of petitions on these practices.

The All-India Muslim Personal Law Board and its role in Gender Discriminatory Practices

a. Polygamy: A Constitutional Fraud

A non-cognizable misdemeanour punishable by imprisonment for up to seven years or a fine or both, adultery during a husband's or wife's lifetime, is illegal under section 494 of the Indian Penal Code. No one of any faith, caste, or creed is exempt from this rule. However, the provisions of the Code of Criminal Procedure, 1973, paragraph (c) of section 198(1) must be observed. According to section 198(1) of the Indian Penal Code (45 of 1860), the court cannot investigate a crime under Chapter XX unless it receives a complaint from the victim or someone related to her by blood, marriage, or adoption.

Justice J. B. Pardiwala examined the term and idea of bigamy in *Jafar Abbas Rasool Mohammad Merchant v. State of Gujarat (2015)*¹¹ by referencing the Indian Penal Code, the Civil Marriages Law, and other applicable Community-specific legislation. The judge also discussed Muslim marriage, polygamy, and the freedom of religion guaranteed by Article 25 of the Indian Constitution. He cited the Supreme Court decisions in *Sarla Madgal (1995)* and *Lily Thomas (2000)*. Paragraph 43.2 of the same ruling contains the opinion of Justice J.B. Pardiwala that, in light of the rise of contemporary, radical thoughts and perspectives, India should outlaw polygamy.

Marriage is an individual's right over his or her body, and contracting polygamy violates that right an individual. Considering this argument, marriages are considered a contract under Muslim law.¹² However, there needs to be a proper codified format for the proposal and offer, leaving the party involved in the hands of the religious clerics. The Apex court has time and again referred to previous judicial decisions regarding an individual right to choose under Article 21.¹³ The right to choose is recognized under Article 21, where both parties to a marriage contract should be able to voice their choices without fear.¹⁴

It was recently argued (Legal correspondent, 2022) that Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 violates Articles 14, 15, and 21 of the Indian Constitution in a writ petition filed by Supreme Court Advocate Ashwini Upadhyay against the bigotry practices of polygamy and nikah halala.

¹¹ *Jafar Abbas Rasool Mohammad Merchant v. State of Gujarat 2015 Lawsuit (Gujarat) 2127*

¹² *Abdul Kadir v. Salima (1886)*. I.L.R 8 ALL 149.

¹³ *I.R.Coelho v. State of Tamil Nadu (1999) 7 S.C.C 580*

¹⁴ *State of Karnataka v. Associated Management of English Medium primary and secondary schools, (2014), 9. S. .C. 485.*

According to Advocate Ashwini, polygamy is a crime under Section 494 of the Indian Penal Code, whereas Nikah Halala is a crime under Section 375 of the same code. Advocate Ashwini Upadhyay, who filed the suit, said that religious leaders and maulvis in influential positions have utterly damaged the essence of Islamic Law by promoting and authorizing practices like polygamy and nikah halala, which degrade women's worth and see them as objects. The demonstrates beyond a reasonable doubt that the Board's leadership has been abusing its position of power.

In a recent survey conducted by the Bharatiya Muslim Mahila Andolan¹⁵ With Maharashtra State Commission for Women mentioned in a report by Barnagarwala, T, 2018 titled 'Status of Women in Polygamous Marriages and Need for Legal Protection' in 2018 with a sample of 250 women has revealed that 84% of women wanted a ban on polygamy as they have no other way to fight against this practice legally. Th s survey also revealed that more than 73% of women wanted to criminalize polygamy, as in the case of Tunisia, Germany, Turkey, and Canada. The Mumbai-based organization also revealed a nexus between poor educational levels, financial backgrounds, and polygamy in its survey mentioned above. (Niaz, S.N, & Soman, Z, 2018.)

Polygamy is contrary to the dignity of women and girls. A report by UNICEF exposes the practice, which violates human rights and freedoms even within the family. (United Nations Population Fund. 20 0.) Polygamy is an umbrella practice for many other degrading practices to women, such as child marriage as a part of the racket of bride selling. (Pesons, M et al., 2021)

b. Legal Age for Marriage: Option of Puberty

The legal age for marriage has been codified to be 18 and 21 years as the minimum age for marriage for girls and boys under the Prohibition of Child Marriage Act 2006. Nevertheless, under Islamic Law, puberty is an indication of marriageable age. As the Quran does not specify any codified age for marriage, it is left to the authorities' interpretations. (Bowden, J. J, 2013).

The minimum age for marriage varies amongst Islamic legal traditions. For girls under Sharia Law, the marriageable age is when they reach puberty, typically between the ages of 12 and 14. Although she is underage, she will be legally bound to her spouse when she marries and cannot cancel the marriage. For example, in Hanafi Law, a minor who has been married off cannot renounce the marriage unless the parent or legal guardian who performed the ceremony is shown to have behaved fraudulently or the marriage turns out to be harmful to the minor after they reach adulthood. The term for this is "Puberty Option." To wit: (Verma, Y. K., 2017). The Dissolution of Muslim Marriage Act of 1939 makes an exception to this law by allowing a Muslim woman to annul her marriage once she reaches puberty.

¹⁵ Bharatiya Muslim Mahila Andolan (BMMA) is a national movement. An autonomous, secular organization started by Dr Noorjehan Niaz & Zakia Soman in January 2007. Ba ed in Mumbai, the organization works for Muslim women's rights in India.

It is essential to get out of the marriage before she becomes 18 and especially if it was never consummated. The State, not Islam, allows Muslim women to reject child marriage and choose puberty instead. However, this option is only available if the marriage has not yet been consummated. The non-consummation requirement makes it difficult, if not impossible, for a woman beyond 18 to legally renounce her marriage. (Tahir Mahmood & Co., 1972)

Justice AK Sikri of the Supreme Court noted that similar circumstances existed in personal law. He points out that the Prevention of Child Marriage Act is not a religious statute. However, once a girl reaches puberty, she is considered marriageable under Muslim law. Nowadays, puberty often sets in for a female around 12 or 11. Neither her legal marriage age nor the age at which she may legally drink alcohol are known. The Board has engaged in extensive discussion on this matter. The Right of Children to Free and Compulsory Education Act, 2009, has been challenged by the All-India Muslim Personal Law Board. As far as the Board is concerned, this law would threaten the Islamically-inspired Madrasa system of education used by Indian Muslims. In a study (Tripathi, 2011)

In a conference, the Bharatiya Mahila Muslim Andolan mentioned, "While the comprehensive legislation is yet to happen, the government must ensure that the PCMA, 2006 becomes expressly applicable to the Muslim community." "As per the 2011 census, child marriage is rampant amongst Hindus at 31.3% and 30.6% amongst Muslims." Also, Khatun Shaikh, BMMA's Maharashtra convenor, said, "We have seen a drastic decrease in the number of triple talaq cases after the court held it illegal. We also want the same result as child marriage. The government needs to take care of Muslim women and children. We are all equal, as per the Indian Constitution. Therefore we must all get the same protection." (Saigal, Sonam, Sept 24, 2022)

II. Suggestions and reforms

The basis of the study being Muslim women faces discrimination based on their gender. Even in this Century, marriage has been highlighted thoroughly. The issues relating to the prevalence of archaic practices like polygamy and the option of puberty under the Muslim Personal Law Board have been mentioned. These issues have been taken up to the Apex court for suggestions on reform. "The role of All India Muslim Personal Law Board has been thoroughly judged with the help of various judicial decisions." It is visible that they are opposed to making any changes to the existing Muslim family law. "This is what led to the establishment of Bharatiya Muslim Mahila Andolan in 2007, which stands to reform the customary practices which are divergent from the values and principles of the Quran." Thus, the organization created the Muslim Family Law Act in 2014. In a Nationwide survey in over ten states of India conducted by the organization on Muslim Women's perspective of family laws, BMMA claimed that 91.7% or 4320 women out of the respondents wanted codified reformed laws on polygamous marriages, Mehr, divorce, and inheritance, Muta laws. (H Correspondent, Jun 12, 2017)

A. Increase of Legal Age of Marriage

Muslim law views marriage not as a sacrament but as a legal transaction. A marriage performed in a mosque is not valid under Islamic law or religious observance. Muslim marriages are considered legal contracts in Islam. Parties in a marriage should be legally able to enter into contracts. Building a marriage requires an offer and acceptance. The wife's *Mahr* has to be taken into account. Coercion cannot be used to engage in a marriage contract since it is a voluntary agreement between two consenting adults. Young Muslim brides' marriage ages have been a point of contention. The earliest age of puberty for girls is often considered to be nine, while for boys, it is generally considered twelve in most Islamic legal systems. However, no specific age is specified in the holy books. Although puberty among Muslims in India is often thought to begin around age 15.

Unmarried Muslim women need their guardian's permission to enter a marriage contract, according to the Shafi (Sunni) school. There is always a risk of a young girl being forced to marry and unwillingly being thrown to get on with it by the guardian. As a reform of this ambiguous law, the imposition of minimum age for marriage is a better safety measure.

The Quran does not state anywhere that a full-grown adult man should marry a young girl. There is no such thing mentioned in the Quran. In Surah, *an-Nisa* verse 3, there is mention of marriage. The title refers to the concern of women that Surah has. However, it is not mentioned that young girls, on attaining puberty reach their marriageable age.

The term "marriageable age" is found in verse 6 of this same Surah. However, nothing is mentioned about the marriageable age of a girl in the Quran. Since Quran is not codified; it remains open for interpretation. Puberty is a physical phenomenon that does not mature a child. Age comes with maturity. Marriage requires maturity, both physical and emotional. Puberty does not offer the maturity and intelligence required to cope with married life's complexities and demands. Early marriage would burden a child with childbirth for which she is not ready physically and mentally, and she is ill-equipped. It exposes her at an early age to the risk of childbirth.

Nevertheless, puberty is still celebrated as an ideal age in which a girl is conferred to pursue and face the burdens of marriage. This is not what is best for a kid. An early marriage takes away the girl's childhood. This violates their fundamental human rights because it will ruin their childhood and make it impossible for them to grow normally. She will be denied the chance to better herself via education. Since there is no mention of a set legal age for marriage in Muslim law, there is much room for interpretation regarding this topic. According to research (Chitkara, 2015), Any changes proposed by the Law Commission have been accepted by the All-India Muslim Personal Law Board so long as they are consistent with Islamic principles. The Prohibition of Child Marriage Act of 2006 sets a minimum age of 18 for females and 21 for boys. Marriage, however, is legal in

Islam only once a person reaches sexual maturity. In light of this, the BMMA and others have advocated for a legal minimum age for marriage, which is consistent with the Prohibition of Child Marriage Act of 2006. (Soman, Z., 2021-12-16).

B. Prohibition of Polygamy

Section 2 of the Shariat Act allows Muslim men to practice polygamy. Polygamy as a practice should be considered arbitrary and discriminatory, which violates Constitutional Article 14 and Article 15 based on discrimination against sex. This principle was highlighted in the Supreme Court decision on *Charu Khurana v. Union of India (2015)*¹⁶. Polygamy has been under the radar of many stakeholders about Law, Order and Justice, yet there has been extraordinarily little change in the situation. In a country like India, where there are different personal laws to govern different religions, it becomes essential to understand the constitutional validity of such laws.

According to Article 15 of the Indian Constitution, the government may not discriminate against citizens based on their caste, creed, sex, religion, race, or place of birth. Every citizen has the right to oppose discrimination on the part of the State, as guaranteed by the universality clause in Article 15(1). The need for legislative distinction has been raised as a result of this article. The court ruled in *John Vallamattom v. Union of India (2003)* that the petitioners could not leave property to religious and charitable organizations because of the Indian Succession Act of 1925. Since no other faiths were included in the Act's protections; it did serve to distinguish Christians from members of other faiths. Separation on the part of the law would look like this. Since polygamy is legal solely in Islam, it might be seen as a kind of religious discrimination. However, this is not the only discriminatory polygamy because of sex; it also fails the reasonable categorization requirement. In Muslim Personal Law, polygamy is strictly forbidden.

Unless they are in harmony with Article 13 of the Indian Constitution, personal laws originating from different religious sources are null and invalid. An legislation that violates the rights guaranteed by Article 13 of the Constitution is null and invalid. As outlined in the founding document, polygamy must be abolished in India since it violates citizens' rights.

The ulemas have defended the custom by arguing that it is intrinsic to Islam and should not be considered a prohibition against polygamy. De-ending polygamy, the All-India Muslim Personal Law Board cited the Holy Quran and the Hadith as the primary sources for Muslim law. Because of Article 13 of the Constitution, it cannot be proven in a court of law. The Indian Constitution is fundamentally at odds with the practice of polygamy. If polygamy persists, it severely violates Articles 14, 15, 21, and 25. A complete ban or stringent regulations have been proposed as a final solution.

¹⁶ *Charu Khurana v. Union of India (2015) 13 S.C.C. 44.*

C. Replacement of All India Muslim Personal Law Board with a gender-inclusive body

The All-India Muslim Personal Law Board is a non-Governmental body that was constituted in 1973 with the active support of the then Government to protect Muslim personal law in India. Over the years, the All-India Muslim Personal Law Board, with the active support of successive governments, has come to enjoy a de facto veto on any attempt to reform Muslim Personal law. The fact that a non-governmental body has practically outsourced the responsibility of safeguarding Muslim personal law and its consequent reforms and bestowed it with legitimacy by allowing it to intervene in all efforts to reform Muslim personal law in a secular state like India is a matter of concern. The board's current list of executive members consists of one female member, Dr Azma Zehra Sahiba, out of 50 executive members.

The All-India Muslim Personal Law Board believes that appointing a woman as a Muslim theology professor goes against Islamic teachings and hence should be avoided. It has used several patriarchal reasons in defence of its stance. The patriarchal mindset has been condemned time and time again by numerous Muslim intellectuals and essential players. However, the views of the authorities have changed very little, if at all. A constitutional body with authority to revise Muslim laws in light of societal developments is proposed to replace the All-India Muslim Personal Law Board. Members of this Constitutional body might consist of men and women who are respected experts in the Islamic faith. The process of reforming Muslim personal law must be released from the hands of the All India Muslim Personal Law Board.

III. Conclusion

The whole spirit of Islam behind the practice of polygamy has been undermined as polygamy was started as a practice under unusual war situations when most men died on the battlefield, leaving hundreds of women and children uncared for. So the surviving soldiers provided the widowed wives of the fallen soldiers and the orphans a home by marrying them to care for them. However, with the changing times, such a practice should have been obsolete as there are no such situations in the present world. (Husain, R. T, et al , 2019, 93-104). "As a result of this, Muslim women still must constantly live in the fear that she might become one of the many wives that her husband is legally allowed to marry."

Although Human rights are no longer considered a westernized concept and have become inherently most significant to the whole world, women in India continue to battle for their prior status. "Even though India has been one of the endorsers of the Universal Declaration of Human Rights¹⁷, International Covenant

¹⁷ "An International, historical document was adopted on Jan 10 1948 for maintaining and creating awareness about human rights by the United Nations."

on Civil and Political Rights¹⁸, The International Covenant on Economic, Social, and Cultural Rights¹⁹, and Convention on the Elimination of All Forms of Discrimination Against Women²⁰ there is a long way to implement these human rights." These liberties are crucial to people's overall well-being—Ba las, A. (2019). After ratification, India is legally bound to uphold these conventions, yet serious breaches persist. The Muslim Personal Law (Shariat) Application Act, 1937, was repeatedly challenged for violating the rights of women to be treated with equality and respect. Si ce Nikah Halala and polygamy continue to exist despite Muslim women's rights violations, they must end. To ensure that the provisions of the Muslim Personal (Shariat) Act, 1937, are effectively implemented, the All-India Muslim Personal Law Board was set up to provide suggestions and recommendations to the Government about suitable resolutions, bearing in view the interests of society as a whole. The Board's intransigence and seeming openness to reform at the government's behest are reasons why it may soon become irrelevant.

The Indian Constitution specifies that since marriage is a secular institution, all faiths shall be subject to the exact legal requirements and consequences for disobedience. According to (Mahmood and Tahir. 2019), however, the legal system in India has to be changed to eliminate the inconsistency that exempts one religious group from criminal culpability for the charge of bigamy while exempting all other faiths. For example, (Bhattacharya, S., & Shandilya, A. (2017). So long as polygamy is legal in India, Muslim women will continue to face abuse at the hands of their husbands, or they will constantly worry that their partners might enter into many marriages without their knowledge or permission. The All India Muslim Personal Law Board's view on polygamy is very important for modern and future Muslim women. What influence the State's political climate plays in this is crucial. The dominant Hindu ideology, which is always critical of Islam, and minority Muslim organizations, such as the All-India Muslim Personal Law Board, both work against the advancement of women in India. (A am, P. 2020) So Muslim women are caught in the middle, where religious groups like the All-India Muslim Personal Law Board cannot aid them politically and where the Board's position has been more retrograde than progressive.

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