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# WOMEN'S LINK

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**“Not Respectable Women:” Working Women and Sexual harassment in Colonial India**

*-Geraldine Forbes*

**Decoding Surrogacy: Mothering in Context of Money and Market**

*-Khushboo Srivastava*

**Legal Rights of Indian Muslim Women: Striving for Holistic Development**

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**Muslim Women as an Oppressed Minority: Facts and Projections**

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**Indian Women Artists: Their struggles, Accomplishments and the undervalued Art**

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**Women as Victims of Violence in Indian Society: A Feminist Perspective**

*-Nisha*

**Education for Muslim girls: Exploring for an inclusive approach**

*-Asiya Nasreen*



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## Editorial

Many decades have passed since the 1975 Conference in Mexico and the initiation of the United Nations Decade for Women. Great theoretical strides have been made and disappointing practical returns noted. No longer is the importance of women in development recognized only by a minority, but neither have women been effectively integrated into development planning. Since the beginning of the 1980s women have experienced a decline in terms of health and nutrition in parts of every developing region, their educational gains so promising in the 1970s have slowed down and they have been confronted with new survival challenges due to structural adjustment policies.

In many parts of the world, women have few resources or rights and little opportunity to improve their lives. They are restricted in terms of education, ownership of property, monetary return for their work, financial opportunities, and opportunities to influence decision-making at the level of the family and society. Country by country, the lack of resources and opportunities open to women is strongly associated with society-wide poverty or lack of development.

Although the literature exploring such a relationship between the freedoms accorded women and development is still small, interest in this area is growing. Those in grass root development work generally acknowledge the importance of the status of women in development, believing that these restrictions on freedoms are directly counterproductive for development. The United Nations Millennium Development Goals, for example, include gender issues among the top priorities. United Nations Development Program (UNDP) and the World Bank have also done extensive research on gender and development.

Geraldine Forbes in her paper, *“Not Respectable Women:” Working Women and Sexual harassment in Colonial India* focuses on workplace harassment using incomplete accounts and fragments about the sexual advances and violence women faced. The article is especially concerned with the implications of this violence for women as workers in the past and in the present. In *Decoding Surrogacy: Mothering in Context of Money and Market*, Khushboo Srivastava discusses the debate around surrogacy. It says that from the legislatures to household and from media discussions to those in academic circles, surrogacy has been variously looked at and discussed. It has generated many arguments, from commodification of the surrogate to the moral issues of child rearing.

Work and employment in this regard provide crucial interventions since employment is critical for poverty reduction and for enhancing women’s status as rights bearing individuals. This however is contingent on the nature of work.

*Legal Rights of Indian Muslim Women: Striving for Holistic Development* by Juhi Gupta discussed the provisions and possibilities under Muslim law and the Indian constitution in some key areas concerning Muslim women. It also aimed for building awareness about existing laws, especially amongst Muslim women so that they exercise their rights without being subjected to prejudice. Simin Akhter Naqvi in her paper *Muslim Women as an Oppressed Minority: Facts and Projections* tried to empirically establish the relative deprivation of Muslim women in India using three key parameters; education, employment and crime against women; in an attempt to draw attention to actual questions of survival facing these women, in the backdrop of the largely Islamophobic and majoritarian milieu where both mainstream media debates and parliamentary discussions about the condition of Muslim women selectively concern themselves with questions of ‘triple talaq’, polygamy and ‘purdah’, while seldom bothering to consider issues like educational deprivation, workforce participation, nutritional status, sex ratios and causes and determinants thereof.

The article *Indian Women Artists: Their struggles, Accomplishments and the undervalued Art* by Alankrita Singh and Ishita Pundir analyzed some exceptionally distinguished women artists in the history their long overdue deserving public acknowledgment and appreciation that they have earned justly through merit. *Women as Victims of Violence in Indian Society: A Feminist Perspective* by Nisha described the various forms of violence against women that take place in public and private sphere. While Asiya Nasreen in her paper on *Education for Muslim girls: Exploring for an inclusive approach* identified the reasons as to why Madrasa in India has failed to cater to the educational impotency of the Muslim girls. The reasons identified are patriarchy that breeds convenience based interpretation of Sharia’ah as well as outdated curriculum that needs immediate rectification to suit the requirements of the modern operative structures.

**Prof. Sabiha Hussain**

# “Not Respectable Women:” Working Women and Sexual harassment in Colonial India

Geraldine Forbes\*

**Abstract:** This essay is an attempt to excavate the history of what is now known as sexual harassment (coercion of a sexual nature) in colonial India. Following the modern legal definition of sexual harassment, I focus on workplace harassment using incomplete accounts and fragments about the sexual advances and violence women faced. I am especially concerned with the implications of this violence for women as workers in the past and in the present.

Like many women, I was electrified by the response to Alyssa Milano’s October 2017 tweet urging women who had been harassed to send a #MeToo message. #MeToo encouraged millions of women to reveal and continue to reveal their experiences of being harassed and assaulted. The object of the movement was to tell the world that sexual harassment and assault are not rare occurrences but rather what millions of women face every day in their schools, universities, and places of work. Critics complain the charges often lack specificity, reference events that happened in the past, sometimes decades ago, and that accusers remain anonymous while accused are named. These critics miss the point: #MeToo is a social media campaign akin to the consciousness raising forums of the 1960s and 1970s where women discovered the violence they experienced was not their fault but happened because they were women and because men could get away with it.

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## Historians and #MeToo

As #MeToo continues to spark revelations, the accounts are affecting academics who study the present as well as the past. While current issues are not the subjects of historical research, historians cannot avoid being influenced by the societies they inhabit and the topics those societies deem salient. In a sensitive and thought-provoking essay, the historian Amy Stanley wrote that #MeToo caused her to rethink three letters written by a Japanese woman called Tsuneno in 1839.

Tsuneno, who defied her family and ran away to Edo, gave somewhat different accounts of what happened between her and the man who assisted her escape. In one, she called Chikan, a friend who helped her; in another, she wrote she was forced to do “what he wanted” and third, referred to his “impure intentions” and called what had happened “terrible.” Stanley originally doubted Tsuneno had been raped because: “This is how historians are trained: we do not take our subjects’ statements at face value, particularly if they changed their stories, and especially if they had reasons to dissemble.” Reading #MeToo accounts, Stanley reflected on why women lie about sexual violence and recalled African American scholars who have pointed out

that the epistemology of history writing is biased in favor of the

accounts of white men, which are automatically considered

trustworthy, while the memoirs of enslaved people are examined

relentlessly for any hint of an ulterior motive.

Revisiting Tsuneno’s life and letters in 2018, Stanley concluded: “Tsuneno was raped. She said so. And nearly 200 years later, I believe her.”

My decision to search for examples of sexual harassment (coercion of a sexual nature) in history was influenced by the force of the #MeToo movement and the criticism it has received. In researching the lives of Indian women, I have observed the silences surrounding sexuality, blame heaped on women who became pregnant outside of marriage, and the importance of chastity. However, it was the #MeToo movement that drove me to look for examples of sexual harassment in colonial India. It is a difficult task, partly because the concept did not exist, but also because we know so little about the daily lives of women. In this essay, I focus on subaltern women, in the jute and cotton mills, as field laborers, and on tea plantations; and on middle-class women entering the professions of teaching and medicine. I trace the

harassment women faced in the past, public reaction to their difficulties, and suggest the ways this history influences the present.

### **Sexual Harassment**

Sexual harassment is a term first used by Lin Farley, director of Human Affairs at Cornell University, in a public hearing in 1975. Testifying before the Commission of Human Rights, she called a cluster of demeaning acts and remarks “sexual harassment” and declared this an epidemic. Laws came later, in 1979 in the USA, and in India with the Vishaka decision by the Supreme Court in 1997 and the formal Act in 2013. India’s Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 defines sexual harassment as contact or advances, demand for sexual favors, making sexual remarks, showing pornography, or any other unwelcome sexual advance in the workplace or places where employees are required to go. Sexual harassment of students was included when the University Grants Commission’s Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions Regulations was applied to all higher education institutions in 2016. Although often conflated and confused with laws against what is popularly referred to as “Eve teasing,” that is, Criminal Code Sections 354 (Assault or criminal force to woman with intent to outrage her modesty) and 509 (Word, gesture or act intended to insult the modesty of a woman), the Sexual Harassment law of 2013 was designed to allow women to pursue their careers without humiliating advances and/or promises of preferential treatment for giving in to sexual overtures. The definition includes contact or advances, demand for sexual favors, making sexual remarks, showing pornography, or any other unwelcome sexual advance in the workplace or places where employees are required to go. Although we have considerable evidence that women were and continue to be sexually abused in their homes, while traveling, in public spaces, and while engaged in casual labor, sexual harassment is a crime of the organized workplace.

On October 16, 2017 – the same day Milano issued her call to women to post - *Scroll* reported that hundreds of Indian women from the “lettered, urban upper middle class” had stated #MeToo on social media. Influenced by #MeToo, an Indian woman studying law in California law posted on Facebook a list of

Indian professors anonymously accused of sexual harassment. Claiming she had received complaints of over 300 harassers, Raya Sarkar posted the names of over 60 men before taking the list down.

In early November, Malati Kumari published a list of harassers compiled by Dalit-Bahujans from small towns and villages. This list included professors, publishers, artists, writers, social activists and student activists accused of sexual, verbal, and on-line abuse. In November, the actors Swara Bhaskar (Bollywood) and Divya Unny (Mollywood) were praised by feminists for talking publically about their experiences of sexual harassment in the film industry. In response, the Minister of Women and Child Development Maneka Gandhi warned film producers that like any other industry, they were responsible for a safe work environment. Shortly after this, Gandhi launched an on-line portal, the “She-box,” allowing individuals to register their complaints of sexual harassment against government agencies or private companies on-line in Hindi or English. Students also took action. For example, later the same month, students at Jadavpur University boycotted the classes of a professor charged with sexual harassment. At other universities, students complained about harassers, wrote blogs, and refused to attend classes with abusive professors.

However, the momentum first generated by #MeToo has not yet produced the flood of formal complaints some expected while informal complaints and social media accusations have continued. Explaining why they do not come forward, women complain they are discouraged from doing so, argue they would be penalized, and protest that harassers are never punished. The lack of formal complaints is clearly not because sexual harassment is rare but because women fear academic and career repercussions as well as social ramifications if they complain.

### **The Colonial Context**

Colonial rule transformed the traditional economic system and in the process fundamentally altered the non-agricultural, village-based economy dramatically altering women’s lives. The decline of the local economy and with it the demise of local small scale services and industries affected both men and women. Women who had formerly participated in a wide range of village enterprises - from processing food grains and oil seeds to making pottery, nets,

and ropes, and repairing various things - were now unemployed. In Bengal, the female-dominated household industry of rice husking was replaced by mechanized threshing machines run by men in mills. The colonial economy provided women some new opportunities for employment but under radically different circumstances. First, most of the new jobs had not previously existed, and second, this work was far from their village homes.

Legally and socially, the social reform agenda reflected the high caste status of elite men who promoted a “putative Hindu ideal of womanhood.” According to Samita Sen, this worked to direct “social change towards greater conformity with brahmanical values” and deprive lower caste women of their customary rights. The growing emphasis on the family and women’s roles as homemakers and mothers, led middle-class men to write advice manuals, aimed at inculcating the habits of thrift, cleanliness, and orderliness in running the household, for their wives.

A third strand of the changed socio-economic context involved the stigmatization of work outside the home. Although they promoted female education, reformers’ concern was women within the household, not women who had to work. Those women who found it essential to support themselves and often their children were thrust into situations rife with sexual harassment. Some were raped, others forced to have sexual relations to obtain or retain their jobs, and still others understood they could barter their sexuality. Regardless of the degree of complicity in sexual intimacies, these women were condemned as licentious and lacking morality. Women entering the professions of teaching and medicine were generally considered respectable but these positions were still hazardous for women.

### **Subaltern Women**

One can locate examples of the modern concept of sexual harassment in the historical records of the new cotton and jute mills. The men and women who worked in these mills were characterized as victims of poverty, famine, or the loss of traditional occupations. Men were the majority of workers but 25% of the jute mill workforce and 20% of the workers in cotton mills were women. Those who came to work in the mills of Bengal were mostly widows at a time when the word *rarh* was used for both widow and prostitute, an indication of the extent to which the widow was regarded as sexually available.

Employed in the lowest paying jobs in the mills while working side-by-side with men, mill women were sexually and economically vulnerable. Dr. Dagmar Curjel, the author of a report on women’s labor in Bengal (1923), observed that women workers formed liaisons with male workers for support and protection. The men were usually married, sent money home, and periodically returned to their villages. Ironically, the women they lived with behaved like “good wives” and turned their earnings over to these men. Commenting on how the fact women rarely stayed without a partner, Curjel wrote: “As it is scarcely possible for a woman to live for any length of time alone in a mill compound, women workers, if deserted by one man, usually seek other male protection.” She continued to explain that this “protection” extended beyond living together to working in close proximity so the male partner could “prevent the attention of other male workers.”

While adult women lived with men for protection, “half-time girls,” the teenagers who worked in the mills for less money, were blamed for attracting male attention. Managers told Curjel these girls “lead to trouble” when they worked in the proximity of young men. It is not clear whether the men neglected their work or fought over the girls but the blame was placed on the girls. Curjel also mentioned that almost a quarter of the women told her they had no children. A manager said this was untrue and claimed women lied because they had no husbands.

From a contemporary perspective, these women were victims of sexual harassment – from contractors, managers, and fellow-workers – and traded sex for protection. But their society judged them harshly and branded them low women and prostitutes.

We know very little about the lives of agricultural day laborers beyond the fact that both men and women worked for low wages. However, there are traces of the lives of female agricultural workers in the criminal records of women prosecuted under the Female Infanticide Prevention Act of 1870 that imposed the death penalty for infanticide. Padma Anagol maintains the majority of those accused were widows living with and dependent on their families. Rakhuma, a widowed day laborer charged with murdering her illegitimate child, claimed the infant had died of malaria. She said she had been raped while working in the fields but not attempted to abort the fetus because she had one child dependent

on her. Unfortunately, the courts did not consider rape a mitigating factor; women accused of killing their infants were tried for murder regardless of how they became pregnant. This case underscores the vulnerability of casual workers to sexual violence and the lack of public understanding and sympathy for their struggle to survive.

In contrast to other industries, at least half of the labor force of the tea plantations of Assam were women and children. Brought to the plantations by professional recruiters notorious for their abusive tactics, both female and male workers received low wages, found their mobility restricted, and were subjected to harsh punishments such as flogging and confinement. Jatindranath Sarkar, writing about tea garden labor for the *Modern Review* in 1929, commented on the terrible work conditions and sexual abuse of female laborers. Unlike the jute and cotton mills where women and men did different work, women in the tea gardens performed the same tasks and worked the same hours as men but for lower wages. They were also beaten more frequently and suffered from sexual exploitation by managers.

While the individual stories of the women employed on tea plantations were never recorded, traces of sexual harassment appear in official documents when laborers collectively protested or attacked planters. In 1888, the laborers of Mesaiijan tea garden complained to the District Superintendent of Police when three women were beaten for not working hard enough. The women “were tied to a post in the porch of the Manager’s house, their clothes lifted up to their waists, and they were beaten on the bare buttocks with a stirrup leather by the orders of the Assistance-Manager.” We know of this incident of sexual harassment because the manager was convicted, a rarity in the history of tea plantations. Another case preserved in the records is that of Maduri tea garden laborers of Sibsagar attacking the manager in 1892 because he assaulted a girl. Although laborers who beat up managers were usually punished, in this case the manager was convicted of wrongful restraint and assault. In other instances male workers attacked managers who made sexual advances to their wives.

### **Middle-class Women**

While the number was infinitesimal in comparison with the number of women who worked in the fields, jute and cotton mills, plantations, and domestic labor,

some women became teachers and medical workers in the late nineteenth century. Concern about child widows who were unlikely to remarry except in a few cases, progressive men saw the training of widows for women’s work a double gain. First, widows would be “saved” from lives of misery and temptation, and second, they could provide education and medical treatment away from the dangerous influence of missionaries. However, the general public perceived them as women without modesty and honor. Worse than public disapproval, some professional women encountered sexual harassment, threats of rape, and even abduction.

One of the most frank memoirs was written by Haimabati Sen (1866-1933), a child widow who became a teacher and then a medical doctor. Widowed before she was 12, she went to Varanasi as a teenager to live with a cousin. When he refused to take her in, she found employment in a small girls’ school. She had been educated, first with her brothers and later with the boys in her husband’s family, and was better qualified than the elderly gentleman then teaching the girls. Rude to her from the beginning, he accused her of using her sexuality to get the job and then began discouraging people from sending their girls to be taught by a “wicked woman.” While some of the elderly women supported Haimabati and told her to ignore the gossip, others blamed her for taking a job when she could have joined other widows who survived by begging.

Haimabati soon left this job and made her way to Calcutta. Within a few months, an elderly friend found her employment in the home of a Raja who wanted a teacher for his young wife. While the salary and accommodations were very good, the Rani was not interested in studying and the Raja began to pester Haimabati to spend time chatting and playing games with him. When it became clear her employer was interested in an intimate relationship, she bribed one of the servants to help her escape. Although these two examples come from the same woman, they highlight two forms of sexual harassment: the hostile workplace created by a jealous male co-worker and the advances of an employer in a position to improve his employee’s conditions of work if she agreed to his sexual overtures.

It was only after she had remarried that Haimabati was admitted to Campbell Medical School, which had opened a special program to train women without

formal schooling as Hospital Assistants. While the course work proved extremely difficult, Haimabati praised her professors for the extra help they gave the women students. Her male classmates were a different story. Not comfortable with women students in medical school and certainly not willing to admit they might be better students, her male colleagues rioted and attacked the female students when Haimabati earned the gold medal. To placate them, the prize was given to a young man and Haimabati was given a scholarship to continue her studies at Medical College.

When she became the Lady Doctor in Charge of the newly opened Hooghly Dufferin Women's Hospital located in the old Chinsurah barracks, Haimabati faced even more serious harassment. Although the women graduates of Campbell Medical School doctors held the "inferior" Vernacular Licentiate in Medicine and Surgery degree, they were often put in charge of the hospitals and dispensaries that employed them. There, they were supervised by Civil Surgeons with the degree of oversight depending on the individual and the location of the hospital. Practicing in a women's hospital was a respectable career and provided a degree of protection from sexual harassment, but only a degree since these women were at the mercy of male supervisors. Salaries were relatively low (though higher than those of men with the same credentials) but could be supplemented by private practice.

When Haimabati first joined the hospital, Assistant Surgeon Dr. Badrikanath Mukherji insisted on educating her about "shameful [venereal] diseases." Haimabati told him she could read about these in books, but "the dirty beast," persisted and "said whatever came into his mind." When she told him to stop talking about these things, he told the Civil Surgeon that the new lady doctor was unwilling to learn from her superiors.

Dr. Mukherji also pestered Haimabati to treat his younger brother's wife at home, insisting he travel with her. When she told him she did not take passengers in her carriage, he suggested she meet him near the Court. Assuming Haimabati was keen to have an affair with him, Dr. Mukherji continued to beleaguer her with invitations.

Disturbed by Mukherji's constant harassment, Haimabati played the gender card and complained

to the Civil Surgeon that males from the main hospital were entering the women's hospital. The Civil Surgeon told Dr. Mukherji there was no need to go to the Women's Hospital and temporarily saved Haimabati from his advances. However, soon after her complaint, someone came every night and defecated in the vat where she stored water, on the stairs, and in the cooking pot for rice. Convinced Dr. Mukherji was retaliating, Haimabati reported it to the Civil Surgeon and the police but nothing happened.

The next time her husband left the family to visit his family in Midnapore, Haimabati saw two people sneaking towards her house during the night. She found a stick, hid beneath the stairs, and struck one of the men as he was coming up the stairs. Surprised and hurt by the blow, he yelled out that he was Dr. Mukherji's servant in the hospital. The next day, Haimabati reported what had happened to the Civil Surgeon, a man she knew well who, she wrote, "had a soft corner in his heart for me because I was a Brahmo girl." Dr. Dutt took action, dismissed some of the lower staff and the harassment ceased.

Other women were not so fortunate. In the early 1930s, Dr. (Miss) Ahalyabai Samant, the director of the Municipal Dispensary of Nadiad, was abducted and assaulted by the Municipal Councilor Dr. Balabahi Harishankar Bhatt. The District and Sessions Judge sentenced Bhatt to one year in prison hoping this would make it clear women doctors were to be treated with respect. However, the Chief Justice of the High Court overturned this decision and simply fined Bhatt. According to the Chief Justice,

If women engaged in professional work come out into the open

world they must adopt the standards of the ordinary men and

women of the world. They cannot expect to retain the hyper-

sensitive notions of modesty, which their ancestors in purdah

may have possessed.

## Conclusion

Three themes emerge from these fragmentary and incomplete examples from colonial history. The first and most obvious is the lack of empathy for women

who faced harassment and the tendency to blame them for what they experienced. This was a time of growing concern for domesticity and motherhood and the devaluation of women's role as earners. It was also a time when middle-class society was preoccupied with women's chastity. In discussing the women employed in jute and cotton mills, Dagmar Curjel wrote that "ordinary respectable Bengali women around Calcutta are reluctant to undertake factory work." She recognized there were some Bengali women "of good caste and family" working in the mills but that others were of "doubtful character." Those judged "good women" had been observed by Curjel taking "care of their children, and in a number of cases, provided for their schooling." Women who were not good mothers, for example, those convicted of infanticide, were bad women who had "given in" to their lust. The laws against infanticide, as Anagol has pointed out, created "a formidable body of negative knowledge about Indian female sexuality." Widows who became pregnant were not seen as victims of predators who were more powerful financially, socially, and physically but rather blamed for their plight.

A second theme that emerges during this period was the impulse to shelter or rescue women who were endangered and turn them into productive and respectable women. Brahmo Samaj stalwart and reformer Sasipada Banerji, with his wife's help, opened a home for widows [Hindu Bidhabasrama] in Bengal in 1887 and Maharishi Karve, the Hindu Widow's Home Association, outside Pune in 1896. The concept of rescuing "fallen women" was borrowed from England and applied to women in danger of joining the ranks of prostitutes. While the first homes were designed to protect women defined as vulnerable, especially young widows, rescue homes for "fallen women," the homeless, and deserted appeared only slightly later.

The third discernable theme was the enactment of legislation to protect working women as wives and mothers. Despite local hostility to legislation, India had its first factory act by 1881. An 1891 amendment limited women to an 11-hour day, and a 1911 Act prohibited women from working at night. The impetus for these changes came from England; within India there was no demand for change from philanthropists, reformers, factory owners, or workers. Although this legislation was largely ignored in the late nineteenth

and early twentieth century, the Government of India supported protectionist legislation when India became a member of the International Labour Organization in 1922. Many of the women workers, however, opposed these regulations and developed strategies that subverted the original intent. For example, limiting hours to give women adequate rest meant less pay and resulted in some taking up part-time employment in other factories. Maternity leave, designed to benefit the health of the mother and child, was similarly a burden for women who needed to work. By the 1920s and 30s, when regulations tightened, owners had the option of becoming more mechanized or hiring from a large pool of male labor. Instead of benefitting from better working conditions, women were retrenched.

While there was very little sympathy for the women who were harassed, there were feminist voices that recognized their plight. In 1882, a young Marathi housewife, Tarabai Shinde, wrote *Stri-purusha-tulana* [A Comparison Between Women and Men] in which she castigated society for persecuting women who became pregnant while ignoring the vices of men. Anagol documents how mothers, grandmothers, aunts rallied around the women charged with infanticide, an indication these women knew the conditions their daughters and sisters faced. And, Haimabati Sen reported the misdemeanors of the men who harassed her. Her complaints were often ignored but finally acted upon by a Civil Surgeon who felt especially protective towards her. While these responses pale next to the record of endemic harassment of working women, they tell us that some women saw this treatment as unjust, raised their voices, and acted.

Let me end with the present. Sexual harassment in the workplace is a universal problem with deep roots in social and cultural attitudes. For Indian women in the formal sector, laws have not yet changed behavior. However, 90% of working women are in the informal sector with little protection against sexual harassment. Surveys indicate that even those women who could report sexual harassment are reluctant to do not because they do not fully understand the law, trust the mechanisms for reporting, or believe they will be secure in their jobs. Additionally, they fear being ridiculed, stigmatized and embarrassed.

While it is clear women in the formal sector need to be better informed about the laws and how to report harassment, the more serious issue are attitudes

solidified in colonial India. Although more and more middle-class women are entering the workforce, working women are not accorded equality with working men. Moreover, women are essentialized as weak and helpless and in need of shelter from a dangerous and hostile world. Instead of urging women to fight for their rights and demanding men and institutions change, protective legislation and institutions are regarded as the solution. While I do not have an answer as to how we can end sexual harassment in Indian society or in the USA, I will end with a story from Haimabati Sen's granddaughter,

Namita. Although very young when her grandmother died, Namita had a vivid memory of this sturdy woman doctor using her umbrella to hit any man she saw harassing a woman. While #MeToo is a start, to bear fruit it needs commitment to extend rights to women in the informal sector, enlist men in the struggle, devise ways to protect women who file complaints, demand institutions deal with grievances, support girls and women who report harassment, and fight for the right to work in safety and with dignity. Above all, we need to stop blaming women for the aggression and violence they face.

## Endnotes

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- <sup>14</sup> Dagmar F. Curjel, “Women’s Labour in Bengal Industries,” No. 32, *Bulletins of Indian Industries and Labour* (Calcutta: Superintendent Government Printing, 1923), 7.
- <sup>15</sup> Curjel, 7.
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- <sup>20</sup> *Ibid.*
- <sup>21</sup> Rana Behal, *One Hundred Years of Servitude: Political Economy of Tea Plantations in Colonial Assam* (Tulika Books, 2014) 259.
- <sup>22</sup> Behal cautions that “incidents of protests and resistance in the tea gardens was deliberately suppressed in official reporting so as to present a picture of well being and harmony.” Rana Behal, “Labour Resistance in Indentured Plantations in Assam Valley, “ presented at “Challenging Perspectives on the Indian Diaspora: A Global Conference on Diaspora Studies and Policies,” The Hague, The Netherlands (Oct 5-7, 2017), 7
- <sup>23</sup> Behal, “Labour Resistance,” 8.
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- <sup>33</sup> Rosalind O’Hanlon, *A Comparison Between Women and Men: Tarabai Shinde and the Critique of Gender Relations in Colonial India*. (Delhi, Oxford University Press, 2000).
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# Decoding Surrogacy: Mothering in Context of Money and Market

Khushboo Srivastava\*

## 1. Introducing the Theme

In contemporary times, while men and women are ostensibly considered equal there are inequalities of various kinds ranging from economic discrimination to social and political marginalization that continue to mar our societies. Distinctions on the basis of caste, creed, color, religion, language and gender underpin our lives. Of these categories, gender is perhaps extremely pervasive owing to its overlapping nature. The oppressed status of Women is juxtaposed with low literacy and high economic dependence on their male counterparts thereby leading to their further oppression and subjugation.

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Over the years, women have grappled with their continued suppression and have explored avenues to gain autonomy. This has led to various developments, one of which is emergence of *feminized forms of labor* referring to forms of work which are predominantly women centric. What makes this problematic is that most of these ‘professions’ as argued by a strand of feminist scholarship, are embedded in violence and harm thereby leading to their commodification and objectification. They thus call for abolition. Arguing from a diametrically opposite standpoint, liberals have called for its regulation, on the premise that it is an occupational choice of women and hence a matter of their rights. This debate has become further nuanced with voices of women in the business. (Delson 1995) Empirical accounts suggest that surrogate women see it as being economically empowering which has also translated into an upward mobility in the social and familial hierarchy. Their bodies have meant their emancipation and ensured ‘*social solidarity*’. (Fixmer-Oraiz 2013) Therefore they see no harm in the practice of surrogacy. *Surrogacy, Sex Work, Domestic Work and Pornography* are such forms of feminized labor which have been at the center of academic and policy discourse. It is in this context that the current paper focuses on Surrogacy.

Surrogacy has in recent times been the subject of much debate, discussions and contestations. From the legislatures to household and from media discussions to those in academic circles, surrogacy has been variously looked at and discussed. It has generated many arguments, from commodification of the surrogate to the moral issues of child rearing. *Work and employment* in this regard provide crucial interventions since employment is critical for poverty reduction and for enhancing women’s status as rights bearing individuals. This however is contingent on the nature of work.

This debate has been further problematized by the coming in of “*new enclosures*” in biotechnology and bioethics. Donna Dickenson in her work “*Property in the Body: Feminist Perspectives*” uses the term “*new enclosures*” to refer to the development in science and technology that have facilitated the use of more advanced techniques in reproductive technologies. (Dickenson 2007) Biotechnology has muddled the difference between what is external and what is internal to human body and therefore what is alienable and what is inalienable from human body.

What divides academia and women in the field also divides the way law looks at surrogacy across the globe. (Dickens 2008) The legal aspects of surrogacy in any particular jurisdiction tend to hinge on a *few central questions* like are surrogacy laws enforceable, void, or prohibited? If they are, do they empower women by eliminating the element of harm inbuilt in surrogacy? The limited scope of the ICMR guidelines, the Draft Assisted Reproductive Technology (Regulation) Bill 2008, 2010, 2013, 2016 in context of India have pushed surrogacy further by highlighting the gender bias of the law against surrogates. (Pande 2014) In context of these varying debates, it is interesting to see how surrogacy defines issues of reproduction, body and agency.

## 2. Contending Debates around Surrogacy: Empowerment v/s Commodification

Surrogacy weaves together ideas of reproduction, body and agency all of which point towards the lived experiences of women. Reproduction conventionally

is seen as a duty that women are born with and is associated with the ethos of love, care and nurture. As a result, women are constantly juggling between being *hapless victims* and seeking to become *empowered agents*. (Engh 2016) It also challenges the notion of *women being a 'homogenous class'*. While child birth is considered a virtue for some women, others with the inability to perform their '*natural role*' are considered a bane for the family. For women like these undergoing the frustration of remaining childless and considering adoption as being inadequate, resorting to medical technology for control over their infertility seems the most desirable option. The strong desire to reproduce oneself has opened avenues for Surrogacy. It highlights a deviation from the conventional understanding of women's reproductive labor that for long has been domesticated.

By "surrogate mother we mean a woman who is hired to bear a child whom she turns over at birth to her employer who has been facing fertility issues." (Nelson 1989) Nelson and James extend this definition by suggesting that, a surrogate woman is one who "supplies the egg while the man who purchases her services provides the sperm, but the egg need not be hers." (Nelson 1989) Surrogacy is an exemplification of a particular kind of labor relation whereby "the employee is the woman who becomes the surrogate and the commissioning couple and more so the commissioning father is the employer for he is the one who takes all the critical decisions." (Everett 2011) As Sharyn Anleu suggests "surrogate mother contracts involve a woman agreeing to become pregnant and to relinquish the child to the commissioning couple at birth when they pay her for her gestational services." (Sharyn Roach Anleu 1990)

Discussing the surrogacy industry in India, Sharmila Rudrappa (Rudrappa 2015) and Sheela Sarvanan suggest that "it is the availability of ample wombs that can be cheaply leased, the biddability and fungibility of surrogates that makes the industry to thrive in India." (Saravanan 2018) Usha Rengachary Smerdon goes on to add that, "the presence of skilled intermediaries and cutting edge technologies coupled with loose or non-existent regulations that have made India world's capital of transnational gestational surrogacy." (Smerdon 2009) What sets this form of women's labour distinct is that it is not only informal but also unreported, unregulated and underground. (Kalleberg 2000)

Christine Sistare has written that a "fundamental moral issue in the surrogacy debate is the nature and extent of women's freedom: their freedom to control their bodies, their lives, their reproductive powers, and to determine the social use of those reproductive capacities". (Nelson 1989) It is simple commodification. Christine Overall suggests two ways in which women's control over their lives is impaired by surrogacy. (Christine Overall 1987) Overall examines models that are frequently used in thinking about surrogacy-the free market model and the prostitution model and comes to the conclusion that neither is adequate, because both see surrogacy as a job when in fact it is not. In her view, a job implies the selling of a service or other commodity, and it also implies that the worker has control over the work.

Carole Pateman argues that "When women's bodies are on sale as commodities in the capitalist market, the law of male sex-right is publicly affirmed, and men gain public acknowledgment as women's sexual masters." (Pateman 1988) It is argued that the harm that this industry entails is beyond the scope of repair by any mechanism. Contract to this end rather than being a facilitator is itself an impediment. In their schema, legalization and decriminalization only render harm invisible rather than ameliorate it. (Dworkin. 1992) The contract makes women's sexual access and availability to men all the time and gives it the orientation of being a fair and just set up. It is this that leads her to invoke the following questions "Why do men demand that women be available on demand?" (C. Pateman 1988)

The opponents raise suspicion over the potential of a contract or law in ameliorating the status of these women working as surrogates. From the standpoint of the feminists opposing contractualization, the first contention is with the idea of consent. (Daniel I. O'Neill 2008) It is argued that contracts assume women's incapacity to consent in the public life and transferring it to an individual man thus making women second class citizens both in public and private domains. The second concern pertains to the idea of property in person that suggests that contracts based on property in person give an individual control over another's use of his or her body (Daniel I. O'Neill 2008) thereby leading to civil subordination. (C. Pateman 2002) In the exchange of money, all the violence that is perpetrated against them is argued to be bought in.

Another issue pertains to the unequal status of

participants. It is argued that men of relative privilege exploit the poverty of women. Inequality explains that socially more powerful have access to sexual objects of their choice. (Kappeler 1990) Contract thus are determined by the them and are premised on unilaterally decided conditions thereby rendering harm invisible. The fourth contention raised by Andrea Dworkin herself is that, ‘professions’ like surrogacy or prostitution entail the *sale of an individual’s degradation* and hence even a law cannot eliminate the detrimental effects it has on women. (Dworkin 1983) Another institutional criticism is that it sustains the social inequality of women. Women are either seen as an epitome of societal desire or as being naturally trained to perform certain forms of labor.

The liberal proponents of surrogacy counter these arguments on the grounds that it is an *occupational choice* of women. Liberals argue that women should have freedom, financial autonomy and sexual self-determination. Women in the profession and pro commercial surrogacy advocates argue that such a conception is premised on the application of pervasive gender norms specifying that women’s motivations to have children should be solely based on emotions, selflessness, and caring and not on self-interest, financial incentives, or pragmatism.

To sum up, at the core of the criticisms of surrogacy is the economic issue of whether a woman should be paid for this service. Secondly, that surrogacy is baby-selling and is harmful to the children born to surrogates. Thirdly, that surrogacy entails the wrongful “commodification” of persons or relationships. Fourthly, that it exploits the surrogate mothers and that such exploitation is grounds for prohibiting commercial surrogacy.

### **3. Legal Recourse to Surrogacy: The Legal Plight of Disposable Mothers in India**

Ever since the controversial *Baby M case*<sup>1</sup> in which the New Jersey Supreme Court declared surrogacy illegal, countries across the globe have been grappling with the question of what should be an ideal surrogate contract. The legal aspects of surrogacy in any particular jurisdiction tend to hinge on a few central questions:

- Are surrogacy agreements enforceable? Does it make a difference between commercial and altruistic aspects?
- Are surrogacy laws biased towards the intending parents thereby abrogating the rights of the surrogate?

Revolving around these crucial themes, surrogacy laws differ widely from one jurisdiction to another. Some countries like Australia, Belgium, Canada, Iceland, Netherlands, New Zealand distinguishes between commercial and altruistic surrogacy so much so that while they allow altruistic surrogacy, they abolish commercial surrogacy and label it to be a criminal offence. Yet in others like Czech Republic, Hong Kong, Italy surrogacy is not legally regulated and is hence considered legal. France, Germany, Pakistan, Serbia, Switzerland on the other hand makes no distinction between altruistic and commercial surrogacy and thereby holds it illegal in all forms. Very few counties Greece and Iran give legal sanction to surrogacy thereby giving legal protection to intended parents.

What is evident in the laws is that they are framed from the perspective of the commissioning couple and not the surrogate. Arguably laws have done little to guarantee to surrogates basic rights like fair remuneration, good medical facilities, rights over the child to name a few. Within this context, one can argue that surrogacy laws in India too are characterized by confusion, divided opinion and dilemma. Following are the key bills that have been proposed on the issue of surrogacy in the country (India 2009):

#### **➤ Surrogacy and Indian Council for Medical Research Guidelines:**

*Owing to the low-cost factor of the surrogacy procedure in India, it has fast emerged as being in the forefront of fertility tourism. The legal environment had been favorable with surrogacy having been made legal in 2002, by the guidelines of the Indian Council of Medical Research (ICMR). The ICMR, provided pro-surrogacy guidelines that protected, to an extent, the surrogate mother and the commissioning parents. It prohibited sex-selective surrogacy, required the birth certificate to only have the names of commissioning parents, required one of the commissioning parents to be a donor, required a life insurance cover for the*

<sup>1</sup> Herbert Richardson, *On the Problem of Surrogate Motherhood: Analyzing the Baby M case*: (Lewiston, NY, The Edwin Mellen Press, 1987).

surrogate mother and ensured right to privacy of the mother and the donor, among other things.

➤ **Baby Manji and Judicial Intervention: Supreme Court Upholds Surrogacy in India**

While ICMR laid down meticulously various provisions that regulate the surrogacy arrangement, India does not have any enforceable laws in place so as to regulate it. The necessity of legal protection was felt for the first time through the case of *Baby Manji vs Union of India*. A Japanese couple commissioned an Indian surrogate but they soon ended in a divorce. The single male parent was not granted custody of the child and the mother refused to accept it. Japan gave the child humanitarian visa and allowed the grandmother to take the child on behalf of her son, given his genetic relation with the baby. During the case, the Supreme Court recognized that the parent of a surrogate child may be a male. Therefore in 2008, the Supreme Court while ruling a case of surrogacy had made commercial surrogacy permissible.

➤ **Buns in the Oven: Legislative Intervention in Surrogacy Laws in India**

Following are the major surrogacy laws in India (Mehrotra 2017):

**a. The Draft Assisted Reproductive Technology (Regulation) Bill 2008:**

In order to make up for the absence of surrogacy laws in the country, the Government of India formed an expert committee to make draft laws for Surrogacy and ART. The committee forwarded recommendations but the bill remained pending with the government and could not be presented in the Parliament.

**b. The Draft Assisted Reproductive Technology (Regulation) Bill 2010:**

Another attempt was made in 2010 but it failed too. It laid down further conditions and procedures for surrogacy and noted that there was no cap on number of pregnancies. It enabled single parents, to have a child through surrogacy. The bill, however, had no rules as to how much compensation a surrogate mother

can get and should get. Over exploitation often results in declining health of mothers who become baby making machines.

**c. Assisted Reproductive Technologies (Regulation) Bill, 2013**

The next attempt came with the Assisted Reproductive Technologies (Regulation) Bill 2013. It laid down the number of pregnancies that can be allowed for a surrogate, the minimum amount of compensation, minimum age of surrogate along with proposing punishment for violators of the law.

**d. The Draft ART (Assisted Reproductive Technology) Bill 2016**

After receiving approval from the cabinet, the Surrogacy (Regulation) Bill, 2016 was introduced in Lok Sabha in November. The most defining feature of the bill has been the complete ban on commercial surrogacy and allowing only altruistic surrogacy. Of the many recommendations it aims at maintaining a register of all surrogacy clinics, provisions for punishing commercial surrogacy, abandoning the surrogate child, exploitation of surrogate mother, selling or import of human embryo.

The bill that was presented in 2016, lapsed due to the adjournment *sine die* of the parliament session. It was re-introduced in the lower house of the Parliament where it was passed in the same year. The bill now requires to be passed by the Rajya Sabha followed by the presidential assent before it becomes an act. The bill is currently with a twenty three member special committee of the upper house which is reviewing the various provisions of the Bill.

**4. Surrogacy Regulation Bill 2016: Revisiting the Balance between Regulation and Rights**

The Surrogacy Regulation Bill 2016 has come in with immense uproar considering that while allowing altruistic surrogacy: first, it outlaws altruistic surrogacy for unmarried couples, foreigners, single parents, live-in partners, and homosexuals; and second, only Indian couples who have been legally married for a minimum of five years can avail its benefits. The proposed law has been argued as not

only legally unsound but also highly divorced from the Indian social reality. It has been widely argued that banning, rather than regulating, the market the government cannot ameliorate the exploitation of poor women who are coerced into surrogacy. Further, the intent of all these bills has been to guarantee rights to the couple and not the surrogate which is one of the most fundamental lacunas in it.

Critics point out that the surrogacy bill fails to adhere to the “*Golden Triangle*” test devised by the Supreme Court to inspect the constitutional validity of the laws. This test of reading equality, liberty, and freedom of rights conjunctively aims to ensure that the basic fundamental rights of individuals are not encroached upon by the State. (Basu 2014) Arguably, by distinguishing between people on basis of their nationality, marital status and sexuality, the bill restricts the right of these people to make choices.

The proposed law infringes Article 14 of the Indian Constitution, which guarantees “*equality before the law and equal protection of laws to all persons.*” Restricting altruistic surrogacy to only married Indian couples and disqualifying others on the grounds of nationality, marital status, and sexuality impinges upon the right to equality for being an unreasonable classification. Further, by disallowing the right to choice vis-a-vis surrogacy for homosexuals and unmarried couples, the Bill reinforces the majoritarian Indian morality that stigmatizes the idea of homosexuality and unmarried people living together. The Bill also violates the “*right of livelihood*” and “*to reproductive autonomy*” enshrined under Article 21 of the Constitution. Normatively and constitutionally, the method of procreation and parenthood lies outside the domain of the State, and any interference in this choice will warrant an infringement of this Fundamental Right.

Thirdly, the proposed law is foul of Article 19 in general, and Article 19(1)(g) specifically, which guarantees the “*freedom of trade and profession*” in India. It is also argued that the proposed bill is an *infringement of International Covenants and Obligations that safeguards to human life, health*” and dignity. By interfering with the reproductive rights of the individual, the proposed law infringes upon the “*right to found a family*” enshrined in Article 16 of the Universal Declaration of Human Rights. (Xuan 2016) An additional challenge to the Bill also arises from Article 16(1)(e) of the Convention on the

Elimination of All Forms of Discrimination against Women, which requires state parties to ensure equality of rights for men and women “to decide freely and responsibly on the number and spacing of their children.”

It has been argued by liberals, surrogates, doctors, intending parents that instead of imposing a ban, the commercial surrogacy market should be regulated. A balanced path by the Government would be adoption of a rights-based approach addressing the concerns of the surrogate mother, children born out of surrogacy, and other stakeholders in the surrogacy market. India needs a centralized system that could regulate the surrogacy market by addition of supplementary checks and balances, transparency, and registration of surrogacy contracts. This would also eliminate the middleman, ensuring that the entire compensation reaches the surrogate mother. By limiting the access to surrogacy on fallible and exclusionary grounds, the government will also provide impetus to a rising black market for wombs as evident from earlier bans on sex-determination tests, bar dancing and organ donations, which have all pushed the market underground and left it completely unregulated.

## 5. Concluding Remarks

The aforementioned account brings forth the point that while surrogacy has meant economic empowerment for women working as surrogates it is not without its flaws. Considering this juxtaposition, the question is how should it be addressed to do away with the detrimental effects. However regulations so far have been inadequate principally on account of its biased nature. Only when laws are justly framed and implemented can they ameliorate the conditions of surrogates and recognize their pregnancies as work. If laws or contracts are justly framed out, they might hold merit to eliminate the flaws in surrogacy.

Laws according to **Nivedita Menon**, provide the ground for struggle, to establish just and equitable conditions of work. (Menon 2004) Contracts provide the ground for consent and mutually negotiated conditions of work. **Susan Moller Okins** opines that out rightly rejecting the potential of law would tantamount to giving up on its possible use for feminism. **Jane S. Jaquette** contends that laws provide a strong commitment to individual agency and a clear negotiation of what justice in a dynamic society requires: equality, choice and negotiation. (Boucher 2003)

Contracts would further facilitate the regulation of conditions of work and third party actors. In the absence of law these work forms become concealed and violence becomes invisible. Legalization could include provisos ranging from unionization, welfare measures like health care, child care and social security. It would also go a long way in wiping out the stigma associated with these work forms. Contracts could eliminate the informal, unreported and illegal dimensions of the surrogacy economy.

However, the efficacy of contracts depends on its very nature. What should then be its nature and constituents? To begin with, it should establish a standard method of deciding the remuneration, standardize conditions so that a decent minimum

standard of living is ensured, the leave structure and termination provisions should be spelled out explicitly, rights and entitlements of both the parties should be clear. To supplement these, the most important step would be to provide these women a podium to unionize so that they can collectively fight for their rights and in case of a breach, seek for redressal of their grievances. While formulation is a significant way forward, the implementation of these contracts is imperative.

In crux, contracts are an important instrument that can replace the present quasi-familial set up. It bears the potential of bringing surrogacy within the ambit of work and thus in turn ensure it is well ordered and regulated.

<sup>i</sup> Such views are well laid out in Andrea Dworkin's "Prostitution and Male Supremacy," Catharine MacKinnon, "Prostitution and Civil Rights," and Carole Pateman's "Sexual Contract"

<sup>ii</sup> This view is documented in Martha Nussbaum's "Whether From Reason or Prejudice': Taking Money for Bodily Services," in her *Sex and Social Justice*, Prabha Kotiswaran's "Dangerous Sex, Invisible Labor". A large section amongst the sex workers and surrogates themselves have demanded normalization

<sup>iii</sup> Based on field work conducted in Anand in Gujarat.

<sup>iv</sup> Martha Nussbaum defines objectification as a plurality of denials imposed on human subjects: denials of their agency, autonomy, uniqueness and dignity.

<sup>v</sup>Thelma McCormack suggests that on account of this distinction between the public and the private, most of the women are not in a condition to make negotiations for themselves.

<sup>vi</sup> Nancy Scheper-Hughes argues for an enlarged conception of commodification to include all capitalized economic relations between humans in which bodies are the token of economic exchanges that are often masked as something else-love, pleasure, altruism, kindness.

<sup>vii</sup> Some of the states in the United States that have come up with their own frameworks are Michigan, Florida, Indiana, Kentucky, Louisiana and Nebraska.

<sup>viii</sup> Baby Manji Yamada v. Union of India and Another, AIR 2009 SC 84; (2008)13SCC518.

<sup>ix</sup> Venkatesan, J., "SC Grants Custody of Manji to Grandmother," *The Hindu*, 15 August, 2008.

<sup>x</sup> Saheli, "Assisted Reproductive Technologies and Surrogate Motherhood: A Critique of the Proposed Bill," *Saheli*, January-April, 2009: 12-15.

<sup>xi</sup>It is pertinent to note that being a homosexual is not illegal in the country. Limiting the access of altruistic surrogacy is an instance of discrimination.

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# Legal Rights of Indian Muslim Women: Striving for Holistic Development

Juhi Gupta\*

**Abstract:** It is a common belief that Muslim women face different forms of oppression in their own community and are deprived of any rights. Every now and then there is some issue or the other in media about the personal lives of Muslim women, ranging from Instant Triple Divorce and Polygamy to Veil and others. But the truth is that Muslim Women are entitled to equal rights in all walks of their lives. In fact, in many instances, rights and status given to Muslim women by the laws in the religion and under the Indian constitution, are much stronger and higher compared to their counterparts in other religions. There is a complete lack of discussion on the real issues of Muslim women that can truly empower them. Education, political representation and economic empowerment are all topics that must be relentlessly discussed. Instead, the focus is diverted towards non-issues which further leads to misconceptions about the religion itself. These misconceptions about the faith mushroom because of the lack of knowledge about the true teachings of Islam and awareness about its laws. Like any other religion, there is always ample scope of personal biases and interpretation of the Holy text by the people in power. A large number of people including women themselves are ignorant and unaware of the laws and rights that they enjoy. This article aims at highlighting the rights to which Muslim women are entitled at different stages of their lives. The purpose of this study is to draw attention to the provisions and possibilities under Muslim law and the Indian constitution in some key areas concerning Muslim women. It calls for building awareness about existing laws, especially amongst Muslim women so that they exercise their rights without being subjected to prejudice.

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## 1. Background

### 1.1. Emergence of and the Need for Shariah

Before Prophet Mohammad established the faith of Islam, Arabia was governed by a tribal social structure wherein no prescribed or written rules existed. With

the advent of the Prophet and his teachings, Islamic norms spread through society and got established as a faith which was followed predominantly in Medina and the surrounding regions. A tribal custom was soon replaced by the teachings of the Qur'an and other laws, popularly called as the 'Shariah'. According to Islam, Shariah literally means 'a path to life-giving water,' and refers to a defined path upon which people are advised to follow. Initially, the Shariah emerged as a means of providing solutions to practical problems of the community.

Consequently, the Muslim jurisprudence and all its precepts that passed down through succeeding generations are considered to be directly from the Prophet himself. After the demise of the Holy Prophet, systematic and legal thoughts were articulated by the Hanafi, Maliki, Shafi'i, and Hanbali schools of jurisprudence. Centuries later, Muslim norms were introduced to India. The Indian subcontinent was reigned by several Muslim rulers for a long time, and there were instances of cases being dealt by a "Shariat court" assisted by a "Mufti". The laws and principles covered under the Shariat were never static. Over the years the powers of the Shariat court were restricted, revived and reformed under the regime of many famous Mughal emperors. Under the British rule in India, the codification of the Muslim personal law was begun by the Muslim League in the late 1930s. On the 7th of March 1937, the Muslim Personal Law Act was passed which ensured that Muslims would be governed by the cultural norms under Islam. The Shariat is accepted by law and protects the rights and principles that govern the Muslim community in India across many aspects such as marriage, divorce, succession, inheritance, etc.

### 1.2. Understanding the Shariah

To many, governance by Shariah is still a myth. To completely understand the Muslim Personal Law, one needs to delve into the composition of Shariah and its foundations. When it comes to religious laws, it can be human-made as well as divine. Shariah is a doctrine that governs what is good and evil and has

descended from the Holy scriptures and the teachings of Prophet Mohammed himself. The Shariah as we know of it today is composed of two main aspects - the Holy Qur'an, which the Muslims believe is a divine revelation to the Holy Prophet and the second being 'Sunnah', which is the deeds of the Holy Prophet, his utterances and his permissions to the way of life. The Quran and the Sunnah are often subject to various interpretations. Muslims, therefore, resort to secondary sources of law. The Shariah in a broad sense comprises all Islamic legislations. The secondary sources are not altogether applicable in every case and yet are taken into account quite considerably. According to popular Muslim Schools of law, the generally accepted secondary sources of Shariah are *ijma* (consensus) and *qiyas* (analogy). In conjunction with the primary source (the Quran), they form the four pillars of Islamic law.

Minorities in India are governed by their own Personal laws. The Muslim population is governed by the Muslim Personal Law in matters related to the followers of Muslim religion and cultural norms. The Islamic jurisprudence is however not bound by precedence. Sometimes, the rulings (Fatwas) pronounced by a recognized authority (the Islamic leaders), deviate from previous opinions or Fatwas given by other Shariah scholars. Such an imbalance in fatwas justified as the rightful interpretation of religious texts lay the foundations for controversies.

## 2. Rights of Muslim Women

Muslims remain ignorant and unaware of the laws and rights that they are covered under Personal law. Muslim women, in particular, are victims of such interpretations. A significant reason for not being aware of the laws is the poor literacy rate of India. It is one of the major factors for the lack of vigilance amongst women about their rights and protection, since birth. Muslim women around the world have an average of 4.9 years of schooling, as opposed to 6.4 years among Muslim men. Awareness of the law, duties, and rights make the citizens of any nation empowered. As a result of this disparity, Muslim women do face numerous issues in their journey to empowerment.

This article throws light on the legislative aspects that guarantee the protection of the rights of Muslim woman across all phases of life. The Muslim Personal

Act 1937, is extended to the whole of India except the state of Jammu and Kashmir. The Shariat Act is applicable in cases wherein both parties are Muslims. The verdict of the ruling will abide by the Muslim law if the cases under its jurisdiction involve the following matters-

- Inheritance
- Marriage (covering all the aspects)
- Dissolution of marriage
- Maintenance
- Dower
- Guardianship
- Gift
- Woman's special properties
- Trust and trust properties
- Wakf

Note that all the cases between two Muslim parties are governed under Muslim law. The courts are empowered to administer not just the Muslim Personal law but are also bound to do so in the situations mentioned above.

### 2.1. Children and Education

Gender disparity in education has always been one of the indicators of a poor demographic structure in India. Education is the most critical tool for socio-economic transformation. Educationally, Muslims are one of the most backward communities in the country. The female Muslim population lags behind its male counterparts and women across all other communities. Amongst Muslims, the girl dropout rate from school is 17.6%, higher than the national average of 13.2%. A quarter of Muslim children falling under the age group of 6 to 14 years have not attended a school or have dropped out. The Muslim Personal law deals very precisely and clearly with providing basic rights to the children, the denial of which, is considered a punishable offence.

Children in Islam refers to both male and female, which leaves no room to believe Islamic laws impart human rights differently based on gender. Islam does not promote and permit any preference based

on gender. Children are entitled to various rights falling under Shariah. The essential rights are the right to good upbringing, the right to adequate health care and proper education. This implies that children should be given sufficient, and sound religious, ethical and moral guidance to lead their entire lives. They should be taught moral values, the meaning of good and evil, appropriate and inappropriate, so forth and so on. Parents are bound to spend adequately on the nourishment and welfare of the children. Also, in terms of financial gifts, children have the right to be treated equally. One of the most important rights of children regardless of gender is the right to education. The Constitution (Eighty-Sixth Amendment) Act, 2002, with its addendum of article 21-A, made education a fundamental right for all children between the ages of 6 years to 14 years. This right supersedes any Personal law, and the failure to provide this basic right is a punishable offence.

### **2.2. As an Adolescent**

The average age of marriage for women in India is 21 years, according to the 2011 Census. The age of marriage of a Muslim woman is usually a common topic of discussion. According to the Personal Law, the age for a Muslim girl to get married is set at 16. Additionally, it allows the marriage of Muslim girls between the age of 15 and 18.

Nevertheless, according to the provisions of Prohibition of Child Marriages Act (POCMA) of 2006, the marriage of girls below 18 years of age is illegal. The Act applies to Muslims as there is no clause in the Act that prohibits the application of the Act to Muslims. The age of marriage under the Act is 21 years for a man and 18 years for a woman. The latter supersedes Personal law.

### **2.3. As a Bride to be**

A Muslim woman, at the time of marriage, is entitled to, under the Muslim law, the right to receive Mahr (dower) payment in the form of money or possession by the groom to the bride, paid or promised to pay at the time of marriage. It legally becomes her property after that. The common practice of offering mahr is money, but it can be anything which the bride agrees to, such as jewelry, property, furniture, etc. Mahr is exclusively specified in the marriage contract signed during an Islamic marriage. The bride has the full

rights to demand mahr, and the groom is obligated to pay.

Legal rights of wife on the non-payment of *mahr*:

- Husband is legally required to pay the wife before the marriage. Until then, the wife has the right to resist marriage.
- Wife has the right to sue relatives of the husband for payment of dower.
- The wife has the right to retain her husband's property (if any) until the *mahr* is paid.
- The wife is entitled to dissolve the marriage either due to divorce or due to the death of the husband.
- If not agreed upon at the time of marriage, the dower can be decided by the courts by taking into account the financial status of the husband, age of wife, cost of living, the property of the wife, etc.

### **2.4. As a Married Woman**

The issues concerning married woman are many, with domestic violence being the most common of them. The patriarchal setup of Indian society makes the woman vulnerable to abuses. The Protection of Women from Domestic Violence Act (or the Domestic Violence Act) is an important legislation that was enacted in 2005 to eradicate this problem. The Act guards the woman against abuses in a domestic setup. Women earlier could approach the Courts under the Indian Penal Code (IPC) in cases of domestic violence. Yet the Act of 2005 expanded the scope of justice and safeguarded the welfare of women. A Woman falling under any minority group can make full-fledged use of this law and need not wait for the jurisdiction of the minority group's laws. The Act offers a very expansive definition of Domestic violence in Section 3 of the Act, which includes abuse of all forms – mental, physical, verbal, emotional, sexual and financial. Even harassment for dowry and threatening the woman and her kith and kin amount to abuse.

### **Dissolution of Marriage**

In India, Muslim marriage is a legal contract between

a man and a woman. One of the most controversial issues under debate is the Muslim dissolution of marriage and the rights of women associated with it. We discuss here the provisions covered under the Muslim Laws Act, 1937. Dissolution of marriage can be sought by the husband (*talaq*), wife (*khula*) or mutually by both (*mubarat*). *Talaq* sanctions Muslim men to legally divorce his wife by announcing the word *talaq* three times with a three months' gap between all three verbal declarations. Any other form of written or electronic messaging of *talaq* is inadmissible. Some Muslim groups allow instant triple *talaq* (or *talaq-i-biddat*) as a valid practice of divorce even while stating three *talaqs* at once and proclaiming the instant divorce. On the 22<sup>nd</sup> of August 2017, the Supreme Court of India banned the instant triple *talaq* and declared it unconstitutional.

Section 5 of the Shariat Act of 1937 deals with Muslim women seeking the dissolution of marriage. Section 5 was later deleted and replaced by Dissolution of Muslim Marriages Act 1939. Muslim women are eligible to seek a divorce in a court of law.

A Muslim married woman is allowed to claim divorce in the following situations:

- (a) Where the husband himself delegates to the wife the right of divorce (*Talaq-e- Tafweez*).
- (b) Where the wife is a party to divorce by mutual consent (*Khula* and *Mubarat*).
- (c) Where she wants to dissolve the marriage under the Dissolution of Muslim Marriage Act, 1939.

The following circumstances can be legal bases for seeking divorce as pronounced under the Act:

- if whereabouts of the husband have not been known for a period of four years.
- if the husband has been sentenced to imprisonment for a period of seven years or upwards.
- If the husband has failed to perform his marital obligations for a period of three years.
- if the husband was impotent at the time of marriage and continues to be so.
- if the husband has been insane for a period of two years or is suffering from leprosy or

virulent venereal disease.

- if the husband treats the wife with cruelty, even if such conduct does not amount to physical violence.
- if the wife has been given in marriage by her father or guardian before she attained 15 years of age.
- if the husband associates with women of evil repute or leads an infamous life or attempts to force her to lead an immoral life.
- if the husband disposes off her property or prevents her from exercising her legal rights over it.
- if the husband obstructs her in the observance of her religious profession or practice.
- if he has more wives than one and does not treat her equitably in accordance with the injunctions of the Quran.

## 2.5. As a Divorced Woman

### 2.5.1. Maintenance Under Muslim Law:

The 'Women (Protection Of- Rights on Divorce) Act, 1986' declares the objective of the Act as 'the protection of the rights of Muslim women who have been divorced by, or have obtained a divorce from, their husbands.' The Act discusses various sections that lay out the criterion for women to be granted maintenance. Section (a) of the Act says that divorced woman is entitled to have a provision of maintenance from her former husband, and the husband is required do so within the period of *iddat*- the mandatory waiting period before a divorce proceeded by *talaq* becomes effective. This obligation is not confined to the period of *iddat*. It further provides that, if the woman is not granted maintenance, she can approach the Wakf board under section (b) which declares that if she is denied maintenance from her husband, she can claim it from the relatives. The Act does not take away any prevailing right of the Muslim woman. Nonetheless, all obligations of maintenance end when she remarries and no claims further shall be entertained. The Act thus provides to a divorced Muslim woman, means of livelihood for sustaining herself.

### 2.5.2. Child Custody:

The right to the custody of children solemnly belongs to the mother. This right cannot be taken away from her so long as she is not found guilty of any misconduct and is hence proven to be unfit for the child's upbringing. This right is called the right of *hizanat*, which can be enforced against the father or anyone else who opposes her right over the children. This right is recognized solely for the interest of the children, and it is not absolute. The mother is entitled to this right only till the children come of age.

### 2.6. Property Rights of Muslim Women under the Personal Law Act

The classified property rights for a Muslim woman in India are dealt by two schools of the personal law- Sunni and the Shia.

Following are some general rules of inheritance and financial security for women as per the Muslim personal law:

#### 2.6.1. Inheritance from the parents:

- A Muslim daughter is entitled to half the share and owns whatever asset she obtains from her parents if she has no brother. It is legally hers to possess, control, and to dispose-off if she wishes to.
- When the parents have both male and female children, a daughter's share is half that of a son's.
- She is lawfully authorized to stay at her parents' house and seek subsistence until she gets married.
- If the man is childless, then his sister inherits half his property.

#### 2.6.2. Inheritance from the Husband:

- A Muslim bride is entitled to receive money or property from her husband at the time of marriage, called a marital gift (*mahr*).
- This money is only hers to possess; its control, distribution and management are completely in her authority as well.

- In the event of the husband's death and they have children, a widow is entitled to a one-eighth share to his inheritance.
- If there are no children, the woman's share comes down to one-fourth.
- If her husband has more than one wife, the share is set to one-sixteenth
- The wife may inherit a higher proportion of the 'Will' in cases where there are no heirs for the property as dictated by the law.
- A Muslim is forbidden to give away more than one-third of his/her total property through a Will.
- In case of a divorce, a Muslim woman is entitled to receive maintenance from her husband for her welfare within the period of iddat.
- Additionally, the maintenance reverts to the woman's parental family as well.
- However, if the children are in a position to financially aid her, the responsibility is on the children.

#### 2.6.3. Inheritance from the Children:

- A Muslim mother can inherit from her children if they are independent.
- In case of the child's death, she is to inherit one-sixth of the dead child's property if her son has children.
- She is likely to inherit one-third in a case where the deceased son has no children.
- She is entitled to receive gifts from those she would inherit the property from.

### 2.7. Adoption and Muslim Personal law

In India, child adoption has been a prevalent social practice. The primary consideration for the practice is usually the belief of the childless parents such as the perpetuation of the family name, maintenance in the old age, performance of rituals after their death and means to salvation. Adoption is considered as a specialised child welfare service which helps in meeting the needs and promoting the development of children lacking parental care. Muslim Personal Law does not recognize adoption. However, it also does not prohibit a childless couple from providing for a child with material and emotional support. If a Muslim

adopts a child, he/she cannot establish paternity over the child. He/she only possesses the power of guardianship. The parents have legal rights on the child until he or she turns into an adult post which the biological parent's right over the child is bound to supersede that of the guardian's. However, in 2014 the Supreme court of India held that the Shariat law's prohibition against adoption would not bar a Muslim couple from adopting a child if they did so under the secular Juvenile Justice (Care and Protection of Children) Act. Despite the Act, the Muslim personal law does enable the care of an abandoned child.

### 3. The Triple Divorce Bill, 2018

Marriage is known to be an eternal bond of love and understanding amidst two people. Although pertaining to unfortunate circumstances, a marital contract is breached for the sake of restoring peace into the lives of the unhappily married couples. Islam and divorce are two of the topics that have been vulnerable to many controversies. The understanding and methodologies of divorce in any religion is complicated and varied. Divorce in Islam can be sought in several ways, some initiated by the husband and some initiated by the wife. The commonly recognized modes of divorce in Islam are *talaq* (repudiation), *Mubarat* (mutual divorce), judicial divorce and oaths. Instant triple divorce or more commonly known as *talaq-e-biddat* was a prevailing marriage dissolution practice amongst some sections of the Muslim community. This practice stands different from *Talaq-ul-sunnat*. *Talaq-e-biddat* is a practice wherein as soon as the man pronounced the word '*talaq*' three times, the divorce is immediate and irrevocable. This form of divorce can take place either in a sitting or through a phone call or text message or in the form of a *talaqnama*. There has been some misuse of this from time to time.

Unlike other religions, Muslim Law considers marriage as an act of civil contract. Here, a mutual consent between both the parties is deemed to be vital once they utter *qabul* (consent). Many Islamic jurists stood in opposition to the practice of instant triple divorce as they argued that it lacks an essential backing of both the Quran and Hadith. This is the reason why many Islamic countries imposed a ban on the same. In India too, the government introduced a bill in the Lok-Sabha on the 17<sup>th</sup> of December 2018. The bill made several provisions in regard

to safeguarding women's rights and safety. Under it all declaration of instant triple divorce expressed in any form was voided, deeming it a cognisable offence with a maximum of three years imprisonment and a fine. The Supreme Court too upheld the practice of instant triple divorce as unlawful.

### 4. Scope of the Uniform Civil Code in India

Uniform civil code is a matter of debate within India. It propagates the implementation of a uniform code for all citizens and to replace personal laws based on religious Scriptures and customs. Article 44 of the Directive Principles, while formulating policies for the country, expects the state to apply these. However, according to some, it challenges the very core of the secular fabric of India and the fundamental right to practice religion. Personal laws differ from the public laws specifically over marriage, divorce, inheritance, adoption, and maintenance. Goa is the only Indian state to have a uniform civil code in the form of common family law. The debate for the UCC is often focused around the Muslim Personal Law, permitting unilateral divorce and polygamy in the country. Whether it is the issue of the minimum age of the Muslim marriage or, the Muslim personal law has been under scrutiny from various dimensions. There have been constant attempts for revision and amendments. The supporters of a UCC driven India, argue that the personal laws give upper preferential status to men in several aspects that bring social and cultural anarchy. Although the future of UCC may promise a bias-free civil code, the prosecutors are many. They profusely argue the destruction of personal law sanctity. One of the key points coined by them is that enforcing a uniform set of rules in a tremendously cultural diverse India, across the religions, sects, castes, states, etc., is beyond the scope.

Additionally, it is also a possibility that a common code will neglect and supersede the traditional norms and dictate the laws of major religious communities. The question of the right to religious freedom is also a major threat to the implementation of a common code. Amidst all the controversies fuelling heavy opposition in the realm, it is important to recognize that a harmonious country is above the enforcement of a blanket uniformity. If not, the efforts undertaken for a common civil code will only deem to be

counterproductive, leaving the minorities insecure and rebellious. A code as promising as this must be brought about by being in agreement with different personal laws, on marriage, maintenance, adoption, and succession, etc. It must acknowledge the benefits that one community secures from the rest, with the scope of gradual amendments in each, that assures a bias-less society. This is a futuristic task that demands uniformity in the mind-sets of the human resource of our country and a good deal of time to do the needful.

### **Conclusion**

Islam is often misunderstood, and so are its laws. A careful study of Muslim laws clearly shows that religion empowers Muslim women under many specific conditions and stages of life. It is the lack of awareness of laws and rights that continues to be the real reason behind the wrongful implementation.

To add to these woes, are the multiple personal interpretations by every small religious head that leads to a lack of clarity and confusion about the applicability of laws. Today, there are enough laws, both within the Muslim law and under the Indian constitution, to ensure the protection of the rights to life, liberty, and dignity of Muslim women. The need of the hour is to bring those laws into actual practice and have a common interpretation. One need not look elsewhere. This can happen if the community and religion can encourage all its key stakeholders to implement the most basic teachings of the Quran and the Prophet Mohammed without personal interpretations. A religion founded on the basis of God's utterances can do no wrong as long as it is practiced with the equality, love, and respect that He commanded His followers to adopt.

<sup>i</sup> After the death of caliph Hazrat Ali, Sunni Islam was divided into four major sects namely, Hanafi, Maliki, Shafi'i, and Hanbali. Hanafi are the followers of Abu Hanifa. Hanafis consider Quran, Sunnah, Ijma and Qiyas as the sources of religious practices. Malikis are followers of Imam Malik while Shafis are followers of Imam Shafi and emphasis on the teachings of Ijma. The Hambali group follows imam Hanbal and the Sunnah exactly and completely as it is.

<sup>ii</sup> The Sunni and the Shia are two major denominations of Islamic World. Sunnis are the majority group of Muslim society while Shias are the second largest group of the Islamic community. Shias oppose the caliphate and believe that the family of the holy Prophet were the only ones to rule Islam while the Sunnis do not believe in following the leadership of the true bloodline. The Sunni Islam is further divided into four major divisions while the Shia Islam is divided into twelve sects.

# Muslim Women as an Oppressed Minority: Facts and Projections

Simin Akhter Naqvi \*

**Abstract:** Understanding the material bases of any community's deprivation requires analysis of not just socio-economic structures that work to exclude, oppress or marginalize members of the community, but equally of institutional mechanisms surrounding generation and dissemination of data about the condition of the community. This paper seeks to empirically establish the relative deprivation of Muslim women in India using three key parameters; education, employment and crime against women; in an attempt to draw attention to actual questions of survival facing these women, in the backdrop of the largely Islamophobic and majoritarian milieu where both mainstream media debates and parliamentary discussions about the condition of Muslim women selectively concern themselves with questions of 'triple talaq', polygamy and 'purdah', while seldom bothering to consider issues like educational deprivation, workforce participation, nutritional status, sex ratios and causes and determinants thereof. The paper looks at secondary data from NSS (various rounds), NFHS-4 and 5, PLFS-2018, UNDP-HDR (various years) and NCRB-2016. Findings suggest that while average workforce participation of Muslim women is indeed less than their non-Muslim counterparts, average educational outcomes are not found to be any poorer controlling for variables like income and economic class. The less than average rural and urban workforce participation rates of Muslim women are also found attributable to the community's overall economic deprivation, lack of access to subsidized public education, and discriminatory hiring practices in both formal and informal labour markets, causing a more than proportionate concentration of members of the community in self-employment, compelling even middle class Muslim families to live and find work in and around Muslim ghettos.

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## Introduction

While what is often projected as the 'deplorable condition of Muslim women' has increasingly come to define 'the Muslim question' for the right wing rhetoric in India, NFHS-4<sup>2</sup> (2015-16), PLFS-2018<sup>3</sup> and NSS-EUS (2011-12)<sup>4</sup> data actually find sex ratios and female nutritional indicators to be better among Muslims compared to their non-Muslim counterparts. Not just this, the figures are also found to be better in 'poorer' neighbouring countries like Pakistan and Bangladesh by UNDP-HDR<sup>5</sup>, countries often referred to as 'backward' in India's comparison. Decadal population growth rate among the Indian Muslim community has also been found to decline between 2001 and 2011 (NSS-2001, NSS-2011)<sup>6</sup> much like the rest of the country, particularly for sections witnessing upward economic mobility. Divorce rates have also

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2 National Family Health Survey, a large scale, representative annual survey focusing on population, health and nutrition, conducted nationwide by the International Institute for Population Studies, Mumbai under direction of the Ministry of Health and Family Welfare, Government of India, with the support of USAID and UNICEF. The first NFHS survey, NFHS-1 was conducted in 1992-93 and is compiled annually at the national, state and district levels.

3 Launched by the Ministry of Statistics and Program Implementation in 2017, the Periodic Labour Force Survey compiles data on employment and unemployment periodically, with modified survey methodology and a frequency higher than the earlier quinquennial survey conducted by the government. The survey reports 'unemployment by usual status' to be at 6.1% for 2017-18, the highest in four decades.

4 NSS-EUS refers to the quinquennial Employment-Unemployment Survey conducted by the National Sample Survey Organization, Government of India and was a major source of data on employment and unemployment in the economy till 2017. The survey was replaced by the PLFS in 2017.

5 Refers to United Nations Development Program's country profile Human Development Reports compiled annually by the United Nations.

6 National Sample Survey data 2001 and 2011 respectively.

been found to be lower among Muslims compared to non-Muslims as per NFHS-4, and while incidence of domestic abuse and dowry related crimes against women have been found to be comparable in Muslim and non-Muslim dominated districts as per NCRB<sup>7</sup> data, results from a number of independent studies clearly show a much lower incidence of dowry related harassment, domestic abuse and dowry deaths among Muslims.

This paper argues that the condition of Muslim women in India needs to be analyzed in the light of both; the relative deprivation faced by Muslim women *vis-à-vis* women from other communities (controlling for variables like income and class) as well as the selective projection of their predicament by large sections of the academia, media and cinema alike. While the first section of the paper looks at the general condition of women in India in an attempt to bring out the degree and forms of patriarchal discrimination and oppression faced by them, the second section analyzes the socio-economic condition of Indian Muslims in order to establish how the community fares in comparison with the rest. The third section uses insights from sections one and two to determine how the inter-sectionality of gender and communal identities explains the condition of Muslim women as a social group. While NSSO census survey (2011) and NSS-EUS (2011-12) data is used to analyze trends in employment and workforce participation, NFHS and NCRB data is used to compare how Muslims fare *vis-à-vis* non-Muslims, both as a community as well as in terms of the condition of women from the community.

### Section I: The condition of women

The maintaining of patriarchal social order essentially requires that certain rituals of perpetuation of inequality be repeated naturally on a daily basis to enforce a continuous and uncontested assertion of male superiority, both within the household and outside (Menon, 2012)<sup>8</sup>. For this, institutions and structures that enforce unequal access to rights, opportunities and resources need to be in place so that social attitudes that help accept, rationalize, internalize and socialize

this inequality can be institutionally reaffirmed. As it is, social exclusion, at the operational level, is not just a monolithic deprivation of certain enabling attributes rather a complex product of institutional processes, group dynamics and social practices (Kabeer, 2000. 72-73)<sup>9</sup>.

In the context of labour markets, discriminatory access to education, work opportunities and wages ensure that gender-inequality is not only maintained but gets passed on at an inter-generational basis. India's labour markets in that sense are openly characterized by both, lower educational attainment rates and a much lesser workforce participation for women.

Looking at average rural and urban literacy and educational attainment rates<sup>10</sup>, one finds that while overall literacy in India stood at 64.8% in 2011 (NSSO, 2011), male literacy was 21.6% higher than female literacy at 75.3%, 53.7% respectively. Females have also been found to exhibit much worse post-secondary educational attainment rates, with only 31 million females completing secondary school for every 100 million males, despite comparable gross enrollment ratios. The gap widens further for vocational and higher educational levels (with women constituting less than 28% of all students in Arts and Humanities and as few as 17% for Sciences), mainly due to discriminatory social attitudes that begin with sex-selective abortions and adverse sex-ratios, going all the way to dowry related harassment and deaths; social attitudes fail to incentivize daughters' education *vis-à-vis* that of sons' education, which is looked upon as a source of old-age security by parents.

Likewise, while the overall workforce participation rate (WPR) was 39.3% as per census 2011, (comparable with neighbours in the sub-continent including Bangladesh (30.09%), Pakistan (27.93%), Sri Lanka (33.42%), but much lower than Japan at 49, Germany at 48, and UK at 46), the male participation rate stood at 51.9%, while the female work participation rate, FPR was 25.70%. In 2018, however, while the figure for overall labour force participation rate (LFPR, active workforce, new methodology) stood at 51.8%, the female LFPR was found to be 23.3%, exhibiting

7 Established in 1986, the National Crimes Record Bureau is an organization set up by the Government of India to compile, analyse and disseminate data on crimes as defined by the Indian Penal Code and other special laws.

8 Menon, N. 2012. *Seeing like a feminist*. Penguin/Zubaan. New Delhi.

9 Kabeer, Naila. 2000. "Social Exclusion, poverty and discrimination: Towards an analytical framework", *The Institute of Development Studies bulletin*, 31(4).

10 For a detailed discussion refer to MoSPI's annual report on gender related indicators, 2018.

a reversal of participation, resulting in one of the lowest female labour participation rates in the world.

In terms of main and marginal workers (as percentage of total population) while overall figures stood at 32.5% and 8.4% respectively, figures for male workers stood at 44.3% and 5.6%, while only 13.7% of females were found to be employed as main workers and 10% as marginal (NSSO, 2011). In terms of the sectoral distribution of workforce by gender 2009-10, 45.27% of male workforce and 66.9% of female workers were found to be employed in the primary sector, 21% of males and 17% of females in the secondary sector; and 31% of males as opposed to only 17% of all female workers in the tertiary sector. Within the tertiary sector, it needs to be noted that females are found to be primarily concentrated in low-skill, low-wage informal jobs within community, social and personal services, while males exhibit a much higher concentration in relatively high-skill, higher-wage jobs in trade, transport and communication.

Looking at nutritional deprivation, according to survey reports by UNICEF (Gill, 2012)<sup>11</sup> and World Bank<sup>12</sup> the average Indian teenager girl is found to consume only a third of the nutrition available to her male counterparts. Following Sen and Dreze (2013)<sup>13</sup>, while India as a whole exhibits extremely high levels of under-nutrition, with 47% of all children underweight, the condition of women is particularly worse, with 52% of adult females being anemic and 76% of all rural women protein-deficient. The condition of Dalit and tribal women is worse still and has been reported to have deteriorated between 2001 and 2011, despite falling average poverty ratios.

In terms of crime against women too, India continues to be one of the most unsafe nations, with a gender inequality index rating of 0.524 in 2017, making India a part of the worst 20% in the world. According to NCRB data for 2017, there were a total of 3.59 lakh reported crimes against women in 2017 (an increase

from 3.38 lakh in 2016). According to the international men and gender equality survey (IMAGES, 2011)<sup>14</sup> 65% of surveyed Indian men believed that women should put up with domestic violence and abuse in order to keep families together. According to NCRB statistics of all rape cases reported in 2011, 54.6% are yet to be investigated (NCRB, 2013), while 30.6% were 'waiting for trial' by the end of 2013 and only 16% of all these cases have been found to have resulted in conviction. Further, average crime rates have only increased over the years, rising to 238 per lakh of population in 2017, constituting an increase of 3.6% over 2016, with crimes against women contributing 10% of all crimes. Clearly, high rates of economic growth and expansion of employment opportunities since the 1990s has failed to translate into improvement in the relative condition of women in India. Gendered gaps in educational attainment, workforce participation and wage-outcomes continue to prevail amid no substantial improvement in women safety or in general societal attitudes towards women.

## Section II: The State of Muslims in India

In looking at the condition of Muslims in India, the first thing one realizes is the disproportionately high share of Muslims in poverty and self-employment (38.4% of all urban Muslims and 26.9% of all rural Muslims were found to be poor in 2011; 46% of all Muslims self-employed; NSSO 66<sup>th</sup> round)<sup>15</sup>. Given that the progress of school education in India in the last couple of decades has been marked by a significant increase in the share of private schools in total (Kingdon, 2007)<sup>16</sup>, it is no wonder that Muslims and other poorer sections have been progressively pushed out of education. Data collected by Sachar<sup>17</sup>,

14 International men and gender equality survey conducted by the Brazil based advocacy group, Promundo.

15 Also, as per census, 2011 data, 25% of all beggars in India are Muslims; a population group that otherwise constitutes only 14.2% of the population, indicating a high concentration of poverty.

16 For a detailed discussion refer to Kingdon, G. G. 1998. "Does the Labour Market Explain Lower Female Schooling in India?" *Journal of Development Studies*. Vol. 35. no.1. pp 39-65. and Kingdon, G.G. 2007. "The progress of school education in India". *Oxford Review of Economic Policy*, Volume 23, Issue 2, pp 168-195.

17 Government of India. 2006. Report of the Prime Minister's High Level Committee on Social, Economic

11 Gill, Kaveri. 2012. "Promoting Inclusiveness: A framework for assessing India's flagship social-welfare programmes", UNICEF Social policy Working paper series 2.

12 World Bank. 2011. *Poverty and Social Exclusion in India*. Oxford. United Kingdom.

13 Sen A.K. and J. Dreze. 2013. *India and her contradictions: An Uncertain Glory*. Princeton University Press. New York.

Basant<sup>18</sup> and others also reveals that the overall density of schools within 1, 3 and 5 kms of residence is much lesser for Muslim dominated districts compared to the national average.

In terms of educational attainment, Muslims were found to be 33% less likely to complete primary education compared to upper caste Hindus (38% secondary, 49% post-secondary) even as recently as 2010-11, faring worse than both *Dalits* (35%) and *Adivasis* (46%), in terms of having never enrolled in schools, as opposed to an average of only 17% for upper-caste Hindus (Basant, 2012; Sen and Dreze, 2013)<sup>19</sup>.

Religion-wise data on Muslims' participation in salaried jobs in the private sector also reveals a dismal picture, with only 3.2% Muslims turning out to be a part of private salaried jobs and only 8.7% of all minorities taken together, working as public sector employees (Total population share 20%, total Muslim population share 14.2%, Muslim total workforce participation rate 32.4%; NSSO, 2011).

Not surprisingly, studies on inter-generational mobility (Asher et al, 2018)<sup>20</sup> reveal a much higher mobility-gap for Muslims (26%) as compared to Dalits and tribals (37% and 33% respectively), attributable primarily to the exclusion of Muslims from affirmative action policies including reservations in education and jobs.

Despite this and in spite of the active exclusion faced by Muslims in access to healthcare (both being Muslim; Gill, 2012, and being poor, Baru et al, 2010)<sup>21</sup>,

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and Educational Status of the Muslim Community in India. Cabinet Secretariat. New Delhi. (also referred to as the Sachar committee report)

18 Basant, Rakesh. 2012. "Education and Employment among Muslims in India: An Analysis of Patterns and Trends", W.P. No. 2012-09-03. IIMA Working Paper Series.

19 Basant, 2012 (*ibid*); Sen and Dreze, 2013 (*ibid*).

20 Asher, S., Paul N. and Charlie R. 2018. Intergenerational Mobility in India: Estimates from New Methods and Administrative Data. World Bank Asia working paper series.

21 Rama Baru et al. 2010. "Inequities in Access to Health Services in India: Caste, Class and Region". *Economic and Political Weekly*, September 18.

Muslims as a population group have witnessed a steady decline in decadal population growth rates, comparable to the national average and higher than other economically comparable population groups (having come down from 30.2% in 1961-71 to 24.5% in 2001-11). Average divorce rates also turn out to be lower among Muslims (68% of all divorced women in India are Hindu and the average likeliness of a Hindu women being divorced or abandoned is 2.8 compared to a figure of 2.4 for Muslims). Dowry as a cause of divorce is also nearly negligible for Muslims, as opposed to a probability of 48% for Hindus (NFHS-2004).

Sex ratio among Muslims was also found to 951 as per census, 2011, as compared to 939 among Hindus (and was found to have improved significantly from 936 in 2001 to 951 in 2011, compared to a smaller improvement among Hindus, showing an improvement of merely 8 units; 931 in 2001 to 939 in 2011). The higher total fertility rates among Muslim women, often cited as a matter of concern by those 'scared' of a Muslim population explosion also turn out to be primarily because of poverty and a general lack of wage-employment; factors known to have substantially brought down population growth rates for other socio-religious groups.

### **Conclusions: What explains the condition of Muslim women in India?**

In a fair assessment of what constitutes the material basis of deprivation of Muslim women in India, one finds that gender, communal bias, poverty and intersecting gender-class-communal identities, all have a role to play, and while cultural and religious questions like '*triple talaq*' and '*pardah*' are often cited as reasons for the backwardness of Muslim women, it is in fact, socio-economic factors like poverty, lack of access to subsidized public education, lack of participation in waged-employment and rural landlessness that tend to explain the community's deprivation as a whole. Having said that, it must be pointed out that gendered gaps in educational attainment and drop out rates, particularly at the post-secondary level, do exist within the community and are found to co-exist with a reported lack of acceptance of wage-employment for women by lower-middle income class families. For both, the poor and middle and high income categories, however, women's average workforce participation and the acceptance

for a need to work are found to be comparable with non-Muslims.

A major reason for limited work-opportunities enjoyed by Muslim women is ghettoization. The fact that a large number of even middle class Muslim families feel compelled to live in community specific ghettos (Susewind, 2017)<sup>22</sup> cannot be ignored when looking at where and why Muslim women do or don't work. A growing degree of overt communal polarization of both, political discourse and living spaces, together with an unprecedented rise in the incidence of unpunished mob lynchings, hate speeches and growing injustice and persecution at the hands of Police, media and the judiciary alike also go in to raise the perceived insecurity of Muslims as a community. Needless to say, this negatively impacts families' confidence to send their daughters to school or their women to work.

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22 Susewind, R. 2017. "Muslims in Indian cities: Degrees of segregation and the elusive ghetto". *Journal of Environment and Planning*. Sage, UK. March 7.

The oppression of Muslim women as a socio-religious community cannot therefore be attributed to the community's lack of acceptance for women's equality or the need for women to study and work, as is often alleged. It is rather, a more complex, more labyrinthine inter-section of gender, communal and class identities that is found to be at work in excluding women from education, work and asset-ownership. Any affirmative action concerning Muslim women therefore, also calls for not just revisiting the socio-economic determinants of the community's deprivation but also of wider political, academic and policy attitudes to the very nature of concern held for Muslim women. As long as politically motivated, empirically insignificant issues like population growth and divorce rates continue to dominate public imagination while real challenges of the community's share in economic opportunities and in access to resources like land, education and healthcare continue to be neglected, any improvement in the condition of the community's women cannot be expected or imagined.

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# Indian Women Artists: Their struggles, Accomplishments and the undervalued Art

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**Abstract:** Women in art have faced discrimination due to prejudicial treatment on the grounds of sex in the conventional circle of Fine Arts throughout the history. They have often encountered obstacles in learning, commuting and exporting their work, as well as in receiving honour. Beginning in the late 1960s and 1970s, female artists and social scientists initiated a '*Women's Art Movement*' that critically highlighted the position of women in the Art Industry and questioned their status in the history of Art and the society they live in.

The following paper attempts to give some exceptionally distinguished women artists in the history their long overdue deserving public acknowledgment and appreciation that they have earned justly through merit.

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*“Art is the activity by which a person, having experienced an emotion, intentionally transmits it to others.” - Leo Tolstoy*

The fact that art is quite integrated into the human culture makes it fair to say that we have always made it a part of our existence in this world. Art is very important in society as it is an integral element that empowers the hearts and minds of the people. It is a profound way of depicting the unsaid or unheard emotions either on a canvas of a painter or in the poetry of a writer. Art encourages people to look beyond what is essential for survival and drives them to convey their thoughts through the creative expressions.

Art is supposed to incite the emotions and thoughts within its audience. By turning our eyes onto a piece of art, we plunge into our own set of experiences and sentimental recollections. In this way the meaning of

a piece of art stands as different as chalk and cheese to every person that puts a light upon it. Art makes it easier for the people by allowing them to start talking more about themselves and their feelings and by helping them to concentrate on various viewpoints and ascriptions of the art. It promotes pensive discussions and the knowledge that there can be more than one concept to everything in this world.

An artist is an emotionally sensitive being to get the impression of everything going around and possesses the quality of expressing his/her observations in the form of painting, poetry or sculpture. The artist soaks up the character of a situation or the reminiscence of an emotion. At times, it is a curse for an artist to hold all of these emotions and to be acutely perceptive. Artists tend to care about the world when the no one does because they know how it feels to stand alone when nothing goes right and no one takes the trouble to stand with the broken. They know how it feels to cry in the loneliness when there is a dire need of a shoulder to lean on. *Kate Chopin* says, *“To be an artist includes much; one must possess many gifts-absolute gifts-which have not been acquired by one's own effort. And, moreover, to succeed, the artist must possess the courageous soul.”*

It is not easy for a woman to express her sentiments in words which are predominantly controlled by men in this patriarchal society. Although women artists have been engaged in the creation of art during whole of the times gone by, their imaginative abilities were always weighed less when compared to the works of their male colleagues. Customary typecasts about the genders have always caused women's inventiveness to be held in low esteem. Regardless of conspicuously excellent credentials it is often difficult for women artists to make significant progress in the field of arts because of the centuries of misogyny in the artistic universe. To be honoured in one's own lifetime only to crumble into the arms of darkness is a misfortune not known to male artists, but it is an ordeal that literally every woman artist has witnessed, albeit renowned in her own heydays.

Many a times in the white-collar universe, people often speak about the '*glass ceiling*' to demonstrate an unacknowledged barrier to advancement of women with respect to general expectations of involvement in the positions or the roles of responsibility in the field of work. This environment is even more notorious in the world of art and artists. From the centuries gone, women have remained the subject of either muse for painting or a thought of writing to men. The supremacy of men with anti-feminist mindset within the art industry is evidently strengthened by the influential literature of politically powerful male theoreticians, reviewers, and scholars of art. Not only have men maintained an authority over the illustration of women but the registered declarations of the iniquitous men's portrayals of women fill a large portion of authoritative scriptures and catalogues. As a result, the modern scholarly research of art history explicitly reveals the male artists.

However, during the last few decades, the art historians, museums and galleries around the world have been devoted in the excavation of the work of great women artists who have been deserted or prevented from having the public attention. This initiative is aimed to get the knowledge about the women artists, to acknowledge their exceptional contribution to the art industry and to integrate their works in the art history.

Several challenges have frame-up themselves at the head of those who wanted to draw the illustrations of history of women in the art. The first is the scarcity of bibliographic information on the artists. This absence of records for the feminine biographies is because they were the minor representatives of this category. Anonymity of palimpsest is also one of the greatest challenges confronted by the historians. Women were often the sufferer of sexism in all the sectors of art where their creations were not registered or preserved, including painting, writing and textile design. During the Medieval times, the lighting of manuscripts was an event dedicated for the priests. While the names of certain artists' were disclosed during this era, the majority of the artists continue to exist largely in the caves of mystery.

In the illumination of these operating events of the textile and the historical documents, another difficulty is underlined: that is the long existence of the manufacturing. These creative productions are often discovered in components harbouring an

excessive sophistication to the exterior sections. Another problem is the renunciation of the prenuptial name at the time of the marriage which distorts the investigations, particularly when a work of an uncertain origin comes up by the name of family or by the initials of the name.

Nevertheless, the involvement of considerable number of worldwide public displays dedicated to women artists indicates a new wave of awakening of the heretofore undervalued contribution they have made to the past and progress of art. The exhibitions and documentaries on the women artists provides the severe criticism of a society dominated by men with all their fears and prejudices about the female sex have deprived women from showcasing their strong creative potentials, that the difficult situations in the lives of women artists has in fact been a problem given rise by men. As *Simone de Beauvoir* wrote in "*The Second Sex*", "*To tell the truth, one is not born a genius, one becomes a genius, and the feminine situation has, up to the present, rendered the becoming practically impossible.*"

#### **Ancient India:**

*Madhubani Paintings*: A 2500-year-old traditional art, the origins of Madhubani paintings are said to date back to the times of Ramayana, when king Janaka requested an artist to paint his daughter Sita's marriage to prince Rama. These paintings were usually created by women on the floors and walls of households during religious or family events and ceremonies. Mithila painting or *Bhitti Chitra* was discovered in 1934 when a severe earthquake affected the state of Bihar. The British Colonial Officer of the Madhubani district, William G. Archer, unexpectedly found these art pieces in the interior walls and floors of the households while analyzing the destruction caused by the earthquake.

Madhubani paintings are exemplified by figures that have heavily highlighted, protruding fish-like eyes and sharp noses. The subjects of these paintings generally comprise elements of nature such as fish, parrot, elephant, turtle, sun moon, bamboo and lotus. Geometric patterns and designs can be seen in these illustrations, which often represent passion, courage, dedication, fecundity and wealth. This ancient tradition style has also been documented to accurately portray episodes of marriage ceremonies, religious practices and various cultural occasions,

such as festivals, from mythological scripture like Ramayana.

The art of Madhubani paintings is still exercised by many women in Ranti village of Bihar. In addition, *Karpuri Devi*, the sister-in-law of the well-known artists *Mahasundari Devi*, *Dulari Devi* and *Mahalaxmi*, are the women from three generations in the village who have actively driven to preserve this form of art by training other women in the village and encouraging them how to create Mithila's artwork as their way of living and taking the tradition further. Works of these three women have been undertaken by the Government of India and a place has been allotted to them in the Mithila Museum in Japan.

Notable Madhubani Painters are: *Sita Devi*, *Bharati Dayal*, *Malvika Raj*, *Pushpa Kumari* and *Jagdamba Devi*.

### **The Medieval Era:**

There is no documented evidence of women artists creating a difference on their own in the Medieval India. Available accounts do not reflect the presence of any structured arts education framework for women at that time. Since the time of Mughals and Ashoka, it was a symbol of the nobility that women should not go beyond the boundaries of their house. However, limited to the inner world, women, including princesses and courtesans, did acquire skills in painting and drawing, as well as in music and dancing. During the Medieval era, female isolation was better regulated. Nevertheless, women, confined to their domestic life, sculptured out a different universe for themselves. Islamic upper class women and some of their domestic servants took an interest in painting to invest their free time. There are scattered references to several women artists during the Mughal period, respectively *Sahifa Banu* and *Nadira Banu*. But they were not the expert artists who could stake their claim on the Indian art.

### **The Modern India:**

#### ***Women Artists at peace:***

*Sunayani Devi* (1875-1962) was born in the aristocratic Tagore family of Calcutta, West Bengal. She acquired the skill on her own initiative rather than through formal instruction or training in art. Regarded as a true indigenous of the Bengal Art School, she drew moral guidance from the traditional

'Pata' painting style that was conversant to the women of the Tagore family. Often portraying episodes from the Indian classics and folk tales in her artworks her prominent contributions to the Indian Art are *Sadhika*, *Ardhanarishwar*, *Satir Dehatyag*, *Milk Maids*, *Yashodha* and *Krishna* and many more.

Sadness and seclusion have always walked beside a woman through ages. *Amrita Sher-Gil* (1913-1941) with her paintbrush addressed the pain and sorrow experienced by women in 1930s and decided to give representative expression and veracity to their feelings. Her melancholic artwork '*Three Girls*' shows women exhibiting submissive gestures, their serious brown faces depict a connection with their clothing's vibrant colours that are red, green and amber. The mood is dispirited, as though the women are waiting for something which they doubt would ever arrive. Her painting '*Young Women*' in 1932 was awarded a gold medal at the famous art show called Paris Salon in 1933. It portrays her sister, Indira, donning European clothes and an expression of confidence while sitting with a slightly naked friend, Denise Proutaux, whose face is hidden by her hair. The painting represents the various aspects of Sher-Gil's personality i.e., affectionate and extroverted.

While remembering the forgotten women artists of India, *Atasi Barua* (1921-2016) is one such painter in the Indian History of Women Artists who remained overlooked since years. Her painting entitled '*Birth of Lord Buddha*' received remarkable appreciation. She also earned a financial reward at the 11th Annual Exhibition of the Academy of Fine Arts in Calcutta. Afterwards, she became a member of the 'Artist Society' of Calcutta (now Kolkata). With the support of this society, her paintings were displayed extensively in several parts of the country like Bombay, Delhi and Lucknow in India, and then in Colombo, Tehran, Cairo, Bangkok and Tokyo overseas. *Y.G. Srimati* (1926-2007) was brought back to public knowledge by an exhibition of artworks at the Metropolitan Museum of Art in New York. The most captivating dimension of Srimati's artwork is her dealings with the human form. In her painting entitled '*Shiva Gangadhara*' (1945), she was able to portray the intensity and grace in the limbs of the figure through a straight lined silhouette. Her another artwork titled '*Woman with Lotus*' (1951) offers a subtle emphasis on the perspective, which seems deceptively basic, with a sense of volume provided

by the drape of the transparent fabric and the outline which gradually deviates from being straight of the breast which is so beautifully illustrated by the falling of the pearl necklace.

*Prafulla Dahamkar* (1934-2014) influenced many budding artists in India. She painted non-representational landscapes in usually one intensely deep and strong colour, with various colours and patterns and profundity. She termed her paintings as '*Mindscapes*' in the 1990s and '*Eternal Space*' in the 2000s. *Nasreen Mohamedi* (1937-1990) was renowned for her base line drawings and is recognized as one of the eminent women artists from India. Initially, Mohamedi started working with colour and created vivid oil paintings till the mid-1960s. She then started to develop a new artsy vibe and conducted experiments with Piet Mondrian and the Minimalists' famous grid format. But in contrast, it is temporarily hard to identify her work as she habitually left most of her creations untitled and undated.

*Rummana Hussain* (1952-1999) was born in Bangalore and is considered as one of the persons who broke new grounds for the conceptual art in India. She was a feminist and activist, and a performance artist, taking up many roles during her short existence. In her painting titled '*Big Fish Eat Little Fish*' (1989) she illustrated two abstruse figures propelling a small boat with oars in moonlight, trying to cross a turbulent, perilous sea, crouching down in fear as they see a gargantuan fish eating its smaller brothers. In her another work '*Angel and Colaba*' (1990), she portrays a closely related predilections disseminated over the other mysterious, aquatic ecosystem, this time the fisheries docks in Colaba, Mumbai, that are crammed with fishermen transporting carts of food, while scantily draped figures and domestic livestock occupy a neighbouring road. The impressionistic tradition she embraced in the 1980s took an unexpected turn in backlash to the aggressive, communal occurrences in India in the 1990s, best exemplified by the destruction in 1992 of the Babri Masjid in Ayodhya. During the following seven years, Hussain reacted in a dramatic and emotional way to the dark political environment and the tragic revelation of her own debilitating disease in 1995. By the time of her death, she had become a visionary artist who courageously paved a new path in India towards theoretical and performance art.

### ***Contemporary Women Artists:***

*Anjolie Ela Menon* (1940) is one of the leading contemporary women artists of India. Her favoured medium was oil on Masonite, which she carried out using semi-transparent colour schemes and slender washes. In addition to oil paintings and wall paintings, she worked in several other forms of art, such as digital effects and Murano glass. She is particularly known for her paintings, portraits and nude pictures on religious concepts which are integrated with a vibrant colour palette and transformed in a wide range of styles varying from abstract expressionism to methods that resembled European Renaissance artists. She presented abstract work for the first time in 1997, like Buddhist abstracts. She has represented India at the Paris, Algiers, and São Paulo Biennales, and at three Triennales, New Delhi.

*Nilima Sheikh* (1945) is a visual artist who was born in Delhi. She has done comprehensive analysis of traditional art practices in India, endorsed the preservation of the art of traditional painters, and included a wide variety of multimedia and textual resources in her research. Her research focuses on relocation, yearning, ancestral heritage, culture, ethnic conflict, and perceptions of womanhood. She uses paper, painting, installation, large sheets, theatrical set models, and illustrations for children's literature. Sheikh's work was shown in 'documenta 14' in Athens, Greece, and in Kassel, Germany in the year 2017.

Another leading contemporary artist *Uma Bardhan* (1945) was born in Kolkata, West Bengal. Her works reflect the concern regarding various aspects relating to Mother Nature. She intertwines her characters, Hindu God and Goddess, women, birds and other natural forces into artistic impressions, through gestures of spirituality. Her paintings are an expression of one's subconscious mind, an acknowledgement of happiness and an embodiment of energy and creativity. There is also an expression of the women's lives in rural Bengal, besides nature drenched in vibrant shades in her artworks.

*Sheela Gowda* (1957) was born in Bhadravati, Karnataka and is a renowned contemporary artist of India. She moved into Installation art and the art of making abstract forms, especially by carving stone or wood or by casting metal or plaster in the 1990s in order to respond to the shifting political ecosystem

in India. In the year 2011, she had her first solo show called *'Therein and Besides'* at the Institute of International Visual Art, London. She designs apocalyptic images using products such as aromatic biotic material that releases fragrant smoke when burned and kumkuma (Saffron) that makes a direct relationship between conditions of labour working in incense industry and woman's oppression. Her research depicted women's plight, often illustrated by the stress of their jobs, psychological limitations and sexual abuse.

*Rooma Mehra* (1967) has had 11 solo shows of her paintings, relief artworks and carvings. Her creations can be found in private & permanent collections including National Gallery of Modern Art, New Delhi, Lalit Kala Akademi, New Delhi and independent artworks in Switzerland, Denmark, Austria, Spain and Japan. She is also a respectable author.

Some other significant contemporary women artists are: *Tara Sabharwal, Latika Katt, Dayanita Singh, Geeta Vadhera, Anita Dube, Bharti Kher, Illosh Ahluwalia* and many more.

### **Conclusion:**

*Virginia Woolf* in *"A Room of one's own"* writes, *"Women have sat indoors all these millions of years, so that by this time the very walls are permeated by their creative force, which has, indeed, so overcharged the capacity of bricks and mortar that it must needs harness itself to pens and brushes and business and politics."* Women remained within the walls of their homes not for any desire of action affecting another's affairs, or because of their disinclination to express their blue sky. They were trapped behind the defined boundaries, tied into precisely marked appearances, confined into corsets, girdles and corselets to shape their bodies. Their painful experiences and ability to endure hardships has had pressed their imaginative capacities to reinstate the persuasiveness inside their hearts and minds so much that they have given birth to

the intensely remarkable art that is existing between us today.

The emergence of the modern world revolutionized the conditions of women artists. The art of women has evolved dramatically and is creating the major impact on our modern society. The imaginative forces and the screeches of unheard pain is making a deep and echoing sound the whole time in the mind of every woman. It is collapsing like the glacial plains, rumbling like a thunderbolt and boiling like volcanoes. Their works are now characterized by their violent anger and a feeling of deep sadness. Their intense delights are reflected in the literary works written in verse of high quality, great beauty, emotional sincerity and profound insights and the dramatic works where music is a dominant part of the performance, with the actors often singing with the intention of softening the hearts.

Concluding the paper, to all the women through this paper we would like to deliver a message:

*"Do not let anyone tell you to quit when the life gets tough. Do not allow someone to take advantage of you when emotions tend to scatter. Chose your own shoulder to lean on when no one cares about your existence. You have to understand that life is not a series of assets, happiness and satisfaction. Instead, life is hard to please and full of twists and turns. The humbleness within you will let you to live through its unexpected changes. Having accomplished something is a fantastic feeling, but it tends not to be the kind of event that we become skilled from. It is our utmost right to relish it, because we have earned it. But it won't allow us to earn the wisdom that we need to. So do not get shattered when failure knocks the door. Accept it as the phase of your life. Focus on your strengths. Try to talk about your fears and work on them too. Because when the universe stands against you, only your inner demons and angels will walk by your side."*

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# Women as Victims of Violence in Indian Society: A Feminist Perspective

Nisha\*

**Abstract:** Violence in its simple concept is a straightforward category of injury, pain and death that carried out with intention or perceived intention to harm another person that affects the everyday lives of people yet remains invisible or normalized. It takes place usually in all societies around the world. But the use of violence against women is an age old phenomenon that is described as a major human rights tragedy of our time. Violence that occurs towards women is used as a means of social control to ensure patriarchal dominance and the dehumanizing position of women throughout the world. Women experience violence because in the patriarchal system they do not have the same rights or freedom that men do have. The acute suffering that women face during their whole life is because of their gender. Both public and private sphere increases violence that has range from domestic to militaristic which subsequently result in females enduring abuse in the form of rape, forced prostitution, sexual mutilation in private sphere, female infanticide, feticide, wife battering, etc. in domestic sphere. The expression of violence take place in a man-woman relationship within a family is shaped by patterns of marriage and availability of divorce by conception of male authority and female submission that treated less seriously than those occurring in public sphere. However, the prevalence of violence against women in communal conflict depends on the ideas of militarized masculinity to dishonor the community to which the women. Thus, this paper is a modest attempt to describe the various forms of violence against women that take place in public and private sphere.

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## Introduction

Violence in its simple concept is a straightforward category of injury, pain and death that carried out with intention or perceived intention to harm another person that affects the everyday lives of people yet remains invisible or normalized. It takes place usually in all societies around the world. But the use

of violence against women is an age old phenomenon that is described as a major human rights tragedy of our time. Violence that occurs towards women is used as a means of social control to ensure patriarchal dominance and the dehumanizing position of women throughout the world. However, today women have proved themselves in almost every field of life affirming that they are no less than men due to their hard work whether at home or working places But the offences of violence reflects the pathetic reality that women are just not safe anywhere. It is because of patriarchal domination of society that sees women as second class citizen as feminist argued (Kalaiyarasai R. 2015).

## Meaning and Definition of Violence against Women:

Violence against women is an obstacle to the achievement of the objective of equality, development and peace. In all societies, to greater or lesser degree, women and girls of all ages are subjected to physical sexual and psychological violence that cuts across lines of class, income and culture. The low economic and social status of women and girl can be both cause and consequence of violence against women. However, violence and crimes against women is not limited to traditional form of violence like beating, raping, murdering. New modes of victimization are constantly emerging. Violence starts even before birth of girl and continues throughout life in different forms (Mathur, M.2007)

The term “violence against women” refers to many harmful acts directed towards women and girls because of her gender. One of the widely accepted definitions of violence against women has been framed by the United Nations declaration on the elimination of violence against women. Article one of the declaration defined violence against women as “Any act of violence that results or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life”. Article 2 of the declaration

clarifies and lists some of the forms of violence as “violence against women should encompass, but be limited to, acts of physical, sexual abuse of female children, dowry related violence, rape, including marital rape, and traditional practices harmful to women, such as female genital mutilation. They also include non-spousal violence, sexual harassment and intimidation at work and in educational institutions, trafficking of women, forced prostitution, and violence perpetrated or condoned by the state, such as rape in war”(UNFPA Report, 2004).

Various cultural and social factors are interlinked with the development and propagation of patriarchy that leads to violence against women. The Indian women is a slaves to the so called institutional cultural beliefs that is rooted in kinship structure and usually described as “harmful traditional practices” and that restrict women’s mobility, self-expression, thoughts and sexuality. Women have to bear the burns of

domestic, public, physical, as well as emotional and mental violence against them which affect her status in society at the larger extent. Her struggle for survival being a victim of violence in many forms continues from the womb to the tomb without respite. Women face violence at every stage of her life as an infant she may be one among 1,000 girl children who are murdered by female infanticide every year. In childhood she may suffer physical, sexual or psychological abuse at the hand of her elders. In adolescence she is the victims of so called Courtship by discouraged male suitors home. In widowhood and old age she may be subjected psychological and physical abuse including homicide (Singh, A. K. 2012). The World Health Organization (WHO), in its research on violence against women categorized it as occurring through five stages of the life cycle: “1) pre-birth, 2) infancy, 3), girlhood, 4) adolescence and adulthood and, 5) elderly” (Kalaiyarasi, R. (2015).

**Table: 1**

**Forms of violence faced by women throughout their life**

Phase	Types of violence
Pre-birth	Sex selective abortion, Battering during pregnancy,
Infancy	Infanticide , emotional and physical abuse differential access to food and medical care
Girlhood	Child marriage, genital mutilation, sexual abuse, differential access to food and medical care
Adolescence	Honor killing, sexual harassment at work place, rape, trafficking, prostitution, economic exploitation
Reproductive age	Mental and physical torture by intimate partner, dowry related violence, abuse of widows including property grabbing.
Elderly	Abuse of widows, mental and psychological torture by family member ignorance of health care.

**Conceptual Framework:**

Violence against women is seen as one of the crucial societal mechanism by which women and girls are forced into secondary position. It is rooted in unequal power relations between male and female in society and can be understood within the gender framework. While sex is a biological, gender is a social construction which refers to the widely shared expectations and norms with the structure

of society about appropriate men women behavior, characteristics, and roles. As Simone de Beauvoir’s in her work *Second Sex* mentioned that one is not born “rather becomes a woman”. Simone de Beauvoir’s formulation distinguishes sex from gender and suggests that gender is an aspect of identity gradually acquired (Butler J. 1986). Thus, gender role assigned to male and female in the society prescribed strict division of labor in which women and girl are expected to perform largely reproductive functions,

maintenance of the household, child care, taking care of elderly etc.

Gender Based violence has been globally recognized to stem from patriarchy which is based on the ideology and exercise of power. Patriarchy regulated by the pattern of gender relations and norms which guide allocations of resources and power at all levels. Patriarchy ensures and maintains the norm of control over coordinated gendered roles/division of work where male position and power are dominant. Males are considered protagonists as heads of household having the ability to organize efficiently household social reproduction (Igbellina-Igbokwe, 2013).

In this patriarchal setup the identity of community is constructed on the bodies of women in which proprietorial rights over women are defined by placing women within the family or community, or challenged them by reducing them from the realm of family and community. Aggression of women can be legitimized by their lack of community or family status. This aggression is mediated by caste and community particularly in situation where there is a precipitation of caste and community interests. In an atmosphere charged with polarized interests, women of specific communities are targeted for attack. There are many ways in which this identity formation takes place. The most common is through the rape of women of minority groups-religious as well as caste—which signify the rape of the community to which the women belongs and is justified by demonstrating its inherent immorality (Jayawardena, K. & Alwis M. 1996).

Since the struggle for power is carried out on the bodies of women by asserting control over women often through the rape becomes the legitimate means of carrying out this struggle. However, women from the marginalized communities such ethnic religious minorities and Dalits are more vulnerable to this control of power. There are various examples of rape that is done to control the women, one amongst them the infamous rape case of Bhanwari Devi. She was a Social Worker belongs to Dalit community. She was working as a member of Women's Development project of the Rajasthan Government. She was actively engaged on various issues related the development like health, education, land water and human rights in her village. She also undertook efforts to sensitize villagers on various social issues and challenged orthodox practices like child marriage. She was

engaged in a campaign to sensitize their community members against child marriage. Things turn worst when she tried to stop a child marriage of an upper caste family (belonged to Gujar community). Her brave efforts were met with heavy criticism and backlash. After the incident of child marriage Bhanwari Devi and her family boycotted by the other villagers on the order of upper caste members and her fields were destroyed and fodder were taken. The backlash took the form of gang rape. She was raped by upper caste men in front of husband. Rape was done with the intention to assert the power and domination over her. (Maduli T. 2017).

### **Forms and Implications of Violence against women:**

The forms of violence are divided into parts. The first part of this section deals with the violence that takes place private sphere while the second part deals with the violence against women in public sphere.

### **Forms of Violence against Women in Private sphere:**

Private sphere is considered as safe place for women and the male member of family is seen as a protector of women however most of the time women become the victim of violence by the male member of their family through various cultural practices which is seen as socially desirable acts that constitute moral and modest behavior for women to safeguard restrict and control women's sexuality. The violence that occurred in private sphere impacts the everyday life of women yet remains invisible. The types of violence against women in private sphere will discuss here cover a wide range: female feticide, infanticide, genital mutilation, honor killing, domestic violence including wife battering mental or physical torture dowry death child marriage.

### **Female Feticide and Infanticide**

Female feticide and infanticide is one of the heinous crimes that are done intentionally towards a female child because of her femaleness. This is a process of murder of infants through abortion by terminating female foetus from the womb of mother or by giving a poison after the birth of infants. This is a core violation of human right that is right to survive. India's child sex ratio continues to plummet, indicating that female feticide and infanticide remain rampant. 2011 census shows that the child sex ratio (0-6 years) has further

declined to 914 girls for every 1,000 boys as compared to 927 in 2001 that is a warning signal to wake up, however the overall sex ratio has increased from 933 females for every 1,000 males in 2001, to 940 in 2011, indicating that a girl child's chance at life greatly improves once she crosses the age of 6. Overall, the last 30 years have been cruel for India's young girls. J&K, Maharashtra, Haryana, Delhi, Rajasthan and Punjab have had the worst 30-year decline in child sex ratios. The Indian government has passed Pre-Conception and Pre-Natal Diagnostic Technique Act (PCNDT) Act in 1994 to ban and punish prenatal sex screening and female feticide. (Yogesh, S. 2003). It is currently illegal in India to determine or disclose sex of the fetus to anyone. However, there are concerns that PCNDT Act has been poorly enforced by authorities.

There various social cultural financial and emotional reason are connected to dramatic fall in the sex ratio are son preference and the believe that it is only the son who can perform the last rites, that lineage and inheritance runs through the male line, son will look after parents in old age, men are the bread winners. Exorbitant dowry demand is another reason for female infanticide and feticide in India. Time has been changed now to great extent however various reason and beliefs are continuing in society.

### **Female Genital Mutilation**

Female genital mutilation is one of the cruelest practices of gender violence. This is a form of surgery performed on young girl's genitalia through different process of surgical alteration that has range from nicking or relatively minor excision of the clitoris to substantial slicing away of the genital region and clitoris and surgical closing of the opening to allow only a very small space for urine and menstrual blood. The practice of genital mutilation originated from the ancient Egypt and now common in broad region stretching from west Africa through the Middle East and south Asia and it is not only happening far away young girls of aged six or seven are regularly being cut here in India and more prevalent in Maharashtra (Marry, S.E.2009). This is a kind of honor killing that is intentionally done to preserve women's virginity and sexual modesty particularly in the young age and conceptualized as a way to maintain women's purity. This is heinous cultural practice that seeks to diminish pleasure in sex and therefore to reduce sexual desire amongst women. This cruel practice affecting not

only women's sexuality but it also has long term consequences for women's reproductive and physical health such as bleeding, infection and death.

### **Honor killing**

Honor killing is also known as customary killing that is prevalent in India; it is a type of violent acts, usually murder committed by male family member against female family member, who are held to have brought dishonor upon the family because the taboo of honor of the family or community is attached to the women. A women can be targeted by her father and brother for a variety of reasons including engaging in sex outside the marriage or, refusing to enter into an arranged marriage or willing to do a inter caste marriage. The act of honor killing is justified by the need to maintain male honor by controlling women's sexual conduct and seen as legitimate means of maintaining a family's reputation or a community's borders by preventing transgression of its norms (Marry, S.E.2009).

Thus, when a woman fails to behave modestly or engage in any kind of act which is not allowed to do by their family or community she brings humiliation and shame upon their entire family or community. Under such circumstances the family members react by killing her in order to preserve the honor of the family.

### **Domestic violence**

The term domestic violence is used to describe exploding problem of violence against women within the homes. It breaks the myth that women are subjected to harassment and violence on the street and at their work place while the home is safest place like haven. Domestic violence is as old as recorded history. It has been recorded in almost every society and community where women are subjected to physical and mental torture including beating and humiliating by their intimate partners. In addition to physical violence it often includes mental or emotional abuse. Psychological abuse may also involve economic and or social control such as the victims money and other economic resource, prevention the victim from seeing friends and relatives actively sabotaging the victims relationship and isolating the victims from social contacts (Naidu, Y.G.2013). This is one of the major and common forms of violence which is usually accepted by the society. It can never be eliminated

from the society unless society refuses to tolerate it. This requires an internal change in the basic nature of Indian society, beginning with the recognition of the worth of every human being as an individual.

### **Forms of Violence against Women in Public Sphere:**

The presence of women in public sphere engenders resistance and social tension because it is a mindset of society that women are confined to stay at home and continue to identify them with private sphere. Women access to outside and the expansion of women's space had led to violence against women in many forms which quickly find a social justification that has led to violence against them in many forms which quickly find a social justification that she has only to stay at home. There are various forms that take place in public sphere but in this paper only most common forms of violence will be discussed that is sexual harassment at work place, eve teasing acid attack and violence against women during communal violence.

### **Sexual Harassment**

The fast and growing change in the economic system, the increasing and rapid urbanization and the demographic evolution due to the globalization, generate profound changes in the social structure and life style. These changes also lead to rapid changes in social relations particularly between men and women. With the increasing number of working women a new arena has opened in which the violation of human rights and dignity of women is challenged. One of these is sexual harassment at work place that include unwanted sexual advance, demand for sexual, and other verbal and physical conduct of a sexual nature which is often excused as natural male behavior or harmless flirtation which women enjoy. However, it constitutes a gross violation of individual's right to equality and dignity. Sexual harassment has its roots in patriarchy and the mind sets of people that men are superior to women and that some form of violence against them are acceptable.

Today sexual harassment at work place is considered as a violation of women's human right and a form of violence against women. As a consideration of serious issue the government also passed the law known as The Sexual Harassment of Women at Work Place (Prevention, Prohibition, and Redressal) Act, 2013 (Saryal, S. 2014). Despite, having a law

to secure women from sexual harassment, the issue of sexual harassment of women is increasing day by day. These provisions have never been successfully implemented because of the patriarchal nature of society.

### **Eve Teasing**

Eve teasing is used as an act of terror that violate a woman's body, space and self-respect. It is a very common way through which women are systematically made to feel inferior, weak and afraid. It is a ridiculous form of enjoyment for male and a physical as well as mental torture for women. This is one of the worst forms of violence that an Indian woman is facing. The UN Special Rapporteur on Violence against women view eve teasing as "*A personal attack on women's mind and bodies instilling fear and violating a women's right to bodily integrity, education and freedom of movement. It is utilized as a powerful mechanism of control and intimidation, through which women's subordinate social status is maintained. The immeasurable damage to a women's self-esteem and the subsequent avoidable of public places by single women could hardly take us on the way to achieve gender equality*" (Akhtar, C. 2013)

Thus, eve teasing is one of the common crimes against women that is always done with the intention to degrade women on the streets and other public places. It ranges in severity from verbal assault, sexually colored remarks to physical assault like pinching, rubbing and touching women's private parts.

### **Acid Attack**

Violence against women as a form of patriarchal control has found expression in any ways from sexual to verbal abuse. However, new forms of violence also emerged like acid attack which is not limited to any caste class, religion urban rural areas or any such category. The prevalence of acid attacks on women is increasing in India in which acid used on women as an instrument of punishment and as a means of exerting control. Uncontrollable anger and frustration is behind the crimes as much as pre-disposition to sociopathic character and violence and societal chauvinism plays a significant role. But the real culprit to blame is the ease to get away with it (McBroon, K. Wilson S. 2017). Anger over rejection causes the desire to lash out and inherent disregard for women in specific and human

suffering in general seeds the thought.

Acid attacks on women are not only caused immense physical pain, but emotional and psychological distress. It is a most heinous form of violence against women and girl in which bodily injuries heal and leave scars not only on the body of the survivor but also on the mind and whole personality of the survivors.

### **Women and Communal Violence**

The rapid spread of communalization from the last two decades is also an important factor that leads to violence in society in which women became the most vulnerable victims to this violence which is often sexual violence. Fighting for the interest of the community is considered masculine (Sjobrg, L. & Sandra, V.2010). The worst of this violence is seen in the manifestation of communal riots where women are the multidimensional victims. Even during the partition riots, women were subjected to inhuman tortures and humiliation by means of gang rapes, mutilation of private parts and tattooing on body parts of women victims. Thousands of women were gang raped in front of their family members. These violent acts had specific symbolic meaning and physical consequences to describe women's bodies as territories to be occupied, marked or claimed. Apart from rape or sexual assault many women were abducted and forced to convert. Abduction, rape and other kinds of sexual violence in 1947 were carried out in a much more calculated way, with an intention to demoralize and defame communities through women's bodies.

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### **Conclusion**

In India women are guaranteed equally freedom, opportunity and protection by the constitution of and several legislations. The preamble of the constitution gives equality of status and opportunity. Article 14 of the constitution provides equality in general, Article 15 prohibits discrimination on the basis of sex religion race etc, and Article 15(3) embodies the exception which permits the state to make special provision for women. Similarly Article 39 (a) (b) (c) and Article 42 and 44 provide provisions for the benefit of women. Article 44 gains importance in achieving the goals of gender justice. Nonetheless, than continue to be victim of domestic violence family violence, violence in the community and at the work places. Illiteracy ignorance, lack of awareness, poverty, added with traditional oppression and customs, place the Indian women at the uneven status. The resultant consequences thereof are, lower sex ratio, lower expectancy of life, high mortality rate, high dropouts in primary schooling, low wage rate etc. It is because of the mind set of our society that treated women unequally in terms of even their basic rights to food, health care education, employment decision-making and livelihood control over production and reproduction. By strengthening women's role in economic, social, political and cultural life and providing equal opportunity and share in the fruits of development only the status of women can be raised.

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# Education for Muslim girls: Exploring for an inclusive approach

Asiya Nasreen\*

**Abstract:** Education is a teaching and learning system for betterment of masses. In this line madrasa have been established by Muslims for the educational attainment. Since its inception, it has played a crucial role in catering to the educational needs of Men as well as Women and contributed to the development of the society. However, over the period it has failed to address the issue of educational impotency among Muslims in India, especially the Muslim girls. It is in this context that this paper has tried to identify the reasons as to why Madrasa in India has failed to cater to the educational impotency of the Muslim girls. The reasons identified are patriarchy that breeds convenience based interpretation of Sharia'ah as well as outdated curriculum that needs immediate rectification to suit the requirements of the modern operative structures. The gaps mentioned in the paper must be addressed on an immediate basis for ensuring a comprehensive educational provision to the girls through madrasas.

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## Introduction

It is a universally accepted truth that education is a means to achieve empowerment. It is considered as a tool that enlightens the society and acts as a catalyst in the process of social change. Due to these reasons, the modern state laid great emphasis on the universalisation of education as it has become a necessity and a matter of governance. Education in contemporary times has become an important marker of human development and is included in the widely used human development index.

Subsequently, the recent trend towards education for all has evolved gradually, as a result of the efforts of various activists against the ancient and medieval practises of education being considered as a luxury available only for the elites of the society. In India, it was meant for the upper two varnas: priestly class (Brahmins) and the warrior class (Kshatriyas) in order to teach them the skills of their specific professions. Similarly, in western society, education was for the elites only, as it was firmly based on the distinction

between the citizen and the serfs. Even Rousseau, the great protagonist of egalitarianism and freedom talked of education as a privilege meant for the lucky few (Jhingran, 2010).

During the eighteenth century, the discourse on education shifted from being a privilege for a lucky few to a right of every human. Immanuel Kant, an eminent sociologist, proclaimed that all humans are essentially rational and autonomous beings; there is no basis to educate a few, leaving out all the others. These proclamations led to a rejection of all social distinctions and led to the rise of nineteenth century liberalism rooted in the right to equality, freedom and happiness of every individual. John Stuart Mill was another champion of liberalism and proposed for the first time, the radical idea of universalisation of education. The current idea of universalisation of education then is based on Mill's philosophy. He understood that education is of utmost importance that could lead to human perfection and also prepare law abiding citizens of the state (Mill, 1989).

## Importance of Education among Muslims

The very first verse of Quran that was revealed to the Prophet (PBUH) explains the extent to which Islam attaches importance to education. It exhorts people to learn in order to teach and spread knowledge. Much before the concept of 'universalisation of education' initiated by Mill in the nineteenth century, the Prophet (PBUH) had started to propagate the idea of 'education for all' during his lifetime. The Prophet (PBUH) himself delivered speeches related to the 'importance of education' to his companions with Quranic references along with its meaning that set the foundation for Islamic jurisprudence.

There are various hadiths (the tradition of prophet) as well that explains the importance of education in Islam. The Prophet (PBUH) mentioned that "acquiring knowledge is an obligation for every Muslim man as well as woman" (Sunnah Ibn Majah). So, education in Islam is a right of every individual irrespective of gender and encourages both to go to any extent in order to gain knowledge. As a result, Muslim world during the seventh and eighth century

not only had great male scholars but also female scholars. Amongst them was Hazrat Aisha (wife of the Prophet (PBUH)), often considered to be one of the most famous women in the history of Islam who had made outstanding scholarly contribution in the form of transmission of prophet's knowledge and practice to the Muslim world. Her quest for knowledge, zeal to address the issue of women's status in the society, and stance towards education for all makes her a prominent figure in the history of Islam.

The incidences, reference and examples mentioned above indicates that seeking knowledge in Islam is important as it is considered as the command of the almighty and people must strive hard to achieve education. Learning and spreading knowledge as per Islamic traditions is one of the most pious acts and a learned person achieves an exalted position in the society as well as before the Almighty.

### **Madrasas and its evolution**

For educational attainment, the Muslims established a teaching learning system that came to be known as Madrasa. The term 'Madrasa' has etymologically originated from an Arabic word 'Al dars' which means to 'teach' or to 'learn'. The meaning is the same as that of the word 'school' in English. 'Dars' which means to tell something or to teach something, Mudarris means 'the one who does 'dars' or teaches. Therefore, madrasa means a place for teaching and learning and is visualized as an institution meant to fulfil the orders of the almighty and follow the teachings of the prophet (sunnah) of a 'lifelong education'. According to Encyclopaedia of Islam – Leiden E.J. Brill "Madrasa is an institution of learning, where Islamic sciences including literary and philosophical ones are taught"

It has been explained by Qasmi that historically, the structural form of madrasa that exists today was not present during the period of the prophet (PBUH). Earlier, a strong system of teaching and learning was present which was informal in nature. Initially, the thrust of madrasa was on dissemination of the knowledge revealed to the prophet (PBUH) The process continued later on and helped in preserving the teachings of the Quran and the Prophet (Qasmi, 2005).

In terms of infrastructure, it was Khalifah Motasim Billah, who built the first building for the philosophers. This building was an epitome of modern educational

institution comprising of large rooms and sections for different sciences and arts and prominent teachers were appointed. However, the building was only meant for the philosophers and not for the *Muhaddaitheen* (Collectors of Hadees).

As per Maulana Sayyed Abdul Hayee Nizam of Nadwat Ulama Lucknow, the first organized step for the establishment of madrasa was taken by the people of Nespur (Hayee, n.d). According to him, "the first attempt to bring the study of different branches under a systematic way was made in the fourth century of Hijra, when several madrasas were established in Nespur. The first two institutions to achieve everlasting fame were madrasa Nizamiah and Madrasa Mustansariyyah in Baghdad". However, these madrasas were not Islamic in nature.

In India, origin of Madrasa dates back to the pre – Muslim period. The foundation of the madrasa education was laid by the Arab traders initially in the form of Maktabas in south India in Malabar region in later part of the seventh century as they started residing with their families in their newly established colonies. The formal shape of madrasa however, came into existence during the Arab rule in Sindh (eighth to tenth centuries), when several madrasa had sprung up as centres for Islamic culture and civilisation. Eventually, they became institutions specialising in the training of the 'ulema' (Scholars of Islamic law and theology), not only in India but also in southern Europe, Africa and other south Asian countries as a result of the spread of the Muslim rule.

Education by way of madrasa received a major fillip with the establishment of the Delhi sultanate in the beginning of the thirteenth century. During this period, a large number of madrasas were established in different parts of the country. The tradition of madrasa based education was furthered during the Mughal rule (1526 – 1857) and followed curricula designed by Mulla Nizamuddin known as 'dars – e – Nizami'. Till this point, madrasa education was largely influenced by the Islamic ethics and values along with a tone of scientific temperament. The turning point in madrasa education came with the emergence of British Raj. During this period various madrasa were shut down and 'modern' schools were established. The damage was caused to the madrasa education but Muslim leaders continued their efforts to protect and preserve it. Establishment of Madrasa – I – Aliya in Calcutta and the rise of Aligarh

movement, initiated by Sir Syed Ahmad Khan, led to the revival and renaissance of Muslim education as it saw a blend of 'western' education with that of the religious one.

### **Madrassa education: contemporary scenario**

The pattern with regard to growth and progress of madrasa education gives an impression that in contemporary substantial progress has been made. However, the picture is far different from the perceived notion. Instead of moving forward after its revival by various advocates of education, the current Muslim educational system has not been fully revitalized. Madrasa education is still rooted in the traditional syllabus (Dars – e – Nizami) which is 300 years old putting a question on its credibility of catering to the needs of the modern society.

Advocates of modernising madrasa education emphasised on the need to bring about a change in its syllabus in order to keep pace with the changes in society along with preserving its culture, values and norms. Pupils passing out from madrasa than could contribute in the development process of the Indian society. Rather than dichotomising madrasa as per vision of teaching either the Deeni (religious) or the Duniawi (worldly) Taleem (education), a curriculum is needed that strikes a balance between both.

This fact that madrasas must be modernised (blend of Duniawi and Deeni taleem) is also accepted by the Ulemas and is evident from an extensive survey conducted by Abdul Hamid Syed. Under this project, 576 madrasas were surveyed out of which 538 were boys madrasas and 38 were of girls. The study revealed that out of 576 madrasas, 553 i.e. 96.01 per cent favoured the introduction of modern subjects in the nisab (curricula) expressing their desire to make the madrasa education purposeful and for a better future for its students. (Syed, 1988)

It is also to be understood that in modern times, the Madrasa educational system is a valuable source of providing free or in some cases subsidised education with the provision of boarding and lodging facility to the Muslim population across the country. This form of education may not be the most sought out one for the Muslim elite but is still very popular amongst the poor as well as the middle class Muslims. Hence, correcting the various flaws in its structure will certainly benefit those who are at the periphery of the society.

### **Education for Muslim girls**

Education for Muslim girls was at its zenith during the era of Muslim rulers in India. There were various prominent women who themselves were not great scholars but provided assistance to scholars. Amongst them was a renowned lady of the Slave dynasty, Razia Sultana who flourished education for girls under her reign. Chand Bibi of Deccan was another learned woman and an expert in the art of governance and war. Sati Khanam, wife of Hakeem Naseer Uddin Kashi, was fluent in oration. Aurangzeb's daughter Zaibunnisa Begum learned calligraphy, creative writings and wrote many books. Khadeeja, the daughter of Umar Bin Salahuddeen Punjabi was one of the Indian Queens who explored her knowledge in the field of Quranic sciences (Malik, 2008). The names of the above mentioned women is an evidence that education was available to women but the opportunity was provided only to girls belonging to royal and noble families. There were no madrasas for the girls belonging to the commoners.

During the colonial era as well, the education of Muslim girls remained unnoticed completely. They were confined within the four walls of the homes. It was during this period that the calls for gender reforms and girls' education came, especially from the male reformers. Zahir Bilgrami in 1873 argued that the girls should also read the same religious text as that by the boys.

Abdul Rahim Khan's writings in 1874, talks about the importance of girls' education and elaborate that education will transform girls into women who can better manage the household economy and relations with the in-laws after marriage (Aftab, 2007). Rashid Jahan, another outspoken writer of the Urdu writer's progressive movement, criticised the middle class ideas of respectability which allowed oppression of women (Minault, 1998).

As a result, various madrasas were established for girls with a purpose of empowering them and improving their status in the society. Some of the madrasas that got established post-independence were:

- Jamiatus Salihat, Malegaon
- Jamiatus Salihat, Rampur
- Kulliya Aisha, Malegaon
- Jamiatul Banaat, Jianpur, U.P

- Jamiatul Falah, Azamgarh, U.P
- Jamiatul Banat, Hyderabad
- Jamiatul Shamsul Uloom, U.P
- Al Jamiatuz Zahra, Malegaon

Despite efforts and reform movements since colonial era, the plight of Muslim women has not changed much. They remain one of the most impoverished groups in terms of educational attainment. The census report of 2001 (first report on religious data) mentioned that the literacy rate among Muslim female is as low as 50.01 per cent. The latest Census report of 2011 also portrays that the educational status of Muslim women has not changed drastically and there has been an improvement of only 1.8 per cent in their literacy rate.

The low educational status of the Muslim girls is often attributed to its ignorance by the Muslim intellectuals. This can be one of the reasons why out of approximately 35,000 madrasas in India, only 8-10 per cent are open for girls (Winkleman, 2006)

The gender disparity within the madrasa educational system can further be substantiated by the study of Nayar, 2007. She mentions that there are approximately 3,00,000 madrasa, big and small, in India that holds a total of 10,35,384 students, out of which 4,75,559 are for girls (45.9 per cent). She further explains that the share of female students at is lowest at the higher secondary level with 29.3 per cent only as compared to primary (46.1 per cent), middle (46.5 per cent) and secondary (45.6 per cent) levels. The disparity has resulted in high dropout rate of adolescent girls at the higher secondary level. (Nayar, 2007)

Studies show that the educational arenas are open for Muslim girls till the point she is ready to take up the stereotypical roles and fit into the patriarchal structure. Her education is not a means to achieve enlightenment or empowerment but a means to further strengthen the patriarchal ethos. The process is then justified in the name of the religion and backed by the 'divine command'.

### Discussion and Analysis

Ghafoor, 1993 in his book 'Muhammad the educator of mankind' elaborates the contribution of Muslim women in every sphere and in every field. The girls of the Prophets' time (and even after that) were inclined

towards education that helped them evolve into an empowered woman capable of participating in the development of the community. They, maintained domestic affairs but also contributed heavily towards the education of the masses. Um Sharik Dawsiiyyah was one of these women whose residence was the rendezvous of the visitors coming to learn about a new religion (Ghafoor, 1993). Such instances act as evidence that the position of women in society was prestigious and were not performing mere stereotypical roles. However, the situation of the present day Muslim women is not that exalted one as that of their predecessors.

At present, very few madrasa for the girls exist as mentioned in the previous section. The reasons for such low levels are something that needs to be deciphered and addressed. Poor educational attainment could probably be responsible for the decline in their position, as it has been evidenced from various national level statistics. Other reason attributed for the low educational attainment is the ignorance of the Muslim intellectual towards the education of girls and women. Even if the education is provided, then it is either not acknowledged or provided at partial levels that do not really augment the social position of women.

Understanding the structural reasons for a lag in girls' education is revisited in subsequent paragraphs:

**Discrimination:** patriarchy, a macrostructural problem has become the main reason for ignoring Muslim girls' right to education. Patriarchal attitude breeds gender bias as a result of which emphasis is given to the madrasas for boys'.

**Domestication of curriculum:** Ignoring Muslim girls' in provision of education simply doesn't mean unavailability of madrasas for them but include a difference in objective for providing education to both. Accordingly different curriculums are framed for boys and girls madrasas wherein for the latter, emphasis is mostly on 'Adab' and performing household activities. This point is well explained by Sikand when he mentioned that "Even in the madrasa for girls, the agency provided to them through its education is circumscribed within the limits of the family" (Sikand, n.d) . Hence, the poor quality of education and training that the madrasa provide to girls do not really help to move upwards in gender hierarchy but equips them simply to deal with the

household chores rather than helping them to operate in the modern operative structures.

**Convenience based interpretation of Shari'ah:** Patriarchal mindset have even played with Quran and Hadiths as their interpretation is done through a male's perspective. The point has been argued by Jhingran (2010) in her book *Madrassa education in modern India: A study*, that "Shari'ah cannot be put into the category of divine as these are merely misinterpretation of the divine word to suit the patriarchal structure in different social context". The misinterpretation, she argues, is acknowledged even by several learned Ulema as being wrong and based on ignorant interpretation of Hadith and as per the convenience to suit the patriarchal social order.

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## Conclusion

Following these lines, it needs to be taken into consideration that poor number of madrasa for girls, discrimination and ignorance in providing education and outdated curriculum being followed are the gaps that needs to be paid attention to link Muslim girls with mainstream. Probably, this could also help in reinterpreting the true light and essence of Islamic traditions which accord equal treatment of both sexes and uphold gender based equality. These measures will then ensure a system of madrasa education for the Muslim girls that is comprehensive and deals with their holistic development.

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