

# **Muslim Women and Politics of Personal Laws in India: Are Laws for Justice?**

*Esita Sur*

***Abstract:** In our society, laws have always been considered as agents of social change, especially for women. . However, women's access to laws to get justice has been subjected to several factors. Especially Muslim women's access to justice has always been determined by their minority community identity, class location and religion. In India, personal laws govern Muslim women and its interpretations by several agents (community as well as religious) seem to be discriminatory to Muslim women. The role of the state has remained obscure. Therefore, the paper will attempt to assess the role of personal laws as well as Indian state in either constraining or enabling Muslim women to exercise their rights. Therefore, the paper will try to review the role of the state as well as laws to facilitate gender justice in our society.*

**Key Words: Public-Private Distinction, Social Change, Instrumental laws and Gender Justice**

## **Personal is Political - Carol Hanisch**

### **1. Introduction:**

In our society, laws are defined in instrumental terms and as the potential source of equal rights for women. Society being steeped into the patriarchal values and practices, the law and the state were seen as the only agents with the power and legitimacy to bring about egalitarian social transformation. However, gradually, especially by 1980s, the experiences of women's movement all over the world have led to an increasingly critical engagement with the legal discourse. After 1980s, feminist activists realized that most legal systems have features, which are actively discriminatory to women, denying them equal rights to property or certain kinds of employments. Nivedita Menon (Menon, 2004) has argued that laws in its actual

functioning discriminate against women because legal agents interpret laws in patriarchal ways. Even laws treat men and women unequally. It is discriminatory to women, because men and women are located in an unequal and hierarchical manner in cultural, social and economic formations. Therefore, it is unjust to treat unequal equally (Hasan, 2000). In this sense, law is essentially male in nature.

In India, the role of law in struggles to improve women's status has been a recurrent dilemma because the gap between women's formal legal rights and their continuing substantive inequality has not gone unnoticed by those who are involved in the campaigns for law reform. Especially when it comes to the role of laws promoting social change for Muslim women<sup>1</sup>, personal laws<sup>2</sup> are one of the factors, which contribute to their substantive inequality and oppression in private as well as public domain. In private domain, misuse of personal laws subjugates them and in public, these laws deny them their legal equality. In the secular, democratic India, Muslim women remain unequal citizens. Therefore, these laws play a great role to construct Muslim women's identity as the bearer of community honour at the cost of which their rights and quest for justice are sacrificed. In this context, the paper will try to raise few questions: 1) Are personal laws gender just? What are the interpretations relating to triple talaq, polygamy, inheritance in the Quran? 2) How should the role of the state be viewed to ensure justice for Muslim women? 3) Do personal laws hold promises to challenge existing power relations resulting in gender justice? In this way, the paper will try to uncover the dynamics of Muslim personal law and identity construction of Muslim women in India.

## **2. Public-Private Dichotomy and Personal Laws:**

Traditional notion of what is 'political' locate politics in the arena of public rather than private life. However, Kate Millett (Millett, 1970) defined politics as power-structured relationships, arrangements whereby another controls one group of persons. Therefore, the relationship between men and women as well as women's experiences

---

<sup>1</sup> The term Muslim women may appear as homogeneous entity but in reality, they do not constitute the unitary category because their experiences may vary on the grounds of class, educational attainment, as well as regional location. All these factors shape their identity.

<sup>2</sup> Personal laws govern spheres of marriage, divorce, inheritance, custody of children etc. In India, personal laws are product of the British rule, which made a clear separation between public laws (secular), and personal laws (religious).

in private lives (family and community) are political in the male dominated society. To understand the impact of personal laws on Muslim women's rights, significance of the term 'private' has to be comprehended. Generally, the term private ensures individual freedom and no intervention by the state and this sphere is supposed to be non-political. However, for women including Muslim women, the term private or personal is political because this private domain is not at all free from the influence of power-structured relationships, which places women in a subordinate position. So re-examining the relationship between legal discourse and the public-private dichotomy revolves around two contestations: 'the private' is personal because law cannot interfere and influence it; by refusing to intervene in private, law itself constructs 'the private'.

So relationship between personal laws and Muslim women's rights becomes crucial because laws are not only instruments of protecting rights and securing women's well-being but also may become the mechanisms through which domination is reinforced. Muslim personal laws relating to triple talaq, polygamy, inheritance remain confined to the private domain beyond public scrutiny because of two dimensions. The First, only the religion leaders, ulemas, and mullahs have the authority to interpret the religion texts, the holy Koran, and to set the boundaries of women rights. Secondly, personal laws in India are considered as the minority identity makers so it is beyond the control of the state. The state considers Muslim women as the responsibility of their community and never intervenes in the private domain to ensure justice. Personal laws remain an indicator of women's oppression in the private as well as the public domain (Mukhopadhyay, 1992).

### **2.1. Development of Muslim Personal law: Subversion or Protection of Muslim Women's Rights?**

The term 'personal law' is derived from the ancient distinction between territorial and personal laws. Before the introduction of British law in India, no distinction was made between territorial and personal laws. English administrators who, early on, decided to leave the personal laws of the native undisturbed; ostensibly, because these formed a part of the religion of the natives first introduced the division between personal and other spheres of law in India. So in colonial India, the British government not only defined communities based on religion but initially also followed the policy of non-

interference in 'personal' matter as it provided the British rule with acceptability and stability. Laws relating to marriage, divorce, inheritance and custody of children have normally been thought to be part of 'private sphere' and therefore to be 'non-political'. But the above stated process and demarcation were never free from the power play of the patriarchal institutions (local and community based) which ultimately resulted in subverting women's rights in society. Apart from this, in post-colonial India, personal laws have become minority identity maker for the religious communities including the Muslim community and an exclusive zone of community control, beyond the purview of the state.

If we see the development of Islamic law, the four material sources of law are, the Koran, the Sunna, the consensus of the community (Ijma) and the analogical deduction (Qiyas). According to this theory, these four sources of law and the theory of *Shariat* were laid down from the beginning of the Muslim exegesis. The Koran, which is considered the word of Prophet, is the highest source of law. The Sunna, or tradition, is the second source of revealed law. Ijma or consensus is the orthodox view means the general agreement of all Muslim scholars who lived in the period immediately after the Prophet (Schacht: 1964). Qiyas or reasoning by analogy entails the exercise of individual reasoning, which is variously referred to as personal opinion, or reasoned inference, Ijtihad is to be used as a source of law only in the last resort (Kapoor, 1996).

Asghar Ali Engineer said that Islam is an egalitarian religion but the interpretation of verses has subverted Muslim women's rights (Engineer, 1999). The art of interpretation is not free from the influence of patriarchal society and culture. Certain verses relating to polygamy, triple talaq, veiling, and wife beating constitute the core of the Muslim Personal law and not free from the politics of interpretations. While discussing about the impact of Muslim personal laws on the lives of Muslim women, it can be illustrated by taking up the question of the polygamy and divorce. It has been said that Muslim men can have wives up to four. However, it is important to say that polygamy has been permitted by the Quran in a concrete social context in order to do justice to the weak and it is subjected to the condition that equality of treatment would be ensured. It is very clear from the wordings of the Prophet on polygamy that in order to ensure justice to the orphans, war-widows Muslim men can have four wives

(Ahmed, 2011). Another issue, which constitutes the core of Muslim personal law, is divorce or triple talaq

According to a precept of the Prophet, divorce is condemned as the most reprehensible of all things permitted. There is nothing more displeasing to God than divorce. The right to dissolve a marriage is given to the husband as well as the wife. Women have to observe 'Iddat' for three months to ascertain paternity. The Quran does not permit any outsider to separate a couple who want to live together even if one of them has a physical defect, though this can be a legitimate cause for divorce. The Quran emphasizes that divorce should not be a hasty impulsive act but should be finalized only after a period of waiting during which time the couple is counseled and given a chance to rethink on the decision. *Talaq* is a procedure that can be initiated by the husband alone without the consent of his wife. Besides, the exercise of *talaq* is extra-judicial and in no way subject to external check. Technically, therefore, the power of the husband to divorce is absolute. *Talaq* may be pronounced in a number of ways, e.g., (1) *Ahsan* (2) *Hasan* (3) *Bid' ah*.

The *Ahsan* form of *talaq* is *Talaq-I-Sunna*. The repudiation does not take place at a single sitting nor can it take place during menstruation. *Iddat* is observed during the period following menstruation that is *tuhr* or the purity period. Two arbitrators from both sides are appointed to bring about reconciliation. During the *iddah* period the marriage is not dissolved. If reconciliation takes place, the marriage is saved and no *nikah* is needed. In *Ahsan talaq* even after the third pronouncement of *talaq*, after the 'iddah period, the marriage is revocable. The man can remarry his divorced wife. This practice is in accordance with the teaching of the Quran and according to *Sunna* Rules. Both Sunni and Shia schools approve of *talaq-a-ahsan*. The *Hasan* form is *talaq-a-Sunna* but is not as commonly accepted as *talaq-a-ahsan*. The man is supposed to pronounce *talaq* during the successive periods of purity or *tuhr*. A couple can live together as husband and wife if the husband so desires before he pronounces the third *talaq*. On the third *talaq* the marriage is dissolved and the *talaq* is irrevocable. Therefore, he cannot remarry her. If she wants to remarry, she has to perform *Halala*, i.e., marry another man, consummate the marriage, consequently dissolve it, and only then remarry her divorced husband. Prophets and Caliph Ali condemn this process of *Halala*. All Shia and Sunni schools of thought have approved of *Talaq-a-Hasan*. Since it is not irrevocable, it is not very popular; yet, the Hanbali Sunni School gives it more importance than to other types of *talaq*. *Talaq-a-Bidah* is a

form of divorce, which is severely criticized since it goes against the rules laid down by the Quran. However, the Sunna approves it. In this form of *talaq* the husband unilaterally, without the consent or knowledge of the wife, pronounces *talaq*. Husband can pronounce *Talaq* once or three times simultaneously, without paying attention to the fact whether wife is in a state of *thur*. The Prophet did clearly not approve of this form of divorce.

Apart from this, women's right to inheritance have also been violated in practice. As for property, movable or immovable, generally very few Muslim women work and earn (though this trend is increasing among educated middle and upper-middle class women). Islam does not prohibit them from working at all. The Quran allows her to earn. She has the right to own property in her own right. Thus, Islam recognizes her individuality and her being as a legal entity. In Islam, there is no concept that she has to confine herself to domestic duties alone. This clearly shows that bringing up children is not her responsibility alone but is a joint one. The husband is equally obliged to arrange for rearing children. However, in traditional society a man usually expects his wife to confine herself to domestic duties and disapproves of her working in order to earn. It is only in some enlightened families where women are allowed to work. Therefore, the way Islam ensures rights to women and the way it has been interpreted shows huge difference. It is quite clear that the status of women has deteriorated because the legal interpretations are always subject to patriarchal influences ( Engineer, 1995).

### **3. The State, Muslim Women and Personal Laws: A Feminist Critique**

Above discussion, shows that the development as well as interpretation of Islamic law is exclusive preserve of community, which is obviously patriarchal in nature. However, it does not mean that the state has no role to ensure justice to women. In recent times, reliance on the efficacy of law and legal reforms to initiate changes in the social order towards a gender just and egalitarian society has increased. In this context, the role of Indian State as an instrument for ushering social change has become significant. However, feminists share doubts regarding the transformative role of the postcolonial Indian State as well as laws. Cases like Mathura Rape case<sup>3</sup>

---

<sup>3</sup> Mathura, a 16-year-old tribal girl from Chandrapur district, Maharashtra, was taken to the police station by her brother and other relatives as they were concerned that she was under age and yet was attempting to elope with her

(1972), Shah Bano (1986) case raised the question whether legal reforms are capable of bringing about gender justice. Have laws been instrumental in ushering any change in this gendered society? Feminists have argued that laws have in fact been often used to reinforce the social subjugation of women (Menon, 2004). Not only this, Ratna Kapoor ( Kapoor, 1996) said that law is seen as an instrument of patriarchy. Therefore, the role of law to address the oppression of women remains incomplete without sufficiently problematizing the role that law can play in overcoming this oppression. A powerful and influential critique of rights, law and the state has come from Catharine Mackinnon (Mackinnon, 1989) who argued that the state guarantees rights to women but in reality, the state is male in the feminist sense and authorize the male experience of the world. As a result, a feminist understanding of the world is patriarchal and oppressive.. Therefore, the role of the postcolonial Indian state as well as laws as transformative agents is not beyond scrutiny and criticism.

Specially if we pay attention to the role played by state to facilitate social justice for Muslim women, Indian state has always been faced the dilemma of following sameness versus difference approach. Sameness approach upholds the equality principle between men and women and ignores the politics of difference. The problem with difference approach is that it cannot distinguish between 'differential treatment that disadvantages and differential treatment that advantages'. It is perhaps because differential treatment disadvantages women when it has been protectionist and considers that women are naturally weaker than men and then they, are onus of the community as well as the state (Jaising, 2005).

The legal discourse on Muslim women's identity always projects her as passive as well as weak and emphasizes the need to protect them. In India, the question of Muslim identity is integrally related to personal laws. These laws are not only

---

lover. The two policemen on duty said they wanted to record Mathura's statement when she was alone. They raped her, while her relatives waited outside. The Sessions Judge held that since she had earlier eloped with her boyfriend, she must have been habituated to sex, and, hence could not be raped. The High Court reversed the judgment, sentencing the policemen to six years in prison. In 1979, the Supreme Court again reversed the order. The judges felt that since Mathura had not raised any alarm, and since there were no visible injury marks on her body, she must have given her consent. The Mathura rape case galvanised the women's movement into asking for reforms of the criminal law that dealt with rape. In 1983, the government passed the Criminal Law Amendment Act, which created a rebuttal presumption in cases related to custodial rape. The government also made amendments stipulating that the penalty for custodial rape should not be less than seven years' imprisonment; and it provided for in camera proceedings and made the disclosure of the victim's identity a punishable offence. These amendments were not enough to stem the rise in the number of cases of sexual violence against women. One crucial defect in the law was the definition of rape under Section 375 of the Indian Penal Code (IPC), which took into account only penile-vaginal penetration. Other physical and mental injuries were left to be dealt with under Sections 354 and 509 of the IPC as 'outraging the modesty of a woman'.

discriminatory but also protectionist. However, it is also worth mentioning that this protectionist approach adopted by the state as well as community does not problematize the way in which laws treat women and accord them the subordinate status in society. These institutions, moreover, act as agents to reinforce their subjugation. So this leads to one of the most pertinent question as to whether law is to be considered as instrument of domination or justice?

#### **4. Role of the State: Constructing Muslim Identity**

Since Independence, Indian State has tried to protect the identity and culture of the minority groups by not intervening into their private domain, especially in personal laws. This is one of the reasons, that religious leaders had played a significant role to define Muslim identity. The application of the personal law is often a complex matter and the interpretation of the Sharia is the monopoly of Ulemas. Through these principal mechanisms, Ulemas and mullahs maintain control over Islamic Society. Here the purpose is not to blame the state but to understand the puzzle for which women fail to get access to laws and justice. This was visible in Shah Bano Case (1986)<sup>4</sup>. While all other Indian women may claim the legal right to spousal support after divorce, Muslim women can not. While other women criminally prosecute their husbands for bigamy, Muslim women may not. According to the Sharia Act, a divorced Muslim woman is entitled to a reasonable and fair provision of maintenance within the period of Iddat; two years of maintenance for her children; mehr and all the properties given to her by her relatives, friends' husband and husband's relatives. If she does not get it at the time of divorce then she can apply to the Magistrate to direct her husband to follow the order. In response to this, Shah Bano, 73-year-old woman filed a case against her husband and the Supreme Court granted her appeal for lifelong maintenance from her husband.

---

<sup>4</sup> According to Shariat Act (1937) Muslim women cannot demand lifelong maintenance after talaq. It is generally supported on the ground of minority community identity, religion and culture. In 1986, when Shah Bano went to the Supreme Court for by demanding her lifelong maintenance, it gave rise to a clash between the collective rights of the community and individual rights and identity. The Supreme Court gave its verdict in favor of Shah Bano. However, Muslim fundamentalists protested this move vehemently on the ground that any change in Shariat Act by the state is against the identity of Muslim community. So the Shah Bano case (1986) shows that women's claim to equal rights is treated as a betrayal to community, the culture and the religion. In addition, the Indian state very consciously institutionalizes gender inequality in personal laws on the ground of minority identity and culture (Hasan, 2000).



Nevertheless, this judgement was not a simple one rather opened the floodgates of debates and discussions on the tricky relationship between gender, community and the state. In response to the *Shah Bano* case and the subsequent legislation, Muslim community leaders split broadly into two camps. Conservative leaders considered the judgment as an attack to Muslim identity as well as Muslim personal law. Progressive leaders felt that the Supreme Court judgement was in accordance with the basic tenets of Islam and thus it was not an intrusion in Muslim personal law. Although they did not agree with everything the judgement said, they supported the substantive conclusion: that Muslim man should provide adequate maintenance for destitute, divorced women beyond the period of *Iddat*. Constitutional scholar Granville Austin has argued that conservative opposition was not only imbued with ideological factors but economic and political factors. The judgement, if it stood, threatened not only the sacred text of Islam but economic interests of Muslim men who might otherwise be faced with maintenance payment to ex-wives. Additionally, the political interests of the conservative Muslim leadership were threatened as well. If personal laws were codified, the religious leaders would lose their power to interpret the Quran. To soothe ruffled feelings, the Rajiv Gandhi Government enacted the Muslim Women (Protection of Rights on Divorce) Bill, 1986. This bill explicitly excluded Muslim women from the right to maintenance available under the CrPC (Hasan: 1994).

The government's response to this judgement was also very crucial as it rests on the need to provide protection of minority identity defined in terms of religious and cultural terms. The government argued that it was against imposing a single pattern on all. The government argued in favour of differentiated criteria of citizenship as against universalistic criteria. It is important to mention that differentiated citizenship is mainly concerned with the inter group equality, not with intra group equality. That is why it leaves many structures of discrimination untouched. The government also asserted that the impetus for change must come from within the Muslim community. Therefore, the government championed community rights, which gives priority to community's self-defining and self-determining character (Jayal, 2002).

Indian state very deliberately never intervened in the private sphere of minority community. It is not only because of preserving their culture and identity but also for maintaining its own vote bank. It was quite clear in *Shah Bano* case (1986). The state could not guarantee the right to maintenance after divorce because the Muslim

fundamentalists perceived it as an intrusion into their culture and religion. Muslim religious leaders and ulemas issued a fatwa (proclamation) that guaranteeing maintenance right was against the teachings of Islam. Within few months the whole issue took the form of communal agitation claiming that Islam was in danger. Modern Indian State intervened in the religion of the majority community through Hindu Code Bill but it has never intervened in the religion of minority. There are two problems behind this issue. First Indian interpretation of secularism on the basis of which Indian state devises policies rests on a 'principled distance' between the government and religion. Second is the conflict between the claims of cultural communities and women's rights of equal citizenship. The state never tried to reform Muslim personal law not only for guaranteeing citizenship rights to all communities but the political leadership realized that respecting religious sensibilities was more important.

So the problem for contemporary radical politics lies in what Menon refers to as the 'paradox of constitutionalism' - "...the tension in which the need to assert various and differing moral visions comes up against the universalising drive of constitutionality and the language of universal rights" (Menon,2004,2). In this vein, Menon argues that "the language of rights and citizenship is thus no longer un-problematically available to an emancipatory politics" (Menon, 2004, 2). So entitlement to rights and justice through laws is not always possible because society is characterised by unequal conditions based on gender, class, caste etc. Muslim women's experiences are not beyond this.

In post-colonial India, the role of the state to create minority identity is unavoidable. The state did this not only by maintaining a 'principled distance' from minorities but also by refusing to intervene in the domain of personal law. The modern state has become the institution through which personal laws have to be negotiated and gender has become the site on which they were negotiated. In 1980s, the state had an important role in cementing a particular perception of the Muslim community as inherently conservative, resistant to reform and oppressive of women's rights by accepting the conservative position on this issue (Williams, 2012). The progressive interpretation would have granted greater rights of maintenance to Indian Muslim women within the framework of Islam. In this case, the role of the state was critical in sanctioning one set of views as representing the view of all even most Indian Muslims. In addition, far from protecting and enabling the dissident, vulnerable

voices within the Muslim community, the state sanctioned and authorized the voices of and an androcentric interpretation of the Muslim personal law of maintenance.

### **5. Politics of Reform and Social change:**

The elaborate discussion of personal laws echoes a demand for reform in personal laws for greater gender justice. Laws can be meaningful only if they serve the needs of the society. However, the reform in Muslim personal law has remained a complicated issue. Asghar Ali Engineer said that Muslim theologians argued that Muslim Personal law is divine and immutable. Therefore, there is no place for any change or reform through human agency. On the other hand, reform in personal laws remains a crucial issue because religion is subject to various interpretations and in today's complex situation the predominant interpretation is often determined by political rather than purely religious considerations.

The question of reform has become very complicated because this issue has always been addressed in close connection with the Uniform Civil Code<sup>5</sup>, which poses a challenge to minority identity and culture. For example, Hindu communalists in India asked for uniform civil code because Muslims take four wives and produce innumerable children and it may soon outnumber Hindu population. So the entire debate on common code has become controversial. Not only this, it is hardly possible to define 'uniformity' as well as 'just laws'.

Therefore, the important task is to think about an alternative to the uniform civil code. In this context, codification of Muslim personal law can be considered as an alternative to reformulate gender just laws. In fact, the original essence of Islamic law, which is quite progressive, and gender just, must receive importance. However, codification in Muslim personal law is also a complicated issue because there are several schools in *Sharia* law, which offers different interpretations on the holy Quran. It is important to understand that Quranic verses are normative as well as contextual. Therefore, the principle of *Ijtihad* (creative interpretation) must be counted as an alternative. However, conservative leaders within the community provide an inner defense mechanism for an 'externally perceived threat' (Shirazi, 2009). The case of

---

<sup>5</sup> The constitution in Article 44 provides a Directive Principle that the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India. It means the dissolution of all religious and customary laws and a uniform code of marriage, divorce, inheritance etc. for all communities.

Indian Muslims is complex as they are quite backward both socially and economically. Recent Sachar committee Report (Sachar Committee Report , 2006) has elaborately discussed that the socio-economic condition of the Muslim community is worse than Dalit communities' backwardness in India. Such an atmosphere can hardly be congenial for the needed change. So bringing about reforms in Muslim personal law is not an easy job. In this context, creation of a gender just Muslim personal law is subjected to several constraints. Every society imposes special roles on women. Not only this, women are also bearers of community honour as well as symbols. Therefore, any reform indicating change in women's position although it is positive, is not free from opposition. So reform in Muslim personal law is definitely necessary but as Zoya Hasan argues that, the process of reform is very complicated. In spite of reforms it is unlikely to radically improve the status of Muslim women by giving them equal and improved access to important social goods such as education and employment (Hasan Z. R., 2005). So not only reforms in personal laws but structural disempowerment, which includes lack of educational-employment opportunities demands attention.

### **5.1. Muslim Women, Laws and Social Dynamics:**

The paper argues that state as well as laws are instruments of social change but the question, which needs to be addressed: are laws beyond the influence of society? In fact, it is not only laws, which affect the society rather social forces and institutions (cultural practices, norms, values) also impact the formation, and execution of laws. So while addressing the issue of gender justice through laws, it is vital to mention that women's access to laws has not only been determined by her locations in family, class as well as community but also by her overall status in society. Dominant discourse and the popular culture always project Muslim women's image as passive victims. Factors like multiple marriages, divorce, veiling etc. have bolstered this portrayal. All these factors influence their status in society. While discussing about their socio-economic marginality, there has been a tendency to define their backwardness in terms of religion and personal laws by overlooking other factors like their under representation in labour force and meagre educational attainment etc. Sachar Committee Report (2006) also highlighted that the issues of socio-economic marginality of Muslim women are explained increasingly by religio-cultural factors and the impact of other factors like their representation in jobs, education and issues

relating to security are overlooked. Eminent works by Hasan, Menon (Hasan Z. R., 2005) have showed that Muslim women in India are under-represented in workforce, politics as well as education. Therefore, the laws as instruments of social change cannot function in vacuum rather the persistence of socio-economic inequalities may be regarded as obstacles, which influence the Muslim women's access to laws and justice. What remains crucial is to find out the mechanism of assigning weightage to these factors. Now the puzzle is whether we require more gender sensitive laws to combat socio economic inequalities or the socio-economic inequalities itself hamper the functioning of laws. It is fact that social change is not possible without the guarantee of formal equality, rights and laws because these are definite requirements to fight against discriminations and has symbolic importance too (Parashar, 1992). However, mere assurance of formal equal rights is not enough to address the persisting socio-economic inequalities faced by Muslim women. The prevalence of personal laws only exaggerates the situation. Social transformation will seem to be a less costly dream when the idea of substantive equality will be properly addressed by the state. An attempt must be there to make laws more sensitive to a more complex notion of equality, which takes into consideration the comparative disadvantages of persons existing unequal conditions.

## **6. Conclusion:**

At last, this paper calls for a revisit to the meaning of justice and law from a different perspective. Is the idea of justice gendered? Justice stands for the principle of distribution of rights, social, political and material resources amongst members of society. The concept of justice has two dimensions. First, procedural justice signifies justice as per law and procedures established by law. Secondly, substantive justice, which seeks redistribution of material resources and public opportunities in such a way that it results in equality of outcomes. The two dimensions also connect to legal and ethical or moral correctness. Variety in interpretations of justice emerges due to different conceptions of what is moral or ethical and is desirable as different religious and moral frameworks have different meanings (Abbas, 2012). It also varies due to different factors like class, caste, religion or gender. In Indian context, women's access to justice depends on the intersection of class, community, caste as well as religion. Muslim women are citizens of India but the state treats them differently on

the ground of their religious identity. Therefore, their quest for rights and justice is trapped in the matrix of formal equality and substantive inequality. These substantive inequalities (including economic and political disempowerment) are not only product of the failure of procedural 'just' institutions but ingredients like cultural influences, patriarchal domination also create unequal conditions for women. Personal laws have become the site, which controls women's experiences. Another important question is, are laws for domination or justice? It is quite clear from the above discussion that state as well as community as the protector and interpreter of laws are patriarchal in nature and it ultimately results in the reinforcement of women's subjugation in society. Nevertheless, it also has to be mentioned that law can not be the entire answer. Changes in socio-cultural attitudes are must and it must challenge the entrenched attitudes from the bottom as well as top (society and state). We should make a stronger effort to search these answers.

### **Bibliography**

- Abbas, H. a. (2012). *Political Theory*. New Delhi: Pearson.
- Ahmed, N. (2011). *Women in Islam* (Vol. 1). New Delhi: A.P.H. Publishing House.
- Engineer, A. A. (1995). *The Quran, Women and Modern Society*. New Delhi: Sterling Publisher.
- Engineer, A. A. (1999). *Problems of Muslim Women in India*. Bombay: Orient Longman.
- Hasan, Z. (1994). *Forging Identities: Gender, Community and the State*. New Delhi: Kali for Women.
- Hasan, Z. (2000). *Politics and the State in India*. New Delhi: Oxford University Press.
- Hasan, Z. R. (2005). *Unequal Citizens: A Study of Muslim Women in India*. New Delhi: Oxford University Press.
- Jaising, I. (2005). *Men's Laws, Women's Lives: A Constitutional Perspective on Religion, Common Law and Culture in South Asia*. New Delhi: Kali for Women.
- Jayal, G. (2002). *Democracy and the State*. New Delhi: Oxford University Press.
- Kapoor, R. (1996). *Subversive Sites: Feminist Engagements with Laws in India*. New Delhi: Sage Publications.

- Mackinnon, A. C. (1989). *Toward a Feminist Theory of State*. U.S.A: Harvard University Press.
- Menon, N. (2004). *Recovering Subversion: Feminist Politics beyond the Laws*. Chicago: University of Illinois.
- Millett, K. (1970). *Sexual Politics*. Chicago: University of Illinois Press.
- Mukhopadhyay, S. (1992). *In the Name of Justice: Women and Law in Society*. New Delhi: Manohar Publications.
- Parashar, A. (1992). *Women and Family Law Reform in India*. New Delhi: Sage Publications.
- Sacher Committee Report *on Social, Economic and Educational Status of Muslim Community in India*. (2006). New Delhi: Akalank Publications.
- Shirazi, F. (2009). *Velvet Jihad: Muslim Women's Quite to Islamic Fundamentalism*. Gainesville: University of Florida Press.
- Williams, R. V. (2012). *Making Minority Identities: Gender, State and Muslim Personal Law*. (R. Robinson, Ed.) New Delhi: Oxford University Press.