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## Research Paper

# EFFECTIVE PROTECTION OF MUSLIM WOMEN UNDER FAMILY LAW IN IRAN AND INDIA

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## ABSTRACT

**I**n the present study, the researcher is going to consider the different domestic laws in Iran and India towards Muslim women's legal status under family laws. Muslim women are under many discriminatory laws within the family such as; minimum age of marriage, guardianship's permission for marriage, polygamy, patriarchy like women's need to husband's permission for working and taking passport, sexual abuse and marital rape, inheritance discrimination and lack of specific legislation to prevent, prohibit and punishment of domestic violence and particularly, there is no position regarding punishment of stoning as a penalty of adultery. Unfortunately in India also Muslim women as a religious minorities face with such problems within Muslim personal law towards marriage and personal freedoms which are severely restricted, like polygamy and threat of verbal divorce and etc. Therefore there is need to study how the presence laws in Iran and India can help to lawmakers to create or amend better laws to protect the rights of these vulnerable women in the family.

The present research work will prove that, if the present family laws in Iran and India take more steps towards empowering women and adopting and implementing efficient policies aimed at eliminating gender-based violence, could help Muslim women to move out from a weak position and to exercise their power like men in equal way. Furthermore, reforms existing laws, regulations, customs and practices in accordance with the objectives of international regulations for effective protection of women within family to be needed.

**KEY WORDS:** Women, Personal or Family Law, Discrimination, Gender Based Violence, India, Iran

## INTRODUCTION

Family law or personal law consists of family or personal matters like marriage, dowry, and dissolution of marriage, guardianship, adoption, maintenance, inheritance and succession. It not only defines the relationship between men and women in marriage and family relations but also marks the relationship between women and the state.

The Quran has talked about women's concerns fourteen hundred years back by generating some

transformations to improve the position of women, though these transformations do not appear to be adopted in practice in Muslim society nowadays. Although Islam as shown to the prophet Mohammed is not domineering to women its version legislated in the family law, and daily living is male-controlled. Unfortunately, Women in the name of religious and socio-cultural practices have been denied opportunities of growth and equality of sexes. In this regard, we face



with one important question that Whether the Muslim Women in India and women in Iran are having same status and rights with men who are claiming regarding Marriage and Family life? To response to this question, there is need to know that Women are still treated, in some respects in the same old way , yet the perception that Women are second to men has not been erased. Women having equal rights within family under human rights laws, Article 23 of International Covenant on Civil and Political Rights states that, “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and no marriage shall be entered into unless full consent of the intending spouses. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage during marriage and at its dissolution.”

In spite of Article 16 of Universal Declaration of Human Rights which states that Men and women of full age, without any limitation have the right to marry and to found a family, still forced marriages of girls under 18 for economic or cultural reasons to be practiced in India and Iran and sadly, in many countries like Iran and India, women do not have equal status compared to men in marital and family life.

In this regard also there is very important article namely Article 16 of CEDAW which states that the States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women, the same right to enter into marriage, to choose a spouse and to enter into marriage only with their free and full consent, The same rights and responsibilities during marriage and at its dissolution, the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation, the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. Therefore Laws and practices governing the status of women in the family often circumscribe women’s role in the unit and their legal capacity. In fact, the family is the fundamental unit of society and the full protection of women within family is the state’s duties. Nowadays, women are hard working and work with dedication. They share most of the duties and responsibilities of their family, they strongly influence the moral, social and creative development of their children and they are dutiful and housekeeping,

childrearing, assisting in agriculture and in industry. Therefore, these two states must repeal all provisions of the civil code and other related articles which constitute discrimination against women and respect women’s equal rights on equal basis.

## MUSLIM WOMEN’S STATUS UNDER FAMILY LAW IN INDIA

In India, like other civilized countries, a number of laws have been enacted in order to provide protection of women, but the complexity of religious and social norms does not allow homogenous civil rights legislation. Constitution of India gives an insight into the constitutional provisions for women which is substantially elaborate framework to ensure equality amongst its citizens. It is not only guarantees equality to all persons, under Article 14 of the Constitution of India: “The State shall not deny to any person Equality before the law or the equal protection of the laws within the territory of India”, but also “Article 15(1): Prohibits the discrimination on the grounds of religion, race, caste, sex, place of birth or any of them”. Furthermore, there are other Articles under constitution of India regarding to fundamental rights of women such as; Articles 15(3)<sup>1</sup>, 16(2)<sup>2</sup>, 39(a)<sup>3</sup>, which it can be seen through these Articles, the fundamental rights of constitution accords equality to women in all field. But on the other hand, nothing in these Articles shall prevent the state from making any special provision for women and children.

For this reason, while civil and criminal laws in India are secular, personal laws are governed by the respective religious laws. In India, religion and personal law are largely interlinked. So Hindus follow Hindu family law and Muslims, Christians, and Parsees have their own laws; and other traditional communities, like the tribal groups, follow their own customary practices or customary laws. Unlike other laws in force in India, such as criminal and civil laws, family laws are not uniform. However, the Constitution of India, in Article 44<sup>4</sup>, provides for a goal or aspiration for achieving a uniform civil code in family and personal matters. This provision is merely a directive or aspiration and is unfortunately not enforceable by a court of law.

For both Hindu and Muslim legal systems, there were other variances based on sectarian divisions, regional specifics, and the local customs and practices. The Hindu law and the Muslim “Shariat” did not differentiate much between moral, custom, and law.

The Canon or Islamic Law is the moral and religious law primarily grounded on the principles of the Islamic religious text the holy Quran and examples

laid down in the Sunnah by the Islamic prophet Muhammad. Therefore, there are child marriages under costume however the prohibition of Child Marriage Act states that a girl in India can't marry before 18 and boy can't marry before completing 21 years of age, there are one-sided divorce and polygamy in the Muslim communal. Islam states marriage as a first step in creating family, and known it as a contract which it may be permanent or temporary and permits a man four wives if he treats all of them equally. There should be a proposal or 'offer, made by or on behalf of one of the two parties; the Muslim marriage law also states that to have a valid marriage under the Muslim law. In the case of polygamy, Personal laws for Hindus and Christians prohibit polygamy and it is criminalized by the Penal Code for non-Muslims, it is permissible for those who are covered by the Muslim Personal law and the dissolution of marriage can take place either by divorce or by death of other spouse.

Muslim Marriage Act has a provision for separation under the name of Dissolution of Marriage Act, 1939. Both the parties to the marriage contract have an opinion for divorce, but the husband's right in this respect is much greater than that of the wife. In case of divorce a husband can leave his wife without any reasons merely by pronouncing the word "Talak" thrice. A divorce can also take place by mutual agreement. But the wife cannot divorce herself from her husband without his consent. She can of course purchase her divorce from her husband and can have the marriage dissolved by delegation. Regarding to this matter, there are also some exception regarding to divorce by wife in so many cases such as; In *Noor Jahan Bibi v. Kari Ali case*, Noor Jahan filed a suit against her husband Kazvin Ali who charged her that she was of bad character and she was enamored of one Asghar Ali and committed adultery with him. It was held by the court that the doctrine of Lian has not been absolute under the Muslim Law and therefore a Muslim wife can bring a suit for divorce against her husband on the ground that her husband has charged her with adultery falsely under section 2(ix) of the Act. Furthermore, In *M.B. Rahim v. Shamsoonnissa Begum Case*<sup>5</sup>, the Privy Council observed that wherein the husband disposed of the property of her wife and confined her to a room as if she was in a jail. He also misbehaved with his wife. In appeal Husband raised contention that as far as Muslim Law is concerned a wife has no right to live separately even though the conduct of the husband is not good. It was held by Privy Council that if under the Muslim law no

wife can separate herself from her husband then such law is clearly contrary to the principle of natural justice. This case was decided in favor of wife by the Privy Council. Therefore when the husband has much greater rights than his wife for separation, it can be known as natural justice violation.

The Women Protection of Rights on Divorce Act, 1986, Section (a) says that divorced woman is entitled to have a reasonable and fair provision and maintenance from her former husband and the husband must do so within the period of iddat and his obligation is not confined to the period of iddat. But in case if she is financially not independent and needs maintenance and her relatives who would get the share of her property will award her with maintenance, in this scenario where she does not have any such relatives than the State Waqf Board has to pay her the maintenance. So in a way the personal law of the Muslims was saved and the new law prevented any conflict between the two major communities of the country. The divorced wife is also entitled to unpaid dower and all such properties which were given to her during her marriage by her husband, his relatives, friends or her relatives. She also has an option to use the Sections 125<sup>6</sup>-128 of the CrPC, 1973.

Some critics believe that in 1973, in an amendment relating to the rights of divorced women to maintenance under the Criminal Procedure Code, the word 'wife' in Section 125 was amended to include a 'divorced wife'. This provoked protests from the Muslim League whose members argued that the amendment violated Muslim personal law. The amendment went on to exclude Muslim women from the provisions of Section 125 if they had already received payment due to them under Muslim law.

To clarify this issue there is a very famous case as "*Shah Bano case in 1986*"<sup>7</sup>, The Shah Bano case controversy brought Muslim personal law which had not been subject to any legislative changes since the 1937 Shariat Act and the 1939 Dissolution of Muslim Marriages Act, back into focus. This case has held that although the Muslim law limits the husband's liability to provide for maintenance of the divorced wife to the period of Iddat. In this case, 73 year old Muslim woman was thrown out of her house by her husband after 43 years of marriage after he used the triple talaq. In 1977 Shah Bano's husband stopped the payment of Rs 200 as maintenance, upon which she filed an application for maintenance of Rs 500 under Section 125 of the Criminal Procedure Code. Her husband subsequently divorced her, paying Rs 3,000 as final settlement. A judicial

magistrate, however, ordered him to pay Rs 179.20 by the Madhya Pradesh High Court. The court held that it would be incorrect and unjust to extend the above principle of Muslim law to cases in which the divorced wife is unable to maintenance herself. The court, therefore came to the conclusion that if the divorced wife is able to maintenance herself, the husband's liability ceases with the expiration of the period of Iddat, but if she is unable to maintain herself after the period of Iddat, she is entitled to have resource to section 125 of the Code of Criminal Procedure, 1973. However, the decision was vociferously opposed by fundamentalist Muslim leaders, who alleged that the court was interfering in their personal law and according to them if this judgment was accepted than in that case their personal law was suppressed and was superseded by the Hindu law. The Indian government which was the congress party at that time was under pressure from the Muslim community to bring a law. Therefore, the Union Government subsequently passed the Muslim Women's (Protection of Rights upon Divorce) Act.<sup>8</sup>

To more deeply understand, we need to consider the relationship between polygamy and dissolution, in the case of *Abdul Azeem v. Fahimunnisa Begum*, the wife sued the husband for dissolution of her marriage for failure to maintain her for two years. She was married in 1952. In 1955 she went away to her parents. The husband then performed the second marriage. The suit failed. It was held that under Mahomaden Law polygamy was allowed and could not be a ground for living apart and claiming for the maintenance in the absence of other grounds which would justify the wife to follow other course. Through considering this case, it can be found that the polygamy is not the reason to leave home under Muslim communities.

In another case, *Munnawarbai v. Sabir Mohammad*, the wife left the marital house and stayed away without any justifiable cause and then asked for dissolution of marriage on the ground that husband was not maintaining her, it was held that the wife is not entitled to relief under section 2 (ii) of Dissolution of Marriage Act, 1939. In 2006, the case of a "*Muslim rape victim called Imrana*" was highlighted in the media. Imrana was raped by her father-in-law. The pronouncement of some Muslim clerics that Imrana should marry her father-in-law led to widespread protests and finally Imrana's father-in-law was given a prison term of 10 years, The verdict was welcomed by many women's groups and the all India Muslim Personal Law Board.

In Muslim community, the custody of children belongs to the mother and she cannot be deprived of her right so long as she is not found guilty of misconduct. Mother has the right of custody so long as she is not disqualified. This right is known as right of Hizanat and it can be enforced against the father or any other person. Among the Hanafis, mother's right of Hizanat over her son terminates on the latter's completing the age of 7 years and she is entitled to the custody of her daughters till the age of puberty. This right is not an absolute right; it is made in the interest of the child. The custody can be given to the father if the mother is disqualified by the provisions of the law.<sup>9</sup> However, the mere fact that the mother is economically less secure than the father, or that she suffers from ill-health or a disability is not usually reason enough to deny her custody because maintenance is the father's responsibility irrespective of who holds custody.

Regarding to Rights of Inheritance, the Muslim Personal Law widows and daughters of an intestate deceased have the right to inherit family land. Under Muslim law, in the case of death of wife, the share of husband is 1/4 of the property when there is a son or child of a son; but when there is no such child then husband is entitled to 1/2 of the estate of wife. In case of the death of the husband, the share of the wife is 1/8 when there are children; but if there are no children, then her share increases to 1/4. Under the Muslim law, there is a restriction that a Muslim cannot dispose of by a will more than 1/3 of his property. The Muslim personal law does not extend to agricultural land, leaving it to devolve by state law or, if state law is silent, custom.<sup>10</sup> At the time of marriage, the Muslim women receive Mehr which she is free to use, spend or invest it in any way she likes. Therefore as a wife she adds to whatever she receives through inheritance in her capacity as daughter and that she does not have to support either herself or her children. Therefore the position of a Muslim woman is showing secure as far as inheritance is concerned but in the amount of inheritance, there is no equality between men and women. But it is worth mentioning that their financial situation in compare with other religious community is better guaranteed by the Islamic law.

Regarding to international commitment of India, India has ratified Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which upholds the principle of equality among men and women in the family. India has also entered the following reservations on Articles 5a<sup>11</sup> and 16<sup>12</sup> of same convention. With regard to these two, the Government

of India declared that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent and with regard to Article 16(2), the Government of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and levels of literacy.

At the end, in countries like India, when women under different religious community are treated as second class citizens, they are entitled to special protection or special rights through legislations, towards making up for the historical, social and religious disadvantage suffered by them on the ground of sex and religion.

### **MUSLIM WOMEN'S STATUS UNDER FAMILY LAW IN IRAN**

In 1979 one version of the Islamic personal law was realized in Iran. A popular revolution gave birth to an Islamic republic. The role of Islam in politics and the proper scope of "Figh" rules were clear in defining social norms and regulating personal relations.<sup>13</sup> Under Human Rights Watch's point of view, still today, there is lack of progress in implementing the human rights of women and girls in Iran, specially their situation within family. Discriminatory civil and penal laws persist in the areas of marriage, divorce, inheritance, polygamy, stoning, violence against women and access to justice. Therefore Iran's lawmakers need to explore obstacles in implementation and options for developing a comprehensive legal framework for protecting and promoting the human rights of women. Iran needs to bring its national legislation into conformity with international obligations on women's right under family law. although women in Iran within family have some financial rights and responsibilities such as, the right to receive alimony in permanent marriage from the husband proportionate to women's prestige, the right to benefit from the estate of the deceased and to financial bequests according to Islamic reality, the right of endowment and receiving and charge of endowment, the right to determine the dowry and obtaining from the husband and to do whatever she wishes with it, the right to receive the father's, husband's or children's pension in case of death, according to the law of contract or the right to benefit from the retirement pension of a deceased woman employee for her legal heirs and the right to get wages from the husband for doing household chores upon her request<sup>14</sup>, but on the other

hand, in practice most of these rights are not requested from women during marriage like alimony, because today women are represented in many fields, including in the legislature, on municipal councils, on police forces and on firefighters, but still law requires a woman to obtain her husband's consent before working outside the home and for educating. It must be said that, today's generation are looking their dignity in law under equal right and they can't be satisfied through these rights which are provided under personal law. Regarding to marriage as a first step in creation of family, the Family Protection Laws of 1967 and 1975 increased the minimum age of marriage to 15 for women and to 20 for men.<sup>15</sup> Official statistics released in 2012 showed 1,537 girls below the age of 10 and 29,827 girls between the ages of 10 and 14 as being married. Therefore in 2013 the Iranian Parliament amended at the request of Guardian Council, Article 27 of the Bill for the protection of children and adolescent who either have no guardian or have abusive guardians to legalize the marriage of a custodian to has adopted child when it is found by a competent court to be "in the best interest of the child".

Regarding to right to work, Article 1105<sup>16</sup> Iran's Civil Code provide that "the position of the head of the family belongs exclusively to the husband", and the council of guardians, had decreed; a woman cannot leave her home without her husbands' permission, even to attend her father's funeral. Also Article 1117 of the same law allows a husband to prevent his wife in working in a profession deemed incompatible with the interests of the family or the wife dignity. But fortunately since Article 18 of the Family Protection Law<sup>17</sup> come to effect, a husband's decision as to what constitute incapability must be approved by a component court. The Article 1117 of Civil Code clearly is contrary to Article 11(c) of CEDAW. The law also restricts the women's freedom of movement under Article 1005<sup>18</sup> and 1114<sup>19</sup> of the Civil Code which provides men with the exclusive right to determine the place of their wife's residence and if a wife leaves her husband's home against his will, she will be considered disobedient. Unless the wife can prove to the court that she faces significant risk of bodily harm and personal safety. And one more Article 18 of the Passport Law, states that the women need the written agreement of their husband in order to be issued a passport and furthermore the husband can request that the wife's passport be confiscated.

Article 976 of Iran's Civil Code continues to deny women the right to pass on their nationality to children. Furthermore, there are discriminatory

provisions regarding to inheritance between men and women in Iran, for instances, Article 913 of the Civil Code, states that a surviving wife may inherit only 1/4 of his husband's estate if the deceased left behind no children and 1/8 if there are children. But a surviving husband, may inherit 1/4 of his deceased wife's estate when there are children and the entirely when there are no children. Article 907 of the Civil Code also states that the inheritance of sons to be twice as much as that of daughters.

Unfortunately, Iranian law establishes a discriminatory regime regarding to polygamy and granting men an exclusive right to be married to four permanent wives and as many as temporary wives<sup>1</sup>. But in an effort to restrict polygamy, Article 16 and 17 of the Family Protection Law requires men to fulfill certain conditions before that can marry a second wife on a permanent basis. As a result of this law (1975), a man could marry a second wife only by permission of the courts with a valid reason to obtain this permission and after obtaining the express consent of his first wife and Concurrently, the wife was given the right to obtain a divorce from her husband in case he took a second wife without her consent and courts permission. At the result of temporary marriages, temporary wives and any resulting children are not granted rights associated with traditional marriage but the contract is enforceable. But it is worth mentioning that, in practice, the amount of polygamy between Iranian's families is very rare and wife may obtain divorce if husband marries without her permission or does not treat co-wives equitably in court's assessment.

Related to divorce as the end of marriage, under Article 1130 of the Civil Code so much power given to men to end their marriages which entitles men to divorce their wives whenever they wish whereas they require women seeking divorce to prove that they are enduring an intolerable level of difficulty and hardship in marriage<sup>2</sup>. But decree of court is required under Iranian law if the claim be on behalf of men or women. 1992 amendments extended divorced wife's financial rights from maintenance during '*iddat* and deferred dower', to right to claim compensation for household services rendered to husband during marriage.

And regarding to child custody, the law provides divorced women preference in custody of children up to age seven. After the child reaches age seven, the father is entitled to custody unless he is proven unfit to care for the child. And divorced women

who marry must give the child's father custody.

Along with all the provisions listed earlier, unfortunately regarding to marital rape and domestic violence still today Iranian laws and regulations remained silence or sometimes in the favor of husband expressed some issues. Namely under Article 1108<sup>22</sup> of the Iran's Civil Code, obliges women to fulfill the sexual needs of their husbands at all times and known it as the requirement of "Tamkin", and if the women refuse to engage in sexual activity with her husband constitutes "Noshuz" means "disobedience" and disqualify her for maintenance rights. In case of domestic violence, Iran has not adopted any specific legislation to prevent, prohibit and punishment domestic violence, and left women in a position where they have to frame their claims of domestic violence as physically assault and bodily harm and proven them under the Articles 160 and 161 of the Islamic Penal Code. According to 2011, University of Tehran, study of violence against women was physically abused every nine seconds in the country an estimated three to four million women were battered each year by their husband and half of the marriages had at least one instance of domestic violence. Unfortunately, there are no official reports of killings motivated by 'honor' or other harmful tradition practices during the year. It is worth mentioning that, claims of domestic violence, even when proven, are not often adequately punished. Unfortunately, till today, Iran has not adopted and implemented efficient policies aimed at eliminating gender based violence. Regarding to stoning as a punishment of adultery, there is no position however this punishment is removed from Iran's new Islamic Penal Code because of its international biased reflection but still it has remained in suspended status and final approve is in the hands of guardian council. Regarding to Iran's international responsibilities, Iran is a signatory to human rights instruments such as Universal Declaration on Human Rights and the Convention of the Rights of the Child. But on the other hand, Iran's family laws are contradicting both the social reality and international standards and norms. And other problem is that Iran till today is not signatory to CEDAW, therefore for effective protection of women within family and society, ratification of international treaties such as CEDAW without reservation and to repeal all provisions of the Civil Code and Family Protection Law which constitutes discrimination against women and respect to equal rights of women on equal basis to be needed.

## CONCLUSION

The discrimination against women violates the principles of equality of rights and respects for human dignity. Therefore both countries need to change the traditional role of men as well as the role of women in society and especially in the family.

The Preamble of the Indian Constitution resolves to constitute a "Secular" Democratic Republic. This means that there is no State religion and that the state shall not discriminate on the ground of religion. Articles 25 and 26 of the Constitution of India as enforceable fundamental rights guarantee freedom of religion and freedom to manage religious affairs.

Also Article 1 of Iran's constitution<sup>23</sup>, states that the form of Government in Iran is that of an Islamic Republic. Therefore there is a different approach between these two government's policies. But there is a common point between these two countries, the issue of Muslim women's rights within family. The laws of the Muslims are considered to be old. Muslim Personal Law has not been reformed to that extent. Unfortunately the Muslim women in India and Iran are victims of the customs of child marriage, polygamy and other kind of discrimination in divorce, inheritance and child custody under Muslim personal law.

According to my studies, Muslim women's status in India is almost equal with women's status in Iran within the family, but in relation to some issues like, protection of women under domestic violence and the rights of maintenance of women who are financially unable in living after divorce, India is a few steps ahead through giving this chance to Muslim women to file a case under section 125 of the CrPC. But towards polygamy and its practice, Iran is a few steps ahead from India. In fact, the majorities of laws towards women within family are morally and they should not be viewed as civil claim. In both countries, since the women within family are governed by their religious texts, husband enjoys special privilege in the different areas of life. In India, for effective protection of Muslim women from verbal divorce, decree of court is required and Muslim personal laws must recognize marital property particularly after divorce.<sup>24</sup> The plea for making Uniform Marriage Laws for all communities is rejected, thus the Muslim women's issue remains unresolved. Therefore India needs a unified code of family laws under an umbrella of all its constituent religions which to strike a balance between protection of fundamental rights and religious principles of different communities in effective protection of women's rights on the base of equal

rights.<sup>25</sup> Marriage, divorce, Succession, inheritance and maintenance can be matters of a secular nature and law can regulate them.<sup>26</sup> As mentioned in Article 2(f) (g) of CEDAW, the state parties must take all appropriate measures, including legislation, to modify or abolish existing laws, regulations and customs and practice which constitute discrimination against women and moreover to repeal all national panel provisions which constitute discrimination against women.

Regarding to Iran, international treaties such as CEDAW must be ratified without reservation because through these commitments, Iran can protect girl children from forced and early marriage, Iran must increase the age of marriage for girls to 18 and ensure that the marriage of a girl child shall have to legal effect. Furthermore should be ensured that women have the right to freely choose a spouse and to enter into marriage with full consent. Moreover, Iran must repeal all provisions of the civil code which family protection law discrimination against women in matters relating to marriage, inheritance, maintenance, child custody and divorce. Lawmakers must create special procedure to investigate acts of violence against women including those involving marital rape and domestic violence and through adopting and implementing efficient policies to eliminate gender based violence and to punish men who murder their wife's and other female relatives through "honor crimes" and don't be silent on banning execution by stoning. Both countries need to reform existing laws, regulations, customs and practices in accordance with the objectives of international regulations for effective protection of women within family. And Moreover, efforts should be taken in both countries for empowering women who may help them to move out from a weak position and to exercise their power like men. They should be educated enough to exercise their opinion in taking decision in the matters of marriage, family size, household developmental activities. Then they will be made free from exploitation, social injustice and inequality. Women empowerment is not an automatic and spontaneous process. It requires efforts deliberately and consistently from all human beings in all walks of life.

### Notes

<sup>1</sup> Art: 15(3) of the Indian Constitution; Nothing in this article shall prevent the State from making any special provision for women and children.

<sup>2</sup> Art: 16(2) of the Indian Constitution; No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

<sup>3</sup> Art: 39(a) of the Indian Constitution; The State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood.

<sup>4</sup> Art: 44 of the Indian Constitution; The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

5 Maintenance of Wife under Hindu and Muslim Law: Comparative Study, <<http://www.lawteacher.net/free-law-essays/family-law/maintenance-of-wife-under-hindu-law-essays.php>> accessed on 12 February 2016

6 Section 125 of CRPC; Order for maintenance of wives, children and parents(1) If any person having sufficient means neglects or refuses to maintain- (a) his wife, unable to maintain herself,

7 Muslim family law- case study India, <[https://www.academia.edu/4159411/MUSLIM\\_PERSONAL\\_LAW\\_in\\_India](https://www.academia.edu/4159411/MUSLIM_PERSONAL_LAW_in_India)> accessed on: 18 February 2016

8 An MRG International Report, "Muslim Women in India", (1999), <<http://www.refworld.org/pdfid/469cbfcc0.pdf>> accessed on; 4 June 2016., p;20-22

<sup>9</sup> Child Custody Laws India, (19 April 2015), <<http://www.indianchild.com/childlaws/child-custody-laws-india.htm> ,> accessed on 28 February 2016

<sup>10</sup> A Report by the Rural Development Institute (RDI) for the World Justice Project, "Women's Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka", (December 2009), [http://www.landesia.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL\\_12-15-09.pdf](http://www.landesia.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL_12-15-09.pdf)> accessed on: 28 February 2016

<sup>11</sup> Article 5 (a) States that Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

<sup>12</sup> Article 16(1) states that; States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters

relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

<sup>13</sup> Khabar online, About Marriage in Iran, where the minimum age is nine, (1 May 2012), <

<http://concit.org/about-marriage-in-iran-minimum-age-is-nine/>> accesses on 28 march 2016.

<sup>14</sup> Chapter of women's rights and responsibilities in the Islamic republic of iran, approval ratified in session 546 dated on September 21, 2004 of the supreme council of the cultural revolution

<sup>15</sup> Khabar online, About Marriage in Iran, where the minimum age is nine, (1 May 2012), <<http://concit.org/about-marriage-in-iran-minimum-age-is-nine/>> accesses on 28 march 2016.

<sup>16</sup> Article 1105 of the Iran Civil Code; In relations between husband and wife; the position of the head of the family is the exclusive right of the husband.

<sup>17</sup> In 1967, Iran adopted a set of progressive family laws, the Family Protection Act, which granted women more rights in the family; those rights were expanded in the Family Protection Law of 1975. Though the act was

<sup>18</sup> Article 1005 of the Iran Civil Code; The domicile of a married woman is the same as that of her husband. Nevertheless where the husband has no known domicile and also when the wife has a separate domicile with the consent of her husband or by sanction of a court, she can have a separate domicile.

<sup>19</sup> Article 1114 of the Iran Civil Code; The wife must stay in the dwelling that the husband allots for her unless such a right is reserved to the wife.

<sup>20</sup> Under 1975 Family Protection Law, a man could marry four wives and have a large number of temporary marriages

<sup>21</sup> Article 1130 of the Iran Civil Code; in the following circumstances, the wife can refer to the Islamic judge and request for a divorce. When it is proved to the Court that the continuation of the marriage causes difficult and undesirable conditions, the judge can for the sake of avoiding harm and difficulty compel the husband to, divorce his wife. If this cannot be done, then the divorce will be made on the permission of the Islamic judge.

<sup>22</sup> Article 1108 of the Iran Civil Code - If the wife refuses to fulfil duties of a wife without legitimate excuse, she will not be entitled to the cost of maintenance.

<sup>23</sup> [https://en.wikipedia.org/wiki/Constitution\\_of\\_the\\_Islamic\\_Republic\\_of\\_Iran](https://en.wikipedia.org/wiki/Constitution_of_the_Islamic_Republic_of_Iran), accessed on; 18 February 2016

<sup>24</sup> Anchit Bhandari & Urvashi Jaswani, "A Critical Analysis of Gender Inequality in the Existing Legislation Relating to Property Rights in India: A Comparative Study of Hindu and Muslim Law", Institute of Law, <<http://www.manupatrafast.com/articles/ArticleSearch.aspx?sub=Family%20Law>> accessed on: 28 May 2016

<sup>25</sup> Harapriya Mohapatra, *Status of Women in Indian Society*, Quest Journals *Journal of Research in Humanities and Social Science*, 2015.

<sup>26</sup> Anil Malhotra and Ranjit Malhotra, "Family Law and Religion; the Indian Experience", <[https://www.iafl.com/cms\\_media/filesfamily\\_law\\_and\\_religion\\_the\\_indian\\_experience.pdf?static=1](https://www.iafl.com/cms_media/filesfamily_law_and_religion_the_indian_experience.pdf?static=1)>, accessed on; 12 February 2016

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