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SHARIAT AND FAITH: THE CONFUSION IN MUSLIM COMMUNITY

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INTRODUCTION:

Despite democracy, strong government authorities, and regulations in the country the hurdles of communities are far away from completely resolved. Numerous times the various communities have faced discrimination and limited number of opportunities in various fields. Even after passing so many acts, bills, and amendments the community has not been able to get the respect in the eyes of the society. For example, the Muslim community is a minor community, so it is imperative to take the community along with all the other communities to ensure harmony and peace in the nation. Muslims in India are following the Muslim Personal Law (Shariat) Application Act,1937 [1] since the beginning in matters relating to their guardianship, marriage, adoption, maintenance, etc. However, their personal matters are often criticised by the society even after they are free to follow their culture and customs. Although the fundamental rights are available to the citizens of the country, the muslims prevailing in the country face discrimination especially for following their customs. Muslims also often got criticised for the traditions such as Dower[2], inheritance rights favouring sons over the daughters of the family, Triple Talaq[3] (later removed). All these traditions of the muslim family are

[1] The Muslim Personal Law (Shariat) Application Act,1937
[2] Dower: A kind of monetary compensation given to the wife in Muslim marriage
[3] Tripple Talaq: A custom of Muslim community

permissible under the act but despite of that these traditions are criticised and called for removal.

MAIN BODY:

Every citizen belonging to their respective religion owns the right to follow, practice and profess religion without any interference, disturbance, or external pressure from any authority backed by the article 25 of the constitution of India. However, certain number of times the customs of some religion has came into question including the muslim religion as well. Instances like slaughter of cows done by muslim community over the years has been a tradition questioning whether it should be done or not is not required, triple talaq which was going on for years as it was convenient to be conducted by both the married parties came to end because it was violating the fundamental parties, restrictions on wearing Hijab in educational institutions on the kids of the muslim community by stating that during educational hours in an educational institutions only the school uniform must be wear by the students to maintain the discipline, integrity and equal position among all the students, giving order by the court of providing maintenance to the wife by the husband even after completion of the Iddat period which was not required to pay as per the Muslim Personal Law (Shariat) Application Act, 1937, the demolition of the masjid where the place of worship got damaged and destroyed by the members of the community just because of their presumption without having any valid and solid evidence which backed their actions they did (it clearly violated the rights of the muslim community they possessed the right to worship their god), raising questions to the students of the muslim community for not singing the national anthem during the school hours even after it is clearly stated by the constitution of India that resecting the national anthem does not merely means singing it & Article 25[4] of the constitution clearly allows every citizen of the country to follow, practice and profess any religion. All these instances which came into the eyes of the society shows that the Constitution Is the Supreme of all and to maintain the constitutional laws the customs, practices and the rituals of any community can get harm.Especially due to the fundamental rights introduced after the independence of India number of customs have been altered, modified and even erased from existence.The muslim community have also faced it as with time, change in laws, fundamental rights and amendment acts some customs have been removed or banned as of today.

[4] Article 25: The Constitution of India, 1950

LOOPHOLES IN THE MUSLIM LAW

1. Agricultural land- Under the Shariat Act,1937 the muslim women get right of inheritance because of which they can also enjoy possession of property even though not as much of mens of the family. However, the Shariat Act, 1937 did not mention anything about the farmland property and it resulted the application of the local and older rules which states that sons receive majority of the share and the women in the family get nothing. It is a major loophole left by the Shariat Act.
2. Will, Legacies and Adoption optional- The Shariat Act does not cover all these matters so which means that if a family does not provide a declaration by themselves then they are not bounded to follow the Shariat Act provisions regarding the Will, Legacies and Adoption they can make their own family rules and guidelines regarding these matters.It leads to a situation where the rules are not same for every family as some follow the Shariat Act by providing the declaration and some do not follow it by not providing the declaration, also it can cause hurdles for courts in giving decisions in such family related matters.
3. opt Out- Under the Special Marriage Act 1954[5], the Muslim men and women have the authority to marry under this act, but it can lead to changes in the rules of inheritance and property. After the death of a married couple under this act shall have to govern their property under The Special Marriage Act 1954 and not the traditional Rules, guidelines and regulations of the Muslim law.
4. Gender inequality- The Shariat Act has stated most of the provisions in the favour of men of the Muslim community. The act tried to make sure it makes rules that are favouring all the Muslims of the community equally. However, while trying to favouring equally all the families of the community it actually led to a situation where the women got very less rights like daughters receiving less share as compared to son, widows limited share, polygamy permitted for men but not in case of women so it won't be wrong to say that the Shariat Act did not favour women as much as it did to the mens of the family
5. No age limit specified- The Shariat Act does not mention any specific age limit for marriage. It states that marriage should be done on the basis of hitting puberty and not a fixed age. It leads to a situation where this provision gets clashed with the child

[5] The Special Marriage Act,1954

marriage act because the child marriage act protects the fundamental rights of the citizen and it overshadows the Shariat Act.

6. No valid divorce procedure- The Shariat Act states the dissolution of marriage is permissible but it has not mentioned the valid and the accurate way of divorce of a married couple due to which even today the members of the community has not able to find out that which method of divorce is valid as per the Shariat Act when it came into existence and even today. The Triple Talaq stayed relevant for such a long period of time before it was held unconstitutional because the proper valid procedure was not known to any of the ancestors of the muslim community
7. No establishment of an authority- The Shariat Act was enacted proven with the purpose of spreading the rules, guidelines and customs and practices of the community to all the members scattered all around the country. But it did not set up any regulating authority to check whether the members of the community are following the religion as per the rules of the act.
8. No rules of will's formalities- Under the Indian Succession Act, 1925[6] the rules relating to making bills are clearly specified. Unlike, the Shariat Act, 1937 where it is not mandatory to make the will in written form and it also does not require registration compulsory which results to making of oral or verbal wills without registration. The making of oral wills can lead to conflicts and makes it difficult for the courts for passing judgements in Muslim will relate cases.
9. No protection against unregistered oral Hiba Dispute - Under the Shariat Act, 1937 the Hiba (gifts) can be given in oral forms without any written agreement to be signed. In case of an oral Hiba, disputes occur because of not having any proof that whether the real owner of the property has actually transferred the property Hiba(gift) in the name of another. So, The Shariat Act,1937 has left a loophole by not making the Hiba in writing.

CONCLUSION:

The Constitution of India ensures fair rules, regulations and guidelines for all the individuals, communities and religions. However, over the years it has been found that the muslim community has faced criticism on customs, modification of their customs, amendments passed on their customs, banned on their customs but the loopholes of the Shariat Act 1937 found out

[6] The Indian Succession Act, 1925

is also a result of nearly a century of incomplete codification. Many of the loopholes have been challenged by the Muslim women themselves as the act provided very less rights to the women in matters relating to inheritance, guardianship, succession, etc. The debate to convince all the communities to adopt and follow the Uniform Civil Code (UCC) which is very complex and critical decision to take considering the sentiments and emotions that the members of different communities Carry towards their customs and religion. Every action comes with certain consequences. To forming Uniform Civil Codes in entire State of India is a suitable approach but as we know our nation entitled with people where there are divided by religion, culture, ethics, morality and social values. So, it could be turned as something which we united people do not want.

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