

# **Status of Women in Polygamous Marriages and Need for Legal Protection**

**A Report by  
Bharatiya Muslim Mahila Andolan**

**Dr. Noorjehan and Zakia Soman**



INDIA • SINGAPORE • MALAYSIA



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## **Preface**

Bharatiya Muslim Mahila Andolan (BMMA) has been working on the issue of Muslim family law reform since 2007. Because of our consistent efforts we have got a legislation against triple divorce in 2019. While our demand for a comprehensive codified Muslim family law continues, we have also been demanding specific issue based legislations to ensure that Muslim women are not deprived of legislative protection.

We have always based our demand for change on a holistic framework inspired by Musawah which is a global movement of women and men who believe equality and justice in the Muslim family are necessary and possible. Our demand is thus based on the daily lived realities of Indian Muslim women, the principles of equality, justice, freedom and democracy in the Indian Constitution, the Quranic values of equality, justice, wisdom, compassion, ahsan [beauty and goodness] and the diversity of Islamic jurisprudence and finally the International human rights framework concerning women and children. This framework is important as it positions Muslim women as not just a Muslim women but also a citizen. It is also time that the most vulnerable and marginalized get their place and voice and are treated on par with other citizens and as equal citizens.

In 2015, BMMA had published a study, Seeking Justice Within Family-Views of Muslim Women on Reforms in Muslim Family Law. According to this study, 91.7% of the respondents did not want their husband to have another wife.

In this study, 84% of Muslim women said that polygamy should be made illegal. 73% felt that the husband

indulging in polygamy must be punished and over 50% reported to have been suffering from depression, guilt and suicidal tendencies. This is the reality at ground zero that must not be ignored and hushed up.

Indian Constitution in its Article 14 talks of right to equality. Allowing men to have more than one wife is not only an affront to her dignity but a blatant violation of Article 14 of the Indian Constitution. As per the Indian Penal Code polygamy is a criminal offence under section 494. This law prohibits polygamy sentencing the said husband to 7 years of imprisonment. It is non-cognizable, bailable and compoundable. Why should Muslim women be denied the legal protection, which women of the other communities enjoy? The Hindu Marriage Act, which governs Hindus, Sikhs, Jains and Buddhists, also prohibits polygamy.

A Supreme Court judgment looking at bigamous marriage in *Khurshid Ahmed Khan vs state of UP and Orissa* 9/2/2015, SC 1662/2015 argued that polygamy cannot be seen as an 'integral part of religion' and so does not receive constitutional protection under Article 25. It also argued that any law in favour of monogamy did not violate Article 25. Various High Courts have also made this case. Indian Constitution provides explicitly for equality and non-discrimination and protects personal laws insofar as they do not violate these essential articles.

There are 3 verses in the Quran which clearly support monogamy.

Verse 4:3: "Marry women of your choice, two, three or four"

Verse 4:3 adds, " but if you fear that you shall not be able to deal justly with them, then only one."

Verse 4:129, "You are never able to be fair and just as between women, even if it is your ardent desire"

Quran, which is primary source of shariah, is clear when it says that a man can never be just and equal to more than one wife. Polygamy existed before Islam and the Quran restricted it to 4 wives. This was done in order to set the trajectory for reforming this pre-Islamic practice in the direction of justice. If this trajectory had been followed, polygamy would have been abolished by now.

Polygamy is restricted in Algeria, Bahrain, Malaysia, and Morocco and totally prohibited in Tunisia, Turkey, Kyrgyz Republic, Tajikistan and Uzbekistan.

The universal Islamic values of equality, justice, wisdom and compassion do not match with the unbridled right to polygamy enjoyed by men. Muslim laws, which claim to be shariah compliant cannot ignore these, core Islamic values as well as the contemporary, lived realities of Muslim women.

India has ratified the CEDAW treaty, which has for its foundational principles, non-discrimination, substantive equality and state obligation. Article 16 of CEDAW says that state must take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

Indian state has to fulfill its obligation of making polygamy illegal for the Muslim community to ensure that Muslim women are treated on par with women of the other communities and also that Muslim women must also be treated as an equal citizen. It is the responsibility of the state to ensure that as citizens Muslim women are treated with dignity within their homes. In terms of human rights standards, polygamy is incompatible with fundamental human rights principle of equality between men and women; it contravenes the CEDAW article 1

definition of discrimination, and violates a woman's right to dignity. The fact that women can be coerced into entering polygamous relationships or existing wives can be coerced into consenting to additional wives violates the free and full consent to marriage provision of numerous human rights instruments. Since a husband be choose to marry multiple women, which can affect the household finances, women in polygamous relationships are denied their equal rights with regard to property under CEDAW article 16(1)(h)

Based on the lived realities of Muslim women, international human rights standards, Indian constitution and the Quran, polygamy is untenable and unacceptable. Indian state must abolish it.

– Dr. Noorjehan Safia Niaz Zakia Soman

Co-Founders, Bharatiya Muslim Mahila Andolan

#### References:

CEDAW and Muslim Family Laws, In Search of Common Ground, Musawah, 2011.

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## Introduction

Muslim women have been denied legal protection in matters of family law in India. We have been demanding a comprehensive reform in family law in keeping with the Quranic injunctions of gender justice and constitutional principles of justice, equality and non-discrimination. Under-age marriages, unilateral instant divorce or triple talaq, nikahhalala, polygyny or more than one wives [broadly referred to as polygamy] have been some of the violations of women's human rights. After a successful movement against instant unilateral triple talaq leading to the Supreme Court declaring it illegal, it is necessary to look at the question of polygamy practiced by husbands. We believe that our religion does not permit it in today's context. This permission to have more than one wives was granted with strict conditions which were difficult to abide by. There is always a difference between permission and encouragement and the Quran has never encouraged polygamy. It is also a violation of various articles of the Constitution granting justice and equality to women citizens. We call for a legal ban on polygamy. No man should be able to legally marry another time when his first wife is alive.

We present here the findings based on a survey carried out by us in 10 states. We thank all the women who shared their intimate stories with us concerning their status as first wife and second wife. Our state leaders coordinated this survey in their respective states of Delhi, Rajasthan, MP, Gujarat, Maharashtra, Karnataka, Tamilnadu, Telangana, Odisha, West Bengal and UP. We thank all the women volunteers

who helped in administering the questionnaire and documenting case studies.

We specially thank Prof. Justin Jones of Pembroke College, Oxford for his valuable support to this survey.

— **Dr. Noorjehan Safia Niaz & ZakiaSoman**  
*Co-Founders,*  
*Bharatiya Muslim MahilaAndolan*

## Polygamy and the Social Context

Bharatiya Muslim Mahila Andolan has been working for equal citizenship and for gender justice for the last 12 years. In the course of our work on the ground across different states women have been approaching us with a range of issues faced by them. We work on education, livelihoods, skill training, health entitlements, family issues and law reform. One of the key areas in need of legal protection is the area of Muslim family law. We have been calling for a codified Muslim family law which is based on the Quran and in consonance with constitutional principles of gender justice and gender equality. This law must regulate all aspects of marriage such as age, divorce, polygamy, custody and guardianship of children, inheritance, share in property etc. A copy of the draft family law prepared by us can be found at the end of this report. Nikahhalala and polygamy are the most unjust practices [apart from instant triple talaq] that violate women's equality and gender justice. What is broadly referred to as polygamy is actually polygyny in the context of a Muslim marriage where the husband can have up to four wives. We spoke to 289 women who are in a marriage as either first wife or second wife to understand their emotional, social and financial condition. They shared with us details about their emotional state, economic status, their life condition and other aspects of being one of the two or more wives.

In a patriarchal society any situation is considered from the men's perspective. A man can come up with reasons or justifications to marry more than once and go on to have multiple wives simultaneously. We want to put the experiences and concerns of women at the centre stage for



it is they who are bearing the brunt of their husband's actions. It is they who deal with the emotional trauma of the husband bringing another wife home. When a man marries second time, it is the existing wife who deals with the pain, agony and insecurity about herself and her children. It puts a question mark on her children's future apart from her own. The man can come out with outlandish justifications and reasons but it is the woman who finds it hard to come to terms with the fact of her position being undermined apart from the emotional trauma it causes.

Apart from listing the detailed experiences of women in polygamous marriages we attempted to put together some arguments about how one husband one wife or monogamy should be the norm today. Monogamous marriage is encouraged when we view religion with a gender just lens or with a human rights lens. Monogamous marriage is encouraged when we apply common sense and logic which are both encouraged by Islam.

Here is a cursory look at diverse arguments supporting monogamy in Muslim family. The claims to the legitimacy of a man's right to marry more than one wife are attributed to just one Qur'anic verse:

*4:3: And if you fear that you will not deal justly with the orphan girls, then marry [other] women of your choice, two or three or four. But if you fear that you will not be just with them, then [marry only] one, or those your right hand possesses. That is more suitable that you may not incline to doing injustice.*

**Arguments used in support of polygyny, including by a number of modern clerics, include the following:**

- That there has historically been a higher population

of women as compared to men, since men have lower life expectancy and are more likely to be killed in accidents, wars etc.<sup>1</sup>

- That women have always/ still do rely on financial support from husbands.
- That Islam works in accordance with the laws of nature; and men are more naturally polygynous by disposition, while women incline to only one marriage.
- That allowing polygyny may prevent husbands committing sins like adultery and fornication.
- That particular circumstances may demand it (e.g. if a wife is unable to bear children, or cannot fulfil her husband's physical needs).

All of these, however, are marginal opinions, and are not accepted in mainstream Islamic thought as general justifications for polygyny.

### **Arguments About The References To Polygyny In The Qur'an**

Most *muftis* and other scholars have argued that the Qur'an does *not* sanction polygyny as a universal or preferable norm of marriage, for the following reasons:

- 1) Some argue that this verse is not about polygyny, but the treatment of orphans. 4:3 was revealed by the Prophet after the battle of 'Uhud, which left in its wake large numbers of orphans and widows who had no means of provision outside of marriage. Similarly, many argue that this *ayah* (verse) must be read in the context of the previous verse, which relates to the care of orphans.

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<sup>1</sup> E.g. This argument was made by Sheikh Muhammad Mutawalli ash-Sha'rawi, an influential Islamic scholar and preacher of Egypt (d.1998).

As is recorded in *Sahih-al-Bukhari*, one of the most authentic *hadith* collections, the Prophet's wife Ayesha commented on this verse, saying that its purpose was not to approve polygyny but to demand the fair treatment of orphans. She stated that the verse refers to the possible temptation for men to marry rich orphans, so that they might take advantage and/or provide them a lower *mahr* than they would to another wife. Should they be tempted to do this, the verse argues, they should marry other women instead.<sup>2</sup> This interpretation is handed down by many compilers and jurists. It reappears in other references in the *hadith*,<sup>3</sup> and is used in interpreting the verses by many of the most important Qur'anic scholars.<sup>4</sup>

- 2 Ayesha's words are these: 'Ayesha said, 'O my nephew! [This verse has been revealed in connection with] an orphan girl under the guardianship of her guardian who is attracted by her wealth and beauty and intends to marry her with a mahr less than what other women of her standard deserve. So they (such guardians) have been forbidden to marry them unless they do justice to them and give them their full mahr, and they are ordered to marry other women instead of them.' ' Sahih al-Bukhari 7:62:2.
- 3 Sahih al-Bukhari makes connected statements several times, and quotes the Prophet as saying that care of female orphans and widows is a meritorious act, equivalent with fasting and prayer. This reinforces the point that polygyny is only validated as a social obligation in specific circumstances, rather than a general permission coming from a desire or fulfilment of lust. In Sahih -al-Bukhari see Book of Trusteeship, no.2557; also Sahih Muslim, Book 43, no.7156; Sunan an-Nisa'i, Book of Marriage no. 3294; Sunan AbiDa'ud, Book of Marriage no. 1771. All these transmitted traditions have a similar interpretation. According to Qatadah ibn al-Nu'man, one of the Prophet's Companions, and Sa'id bin Jubayr, one of the successors to the Companions, the purport of the verse is: 'Just as you are, rightly, fearful of offending against the interests of orphans, you must apply the same careful consideration to the interests and rights of the women you intend to marry'.
- 4 The argument is used in Tafsir al-Tabari and Tafsir al-Qurtabi among others.

To analyse the message this verse further, there is a general ethic present regarding fair treatment within marriage. Marrying widows or orphans at this point was an act of social compassion rather than self-gratification. Some point out that most of the wives taken by the Prophet were widows.

- 2) Others argue that the Prophet's seeming authorisation of polygyny can only be read in its broader historical context. Many argue that in pre-Islamic Arabia (the *jahiliyya*), marriage was often used to cement tribal alliances, and polygynous marriage was common –it was not unknown for men to have tens or in some cases even hundreds of wives.<sup>5</sup> In its setting, the Prophet's reduction of permission to four wives, all of whom must be treated fairly, therefore represented a statement of a move to monogamous marriage as the desired norm.<sup>6</sup>

Some scholars have taken this line of reasoning further, arguing that the restriction of the number of marriages a man can have was one of a number of measures put in place by the Prophet to improve the social rights of women, and that the advent of Islam brought multiple improvements for women.<sup>7</sup> The restriction on polygyny, therefore, sits alongside the prohibition of infanticide,

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5 Muhammad ibn Jarir al-Tabari, an important early commentator on the Quran, quotes several variants of this interpretation and gives it his approval. Tafsir al-Tabari Book 3 states that most men in pre-Islamic Arabia married around ten women, and sometimes many more.

6 This is argued in Abdur Rahim, Principles of Muhammadan jurisprudence (London, 1911), p.328, and later in Asghar Ali Engineer, The rights of women in Islam (Sterling Publishers: 1992).

7 Chiragh Ali was among those to note that, overall, Islam's social impact improved the marital condition of women. Chiragh Ali, Proposed Political, Legal, and Social Reforms in the Ottoman Empire and Other Muhammadan States .(Bombay: Education Society's Press, 1883).

the giving of women's right to inheritance, and the recognition of women's equal status to men before God.

- 3) Others argue that 4:3 can only be interpreted in conjunction with the Qur'an's other reference to polygyny:

4:129: *And you will never be able to be equal [in treatment] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging. And if you amend [your affairs] and fear Allah - then indeed, Allah is ever Forgiving and Merciful.*

Many scholars argue that this stipulation of the need for equal treatment, and the fulfilment of the needs of all wives, sets an impossible condition for polygyny in any normal circumstances. Therefore, when read together with 4:3, the two *ayahs* together amount to a *de facto* prohibition of the practice. There are also different interpretations of the meaning of the instruction to 'equal treatment'. Some interpret the verse as referring to women's social, economic and physical needs. Others, including some Qur'anic translations and commentaries, interpret it also to refer to 'equal feeling',<sup>8</sup> which entails emotional commitment. In turn, it is argued that no man has full control of his heart, making polygyny impossible in all normal

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8 E.g. this is the implication of Abdullah Yusuf Ali's very well-known and influential translation and commentary of the Qur'an.

9 The major Muslim reformist thinker Muhammad Asad, who helped to formulate the 'Islamic' spirit of Pakistan's constitution, analysed further this instruction: 'In view of the fact that a man's behaviour towards another person is... inevitably influenced by what he feels about that person, the above passage - read in conjunction with verse 3 and especially its concluding sentence - imposes a moral restriction on plural marriages'. Polygyny was therefore 'possible only in quite exceptional cases and under exceptional circumstances.' Muhammad Asad, *Message of the Qur'an* (Dar al-Andalus, 1984), pp.101-2, 130.

circumstances.<sup>9</sup>

- 4) Others have argued that the demand for 'just' and 'equal' treatment of all wives in 4:3 and 4:129 naturally extends to all children produced by these marriages; this was argued by Imam Shafi'i, the first of the four founding Imams of the *fiqh* tradition. Once again, this condition makes lawful polygyny unlawful in all normal circumstances.
- 5) Some have interpreted the opening words of 4:3, '*wa-in-khifum*', ('if you fear'), as proof that this verse was not meant as any kind of instruction for general practice, but was an instruction only in its historical moment.<sup>10</sup>

### **Other Arguments Against Polygyny Drawn From The Qur'an**

- 1) Polygyny causes unnecessary suffering and untold marital anxiety to individual women, which contradicts Islam's ethics of compassion and social responsibility, as outlined throughout the Qur'an.
- 2) The Qur'an explicitly establishes marriage as a permanent, consensual contract between partners. It binds each to obligations of mutual responsibility, consent and respect (e.g. 2:187; 4:21; 5:5; 7:62; 30:21). Practices such as polygyny fall outside of this respected norm, alongside adultery, temporary marriage and others. The *general* ethical guidance on marriage should be taken as authoritative over the *specific* reference to polygyny in 4:3, which represented an instruction only in its moment.

### **Summary of Scholarly Opinion**

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<sup>10</sup> Asad, Message of the Qur'an, 101-2.

The vast majority of Islamic scholars, including even those who do not argue that polygyny is *haram* (forbidden) by law, argue that monogamous marriage is clearly established as the desirable norm for marital arrangements in Islam. The majority consider the practice of polygyny to be inadvisable or reprehensible in all normal circumstances. Very few see it as preferable.

From the classical period onwards, jurists from all of the Hanafi, Maliki, Shafi'i, Hanbali, Shi'i and other legal schools have ruled against polygamous marriage. Just a few examples of founding jurists to argue that polygyny is not advisable in most or almost all circumstances and that men should aim for a single monogamous marriage include Imam Shafi'i, Ibn Qudamah, Ash-Shirbini, al-Mawardi, Imam al-Ghazali and ibn Naqib al-Masri.<sup>11</sup>

The same is true for the modern period. The great modern scholar Muhammad 'Abduh of *al-Azhar* worked through *hadiths* and juristic precedents to argue that 'polygyny is in contrast to the original nature of marriage. Verily the origin is for a man to have one woman, and he is towards her as she is towards him.'<sup>12</sup> Like many others, he argued that polygyny could only ever be permitted in contexts of urgent 'necessity' (*dharoora*), e.g. in times of war. This conclusion has been followed by most modern scholars.

Most of the pioneering Islamic authorities of South Asia in modern times have argued against polygyny, including some major commentators of the Qur'an, and a variety of

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11 Ibn Qudamah, *Ash-Sharhal-Kabeer*; Ash-Shirbini, *Mughni al-Muhtaj* 4:207; Al-Mawardi, *al-Hawi al-Kabir* 11:417; Imam al-Ghazali, *Kitab al-Nikah, Ihya 'Uloom ad-Din*. Imam Shafi'i himself declared that it was preferable for a man to marry only one wife to avoid being unfair, as is received in *Ash-Shaafi'i*, *al-Hawi al-Kabir* 11:417.

12 Muhammad 'Abduh, *Tafsir al-Manar* (Cairo: Dar-al-Fikr, n.d.), vol 4: 350.

*'ulama*, jurists and Islamic modernists alike. These include Syed Ahmad Khan, Chiragh Ali, Ameer Ali, Abdur Rahim, Abul Kalam Azad, Muhammad Asad, Ghulam Ahmad Parvez and Fazlur Rahman. The same is true outside of South Asia.

### **Other Arguments Against Polygyny In Modern Time**

Polygyny causes further social problems for the Muslim community as a whole, including attracting stigma from non-Muslims, and causing the self-isolation of the Muslim community. One example of an unfortunate consequence of polygyny is that in many countries is that it deters Muslim men from getting official/ civil registration for their *nikahs*, since civil laws in many places will only recognise monogamous marriages. In India, for instance, a Muslim husband who has contracted a civil marriage is thereby subject to Sections 494-495 of the Indian Penal Code which prohibit polygyny; if a man wants to keep open the option of a second marriage, it is therefore in his interests to take out only a religious marriage. A cessation of polygyny would therefore have a series of progressive benefits for Muslims. In marriage laws, it would help with convincing the Muslim community to make civil registration of marriages.

### **Status Of Polygyny In Muslim-Majority Countries**

In most of Muslim majority societies, reforms by different governments to Islamic family and personal status laws has meant that polygyny has been either abolished, prohibited, regulated or heavily restricted over the course of the last century. It was first outlawed completely by Turkey in 1926, but the vast majority of nations have legislated against it in some way in the decades after that. Even when polygyny has not been explicitly abolished by legislation, the wider



legal move towards codified Muslim marriage laws, and popularisation of marriage contracts, have tended to constrain polygyny in reality. To some extent this has also led to monogamous marriage becoming the normal practice.

Some of the measures enacted by governments in the Muslim world to restrict polygyny include the following:

- Complete prohibition e.g. Turkey, Tunisia.<sup>13</sup>
- Encouragement of stipulations in marriage contracts that the taking up of a second marriage is grounds for divorce or for voiding the marriage .g; Turkey, Jordan, Morocco.<sup>14</sup>
- Condition for licence to be granted by official bodies or local courts to any intended second marriage.<sup>15</sup>
- Enacting of social influence by involvement local community councils and family bodies in any intended

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13 Civil Code (1926), Turkey; Code of Personal Status (1956), Tunisia.

14 E.g Ottoman Bill of Family Rights (1917); Law of Family Rights, Jordan (1951); Code of Personal Status, Morocco (1958). By contrast, India 's DMMA only explicitly makes polygyny a ground for divorce if equal treatment is not achieved, rather than through the act itself.

15 E.g. Law of Personal Status, Syria (1953); Family Protection Law, Iran (1967); Law of Personal Status, Iraq (1951); Muslims Ordinance (Singapore). In these cases, courts or other bodies check conditions which can include the husband's financial means. In Iraq, 'public benefit' must be proven.

16 Family Law Regulations, Indonesia (1947); Muslim Marriage and Divorce Act, Sri Lanka (1951); Muslim Family Laws Ordinance, Pakistan (1961). In the latter case, a locally created Arbitration Council must approve the second marriage.

17 In legal statutes for Iran, Jordan and Senegal as listed above.

second marriage.<sup>16</sup>

- Insistence on the explicit permission of first wife for a second wife to be allowed.<sup>17</sup>
- Subjection of legal penalties for breaking of family laws and procedures.<sup>18</sup>

Some studies have argued that, while polygyny continues in some countries like the Gulf States, even here the social trend is against it. Modernisation and the cultural influence of reforms to marriage laws have created an increasing recognition among younger generations of Muslims that marriage is a fundamentally permanent, monogamous contract. This has been proven in several ethnographic studies of West Asian countries.

Women's movements across the Muslim world have almost uniformly demanded an end to polygyny wherever it exists and have had some success in persuading governments to tighten laws against it in various places including Egypt, Morocco, Iran, Malaysia and Indonesia.

### **Reflections On The Practice Of Polygyny In India**

\* Polygyny has been banned by codes of personal law that apply to Hindus, Christians and Parsis. Prohibition is contained in Sections 494 and 495 of Indian Penal Code 1860, Hindu Marriages Act 1956. Bigamy is a non-cognizable offence, bailable and compoundable with the permission of the court. It is punishable with imprisonment up to 7 years or fine or both. But polygamy has been maintained under Muslim personal law, since it is not codified. It is not explicitly named as a ground for divorce in itself under the Dissolution of Muslim Marriages Act.

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<sup>18</sup> E.g. in the cases of Tunisia, Iraq, Pakistan and Iran as named above.

But some cases exist in which verdicts have been taken against polygyny. They have made clear that Article 25 protects religious freedom insofar as a religious practice is considered 'essential' and poses no threat to 'public order, health or morality'. A Supreme Court judgement looking at a bigamous marriage in *Khursheed Ahmad Khan vs State of U.P. and Orissa* 9/2/2015, SC 1662/2015, argued that polygamy cannot be seen as an 'integral part of religion' and so does not receive constitutional protection under Article 25. The court drew from High Court precedents and argued that it could not be considered an 'essential religious practice'. It also argued that any laws in favour of monogamous marriage did not violate Article 25. Various High Court judgements have also made this case. 1919 E.g. *State of Bombay vs Narasu Appa Mali*, Bombay High Court 1951, 24/7/1951; AIR 1952 Bom 84 (1951); *Badrudin v Aisha Begum*, Allahabad High Court, 1957, LJ300; *R.A. Pathan vs. Director of Technical Education*, Ahmedabad High Court 1981, Guj LR 289. Any legislation in favour of monogamy does therefore not violate Article 25.

It can also be argued authoritatively that the Indian Constitution provides explicitly for equality and non-discrimination, and protects personal laws insofar as they do not violate these essential articles. Polygyny is therefore unconstitutional since it by its very nature bestows different rights upon different men and women.

## **Methodology**

The decision to document the cases of women in polygamous marriages was taken at the National Council meeting at Hyderabad in April, 2016. Following this a questionnaire was prepared for women who were first wives and another one for women who were second wives. 289 questionnaires were administered and 50 case studies were

collected in the states of Delhi, Rajasthan, MP, Gujarat, Maharashtra, Karnataka, Tamilnadu, Telangana, Odisha, West Bengal and UP in 2017. This report presents the findings in brief. Apart from sharing the details of their lives, the women also highlighted the need to put an end to polygamy. Those calling for an end to polygamy included those women who were first wives as well as those who were second wives. This highlights the fact that such relationships are not advisable at all.

## Summary Of Findings

Our survey indicates that being in a polygamous marriage causes tremendous emotional trauma to the woman apart from economic and other hardships. It effects the woman's sense of self respect, self-esteem and dignity as a human being. The issue is compounded by educational and economic deprivation as they are in no position to raise their voice and demand fair treatment. Most wives in polygamous unions have low education and income status. 77% first wives are dropouts below SSC, 43% do not have an income. Further, a large proportion of women in such arrangements – about 52% - have an income below Rs 10,000. This indicates that women in these marriages are deprived of economic independence. In 45% cases the age of the husband at the time of the 1<sup>st</sup> marriage is between 21 and 26 years and in 38% of the cases the age of the husband at the time of the second marriage is between 21 and 26 years. With only 9% of the husbands having studied between graduation and post-graduation, it can be concluded that the educational level of husbands in such unions is also quite low. Another important piece of data that has come out of this survey is that in 49% of the cases where the woman happens to be in a polygamous union, the parents have selected the spouse. This shows the relatively little autonomy that women have within this institution and makes a mockery of the Quranic provision of consent. It also highlights that assumptions about free, autonomous choice of spouses in polygamy is not true.

It is clear that women hardly have the same bargaining power as men when it comes to choice of spouses, especially

in instances of polygamy. An overwhelming number of women said they felt a sense of betrayal, loss of dignity and loss of self-respect when the husband remarried despite her being the wife. The survey highlights severe mental health issues that plague the women. 50% of the women said that they were depressed most of the time. They also reported other symptoms of depression such as lack of adequate sleep (43%), frequent aches and pains (33%), not feeling good about themselves (33%), and even a tendency to self-harm (43%). An overwhelming number of women (84%) felt that polygamy should be outlawed. A large number of them (73%) even said that the husband who takes a second wife should be punished.

- **Under- age marriages:**

- o 29% girls [ who are 1<sup>st</sup> wives] and 18% [ who are 2<sup>nd</sup> wives] were married below the age of 18

- **Low education:**

- o 71% second wives are dropout below SSC, 20% illiterate, 4% graduate
- o 77% first wives are dropout below SSC, 11% up to SSC, 7% graduate, 1% PG

- **Poverty:**

- o 42% first wives have no income at all; 40% have an income of below Rs 1000
- o 45% second wives have no income at all; 34% have an income of below Rs 1000

- **Wife's permission not sought:**

- o Only 23% husbands informed the wife about their second marriage
  - o 72% women learnt about husband's second marriage through family or external sources like neighbours or friends.
  - o 90% wives' said their permission was not sought by the husband
- **Reasons:** the women narrated the kind of reasons provided by the husbands as follows:
  - o 35% of the husbands gave the reason that they fell in love with someone else
  - o 11% gave the reason of no children
  - o 6% said they remarried to support a widow or divorcee
  - o 12% said their parents asked them to
  - o 4% said their wives were bed-ridden
  - o 10% blamed their first wives
  - o 6% remarried because they wanted sons
  - o 11% were not happy with her body (skin colour, too fat/thin)
- 45% of the husbands threatened their first wife with divorce if she resented his second marriage
- **Role of Qazi Court**
  - o 29% of the women approached a Qazi for redress after their husband's second marriage

- o 42% of the women were told to adjust because it is allowed in Shariat
  - o 10% said it was his right in Islam
  - o 22% were asked to take Khula
  - o 26% were asked to file a case against the husband if they were unhappy
- **Relations after Second marriage**
  - o 41% of the husbands do not live with her anymore,
  - o 25% husbands spend less time with her,
  - o 16% said the frequency of fights has increased,
  - o 15% husbands do not at all care for the first wife
- **Monthly maintenance**
  - o 40% of the husbands provide first wife's monthly maintenance,
  - o 47% do not provide monthly maintenance,
  - o 13% husbands provide monthly maintenance irregularly
  - o 44% of women started working after the husband remarried
- **Housing status**



- o 41% moved to their parent's house,
  - o 35% live in the same house as before,
  - o 14% live on their own in a rented house
  - o 10% live in a new house provided by their husband
- 45% women said they are tolerating the second marriage because they have no other option and they are concerned about their children
- Over 50% women suffer from mental trauma such as depression, self-blaming, suicidal tendencies
- 84% women feel that polygamy should be made illegal
- 73% women feel that husbands indulging in polygamy should be punished.

## CASE STUDY ANALYSIS

### About The Victims

In Karnataka two women are above the age of 60 and for many years they have struggled after their husbands married another women and abandoned them. They have grown up children now. For instance Maktumbee, age 62, has 3 children – 2 daughters and 1 son. They are all married and they live separately with their families. Kamrun bi, 65, works as a house cleaner. She had one daughter who died after her marriage. Her husband had HIV and her daughter also had HIV. So her daughter, her husband and their daughter all died. She had another daughter who lives with Kamrunbi. The rest of the women are all within the age of 46. Zarina from Mumbai is youngest. She is 23 years of age.

All of them have children to manage. Roshan from Karnataka has 2 children. Her daughter, 17, is studying in class 12 and son, 20, is working in a mobile shop. Ayesha from Mumbai had 4 sons. Saira in Mumbai and Maimoona Khatoon from Odisha have one child each. Naazmabanu from Odisha has 3 children.

Noorjehan Laik Shaikh from Mumbai belongs to a poor family. Father was unemployed and mother worked as a domestic help. She had 3 sisters and 2 brothers. She is uneducated and because she was the eldest she had to look after her younger siblings. She also started working as a domestic help. Saira from Mumbai is from Gonda District of UP. They were 4 sisters and one brother. Parents were

very poor. Saira studied only till class 7. She was married to Yusuf at the age of 14. Yusuf was 18 years of age. Arzoo from MP has three sisters. Her father works as a labourer.

Roshan from Karnataka. Her husband works in a mechanic shop. Yusuf, Saira's husband worked in a hair salon and earned well. Noorjehan Laik from Mumbai and Rubina from MP are uneducated and Noorjehan works as a domestic help. Rabiya from MP also works as a domestic worker and earns Rs. 1200. She has studied till 8<sup>th</sup> class. Maimoona from Odisha also is a domestic help studied only till class 3. Zarina from MP, the youngest in the profile has studied till 10<sup>th</sup> class and does not have any source of income. Aarzoo from MP also has studied till 10<sup>th</sup> and earns 1500/ by doing basic stitching work. Nazma Banu from Odisha has studied till the 7<sup>th</sup> class. She is a widow now and has 3 children. She is a homemaker.

Most of them have been married young mostly below the age of 18. Rubina from MP was married at the age of 16, saira from Mumbai at the age of 14.

### **Circumstances Under Which She Knew About Remarriage**

In one instance the woman came to know about his marriage from his friend who tried to justify by saying that he loves the other woman. He even cajoled her into giving him the permission to remarry which of course he was not waiting for. He remarried anyway. He even said he will get over the new woman and come back to her. (*aurat rahe so utne din rahti uske baad o chali jaati*).

Her husband had multiple affairs and was never loyal to her. After marriage the quarrels increased but she did not inform her parents. He left her eventually and stayed with

the other woman.

Violence is common amongst most of the victims of polygamy. Whether the marriage is of their choice or the choice of his parents. In one instance which was a love marriage, the violence was so much that she lost both her children in her womb. Although her in-laws were good. They even explained to their son about his violent ways. He did not listen and remarried saying that he did not like her and that she is too thin and dark.

Another instance of love marriage in Mumbai where after 4 months of courtship they decided to get married. He did not inform his parents. They stayed separately as his parents were against the marriage. Initial days her husband was good to her but as pressure from his parents increased he stopped coming to meet her. After 2 years under the pressure and influence of his family he married another woman. They had chosen the girl for him. She was staying with them. After one month Laik told her that he has remarried. Where did all the love go? It could not withstand parental pressures.

In one case both the first and second wife were cheated. Each did not know about the other. In this case the first wife faced a lot of violence. He was always drunk and violent. And he remarried when their daughter was 6 years of age. His second wife was also very poor. With a small child she could not have stayed alone. So she compromised on the issue of his marriage. Now both stay separately.

Husbands don't even consider pregnancy. In one instance, the husband remarried when his wife was pregnant.

Even after a happy beginning the husband finds some reason for second marriage. X was in an arranged marriage.

She and her husband were happy. He worked as a hawker. They were poor but happy. They had 4 children, one out of which was physically challenged. One fine day he started to act difficult. He did not talk to her properly. When she would talk to him he would say he has nothing to do with her. After some days he stopped coming home. When she checked she came to know that he married a girl. He was staying with her.

X's parents were happy at the time of her marriage as her marriage was happening very late. It turned out that because she could not conceive her husband was made to remarry. Her husband and her in-laws were very hot tempered. They kept telling her that he will be married off since she cannot conceive. She lost one child when it was just 3 months old. Out of fear she used to do all household work. She would not even to go her parent's home out of this fear that if she goes then he might not come to take her back. After some days he said talaak thrice and threw her out of the house. After a month he remarried. He did not give her any maintenance. She did not even get her mehr back.

Y's husband got into a relationship with a woman. He used to meet her. And they got close. After 20 years of marriage he remarried. On the other hand Z's husband married after five months of her marriage. His parents made him marry another woman. He married his cousin. They did not inform her nor took her permission. She came to know from others about his marriage.

Victim in Odisha used to stay in a slum and did domestic work. She was very poor. Because of poverty she could not study. She got a proposal for marriage from a big family and they liked her. Her parents said yes because they thought their daughter would be happy. He had said that

he had divorced his first wife. The reason he married her was because he did not have children from the first marriage. After marriage she came to know that her husband had not divorced his first wife. He used to go to her also.

Y was married at the age of 17. They had money and a good house. Since she lost her father early, her family expenses were managed by her brother. After marriage she came to know that her husband's character was not good. He was a drunkard and of loose character. His family never told him anything because he bore all the expenses of the family. She told this to her mother but she said everything will be alright. She said, 'do you want to come back and listen to the taunts of your Bhabhi?' She had a daughter after 3 years of marriage and life went on.

Another victim shares that her husband asked her to learn English so that he can tell others that he has an educated wife. On the floor below stayed a teacher who taught English in school. She asked her to teach her English. Her husband fell in love with this English teacher. They met secretly. She suspected something and they fought over it. One night she did not sleep and kept an eye on him. She followed him to the terrace at 4 in the morning. She went behind him and started screaming loudly and gathered everyone as soon as she saw him with the English teacher.

Victim in Tamil Nadu came to know about her husband's second marriage through her neighbor. They said it is not the case that your husband has gone to another city for work, he has gone there to remarry. While she stays in Dindigul, he married some one and lived with her at Thirupore. Aasiya went to Thirupore and met his second wife.

Another victim from Tamil Nadu was returning from a family function when he saw him with his second wife. She was shocked to see him directly.

Her husband had already married another woman without informing her. One day he got angry and said that he hates her and that he will marry another woman. Then he took her to dargah by train. In the middle of the journey he went somewhere. She kept searching for him. But she realized that he had left her alone in the train. She did not have a single paisa on her. She approached a TC and cried. He was kind enough to make me sit with passengers of her village and she went back with them. Her family searched for him and her younger brother.

In all cases the common emotion was they felt cheated when they first came to know of his marriage. One of them said, *'Mere pairon tale zameen khisak gayee'*

Only in one case it was the husband who informed his wife about his second marriage. In another case it was her brother. But in most cases it was either the neighbours, relatives, his friends.

## **Immediate Fall Out Of Marriage**

### **Came to mothers house or independent**

In one instance her husband tortured her a lot. There are so many signs on her body of all the violence that she has faced. She did not show her tortured body to anyone. She came to her parent's house immediately after his marriage. Her situation was very bad. Her son has not even seen his fathers' face. In MP too, he stopped staying with her. She came to her parents' house with two children.

In Mumbai, one woman shared that problems started after

his remarriage. He left the house and stayed with the second wife. Did not give anything to maintain her, no financial support from him.

In the case where he was forced by his parents for remarriage, he came to her after remarriage and apologized to her and asked her to adjust and assured her that he will keep her well. She came under his influence and forgave him. Slowly he stopped coming to her. Whenever he came he came only to have physical relations with her. Slowly he also stopped giving her maintenance. He earned well. He was a tailor. They had a son. But because he stopped maintenance she had to start working again.

In another instance also husband stopped coming. She was not able to do anything about it. She kept crying through the day and night. One whole month he did not come home. She sent a message through others to come and meet her but he did not come. There was no contact with her husband. Her neighbours would tell her how he is enjoying with his second wife.

In another case, since his remarriage, he never stayed with her in the night. He would come in the day time and then go away. He did not even financially support her properly. He spent most of his time with his second wife.

### **Continued staying with him**

In Odisha in one instance she continued to stay with him. She was not financially independent and did not want to stay with her brother and Bhabhi. Her husband supported her financially. He supported the children also. After his second marriage, he stayed with her one day and one day with his second wife.

In Karnataka, one woman shared that after his second



marriage he quarreled a lot with her. He was ready to leave her for the other woman. But she did not have any option. Where would she go? Her son was small and immature. On top of that her husband cheated her and took her signature on an empty paper. So by cheating her he took her permission for second marriage.

### **Impact On Children**

In most cases the children were too small to understand what was happening. In Karnataka one woman says her children supported their father. They said that since she gave him the permission for remarriage he cannot be blamed. Her children were very small, she does not blame them for thinking like that.

In another instance too the children did not know what was happening to their mother at that time. They were only observers. When she cried her daughters also cried. They asked for their father. As they grew older they realized everything.

In one case when the daughter grew up she started visiting the family of the other wife. She saw that both wives are facing violence. Their situation is the same.

In another case she was not able to provide education to her daughter because of husband remarrying. Here the daughter marries a man with HIV. She also contracts and both die.

In Mumbai too after his remarried there was no income and hence children had to leave school. Her 15 year old son started working. Since his marriage he did not talk to her or their son. Never bothered about son, his education, his future.

In Karnataka this woman says that her son would cry. He said his father is very bad and he will never go with him or stay with him. She tried to talk to her husband and requested him to stay with him but he refused. He did not even bother about his son.

In another instance the children were depressed. She started to stay in a rented house after her husband remarried and the children could sense her despair. Another victim says her children became very quiet. '*Bacche bhi gumsum rahne lage hai*'

In Mumbai's case the victim says her son was small when he remarried. But as he grew up he started to miss the love of his father. When he would go to his shop he was made to go away from there. He would cry and come back home to his mother. Laik never loved his son. Even he thought that he was not his son. So he was deprived of his father's love. He would always say all fathers stay with their children, why is my father not staying with me?

S had 4 children as life went on. Since he did not give her money she started working. She used to sell mobile covers in the train and sell eatables. She managed to educate her children. The children used to meet their father but they were unhappy that he is not staying with them. Children had become irritable. Their friends used to taunt them. So children went out very less. They would stay in the house only. They would not even go to school. She used to send them by force.

One mother in Odisha says her children feel the pain now as they have grown up but they are not able to share it. Another mother in Tamil Nadu says her children were 6 and 4 when her husband remarried. They both cried and missed their father. She worked as a house maid and a cooking

assistant at functions and brought up her children. Both they lost out on their education and became child labourer. Now they have migrated to Gujrat as child labourer.

In another instance the children were 3 and 1 year old. Both were missing their father and they cried a lot, did not take their food but they could not understand the situation. Another mother says her children got fits and fevers. She and her family took a lot of trouble to raise the children.

### **Impact On Physical Health**

Women reported physical symptoms after the marriage of their husband. They said they remained sick all the time. Many reported constant headaches, pain in the eye due to stress. Medicines would have no effect on the health. One woman said she has lost her colour and has become dark. She feels weak all the time and feels giddy. Another said she fell ill and started having hypertension. As a result she had to leave work. She had also lost interest in work.

Another victim said that whenever she would stay at home, she would fall ill. She kept ill all the time. She was not able to look after her son well. She was not able to sleep in the night and then in the morning she was not able to get up. Because of which her son used to miss school

One victim from Mumbai took so much stress that she developed problems in her brain. She used to feel giddy. On checking she came to know that it was brain tumour. The medicines were very expensive. She borrowed money from a lot of people for her treatment.

Many women reported losing appetite and some felt short of money. Without proper food and stress about children led to worsening health situation.

## Impact On Mental Health

Most women reported depression, falling ill, feeling weak, crying, loss of sleep and losing interest in everything as a fallout of polygamy.

One victim says she wanted to die then, go away from the house, and punish herself. She also wanted to commit suicide. *Bahut bure bure khayal aaye us waqt.*

Another women shares that when she heard about his second marriage lost consciousness. Constant worry has affected her mental and physical health. She is always worried. Especially when women don't get maintenance they worry more, especially for their children and their future.

Another victim shares that when she heard about his second marriage, she did not believe it at all. She trusted him completely. She fell ill when she heard about his marriage. But he explained that he will keep both of them happy. But he did not do that as time went by.

Women have also reported feeling loss of confidence. They start to stay aloof. One victim said 'I was like a mad person'.

Stress leading to depression leading to loss of self-esteem and that gets enhanced when she is blamed for his marriage. In one instance her neighbors blamed her and scolded her that she was not capable of keeping her husband to herself. That created more stress. She lost hope, dreams and future. She cried a lot.

How mental, emotional and physical symptom get reflected in one woman is understood when one victim shares that she felt a lot of stress and a lot of self-pity. She was not able to sleep at night. Without proper sleep and food, she got

ulcers.

## **Impact On Emotional Health**

Depression, loss of all feelings, self-blame, anger, crying, mentally disturbed, silence-withdrawing within, feeling upset, feeling cheated, stressed out, shocked, feeling of abandonment – and a host of other negative emotions women experience.

One victim said, *Main bahut chup rahne lagi. Aur bahut roti thi.* Whenever he stayed with his second wife she would spend the night crying. One victim said she would spend the entire night awake and would think of breaking his head. She was so angry and stressed out. Another woman said she just could not tolerate the fact that he remarried. She never thought that he will cheat on her and her children. She underwent severe stress.

Women have experience extreme anger. One victim says when her husband drives her son away she gets very angry. When she started working she felt better as her attention shifted away from her problems. Things became better but her husband never came to her.

One victim shared that she was anyway ignored and harassed by her husband. Even though she was unhappy in her married life she had hopes that he will have a soft corner for her and the children. But when she saw him with her she lost all hopes. She was very upset. She was alone with my children without any future. She was very stressed and unhappy.

Very strong words from a victim – she says she was completely shocked and felt helpless and abandoned. She feels that even after giving birth to two male children, her husband still found a reason to abandon her is intolerable.

She hates herself and she feels she is useless

### **Impact On Self-Esteem And Self Confidence**

This paragraph shows the inner resilience in women and their ability to bounce back. Most of the women reported that after the initial bad phase they bounced back. The reasons for the same varies from women to women but women did come back to life and faced its challenges.

One victim says after this incidence she has become stronger. Earlier her husband controlled her. He did not allow her to go anywhere outside. But now after his cheating, she has become stronger. She opposes his restriction. Earlier she lived in fear believing in his innocence. But now she does not allow him to control her. On some issues he controlling continues but she does not care.

Another victim says she slowly regained her confidence. She feels this is the only life which she wants to lead with dignity although she has faced a lot of hurdles. Now after so many years her husband wants to live with her. He came to meet her but she is not ready for it. Her self-respect is very important for her. She has not allowed him to meet her.

One woman said that her parents gave her a piece of land to construct her own house. She worked as a labourer in the field. Then she learnt to do stitching. She is completely self-dependent. Many people troubled and teased her but she feels that she is not like her husband. Another woman received support from her sister who looked after her son while she worked in a catering job. She gathered courage when she saw her son. A little support from their families helped them a lot.

One woman said she was in a state of shock for many days. She did not meet anyone. She kept herself in the house.

Children would also keep crying. Seeing their condition she picked herself up and became independent. Because she kept herself busy she felt good. Her health improved.

She says, 'What I have learned from my destroyed life is that each girl must stand on her own feet'.

One woman said she could not face people. She lost her confidence and worried about her children's life. But with time she increased her self-confidence and decided to take care of her children by working as a house maid, even though she could not face her relatives and neighbours. Some women continue to remain aloof from family and friends and stop attending social gatherings and functions.

Many women are still angry and seething. One victim says, 'Poor people like us and bought by the rich and we cannot do anything about it. I did not have a choice. *Meri majboori thi kyunki na mera paas daulat thi aur na koi padhai.*'

In another instance her children blamed her for allowing their father to marry another woman. She suffered from within as the blame came on her. Nobody can take responsibility she feels. So she continues to blame herself.

'My husband does not respect me. My self-respect has got affected. *Mere swabhimaan ko thes pahunchti hai.*'

Log taras ki nazar se dekhte hai aur mujhe dilaasa dete hai.

This kind of sums up what women go through and what happens to their sense of self.

## **Reaction Of Her Family**

### **Sad and angry**

In Karnataka her brother and sister also very sad. They wanted her to stay with them but she wanted to stay with

her husband. The society does not think well about women who leave their husband. She continues to stay with her husband. Because she is staying with her husband her family has stopped communication with her properly. But she says she has to live for her children.

In another case, she did not inform her family immediately. Her husband threatened her that she should not inform her parents and their children. After 2-3 months she informed her family. Her brother and sister scolded her and wanted to know why she did not inform them earlier and why did she sign that letter.

In Odisha too her parents and got angry but there was nothing that they could do about it. Because they had low status. They said what ever happened was part of her luck. She went back to her husband's house. In Mumbai too her brother and mother were very angry.

In Tamil Nadu too her parents were very angry and planned to complain to the police, jamaat and ask his parents. In another instance her parents are very poor and she was the first daughter. She had two younger brother and sister. So they were worried about their marriage. In another case, her parents were very stressed over her marriage. They had taken loan for the same. Now she came home with two children. Because her husband absconded they were very angry and felt hopeless. Another woman's father and brother shouted and her mother cried. They were all very angry but no use of all that.

### **Blamed her / no support**

In Karnataka her parents were with her but she thinks that they suffered a lot because of her. She was pregnant at that time. She had lost her consciousness. Her parents also



blamed her. They said why is she born as a girl? They said that she did not keep her husband in her hand, that she is not good.

In another Karnataka case her family blamed her. They said if you were right why did he remarry? You should have bore the pain and violence. All women face violence. It is common for all women. After some time he would have changed. In Mumbai since she had married out of her own choice, her parents now said you have to manage somehow. And that she should not come to their house. So she had no support from her own family. They were also very poor. She did not have mother. Her father used to sell milk and manage. There was no support from anyone plus she was also pregnant.

In MP too her parents were very upset and were crying. They blamed her for the same. They said they had warned her against marrying him but she did not listen to them.

In another instance in MP, her parents were worried about what the relatives and neighbours will say. How will the younger sisters get married? Her parents then went to her in-laws and spoke to them to resolve the matter. They were reluctant to keep her home.

### **Reaction of inlaws**

In most cases as expected the in-laws of the victim supported their son. In most cases they also knew that their son has remarried. They also give various reasons for justifying his marriage. In fact in one instance they blamed the woman for signing a letter which was actually a permission for his remarriage. In another instance they said wife must bear the violence and insults and if she does not then the husband will marry.

In MP in one case she was beaten up by her husband and made to run away from his house. Depressed and dejected she came back to her in-laws. They told her that they cannot do anything about this and that she should take her children and go away wherever she can. That they have now nothing to do with her. When she refused to leave the house, they beat her up so much that she lost consciousness.

In one instance the parents of the daughter confronted the in-laws. Her in-laws told them that they cannot keep their daughter as they have decided to marry off their son somewhere else. Her mother asked them what her daughter's fault was. They said their daughter is barren. Who will carry the name of their son? They asked her mother to leave. They said why can't we marry our son again? We will get him married the third time. Her mother cried but nothing moved them. They came back home and after two days her belongings also came back. In another instance they said they cannot afford to bear her and her children's expenses.

In Mumbai the victims says her in-laws had any ways not accepted her. So she was not welcome there. They called her son also illegitimate. That is why they married him off so that she cannot come to their house. In another case too in-laws did not like her. They never supported her. For them she did not exist at all. The second wife was as per their wishes. She was also poor and did not have anyone to speak on her behalf.

In another case her in-laws refused to give her share of the property where she was staying with her children. When the will was made her name was missing. They said as long as we are staying in this house, she will also have to stay there. So her husband left her and her in-laws did not give her the share in the matrimonial home.

In Odisha the victim checked with her mother in law who confirmed that her son has remarried. She said 'so what if he has not divorced her. He is keeping you happy. He has married you so that you can give a child'.

In another family, only her elder brother in law was angry with his brother but the rest of the family said shariah allows 4 marriages. So what if he has remarried they asked. Another victims says her in-laws favoured their son. They said he disliked her and so he remarried. What is wrong with that?

In Tamil Nadu his parents said that he never took care of them nor listened to them. He does not even stay with them. They were not aware of his second marriage. They said she is her first messenger and that they too are shocked. It is not their fault and they are not responsible for it.

In another case her in-laws were under the control of their son. They could not do anything for her.

## **Reasons Why Husband Remarry**

### **Mothers house visit**

In Karnatak one man say he tortures and beats her up because that is his right as a husband. And he beats her up because she wants to go to her parents' house every time and he does not like her attitude. Since she anyway faces his violence, it is ok if he remarries. Going off to mothers house is another man's complaint and the reason for his remarriage.

### **Looks and appearance**

In MP one man said that he remarried because he does not like her and that she is thin and dark. Another woman was dark and short and he wanted to marry someone of his

choice. Another said he hates her because she is short and that she does not have knowledge and not mentally grown. Another said that she is not fit for him.

## **Love**

Men have remarried because they have fallen in love with another woman. In one case in Odisha the man warned his first wife that if he does not give him permission to remarry he will divorce her and then remarry. To which she relented and gave permission

In Karnataka one man says he is love with a widow. The larger society calls her a prostitute so he wants to marry her. He also loves her and she believes in him and is dependent on him so how can he leave her.

## **His parents did not like her**

Laik's parents did not like her and so made him marry as per their choice. He came after a month and told her that he was forced into marriage by his parents. They said if did not marry as per their choice they would not give him his share of the property. He was forced into marriage. She forgave him because she did not have a choice.

In a reverse case the husband blames her parents for his second marriage. He did not get enough dowry from them so he harassed and beat her up and remarried.

## **SUGGESTIONS BY MUSLIM WOMEN**

### **TO MUSLIM MEN**

A woman gives her whole life to her husband but husband does not respect her. A woman lives with this fear all the time that her husband may leave her. She has no control over him. Men give the example of the Prophet. They think they

know everything about Islam. Change is part of the society then why is change not possible for women?

If men are not able to take care of a woman then why do they need so many wives? This is the refrain of most of the women. They say women do not think like them. If husband leaves her she does not get married. Why is this system in our community? Everyone has same needs then why only men remarry? They only misuse polygamy and cheat women. There is no need for polygamy in today's situation. A husband is not able to take responsibility of one wife and children. They expect dowry from them. Then where is the need for another wife. Why are they taking burden of another wife? They should have one wife and take care of the family properly. How can one neglect ones wife and children who are loving you and are dependent on you. He should at least take her opinion. How can she be forced to share her life with some one? Men should marry once and not destroy women's life.

A lot of duties are assigned to men in Islam. But they are not ready to fulfil it. They use polygamy and ignore and harass the children. This is the worst of practice. It is against Islam. So they should stop it. Muslim men must have only one wife and they should take care of the family properly. They are asking Muslim men to read the Quran and try to understand what it is trying to say about polygamy.

*Mei musalmano mardo se kehna chati hoo ki kisiki majbori ka fayda mat utho apne paiso ke bal per. Un garib logo ke bacho ko padho aur insaan banao.* Don't take advantage of the majboori of someone on the basis of your money. Help the poor children to study and to make them humans.

Women suggest to Muslim men to not cheat their wife. One woman whose husband wanted an educated wife and she

was not, says, if you wanted an educated wife then you should have married an educated wife. Why cheat her?

To sum the relationship between men and women appears at an all time low when one victim says, 'Never to trust men. They can change anytime!'

### **To religious groups**

In Tamil Nadu the women shared that the Jamaats also blames the women. They must put conditions on men also. Jamaat must collect all documents from men when he comes to the jamaat. They must verify everything which they don't. Muslim women cannot go to the court or police station always. The Jamaat also justifies polygamy and says that both women can stay together but they don't consider a woman's personal feelings. Some Jamaat and religious leaders support such harassment as polygamy and destroy the system of Islam. She requests jamaat leaders to lead the society as per Quran and ensure justice.

In *istema, waz, kutba* the religious leaders must give right advice regarding marriage and divorce.

Jamaat and religious groups should lead the society on the basis of the values of the Quran. They should not give space for men to desert their wife and children.

### **To the state**

*Main kahna chahti hoon ki mere shauhar ko sazaa milni chahiye.*

Overwhelmingly the women wants the state to intervene. It is the state's responsibility to reform the law as per the Quranic rights of women and to stop violence against women. If the leaders do not listen to women, where is the space for women to voice her concerns? The police also tell

the woman to go to the jamaat for any marital dispute but the jamaat does not listen to the woman.

Polygamy should be banned so that lives of women like me and the lives of our children are not spoiled. They want the government to put a stop to this practice of polygamy. There should be a law for monogamy. If he remarries then he should be punished. Because a woman's entire life is in trouble because of polygamy. There must be strict laws regarding second marriage. Each woman must get her rights and it is the responsibility of the government.

I request the government and the community that each girl should get her rights. There must be laws regarding marriage. There must also be strict laws regarding second marriage. One woman says, 'What happened with me was wrong. There should be restriction on it. Otherwise women will lose trust over the institution of marriage. Polygamy must be abolished. Not just the husband but whoever is making him do this marriage, must also be punished'. The government must monitor the system and reform laws to save women and children suffering from polygamy.

### **To the larger Muslim community**

Women should be given space to express her feelings, her concerns about her future life. Nobody really cares for her. She needs to be given confidence by the society, by the community. She needs to be empowered. If the husband wants to remarry then he must compensate the woman. Where will she go? We are so far away from the court and the government. We need to change ourselves.

Muslim community needs to understand a woman's soul. Only when they feel her problem, then only the community, government and everyone will come forward

to change.

Is the community ready to listen to our voice? All suggestions are for women but nobody says anything to the men. This attitude of the community is the problem. We need law but who respects that? What men do becomes a law. Our community elders need to think this, we need strict rules – but they are not ready to change?

Women in Tamil Nadu say that the larger community must intervene and tell the jamaat to work in the favour of victims. Muslim community must share love and affection and follow the Quran and legal rights of women to avoid this situation of first wife and children in the name of polygamy. The community must share information about Quranic rights with women and take steps to reform the law in favour of women. They must not harass the women in the name of polygamy.

‘I request the government and the community that each girl should get her rights.’



## APPENDICES

### **BMMA'S JOURNEY TO ENSURE LEGAL PROTECTION TO MUSLIM WOMEN**

While the Hindu majority and other religious minority communities enjoy the benefits of a codified personal law, the Muslims in India have been deprived of this basic protection. BMMA's effort since 2008 has been to evolve a draft by taking opinion and suggestions of the larger community, especially Muslim women who have been the victims of a discriminatory personal law. Personal laws in other Islamic countries have been codified, including neighboring Pakistan and Bangladesh. Historical reasons including political compulsions, a misplaced understanding of secularism, appeasement of patriarchal elements and fear of losing muslim identity have all contributed to the neglect of this issue. So while Muslim women have continued to suffer injustices within family the uncodified law remains out of bounds for any attempt at enabling gender justice. BMMA is demanding what other communities in India and other Muslims in some Islamic countries already enjoy, legal protection. However, during our engagement with the community in drafting the law, we realized that the issue has been highly politicized. We also realised that if we, the Muslim women do not draft the law nobody else will. We realised that neither the community religious leadership nor the state have any interest in the subject. It has been left to the Muslim women themselves to take steps to safeguard their rights and demand a law from the parliament. We undertook this arduous task with the sole aim of fulfilling the legal vacuum that has existed unquestioned.

The women of BMMA embarked on a mission towards legal justice beginning 2008. More than 400 consultations were held

across the country with women, lawyers, academicians, scholars of Islam, ordinary citizens etc. Our interactions with ordinary Muslim women during the process were very encouraging as they clearly spelt out the need for a law which would ensure them legal protection. As meetings, consultations unfolded in state after state, it was very clear that Muslim women wanted a law that ensured their dignity and rights in matters of marriage and family. The first draft of the Muslim family law released in 2014 was thus born out of these consultations carried out since early 2008. Thereafter many lawyers, academicians and ordinary Muslim men and women gave their suggestions and comments which were incorporated into the second edition. We are now releasing the third edition with some more amendments and modifications. It is a document that has emerged through a democratic process and a work in progress. As we move along the path to codify this draft, we hope to hear more suggestions and ideas which can further strengthen this document. It is a continuously evolving draft formulated in the true spirit of the modern human rights framework of the Indian Constitution and the notion of gender justice in Islam. It goes without saying that this document needs to be further strengthened and is open to suggestions from all those who stand in solidarity with Muslim women.

In a nutshell this draft stipulates that the legal age of marriage of a Muslim woman and man is 18 and 21 years. It prohibits polygamy, nikah halala and muta marriage. It suggests that minimum mehr amount must be equivalent to annual income of the groom. It declares mother and father as natural guardians of a child; besides it stipulates that the custody of children is to be decided keeping in mind the best interest of the child and child's consent. In this draft the wife gets a share in the marital property and daughters get equal share in the parent's property. In this document Talaak-e-Ahsan is the legal method of divorce where arbitration is mandatory

and unilateral or one-sided instant divorce by husband is not valid.

BMMA has faced and continues to face many challenges. Such is the stranglehold of patriarchy in our society that we have faced resistance from multiple quarters. These include conservative religious groups, certain academicians, certain lawyers who have attempted to sabotage the movement of Muslim women through counter arguments. They have also attempted to create confusion in the minds of ordinary Muslims who have in many ways expressed their readiness for change. BMMA leaders have faced threats, abusive language and personal attacks. The religious groups have called us unIslamic, cause of fitna [anarchy] and stooges of various political dispensations. Once again, cries of 'Islam is in danger' are being heard. Once again we have been told that the time is not right for Muslim women to speak about law reform.

While on one hand we faced challenges and obstacles, we have received huge support from ordinary Muslim women and men. It is very heartening that we have received tremendous support from ordinary Indians, women and men, from all faith backgrounds. Especially remarkable has been the support of Muslim men who want change and reforms for themselves and for the women of the community.

We are hugely inspired by the rising tide of Muslim women Islamic scholars like Dr. Amina Wadud, Dr. Ziba Mir Hosseini, Fatima Mernissi, Zainah Anwar and many others who are tirelessly working to reconcile modern human rights with Islam so that as Muslim women we are able to enjoy the best of both the worlds enjoining values of equality, justice, freedom and democracy.

Our ardent request to all stake holders is to recognize the voice of Muslim women and strengthen her struggle for legal justice. We also request the elected representatives and the

government to look at the legal discrimination faced by Muslim women because it is their constitutional obligation to protect and promote her legal rights. We have suffered enough at the hands of party politics since the last 70 years and now long for justice within family and society.

# **THE MUSLIM FAMILY LAW, 2017**

## **Draft of the Bill**

### **Third Amendment**

A Bill to consolidate, clarify and codify the provisions of Muslim family law and related procedure regarding marriage, divorce, maintenance during marriage, maintenance after divorce and widowhood, custody and maintenance of children, adoption and inheritance.

#### **A. STATEMENT OF OBJECTS AND REASONS**

- a) The Muslim Personal Law (Shariat) Application Act, 1937 was passed to ensure that customary law does not take the place of Sharia. The attempt at codifying the provisions of the Sharia or the Muslim Personal Law began with the passing of the Dissolution of the Muslim Marriage Act in 1939. However, the process stopped till the passing of the Protection of Women on Divorce Act, 1986. Barring these two legislations the other aspects of Muslim Personal Law has remained uncoded. In the absence of a codified law, customary practices which are divergent from the values and principles of the Quran have emerged. Globally, new codes have been introduced in Muslim countries with the hope that they will introduce the rule of law in family matters and end arbitrariness and variances in judicial decisions. In India there is a need to have a comprehensive codified family law for Muslims to ensure justice within the family. This Bill is a step towards that end.
- b) Based on the Constitutional provision, just as personal laws of other religious communities have been codified, the Muslim personal law must also be codified in a way that it is in consonance with the Fundamental Rights

enshrined in the Constitution.

- c) Based on the values, principles and injunctions of the Quran, this Bill is based on the spirit of equality and justice which are the basic premise of an Islamic law.
- d) Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by United Nations in 1979 and ratified by India in 1993 requires that all forms of discrimination against women be condemned and states must take appropriate legislative measures to prohibit all forms of discrimination against women and establish legal protection of their rights on an equal basis with men.
- e) It is imminent that India joins the league of other nations which have codified their family law in order to bring uniformity and certainty in the application of personal laws without infringing on the right of communities to be governed by their own personal laws.

## **B. PRELIMINARY**

### **a. Short title and extent**

- i. This Act may be called The Muslim Family Law.
- ii. It extends to the whole of India except the States of Jammu and Kashmir and applies to all Muslim citizens of India.
- iii. It shall come in to force on such date as the Central Government may appoint by notification in the Official Gazette.

### **b. Application of the Act**

- i. This act applies to all Muslims as per the definition given in this Act.
- ii. For matters concerning Muslim marriage, divorce, maintenance during marriage, maintenance after divorce and widowhood, custody and maintenance

of children, adoption and inheritance between parties married according to Muslim Law, the provisions of this Act shall apply notwithstanding anything contained in any other law for the time being in force.

- iii. A marriage solemnized between Muslims before the commencement of this Act, which was otherwise valid, shall not be deemed to be invalid by reasons rendering the marriage invalid under this Act. This Act shall have a prospective effect only.
- iv. Nothing contained in this Act shall be deemed to effect the provisions contained in The Special Marriage Act, 1954 with respect to marriages between Muslims solemnized under that Act, whether before or after the commencement of this Act.

### **c. Overriding effect of Act**

- i. Any other law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect in so far as it is inconsistent with any provision contained in this Act.
- ii. Any other provision of uncodified shariah law which is in contravention to the provisions of this law hereby stands cancelled.

### **Note**

- a) Amended Dissolution of Muslim Marriage Act, 1939 has been incorporated in this Act.
- b) The Muslim Women's Protection Act, 1986 will continue to apply to the Muslim community except those provisions which are in contravention of the provisions of this Act.
- c) The Muslim women will continue to take advantage of

the other laws of the land like The Dowry Prohibition Act, 1961, Protection of Women from Domestic Violence Act, 2005, Juvenile Justice [Care and Protection of Children] Act, 2000, Prohibition of Child Marriage Act, 2006 and other laws as deemed fit.

## **C. DEFINITIONS**

### **a. Arbitrators:**

Individuals in welfare agencies registered under the relevant government Act as well as registered under this Act according to the Rules.

A qazi can also act as an Arbitrator provided she/he is registered as an Arbitrator under this Act.

### **b. Court:**

In any area where there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act.

### **c. Halala:**

It is a practice where a woman is made to do a consummated nikaah with another man in order to go back to her former husband.

### **d. Iddat:**

It is a period of waiting for a woman who has been divorced or whose husband has died, upon the expiry of which a remarriage is permissible. In this period no other restrictions are enforceable except marriage and the woman is free to continue with all her activities.

- i. This period is three menstrual courses after the date



- of divorce, if she is subject to menstruation
- ii. It is three lunar months after her divorce, if she is not subject to menstruation
  - iii. This period of waiting is 4 months and ten days after the date of death of the husband
  - iv. If she is pregnant at the time of the death of her husband, the period extends between the death of the husband and the delivery of her child.

**e. Marriage:**

Marriage or Nikah is a solemn pact or mithaq-e-ghaliz' between a man and a woman, soliciting each other's life companionship, which in law takes the form of a contract or aqd. [Ref: Section 2 of Muslim Women (Protection of Rights on Divorce) Act, 1986]

**f. Maintenance:**

Maintenance includes an entitlement to food, clothing, residence, educational and medical expenses and all other personal expenses of woman according to the life-style the parties have enjoyed during their marriage and the economic status of the husband.

**g. Mehr [Dower] :**

It is the Quranic right of women constituting a consideration for marriage and meant for the financial security of the bride in terms of a sum of money or other property or both to be paid to the bride by the bridegroom at the time of the nikaah as a condition precedent for solemnization of their marriage as specified in the Nikaahnama.

**h. Muslim:**

Any person by birth or by conversion who professes the religion of Islam, in other words accepts the unity of

God and the prophetic character of Mohammed. [Ref: Amir Ali]

**i. Nikaahnama:**

The enforceable written marriage contract wherein the consent of the parties and other terms and conditions of marriage are stipulated and signed by both parties, qazi as well as four witnesses, two from each party of either sex. [Annex 1]

**j. Prohibited Degrees:**

Degrees of prohibited relationship as specified within which marriage is not permissible. [Annex 2]

**k. Registered Qazi:**

Qazi of either sex undergone training in Islamic law by a registered organization and registered under this Act as per the Rules.

**l. Registered Welfare Organizations**

After coming into force of this Act any organization, registered under any law for the time being in force in India, and working for the welfare of men, women, children, youth, aged, disabled and the likes, and providing counselling services and other psycho-social support in their day to day activities, and is also registered under this Act.

**m. Unsound Mind:**

A person of unsound mind is an adult who from infirmity of mind is incapable of managing himself or his affairs. [Ref: Black's Law Dictionary]

**n. Witness:**

Adults of either sex with address and identity proof.

## **D. SOLEMNIZATION AND REGISTRATION OF MUSLIM MARRIAGES**

### **a. Conditions relating to Solemnization of Muslim Marriage**

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two Muslims may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:

- i. Every marriage solemnized under this Act shall include payment of Mehr as specified in this Act.
- ii. Express and unambiguous consent of both parties is necessary before a marriage contract becomes valid. This consent must have been obtained without undue influence, coercion and fraud.
- iii. The bridegroom has completed the age of twenty-one years and the bride has completed the age of eighteen years authenticated from reliable proofs or records of the date of birth.
- iv. The parties are not within the degrees of prohibited relationship as mentioned in the Annex no. 2 of this Act
- v. In the subsistence of one marriage a man cannot marry another woman.

### **b. Procedure for Solemnization of Muslim Marriage**

- i. For the solemnization of the marriage, the parties have to approach a qazi
- ii. The parties have to send a letter of application to a qazi 30 days before the date of solemnization where either bride or groom is residing for the last 30 days.
- iii. The procedure of solemnization would include ijaab [proposal of the marriage] and qubool [acceptance

of the proposal]. Both the proceedings of ijaab and qubool must happen in the same sitting in the presence of witnesses and the qazi.

- iv. Nikaahnama must be filled up and original, true copies of the same is to be provided to both the parties.

### **c. Responsibilities of the Qazi**

- i. The qazi must take separate application from both the parties asking the said qazi to solemnize the said marriage.
- ii. The said qazi shall ensure that both parties have fulfilled the conditions related to the solemnization of marriage as specified in this Act.
- iii. The said qazi shall demand from both parties' authentic proofs pertaining to dates of birth and their place of residence and retain copies of the same after having them personally authenticated.
- iv. The qazi must ensure that the bride knows and consents to marry the bridegroom if his previous wife has been divorced or deceased and has children from the said marriage.
- v. The qazi solemnizes the said marriage by filling up the nikaahnama as annexed to this Act. The nikaahnama shall be signed by the said qazi, the contracting parties and two witnesses from each party present at the time of marriage.
- vi. A copy of the certified nikaahnama shall be a conclusive proof of the solemnization of that marriage.
- vii. The qazi shall maintain a proper record of the marriage and give duly certified true copies of the nikahnama to both the parties.
- viii. A qazi can act as an Arbitrator if it is also registered under this Act as an Arbitrator

- ix. The qazi must ensure that the parties submit the divorce papers of previous marriage if divorced and death certificate in case of the death of the previous spouse. In case where the party is marrying for the first time, it must submit to the qazi affidavit stating that it is his/her first marriage.
- x. The qazi must meet the parties to the marriage separately as well as together to ensure that the parties know about each other's background and also to ensure their willful and free consent to the said marriage.

**d. Mehr**

- i. The minimum amount of mehr shall not be less than his one full annual income which could be his income from property, business, agricultural or commercial land and salary. It can be given either in cash/gold/kind.
- ii. If income/salary cannot be determined then the mehr can be fixed based on the minimum wages of his occupation where he is residing.
- iii. The mehr must be prompt and must be paid to the bride at the time of the marriage.
- iv. The mehr is the wife's exclusive property to be used by her at her absolute discretion without any manner of interference from parents and relatives of both parties.
- v. The wife cannot be forced or compelled or emotionally pressurized to forego/return the mehr anytime during the subsistence of marriage or after divorce or widowhood.
- vi. The groom/husband and his family cannot demand dowry nor can they casually and innocently express their desire for dowry before or during the subsistence of marriage.

**e. Registration of Muslim Marriages**

- i. Immediately on solemnization of the marriage the signed nikaahnama should be registered by the parties at the local state bodies like the Panchayat, Block Office, District office, Ward Office or Marriage Registrar Office under the relevant marriage registration Act.
- ii. The parties must ensure that they each have true, original copies of the registration certificate.
- iii. The qazi may take additional responsibility of registration of the said marriage if the parties wish so.

**f. Responsibility of the Witness:**

The witnesses must sign the relevant documents and ensure that the party to which they are supporting as witness must have the relevant documents, which is;

- i. Death certificate if the spouse of the party has died
- ii. Divorce papers if the party has been divorced
- iii. Whether the party they are supporting is previously married.

**E. TEMPORARY PROHIBITIONS IN MARRIAGE**

**a. Irregular Marriage (Fasid Nikaah)**

Any marriage solemnized shall be considered irregular:

- i. If two adult witnesses are not present at the time of nikaah.
- ii. If the marriage has been solemnized during the period of iddat
- iii. If the marriage has been solemnized without the qazi
- iv. If the marriage is not registered as mentioned in this Act
- v. If the amount of mehr is not paid

## **b. Regularization of Irregular Marriage**

All marriages termed irregular in this Act can be regularized. The rights of women and children accruing from the said marriage are not affected if the marriage is not regularized. The regularization process would include:

- i. Approaching a qazi along with witnesses and attaching affidavits from all witnesses affirming the said marriage.
- ii. Approaching a qazi after which the parties will give an affidavit stating that the period of iddat is over deeming their marital status legal under this Act.
- iii. Approaching a qazi and resolemnise the marriage with a fresh nikhanama
- iv. The parties themselves should take their filled up nikhanama along with an affidavit and register it with the authority as specified in this Act.
- v. Payment of mehr as promised.

## **F. INVALID MARRIAGE**

Any marriage solemnized under this Act shall be an invalid marriage:

- a. If the consent of either party to the marriage contract has been obtained by force, coercion, undue influence or fraud.
- b. If the bride and groom are within the prohibited degrees as specified in Annex 2 of the Act.
- c. If the bride and groom have not completed 18 and 21 years of age respectively
- d. If the husband has entered into another marital contract in the subsistence of a marriage contract, the second marriage will be an invalid marriage.

### **F.1 In case of underage marriage the provisions of The Prohibition of Child Marriage Act,**

2006 will apply.

**F.2** In any of the above four incidents of invalid marriage the qazi who has solemnized the said marriage will be penalized.

**F.3.** The rights of women in any of the above four incidents of invalid marriage must be protected.

## **G. DIVORCE**

- a. This Act recognizes 3 forms of separation between husband and wife:
  - i. Demand for divorce by wife [Khula/faskh]
  - ii. Demand for divorce by husband [Talaak]
  - iii. Divorce by mutual consent [Mubarah]
- b. In the event of Talaak, Khula/Faskh and Mubarah, the parties will follow the Talaak-e-Ahsan method of divorce.
- c. No rights of the wife are forfeited in the event of Khula.
- d. The wife has the right to refuse to stay under the same roof during iddat if she fears physical and emotional harm.
- e. The demand of khula by wife is not dependent on the consent of the husband. The Arbitrators can terminate the marriage in the absence of consent of the husband in case of khula [faskh-e-nikaah].
- f. The procedure of Talaak-e-Ahsan also signify restitution of conjugal rights.
- g. In the event of divorce by mutual consent i.e. mubarah;
  - i. Both the parties to the marriage present a joint application to for the dissolution of their marriage on the ground that they have mutually agreed to dissolve the marriage.



- ii. After the joint application is submitted, the period of iddat follows. After 3 months or 3 monthly courses the divorce is finalized. Since this iddat period is required to ensure absence of pregnancy, medical test may be considered for verification or absence of pregnancy.
- iii. The rights of women are to be ensured in the event of mubarah

## **H. PROCEDURE OF DIVORCE**

A Muslim marriage can be dissolved either in the court or outside the court.

### **H.1. Dissolution of Marriage Through Court:**

#### **H.1.1. Grounds for decree for dissolution of marriage by wife:**

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage from the court on any one or more of the following grounds, namely that the:

- a) Whereabouts of the husband have not been known for a period of two years;
- b) Husband has neglected or has failed to provide for her maintenance for a period of two years;
- c) Husband has failed to perform, without reasonable cause, his marital obligations for a period of two years
- d) Husband has been sentenced to imprisonment for a period of two years or upwards;
- e) Husband was impotent at the time of the marriage and continues to be so;
- f) Husband has been of unsound mind for a period of two years or has been suffering from leprosy or a virulent venereal disease;
- g) Husband has, after the solemnization of marriage,

treated her with cruelty; that is to say:

- I. Habitually assaults her or makes life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
- II. Associates with persons of evil repute or leads an infamous life, or
- III. Attempts to force her to lead an immoral life, or
- IV. Disposes of her property or prevents exercising of legal rights over it, or
- V. Obstructs in the observance of religious profession or practice, or
- h) Husband has maintained, after solemnization of marriage, sexual relations with persons other than his own wife;
- i) That due to irretrievable breakdown of marriage, life together has become impossible or intolerable;

### **I. Provided that,**

- i. the woman may be permitted to file a petition for divorce, within such reasonable time period which is shorter than the time periods provided in clause (H.1.1), (a), (b), (c), (d) and (f) of this section, if the court is satisfied that the same is expedient in the interest of justice and equity;
- ii. no decree shall be passed on ground H.1.i(d) until the sentence has become final;
- iii. a decree passed on ground H.1.1(a) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorized agent within that period and satisfies the court that he is prepared to resume conjugal relations, the court shall set aside the said decree; and
- iv. before passing a decree on ground H.1.1(e) the court

shall, on application by the husband, make an order requiring the husband to satisfy the court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the court within such period, no decree shall be passed on the said ground.

### **H.1.2. Grounds for decree of dissolution of marriage by husband:**

A man married under Muslim law shall be entitled to obtain a decree for the dissolution of his marriage from the court on any one or more of the following grounds, namely that the:

- a) whereabouts of the wife have not been known for a period of two years;
- b) wife has been sentenced to imprisonment for a period of two years or upwards;
- c) wife has been incurably of unsound mind for a period of two years or has been suffering from leprosy or a virulent venereal disease;
- d) wife has, after the solemnization of marriage, treated him with cruelty;
- e) wife has maintained, after solemnization of marriage, sexual relations with persons other than her own husband;
- f) That due to irretrievable breakdown of marriage, life together has become impossible or intolerable;

#### **I. Provided that,**

- i. a man may be permitted to file a petition for divorce, within such reasonable time period which is shorter than the time periods provided in clause H.1.2(a), (b) and (c) of this section, if the court is satisfied that the same is expedient in the interest of justice and equity;
- ii. no decree shall be passed on ground H.1.2.(b) until

the sentence has become final;

- iii. a decree passed on ground H.1.2.(a) shall not take effect for a period of six months from the date of such decree, and if the wife appears either in person or through an authorized agent within that period and satisfies the court that she is prepared to resume her conjugal relations, the court may set aside the said decree.

**II.** Notice to be served on heirs of the spouse, when the spouse's whereabouts are not known.

- i. the names and addresses of the persons who would have been the heirs of the spouse under Muslim law if they had died on the date of the filing of the complaint shall be stated in the complaint,
- ii. notice of the suit shall be served on such persons, and
- iii. such persons shall have the right to be heard in the suit.

**III.** Procedure to be followed before granting decree of divorce

Upon receiving the application for decree of dissolution of marriage from either of the party to marriage on any of the grounds mentioned above, the court shall:

- i. appoint three Arbitrators - one Arbitrator each from the family of both parties as nominated by the parties themselves and one member from a welfare organization registered as per the provisions of this Act for the purpose of attempting reconciliation between the parties within 30 days of the date of application, provided that at least one Arbitrator should be a woman;
- ii. direct the parties to attend and fully participate in the reconciliation proceedings to be commenced by Arbitrators within two weeks of their appointment;

- iii. direct the Arbitrators to conduct their duties in a fair, just and impartial manner;
- iv. direct the Arbitrators to submit their report to the court within a period of 3 months from the commencement of reconciliation proceedings indicating the conclusion of the reconciliation process and the reasons for reaching that conclusion;
- v. after receiving the report of the Arbitrators, send a copy each to both the parties;
- vi. direct both parties to submit objections, if any, to the report within a period of 30 days from the date of receiving the report;
- vii. if the parties have reached an agreement and differences are resolved, dismiss the suit or if the parties fail to reach an agreement, continue the procedure for the suit for decree of dissolution of marriage.

**IV** Provided that the court may make such interim orders, notwithstanding anything contained in any other law for the time being in force, for maintenance of the wife and children, if any, as appropriate for the whole or part of the duration of the procedure laid down in this section.

**V.** Settlement of rights of the parties before final decree

- i. Notwithstanding any proceeding initiated under this Act, every woman shall have the right to institute any proceeding, simultaneous or on conclusion of proceedings under this Act, under any or all of the following legislations:
  - (a) Muslim Women (Protection of Rights on Divorce) Act, 1986.
  - (b) Protection of Women from Domestic Violence Act, 2005.
  - (c) S.125 of the Code of Criminal Procedure, 1973.

(d) Any other law for the time being in force, applicable to her.

Provided that it shall be the duty of the court to ensure that the woman is aware of this right.

- ii. The court may pass such interim orders or make such provisions in the decree as may deem just and proper, when so petitioned, related to maintenance, inheritance, custody and education of children, consistent with their wishes wherever possible. The court may, even after the decree, upon application by petition for this purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as may deem just and proper to the court. The court may also from time to time vary any such orders and provisions previously made.

Provided that the application with respect to the interim maintenance and education of the children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent

## **H.2. Dissolution Of Marriage Outside Court**

The grounds on which either party is seeking divorce are the same as mentioned in H.1.1 and H.1.1

### **Procedure**

Dissolution of marriage proceedings, by whatever name called, initiated by either or both the parties to a marriage without the intervention of a court, to be concluded through the following procedure only:-

#### **i. STEP 1**

As a first step, when there is a marital discord, the

husband/ wife will reason out with each other through discussions.

**ii. STEP 2**

If differences persist, then as a next step, the parties sexually distance themselves from each other in the hope that this temporary physical separation may encourage them to unite.

**iii. STEP 3**

And if even this fails, they will once again discuss the seriousness of the situation and try to bring about reconciliation.

**iv. STEP 4**

If the dispute still remains unresolved, as a fourth step, the parties to the dispute must place their matter before two Arbitrators nominated by the family, one from the family of each spouse, for resolution. The family Arbitrators must approach Arbitrators of a registered organization, as mentioned in this act, for the resolution of their marital discord.

- a) It is only after the failure of the aforementioned four attempts at reconciliation that the first talaq is to be declared by the Arbitrators in the presence of two witnesses and both the parties. This declaration of divorce is to be followed by a waiting period called the iddat. Not more than two divorces can be pronounced within this period, the duration of which is three monthly courses.
- b) For women who have attained menopause or suffer from amenorrhea the period of iddat is three months, and in the case of pregnant women it is till the termination of pregnancy.
- c) And if the parties are unable to unite during iddat,

the second and the final irrevocable talaq can be pronounced by the Arbitrators but only after the expiry of the iddat. Once the second and the final talaq has been invoked the marital bond is severed and the parties cease to be of any relation to each other.

- d) However, even after iddat has lapsed and before the pronouncement of the second and final talaak by the Arbitrators, the contending parties have a chance to reunite by recontracting the marriage, provided the final talaq has not been declared.
- e) In other words, after the expiry of iddat, the parties are given the options of remarriage or permanent separation.
- f) All decisions taken before the witnesses and Arbitrators must be recorded. The final divorce at the end of iddat must also be recorded in a talaaknama by the Arbitrators.
- g) The rights of the women on divorce must be safeguarded by the Arbitrators and must be mentioned in the talaaknama.
- h) Original copies of the same must be provided to both the parties.

#### **NOTE:**

- I. The pronouncement of final talaak should be during the period of tuhr
- II. The four steps mentioned above signify restitution of conjugal rights
- III. The parties can also approach the Indian courts directly for the dissolution of their marriage
- IV. Before making the second and final pronouncement of divorce, the Arbitrators must ensure that all matters related to dower, jewelry, household items, maintenance of the women and children, inheritance, custody,



education of children, residence of divorced women has been amicably and fairly settled.

- V. Once the second and final pronouncement of dissolution of marriage has been made, the parties are no longer married to each other.

### **H.3. Rights of women not to be affected**

- i. Notwithstanding that the dissolution of marriage proceedings have been initiated at the behest of the wife (khula), it will not affect any of the rights to dower and maintenance and all rights as mentioned in Note (iv) that the wife is otherwise entitled to.
- ii. Notwithstanding the dissolution procedure, the wife shall be entitled to institute any proceeding in the appropriate court under any or all of the following legislations -
  - (a) Muslim Women (Protection of Rights on Divorce) Act, 1986.
  - (b) Protection of Women from Domestic Violence Act, 2005.
  - (c) S.125 of the Code of Criminal Procedure, 1973.
  - (d) Any other law for the time being in force, applicable to her.

### **H.4. Dissolution of marriage outside court through any other procedure to be invalid**

After coming into force of this Act, dissolution of marriage, by whatever name called, initiated outside court shall be concluded only through the procedure mentioned in this Act. Dissolution of marriage concluded through any other procedure, in contravention of the procedure mentioned shall be invalid and without any legal effect.

### **H.5. Refusal of spouse to cooperate**

If in a proceeding initiated by one spouse, the other spouse refuses to cooperate or refuses to participate in the reconciliation or dissolution of marriage proceedings initiated at the behest of one spouse, it may amount to cruelty of conduct and may be a ground for approaching the court for dissolution of marriage.

## **H.6. Decree of dissolution of marriage concluded outside court**

- a) If the parties married under Muslim Law have concluded a dissolution of marriage by following the procedure provided, then they shall approach the court for a decree of dissolution of marriage.
- b) Each of the party will submit to the court an application asking for a decree of dissolution of marriage. Along with the application the parties will submit the Arbitrators' report which states the procedure followed for divorce and the confirmation that the parties have settled all issues fairly and amicably;
- c) After satisfying itself of the veracity of the affidavits and that the procedure outlined in this Act has been followed, the court shall either pass a decree of dissolution of marriage, in accordance with the other provisions of this Act, or dismiss the petition directing the parties to first comply with the requirements of this Act.
- d) Provided that if any party objects to any settlement related to dower and maintenance of wife and/or maintenance, custody, inheritance, education of children, the court may deem such an objection as non-fulfillment of procedure outlined and may dismiss the petition, requiring the parties to reach a settlement first and then file a fresh application for decree of divorce.

## **H.7 Effect of conversion to another faith**

- a) The renunciation of Islam by a married Muslim woman or man or her/his conversion to a faith other than Islam shall not by itself operate to dissolve her/his marriage;
- b) Provided that after such renunciation, or conversion, the woman or man shall be entitled to obtain a decree for the dissolution of their marriage on any of the grounds mentioned in Section H.1.1 and H.1.2;
- c) Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

## **H.8. Remarriage between parties who have concluded dissolution of marriage**

- a) Parties who have concluded dissolution of marriage either before or after the coming into force of this Act and who intend to remarry each other without any compulsion, force or threat can do so by contracting a fresh marriage after the waiting period as prescribed under this Act is over.
- b) No woman can be compelled through coercion, force, threat or by any other means to undergo a consummated marriage and subsequent dissolution of that marriage before she can remarry a man with whom she was married earlier but that marriage was dissolved.
- c) Any person who compels a woman through coercion, threat, fraud or by any other means to undergo a consummated marriage and subsequent dissolution of that marriage in order to remarry a man with whom she was married earlier but that marriage was dissolved shall be punishable with an imprisonment of six months or fine or both.

- d) Any person who solemnizes or acts as a witness to a marriage knowing that the marriage is being contracted for the sole purpose of consummation and subsequent dissolution in order to compel a woman to remarry a man she was earlier married to shall be punishable with an imprisonment of three months or fine or both.
- e) Any offence punishable under this Act shall be deemed to be bailable and non-cognizable, within the meaning of the Code of Criminal Procedure, 1973 and will be triable by a Magistrate, as provided in the Code.

### **H.9. Automatic dissolution of marriage after lapse of a certain period of time**

- a) Notwithstanding anything contained in any contract to this effect, any dissolution of marriage which takes place automatically after lapse of a certain period of time prescribed in the nikahnama or otherwise will be invalid and without any legal effect unless such dissolution follows the procedure laid down in this Act.
- b) Notwithstanding that a marriage is invalid or irregular any child of such marriage shall be deemed to be legitimate under this Act.

## **I. MAINTENANCE**

### **I.1. Maintenance during Marriage and Widowhood:**

Maintenance as per this Act, includes an entitlement to food, clothing, residence, educational and medical expenses and all other personal expenses of wife.

- a. The responsibility of maintaining the wife and children, even if she has an independent source of income is with the husband.

- b. During the process of arbitration, the maintenance of the wife and children will be the responsibility of the husband.
- c. During the subsistence of the marriage, if the custody of the child is with the mother then the responsibility of maintenance of the child is with the husband.
- d. Procedure for obtaining maintenance from the husband during the subsistence of marriage is the same as enlisted in Section 126 of the Code of Criminal Procedure, 1908.
- e. The widow has a right to maintenance and right to stay in matrimonial home.
- f. Maintenance during iddat period is the same as that provided during the subsistence of the marriage

### **I.2. Maintenance after Divorce:**

- i. The provisions of maintenance after divorce are to be governed by the Muslim Women (Protection of Rights on Divorce) Act, 1986.

## **J. CUSTODY OF CHILDREN**

### **J.1. Natural Guardians:**

Both mother and father are considered natural guardians of the child.

### **J.2. Custody of children after divorce:**

- a. In the event of a divorce, regardless of who amongst the spouse initiates the divorce, the decision regarding the custody of all children (male and female) will reside with the mother until they reach the age of 10 when the child can decide for himself/herself. In any case it is the responsibility of

- the father to provide maintenance for the child.
- b. After reaching the age of 10 the parent not having the custody can apply for custody of the child to an Arbitrator. The consent of the child will be sought by the Arbitrators.
  - c. The parent who has lost the custody of the child will get fair visiting rights.
  - d. Only if the child is not able to take a decision the Arbitrators shall take the decision based on the principle of the best interest of the child which includes the child's physical, emotional and economic security.
  - e. In the event when the custody of the child is with the mother, it is the responsibility of the father to financially maintain the child.

### **J.3. Custody of the children of widows:**

The mother continues to be the natural guardian of the children after she becomes a widow.

### **J.4. In the event that the child is not able to take a decision the Arbitrators while making a decision should keep the following guidelines in mind:**

- a. Consider the quality of the upbringing of the child till date
- b. The health, education, physical and emotional safety of the child.

### **J.5. Custody of the child is not necessarily lost if:**

- a. Either parent change their respective religion
- b. Either of the parent remarries

## **K. INHERITANCE**

The issue of inheritance should not be linked to women's rights to mehr, dowry, gifts which a woman might

receive in due course of her life.

- a. The distribution of property can be made as per the Quranic verses 4:11 and 4:12
- b. The portions mentioned in the Quran are to be allotted after making a will and clearing debts.
- c. To equalize the daughters share with the son, the parents can make a gift-deed or HIBA for their daughters so that all offsprings get equal share of the parent's property.
- d. The grandson or granddaughter can inherit from the grandfather/grandmother in case of the death of the intervening son
- e. The wife has right to receive part of husband's property and an additional specified share in lieu of her housework contributing to the conjugal home and property creation.

## **L. Adoption**

The Supreme Court judgment in 2014 has decreed that prospective parents irrespective of their religious background are free to adopt children after the prescribed procedure. Child can be adopted by Muslim parents under the Juvenile Justice [Care and Protection of Children] Act, 2000 [as amended in 2006]

## **M. ARBITRATION**

The parties can choose to go for Arbitration in the event of a dispute.

### **M.1. Nature of Arbitrators**

- a. Arbitrators could be registered welfare agency which is
- b. Also registered under this Act as per the Rules.
- c. Having at least 50% women members, preferable Muslim women

- d. Has an impeccable record of social justice

## **M.2. Duties and Responsibilities of the Arbitrators:**

- a. The Arbitrators can arbitrate on all matters mentioned in this Act.
- b. The Arbitrators must follow the rule of giving both the sides a chance to be heard.
- c. The Arbitrators are mandated to keep a record of all proceedings during this process as well as a record of all decisions taken.
- d. In case of a divorce, the Arbitrators should safeguard the rights of the women by listing them out on the divorce document and give true, original copy of the same to both the parties.
- e. After following the principles of natural justice, a just and fair decision should be made by the Arbitrators on all matters mentioned in the Act.

## **Annexures:**

Annex 1: Nikaahnama and Iqrarnama

Annex 2: Degrees of prohibited relationships



## Annex 1

### Bharatiya Muslim MahilaAndolan Nikaahnama and Iqrarnama

1. This Nikaahnama is in consonance with the Holy Quran.  
This nikaahnama is entered into at \_\_\_\_\_ [City] and  
\_\_\_\_\_ [State]  
on \_\_\_\_\_ [date, month, year]  
between \_\_\_\_\_ [bride] and  
\_\_\_\_\_ [bridegroom]

2. This Nikaahnama is subject to the exclusive jurisdiction  
of court where bride resides at any future date.

#### **3. Personal details of the Bride:**

a. Full name of the bride:

\_\_\_\_\_

b. Date of Birth:

\_\_\_\_\_

c. Educational Qualification

d. Temporary address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e. Permanent address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Marital Status: Single, Widow, Divorcee:

\_\_\_\_\_

#### **5. Personal details of the groom:**

a. Full name of the groom:

\_\_\_\_\_

b. Date of Birth:

\_\_\_\_\_

c. Educational Qualification

---

d. Temporary address:

---

---

e. Permanent address:

---

6. Marital Status: Single, Widower, Divorcee:

---

7. Date of the Nikaah [English]:

---

8. Date of the Nikaah [Islamic]:

---

9. Full address of the place of Nikaah:

---

10. Time of Nikaah:

---

**11. Brides Witness No. 1**

a. Name:

---

b. Date of Birth:

---

c. Address:

---

d. Relation to the bride:

---

**12. Brides Witness No. 2**

a. Name:

---

b. Date of Birth:

---

c. Address:

---

---

d. Relation to the bride:

---

**13. Bridegrooms Witness No. 1**

a. Name:

---

b. Date of Birth:

---

c. Address:

---

d. Relation to the groom:

---

**14. Bridegrooms Witness No. 2**

a. Name:

---

b. Date of Birth:

---

c. Address:

---

d. Relation to the groom:

---

15. Mehr of Rs. \_\_\_\_\_ [in  
Figure \_\_\_\_\_]  
has been paid by the groom.

16. Mehr in kind which includes

---

has been paid to the bride. [For eg. Gold, silver, fixed

deposits, land, demand draft, any other. Please mention the exact quantity of mehr given in kind]

17. Other Details of the Groom:

a. Present Occupation:

---

b. Address of Place of Employment:

---

c. Income per month:

---

d. Particulars of Property [self-acquired and inherited both]:

---

18. Documents Enclosed of Both Parties: [Please Tick]

a. Passport size photos [mandatory]:

---

b. Wedding card [optional]:

---

c. Copy of passport/PAN card/voter ID/Adhar card/Light Bill/MTNL Bill:

[Any one residence proof and age proof mandatory]

d. Proof of employment [mandatory if available]:

---

e. Divorce papers if divorced [mandatory]:

---

f. Death certificate in case of death of previous spouse [mandatory]:

**19. Annexures:**

- a. Gifts received by bride from bride's parents and her relatives
- b. Gifts received by bride from groom's parents and relatives
- c. Gifts given by bride to the groom's parents and his relatives

**20. Declaration:**

The bride and groom confirm that each of them have read this nikaahnama, understood its content and have given their consent to this marriage. Nothing has been hidden or concealed by either of them.

**21. Signatures:**

a. Signature of bride:

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b. Signature of Witness 1 of bride:

---

c. Signature of Witness 2 of bride:

---

d. Signature of the groom:

---

e. Signature of Witness 1 of groom:

---

f. Signature of Witness 2 of bride:

---

**22. Documents for witnesses from both sides**

Copy of Passport/PAN card/Adhar Card/Light Bill/  
MTNL Bill

(Any one proof of residence and age mandatory)

**23. Details of the Qazi:**

a. Name of the Qazi:

---

b. Signature of the Qazi:

---

c. Address of the Qazi:

---

---

d. Seal of the office of the Qazi:

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## IQRARNAMA

1. The bride and the groom shall give their express and unambiguous consent for the marriage contract to become valid. This consent must have been obtained without undue influence, coercion and fraud.
2. The age of the bride shall be 18 years and that of the groom 21 years.
3. Mehr
  - Since mehr is the right of the bride at the time of nikaah, the amount has to be paid at the time of the solemnization of the nikaah. The groom has agreed to pay the mentioned amount at the time of nikaah.
  - Minimum mehr of the bride is one annual income of the groom
  - The bridegroom undertakes through this Nikaahnama that he or his relatives or any one on his behalf, shall not in any manner apply any physical, social, emotional, psychological, or economic pressure on the bride to forego the Mehr or to decrease the Mehr amount.
  - Mehr is non-refundable and non-negotiable and shall be the absolute property of the bride and under her exclusive control and power.
4. The husband shall not be entitled to and shall not enter into a second marriage during the subsistence of this first marriage as monogamy is the stated ideal in the Quran.
5. The bride and the groom are not within the degrees of prohibited relationship
6. The said solemnised marriage must be registered under the relevant state Act.
7. Divorce
  - The bride and bridegroom agree that in case of marital discord neither party has the right to terminate the

marriage unilaterally.

- The husband shall not resort to, under any circumstances, unilateral oral triple divorce in one sitting. The right to divorce is shared equally by both the bride and the groom in keeping with the spirit of justice in Islam.
- If matrimonial discord occurs, then the parties shall follow the method given below. No dissolution shall take place while the arbitration process is ongoing and until it is finally concluded.

## **8. Procedure of Dissolution Of Marriage**

Dissolution of marriage proceedings, by whatever name called, initiated by either or both the parties to a marriage without the intervention of a court, to be concluded through the following procedure only:-

### **STEP 1**

As a first step, when there is a marital discord, the husband/wife will reason out with each other through discussions.

### **STEP 2**

If differences persist, then as a next step, the parties sexually distance themselves from each other in the hope that this temporary physical separation may encourage them to unite.

### **STEP 3**

And if even this fails, they will once again discuss the seriousness of the situation and try to bring about reconciliation.

### **STEP 4**

If the dispute still remains unresolved, as a fourth step, the parties to the dispute must place their matter before two

arbiters nominated by the family, one from the family of each spouse, for resolution. The family Arbitrators can also approach Arbitrators of a registered organization for the resolution of their marital discord.

- a) It is only after the failure of the aforementioned four attempts at reconciliation that the first talaq is to be declared by the Arbitrators in the presence of two witnesses and both the parties. This declaration of divorce is to be followed by a waiting period called the iddah. Not more than two divorces can be pronounced within this period, the duration of which is three monthly courses
- b) For women who have attained menopause or suffer from amenorrhea the period of iddah is three months, and in the case of pregnant women it is till the termination of pregnancy
- c) And if the parties are unable to unite during iddah, the second and the final irrevocable talaq can be pronounced by the Arbitrators but only after the expiry of the iddah. Once the second and the final talaq has been invoked the marital bond is severed and the parties cease to be of any relation to each other.
- d) However, even after iddah has lapsed and before the pronouncement of the second and final talaak by the Arbitrators, the contending parties have a chance to reunite by recontracting the marriage, provided the final talaq has not been declared.
- e) In other words, after the expiry of iddah, the parties are given the options of remarriage or permanent separation.
- f) All decisions taken before the witnesses and Arbitrators must be recorded. The final divorce at the end of iddah must also be recorded in a Talaaknama by the Arbitrators.
- g) The rights of the women on divorce must be safeguarded



by the Arbitrators and must be mentioned in the talaaknama.

- h) Original copies of the same must be provided to both the parties.

**NOTE:**

- I. The pronouncement of final talaak should be during the period of tuhr
  - II. The four steps mentioned above signify restitution of conjugal rights
  - III. The parties can also approach the Indian courts directly for the dissolution of their marriage
  - IV. Before making the second and final pronouncement of marriage, the Arbitrators must ensure that all matters related to dower and maintenance of the woman as well as inheritance, custody, education of children, have been amicably and fairly settled.
  - V. Once the second and final pronouncement of dissolution of marriage has been made, the parties are no longer married to each other.
9. In the event of divorce initiated by either party the husband shall be bound to comply with the following financial rights of the wife.
- Mehr (if not paid)
  - Gifts received by her at the time of and during the subsistence of the marriage.
  - Right to reside in the matrimonial home.
  - Equal share of all property acquired during subsistence of the marriage.
  - A reasonable and fair provision (matta) for the future sustenance
10. Either party can go to the court directly to settle their

dispute. The bride and bridegroom undertake to follow these terms and conditions and respect each other from this day on.

11. The bride and the bridegroom may insert any other provision provided it does not violate the provisions of this Nikaahnama.

The bride and the groom agree to the above conditions of the marriage.

Signature of the bride:

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Signature of the groom:

---

## **Annex 2:**

### **DEGREE OF PROHIBITED RELATIONSHIP**

#### **Part I**

On grounds of Consanguinity

1. Mother and all female ascendants
2. Daughter and all female descendants, how low so ever
3. Sister and all female descendants, how low so ever
4. Brothers' daughter, how low so ever
5. father's sister (but not her daughter or any other descendants)
6. mother's sister (but not her daughter or any to other descendants)

(Sisters full, consanguine or uterine by valid or invalid marriage or adulterous connections are forbidden)

On grounds of Affinity

1. Mother-in law how high so ever
2. Wives' daughter, how low so ever
3. Son's wife how low so ever
4. Step mother or any other woman with whom the father or any other ancestor has had a physical relationship

#### **PART II**

On grounds of Consanguinity

1. Father and all male descendants
2. Son and all male descendants how low so ever
3. Brother and all male descendants, how low so ever
4. Brothers' son, how low so ever
5. Father's brother (but not his son or any other descendants);
6. Mother's brother (but not his son or any other descendants);

(Brothers full, consanguine or uterine by valid or invalid marriage or adulterous connections are forbidden)

### **On grounds of Affinity**

1. Father-in law how high so ever
2. Husbands' son, how low so ever
3. Daughter's husband how low so ever

Step father or any other man with whom the mother or any other ancestor has had a physical relationship