

**GENDER PREJUDICE A COROLLARY OF ORTHODOXY: THE  
COMPATIBILITY AND COHERENCE OF QURAN WITH MODERN  
SECULAR LAWS**

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**ABSTRACT**

The attitudes towards muslims are perceived as stereotyped as media represented with multiple attributes conjectured as incompatible to secular laws such as gender inequality, non compliance of integrations in the multicultural and multiracial societies, behavioral practices presumed as controlled by faith, impediments in women taking jobs due to fear of intermixing of genders along with traditional notion of muslim women's stay in home giving an impression that islam is responsible for muslim backwardness. However, these ages old verdicts practiced in the garb of religious color adopted as a result of medieval orthodoxy, patriarchal and tribal local customs developed under androcentric hegemony. Also, the evolution of different madhab's (school's) in islam put oil in the fire with each school's interpretation posses variation even on same issues made the sharia law complicated in nations such as Saudi Arabia, Iran and Turkey. However, it is well documented fact that in prophets era and rashidun caliph's spell the gender equality in all spheres of life with shoulder to shoulder, in same line with the modern western countries were observed as without fifty percent population's active involvement it is hard to imagine a vibrant nation.

**Keywords:** Gender prejudice, Orthodox Islam, Secular laws, Madhab, Sharia law, Gender Justice

**Introduction**

Globally irrespective of culture the medieval law codes (e.g. Justinian code, Tang code, Gratian's decretum) have profound influence on shaping society are well perceived as gender biased and incompatible to modern secular and liberal laws. In such patriarchal settings the local culture influenced substantially, that controls the civic life with male hegemony at its pinnacle undisputedly. In that period and even until a couple of century ago the patriarchal customs are strictly followed with every household where geniture of male gender was doffed one's hat to and coveted with cynosure of every eye as embodiment of hubris. Moreover, even in colonial

and post colonial systems men's adjudicating dominantly *ad rem* civic laws (marriage, divorce, maintenances, succession) irrespective of religions such as Christians, Jews, Muslim and Hindus. Thus, Hindus were ruled by Hindu's law (Surtis, Smirities, Commentaries and digests), (Agarwal, 2019) Christians by Cannon laws, Jews by Halakhah and Muslims by Sharia laws. It is established and widely accepted proposition that predominantly men's solely through androcentric readings of sacred religious texts and their exegesis institutionalize age-old customs safeguarding male privileges under the cloak of divinity resulting vastly discrimination against women, in the garb of religious edict subtleness, women folks put under shadow to believe that their only duty is to serve men and to procreate lead towards utopia. Partly, such craftiness was true with the circumstances of the medieval time, where safety, security and work distribution was clear in civic life that women to do house chores while men responsible for alimentation and protection, and in same line offspring's trained and helped by either parents to adept in impending future. As of in medieval time men accords with men and women voices were rarely heeded in family matters, neither were they considered for sought of opinions, hence their mind and bodies overwhelmingly subjugated. Indeed, it is only in the past few centuries, women in North America and Western Europe struggled to achieve gender justices and equality before the law (Locke, 1689). Since women are at par in all sphere of life with the men owing to getting full opportunity and high quality of education leading prosperity and self reliance to the countries those adopted policy of equality and equal opportunity. In spite of adopting such secular and liberal laws in modern societies ramification of gender injustices, family and its structure, family dysfunction, increasing rate of divorce, living single, are hot issues among social scientist, law makers and religious based personal laws in recent times.

Muslims are perceived as stereotyped broadly by media representation which shows abject poverty stricken, lower literacy, high rate of criminalization, segregation of genders and partly of gender prejudices cited as an examples of concerns. Since, quran is foundation basis of Islam revealed in seventh centaury in Arabia where pre-islamic tribal customs with patriarchal setup were prevalent and women were objectified and subjugated, however, quran ushered and introduced phenomenal above par with the modern concept of gender equality, hence it significantly advanced women's status by granting them revolutionary rights in verses depicting in quran for both gender equality and freedoms which had not previously existed in the Arabian society (Esposito, 2001; Tucker, 2008) for example, "O mankind, fear your lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women (Quran 4:1)" and in another verse, "O mankind, indeed we have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is knowing and aware (Quran 49:13)". In order to clarify the gender biasness which existed among those age-old societies and unfortunately, even in modern time still some underdeveloped countries are

grappling with such cognitive behavioral challenges, hence the secular governments are forced to bring statutes to banned scientific fetus sex determination (by ultrasound) which is stringently punishable by prison or hefty fine (Gazette of India, 2003). Incredibly, even today male oriented psychology conformed and celebrated boy child birth on social sites in their friends group but seldom express ingénue birth. Nevertheless, male birth venerated customary which was debunked by quranic verses fourteen hundred years back as, “and they attribute to Allah daughters—exalted is he—and them is what they desire (sons) and when one of them is informed of (birth of) a female, his face become dark, and he suppresses grief. He hides himself from the people because of the ill of which he has been informed. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decide (Quran 16:57–59)”. In other verse it is well clarified, indicted and prohibited to kill any child how tough time comes even in case of severest poverty, thus trafficking which was/is challenges for modern government from poverty—stricken countries to the lucrative rich nation (UNTOC, 2000) in want of better opportunity was snuffed back, it is worth to mention that in those days slave market were prevalent throughout all continents and with extreme distress or captured, slave markets thriving even parents sell or kill their own wards for want of money or severe hunger, “And do not kill your children for fear of poverty. We provide for them and for you. Indeed, their killing is ever a great sin, (Quran 17:31). Moreover, in another beautiful verse of quran, warns the consequences and torment of such savage acts that will be asked hereafter, “And when the female infant buried alive will be asked, (Quran 81:8)”, delineating all forms of female child killing a greater sin, which modern governments had perceived and halted by statutes, as female population ratio is alarmingly dwindling (Park & Cho, 1995). All the above verses delineate and advocate some sort of biasness existed and warns to annul any future happenings of such recurring episodes as of technological advancement even modern time people get fetus aborted, but in classical time after birth people buried them clarifying that such tendency may exist in future as basic instinct of being human, and needed to be strictly exculpated as ascertained by quran, interestingly modern secular governments world over controlled the fetus abortion in similar tone of quran. However, the outcome of the human understanding of quran as primary and supreme source of guidance and then sunnah/hadith as secondary source along with fiqh edicts made islamic law popularly known as *Sharia*, but it must be borne in mind that divine verses are the only flawless, endorses and guarantees of its eternal truthfulness not any secondary sources whatsoever presented, “This is the Book about which there is no doubt, a guidance for those conscious of Allah. (Quran 2:2)”. Interestingly, based on the medieval scholars understanding at passing times various schools under islamic umbrella in various nation-states influenced by local customs, culture and ethnicity, family laws were interpreted by mostly *mohaddis*, *faqih* and scholars who institutionalized the historical narratives. The eminent scholars of such schools developed, progressed and addressed a refinement of any issues arises based on their understanding of islam

as *fiqh* (the human effort to know the sharia, is imperfect and changeable) (Britannica), such as, in Sunnis, *Hanafi, Maliki, Shafi, Hanbali, Salafi* Schools, and in the Shia's as *Usuli, Akhbari, Zaidi, Ismaili* Schools and their followers are acronymic based one particular school of thought per se, it is worth to note that such schools (*madhab*) emerged several generation later to prophet and rashidun caliph's time. It is undisputed historical fact and well recognized precept that hoary of Muslim jurists, *mohaditheen* or *mufassareen* predominantly were men raised, tutored and cultivated in societies steeped in tribalism, patriarchy and predominantly socio-economical milieu of monarchy as Umayyad, Abbasid, Othmania, Mughals, Fatimids and Safavids. The criticism faces by muslims today is owing to the perception of rigidity and incompatibility with secular laws specially of women's right is due to medieval local customs, scholar's written pamphlets, different madhhab's fatwa's and their rationale of understanding and interpreting hadith's and quran. Moreover, ruling class's influence, their life style as a footprint to imitate, and their consistent clandestine dictation and open funding of madarsa's for favors, also the squabbles among scholars in inherent intra-competitions amongst fuqha's (*madhab's*) for superior sense of erudite to advocate their pristineness to the madhab followers of subcutaneous details over the last fourteen hundred years ingrained a patriarchal hegemony lucent cannot be ruled out. As quran in the verse describes and warns well to use the understanding on any information a person receives from any sources since human being can tend to make error and misjudgment as a glaring example of sharia law difference is clearly visible in Saudi Arabia, Iran and Turkey, in the words of Charlie Munger that "The Psychology of Human Misjudgment" could use "a little revising" to bring it in line with his most current views on the subject (Munger, 2005). In accordance to that fuqaha as Imam Shafii (*Shafii school*) has revised/contrasted plenty of edicts of Imam Abu Hanifa (*Hanafi school*), however the followers still adhered to their imam's version cited are best example is instant triple talaq, surah fatiha recitation in prayer and legitimacy of child born after dissolution of marriage in Hanafi law is two years and Shafii and Maliki law is four lunar years are considered as legitimate (Ahmad, 2020) is hard to digest of any reasonable man. But the quran has clearly guided, "You shall not accept any information, unless you verify it for yourself. I have given you the hearing, the eyesight, and the brain, and you are responsible for using them (Quran 17:36)". This verse even very true today of modern digital world as mushrooming social media become rampant tool to spread rumors and fake information and slandering to such an instant that can spread communal clashes (Bepari, 2020) resulting in loss of life and properties, so individual verification of facts is prime important before it accepted to bring peace, love and harmony. Interestingly, the *usul-al-fiqh*, that defines methods and principles at which *Sharia* (literally, "the path leading to the watery place) is based on *quran, hadith*, in order to decipher the codes and edicts of muslim laws over centuries have variance and came a cropper to unify all the *madhab's* as quran advocates strongly, "And hold firmly to the rope of Allah all together and do not become divided. And

remember the favor of Allah upon you- when you were enemies and he brought your hearts together and you became, by his favor, brothers. And you were on the edge of a pit of fire, and he saved you from it. Thus does Allah makes clear to you his verses that you may be guided (Quran 3:103)". Attributably, the definition of several other technical terms used to inculcate under the purview of sharia in order to deduce esoteric intent and clues on issues faced with changing times such as the jurisprudence of consensus is called (*ijma*) and analogical deduction (*qiyas*) and additional sources also influenced legal rulings includes public interest (*istislah*), common customs (*urf*), juristic preference (*istislah*), necessity (*darura*), presumption of continuity (*istishab*), and independent reasoning (*ijtihad*) (Alwani 2007). The pertinent question here arises does medieval extrapolation, conjectures and construe of the sharia laws are still valid or can be revised or compatible with secular liberal laws, and what if it contradict or had a conflict with the modern secular state laws and statutes, in that scenario what the secular governments stands will be, should it be left to the clergy to decide faith of general muslim population or government should make panel of eminent secular jurist and university professors to make reform by understanding quranic verses to deduce justified conclusions. It has been advocated in quran as, "O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do (Quran 4:135)". The orthodox scholars interpretation or divine verses exegesis in modern context by experts may understood in totality for instance triple divorce case which was classified as Talaq-e-bidat is/was prevalent and valid in Hanafi school quashed and punitive statute by parliament of India [Gazette of India, 2019], as quran delineated and declared in clear verse as in single sitting is prohibited and well abolished by 23 muslim countries [PTI, 2018] as, "Divorce is twice; then either to retain in all fairness, or to release nicely. It is not lawful for you to take back anything from what you have given them, unless both apprehend that they would not be able to maintain the limits set by Allah (Quran 2:229-230)", another verse explains well the men have to deliberate, justify, think for months before taking such horrendous step, not playing in seconds in hasty with lives of others as, "Those who intend to divorce their wives shall wait four months (cooling off); if they change their minds and reconcile, then GOD is Forgiver, Merciful. If they go through with the divorce, then GOD is Hearer, Knower. (Quran 2:226-227)". Additionally, myriad of hadith's also vehemently abrogating and vilifying all kind of bidaat as one famous mentioned here that almost repeated in every Friday Khutaba prayer all over the mosques in islamic world, as, "and every bida is misguidance and all misguidance is in hell fire" (Sunan An-nasai 1578). Just based on one faqih's ijtihad (independent deduction) can never be questioned about the islam in toto, interestingly quran never gave any power to mend the law on some individual understanding rather holistic approach is considered as a verse clarified its position,

“O you who believe, obey Allah and obey the messenger and those in authority among you. Then, if you quarrel about something, revert it back to Allah and the messenger, if you believe in Allah and the last day. That is good, and the best at the end (Quran 4:59)”. Based on this verse two viable option the quran has recommended and given governments (authorities) of the time exclusive and prerogative power (since the word used “Amr” is equivalent to power/force) and the other power was to prophet and quran itself, however, third part is so much misused and translated (as “scholars” “Imam’s”) leads muslims to divided in sects (firqa), interestingly heated debates on topic of interest among *madhab*’s often took bad blood for the rival school’s that results in bitterness among themselves and may results superiority of one to another rather to find single goal of truth. Presently, the secular governments are established mostly throughout the globe by people and works on larger benefits as whole nation at unity irrespective of race, religion, gender, and region can mend the laws on larger public interest and omit classical goof ups. To further corroborate the point, the second caliph (634 - 644 AD) has brought many reforms using his authority, such as political (investigation complaints department against officers under charge of Mohammad bin Maslama, intelligence service and financial asset accountability of political officers, Kharaj), Military (established army as state department, salary in cash in contrast to Roman army where they get land or right of collecting taxes, leave of each army personnel at every four month, Ghanimah, Fai,), Religious (Traveeh prayer in congregation, double adhan in Juma prayer, banning muta marriage), Social changes (welfare state digging canals connecting rivers and pension for needy, orphan, elderly, widows, disabled) (Sallabi, 2007), to prevent unemployment and civil unrest as Al-Ghazali describes, “*God has created hands to work, if they cannot find work in obedience they will find plenty in disobedience, so keep them busy in compliance before they get you busy with defiance*” and Land reforms (El-Ashker; Wilson, 2006). In the line of above reforms the government has tremendous power given by holy verse to develop a welfare state and abrogating old age futile traditions for muslims. An interesting verse mention the curse of division either in nation or in religion results in vengeance, will cause shatter in your strength and lead you nowhere, despite of your number you will be weak, that truth is understood by many modern nation in the concept of nation state (nationalism) to unify the state irrespective of language, gender, locality or caste or religious belief and no matter what the circumstances the interest of nation takes the precedence, any divided nation is unhealthy to give impact on the world map, similarly a verse warns muslim as, “Say: “He hath power to send calamities on you, from above and below, or to cover you with confusion in party strife, giving you a taste of mutual vengeance – each from the other (Quran 6:65)”.

Regrettably, interpolations, extrapolations, cultural influences, inflexible deduction, monarch leaning stipulations and interpretation of islamic laws believed to have undermined the egalitarian principles of quran and fostered a legal tradition that has curtailed women equal rights

in the name of religion [Mernissi, 1991; Barlas, 2004; Souaiaia, 2008; Wadud, 1999). Those early interpretations wisely inculcated given religious color embraced by various schools has created confusion and debate within and outside the muslim community with the exposure and rights bestowed by modern secular and liberal system brought challenges and defiance to such deep seated patriarchal attitude of orthodox islam. Amazingly, the sharia is not implemented uniformly in twenty countries across islamic world rather huge differences are visible in application and practices in those nations. It is worthy to note that, ‘Turkey, Cyprus, Tunisia, Algeria, Iraq and Iran do not give a muslim husband right to divorce his wife unilaterally. But, it says that, a muslim husband desiring divorce from his wife must apply to the court of law (Gani, 1978) clarifying that flexibility may be possible. It must be noted that government has power to act in larger public interest with modern well trained formally educated jurist as the second caliph has mended suitable for his time. Since current time all people irrespective of gender have equal opportunity and status, if a spouse want to excel in career and another supports, he may get reimbursement support who provided support as their education or professional development (Hamilton 2006). However, there is always minority who defy the reforms even if it larger interest such as Mushirul Hasan (2000: 10) writes: ‘The demand for reforms is interpreted as an attempt to destroy “Muslim identity”, but it must be borne in mind that muslim identity is the path guided by quran not orthodox age old interpretations, “ This is the book about which there is no doubt, a guidance for those conscious to Allah (Quran 2:2)” and is guaranteed by holy book verse and no one can destroy that identity, as the book revealed, “Indeed, it is We who sent down the message [Quran], and indeed, We will be its guardian (Quran 15:9) and further assertion made by the holy book that, “No falsehood could enter it (Quran), in the past or in the future; a revelation from a Most Wise, Praiseworthy (Quran 41:42)”’.

### **Gender justices at prophetic period and rashidun caliph’s spell**

Scholarly discourse on rights particularly gender justice equality within islamic framework synergies with human rights in a liberal sense has been pointed out flaws and incompatibility with modern secular laws that of fiqh based sharia. It is further perceived as without women involvement no family, no country can be self reliant and with changing time the need of the hour is to integrate the potential of other half population for the nation development as quran has depicted that they are born from same soul so it is clear that they have same potency as of men. Lately the renewed interest with basic tenets of many male and female islamic scholars around the world assiduously working to bring muslim practices back into coherence with the quranic spirits, (Afkhami, 1995). Today, many female and male muslim scholars view the “Quran” as a rich text that can support the jurisprudence of equity and good conscience, and are tirelessly working to address minute details and fineness with clear examples of prophetic traditions with sole aim of rectifying imbalances (Wadud, 2006; Mir-Hosseini, 1999). To some, there are

plethora of examples of muslim women functioning in public spaces, (Aliyah, 2016; Abdelkader, 2012) including Prophet Muhammad's first wife Khadijah (r), who was a businesswoman, and his wife Aisha (r), who was a political strategist, military leader, and expert in islamic jurisprudence (Leila, 1992). Other women such as Al Shifa bint Abdullah (r), political advisor, jurist, islamic scholar, and a public administrator and inspector of commerce (Muhtasib) in Medina appointed by second caliph (Salahi, 2011). Caliph Umar (r) appointed Samra bint Nuhayk (r) same post in Makkah, and he gave her a whip to punish anyone who cheated or gave short measure, [Al-Haythami, 1988; Ibn Hibban 1992] Nusayba Umme Amara (r), who physically defended Prophet Muhammad as the first female muslim soldier; and Ramlah Umme Salim, who nursed the wounded during battles. Rufaydah al-Aslamiyyah (r) started such a surgery in a tent erected close to the mosque, where she looked after those injured in battle (Ibn Hisham, pp.238). When Umar Ibn al-Khattab died, the meeting of the consultative committee was held in Fatima bint Qays (r) home because she was a woman of understanding, shrewd judgment and good opinions. The members of the committee thought that it would be appropriate to consult her. It is pertinent to mention that giving sense of gender equality that women at prophet time do attended the congregational prayer along with the men as some hadith's are clarifying it and worth to mention here as, "Narrated by Ayesha (r), the believing women covered with their veiling *chadar*, used to attend the dawn prayer with Allah's messenger, and after finishing the prayer they would return to their home (Bukhari 195/2; Muslim 118/2), yet another hadith reported that "Do not prevent women from going to Allah's mosque" (Bukhari 6/2; Ibn Hibban 327/1; Al-Mawatta 197/1; Al-Bayhaqi 199/3; Ibn Khuzaymah 90/3; Ibn Shaybah 56/2; Ahmad 405/15) and another place it is stated, "Indeed, when Umar (r) was stabbed, Atikah (r) was in the mosque praying behind him" (Fath Al-Bari 34/3). Similarly, women are also involved in agriculture as Umme Mubashir (r) has date palm farm. Additionally, women took also in part of battles such as Nasibah bint Kab (r) in battle of Uhad where she got twelve wounds, Hudaibiyah (r) in Khaibar battle (Ibn Hajar, pp. 262), similarly Umme Sulaym (r), Umayya bint Qyas (r), Umme Ayman (r) (Ibn Hajar, pp. 93; Ibn Saad, pp. 225) etc. Such sort of narration emphasized without doubt that women's were very much integral part of early muslim society comparable to today's advanced nations and their involvement has made them in very key and strong position as necessary to uplift a society, their contribution could not be denied. But over the passing time the clergy's discriminatory interpretation of the textual sources, patriarchal discourse of islam has stiff challenge or face off to their authority is bound to happen owing to high quality education and sense of rights not only in terms of a juxtaposition but in terms of the synergies that are inherent in the combination of vernacularization (Merry 2006). As a verse of quran has well depicted, "And for women are rights over men similar to those of men over women (Quran 2:228)".

### **Compatibility and gender justices with modern secular laws**



Perception has been created and spread all over that fiqh based sharia law is incompatible with the modern secular civic laws, since most of the democratic nations has adopted modern secular law overhauling local, traditional and their religious based laws and applied new modern liberal laws even in India Hindu personal law that has been coded in 1955 and with time several amendment has been made with passing necessity in order to improve it. The debate ushered and confined basically the medieval patriarchal orthodox interpreted fiqh based sharia as understood by archaic scholars from quran, sunnah, hadith, qayas, ijma and sources such as *istislah, urf, istislah, darura, istishab and ijihad* complicates the deep seated inferences and results in different verdicts on same issue. As mentioned in the section 2.1, with references that in the prophetic and rashidun caliph's spells women's involvement in every sphere just like today's women with shoulder to shoulder of men was evident. As a matter of fact the most common instances to the secular and liberal mind person about the confusion and variance of family laws of different muslim schools (*madhabs*) that always garnered stiff resistance by clergy and rage controversy in the democratic nations like India who shared competing parallel scenario of state statutes and religious family laws. Since the muslim personal law is perceived by jurist as uncodified and being citizens of India both state and religious laws work side by side, that gives lawyers an upper hand to which circumstances is better to frame the opponent in the shackles of law and in order to teach lesson the manipulation of the legal system transpires in collusion rather than peacefully, amicably settling the matter saving time, energy and burdens on family courts (The Wire, 2019). It is worthy to mention here as in case of advanced countries family disputes is fast since both the partner works and no one afford to lose time, so mostly amicable settlement are speedy since both have financial security, contrary to the muslim society the women are dependent, hence to getting maintenance, stiff bickering from both parties deemed to occur occurs and win-lose situation irrespective of gender abuse of rights and open's a long battle of court process that last longer until the final decree. In some cases of marriage and divorce owing to vendetta, deliberate use of section 498A of IPC, 125CrPC using as weapons to frame and extort extended family members to be victimized to score brownie points. The misuse and abuse of dowry statutes are so much that even Supreme Court once commented, "By misuse of the provision, a new legal terrorism can be unleashed" (AIR 2010 SC 3363). Many studied has been performed and concluded with very less conviction rate of 12% in dowry related cases, the pertinent question arises even laws and amendment made by wise, careful and intelligent secular and liberal state still the abuse rate is pretty high as in words of Samuel Adams (neither the wisest constitution nor the wisest laws will secure the liberty and happiness of a people whose manners are universally corrupt) gives impetus to impart quality education among people of the nation (both genders). On the other hand quranic law is believed by all muslim's as a divine laws is for the eternal guide for humanity as whole as we have mentioned in the introduction section. The quran has mentioned, "Surely those who fabricate the lie are a group from among

you...Every man will receive what he has earned for this sin, and whoever had the greater part in it will have a grievous punishment (Quran 24:11)", and it is also clarified (oppression is worse than murder, Quran 2:217). In that context the bottom-line is that any matter of inquest the honesty and uprightness with much deliberation and contemplation with larger perspective and public interest considering wider picture in mind must be conjectured with the clarity of objective, henceforth the ensuing conclusion must be given precedence irrespective of culture or custom and that is also true for the gender justices. Amazingly, perhaps islam is the remarkable religion where marriage is directed as a civil contract but in other religions it is of a sacrament sort. Despite of that muslim clergy failed to bring well balanced stipulations in the form of contract and their model nikahnama as they presented suffers fallacies, vagueness and dissatisfaction to women rights group, the *iqrarnama* and *hidayatnama*, they presented seems advisory, rather than focusing on terms and conditions that brings clarity to both spouses assigning compatible duties and obligations after solemnization of the marriage by wiping the vices, cunningness, hidden agendas in the form of false promises orally, and duplicity that existing in the society. It is worth to mention here that although in Hindu religion the marriage considered as sacrosanct, the *Saptapadi* ritual where bride and groom in front of sacred fire encircles and in front of people pledge to abide the seven promises (seven hymns written in Vedas) to whole of their life (Agarwal, 2019). Here in case of any unprecedented issues or turmoil each party at least remembers his promises to be abided, less likely to abuse his pledges. Since in every marriage among muslim the social conditions of each party or family is different with different status and socioeconomic conditions, so a model *nikahnama* with clarified contract terms may be hard to devise except the general one page posses basic requirements prevalent such as signatures of bride, bridegroom, *wakeel*, witnesses, dower (mahr) amount, addresses etc. However, it can be advised by district level qazi that nikah will be performed if bride and bridegroom along with marriage card print also marriage contract settlement stipulations in detail point wise in three copies, where the duty bind obligations, prohibited degrees, in case of divorce its settlements, responsibility of kids, if women to do jobs then distribution and sharing of salaries of couple must be clearly mentioned and be understood by both parties along with clarifying terms of vows, if any party flaunting the mentioned terms and conditions then either the statutes of IPC, CrPC will be applied or muslim women (protection of rights on divorce) act 1986 will be implicated. The leverage to make civil contract is in conformance to most of the existed schools of thoughts required traditionally a guardian (wali) with rationale of male family member will protect the interest of bride (Al-Hibri 2005) and from man side his family member or himself involve in fair and just contract. Similarly many quranic verses also advocating elders to settle the crises facing by the couples as, "If a couple fears separation, you shall appoint an arbitrator from his family and an arbitrator from her family; if they decide to reconcile, GOD will help them get together. GOD is Omniscient, Cognizant (Quran 4:35)". Furthermore, on

matters of triple divorce in one go, it neither allowed and neither recommended by quran as mentioned previously, moreover this beautiful verse will quash such dogma also as, “Those who intend to divorce their wives shall wait four months (cooling off); if they change their minds and reconcile, then GOD is forgiver, merciful. If they go through with the divorce, then GOD is hearer, knower. (Quran 2:226-227)”. This verse is highly compatible with the modern secular family court law giving plenty of time to think from all perspective in order to dissolve such primary vital and significant knot, not acting scrupulously at the heat of the moment in fit of raze pronouncing thrice instantly. This verse also compatible with modern secular and liberal marriage law amendment act of 1976 of divorce by mutual agreement (section 13B) (Agarwal, 2019) where total duration was given one and half year for reconciliation, what happen if the couple decided completely within few month but have to wait for stipulated time, while the quranic verse save plenty of time as cooling off is prescribed only four month. It has been also noticed that prior to 1970<sup>s</sup> and emergence of no-fault divorce law, process of getting divorce was difficult and sluggish to produce equitable results (Hamilton 2006).

### **Implications and gray area in implementing sharia law on Indian muslims**

India is a vast vibrant secular country of about ~160 million muslims inhabitants spread across its all provinces with various socioeconomic conditions cherishing muslim personal law alike Hindus, Christian and Parsi's permitted by constitution in addition to secular common state laws. However, with the tremendous amount of emphasis is given by the government on education and human development as a welfare state, concomitantly challenges for sharia law implementation exist as new generation have little attention towards religious studies as liberal thoughts and shrinking of world as communications are on finger tips. In that respect any personal law of any community should possess clarity and codification for better understanding as day by day people are engaged much of the time for earning bread and butter. Practically the civil mohammadan laws must be adopted on framing the sharia based on quranic tenets that can lead towards strong successful mutual survival characteristics otherwise vague and complex stipulations on nikahnama such as *iqrarnama*, *hidayatnama* leaving on personnel's wits of parties and clergy dependency will have heavy negative implication in future generations and their view point on personal law might be relenting and emaciating. For example, in sneaky unpredictable future irrespective of religion owing to high inflation, high cost of commodities and education both the educated genders likely to carry out job to address their basic needs, and if in case of family both the couple works then how and what ratio they contribute or share on earnings. Amazingly, even modern muslim clergy advocating in same line of orthodox personal law with same tune, says men have no right on wife's earning and it is men's only duty to maintain and run house without substantial quranic backing, since equal opportunity for all gender is norm of modern law, what if women earning more than men, and what if on only men's earning house is not maintainable?

If such is the case, why the men will allow the women to do the job? Where the chances of mixing of gender are lurking as sharia according to clergy segregates the genders? That sort of situation may put the marriage in turmoil and unstable, also left to them bereft of comfort of luxuries, rather sitting idle at home better to help in earning bread and butter and carry forward family to vibrant leap and bounds. Another case, what if women send all her salary to her parent family and by only men's earning fulfilling her expenses and family needs or he is just sponsoring his wife's family indirectly? Is that justice? In that scenario people prefer secular and liberal law that works for larger interest of family as a unit. It is worth to remark here that prophet himself worked for her before his marriage to Hadrat Khadija (r) at the age of 25 but depends on her asset after marriage with her. Moreover, quran says, "And for women are rights over men similar to those of men over women (Quran 2:228) and at another verse, **"To men is allotted what they earn, and to women what they earn: But ask God of His bounty. For God has full knowledge of all things** (Quran 4:32): so it clarified that God's bounty will shower if both the couple works like team and balance is appropriate in both genders where equity and justice are prime requirement for healthy relations. History has shown that cultures which pay little heed to the incentives of their fundamental institutions such as civic laws and fairness in duties pay a heavy price in terms of extinction or perpetual poverty leading to criminalization and insecurity to peace. It is worth to mention here that National Crime Records Bureau (NRCB) of India in 2019 has published with muslim population of 14.2% have 16.6% conviction rate in criminality, disproportionate to the share of their population (Tiwary, 2020).

Since marriage is believed to be an institution is made up from intricate echelon of informal and formal conduct of interdictions for strong prospering and survival characteristics to achieve the united purpose of successful tie up, tranquility, procreation and wards excellent education. The common hallmark of every marriage is a union between one man and one woman must possess some powerful feature that allows it to be so robust and prosperous across time and location, beyond cultural and custom influence as single entity. It has been observed that in any institution modern or archaic either of commerce or governance there is one chief executive i.e. his decision is final and in any error he is accountable, such resemblance was founded in the marriage institution of patriarchal or orthodox religious code where men were presumed as head, however with passing of secular and liberal statutes granting equality of genders before law has given equal prowess in family institution, perhaps a pertinent question needs to address by sharia of fiqh, that with changing time how stipulations in marriage contract can be made to balance with equity and justice between the genders with the changing times. It is well predicted that with equal rights without proper civil contract in marriage delineating clear duties, implication of disputes may arise how much smartest law are made. According to Douglass North, is the "humanly devised constraints that shape human interaction" [North, 1990]. Furthermore, it has been reported that divorce rate increasing consistently from 0.50 per 1000 in 1998 to 13 per 1000

in 2019 (Joseph, 2020), perhaps it is worth to mention in the words of Rashtriya Swayamsewak Sangh (RSS) chief Shri Mohan Bhagwat, “The cases of divorce are more in educated and affluent families because with education and affluence comes arrogance, as a result of which families fall apart. The society also falls apart because society is also a family”. So, it is incumbent on law making authorities of either personal laws or secular law to make gender-just model laws by analyzing holistic approach in depth of the persisting society’s aspirations to address the real issues to make vibrant and progressive nation.

### **Conclusion**

Many of the age old verdicts practiced in islamic religious belief today are adopted as a result of medieval orthodoxy, patriarchal and tribal local customs influence under andro-centric hegemony. Also evolution of different *madhab*’s in islam with each school’s interpretation posses variants even on same issues made sharia law complicated and un-unified even in islamic nations. However, it is well documented that in prophets era and rashidun caliph’s spell the gender equality in all spheres of life, in same line with the modern western countries were observed as without fifty percent population’s active involvement it is hard to imagine a vibrant nation. Since, quran ushered and introduced phenomenal above par with the modern concept of gender equality is believed by all muslim’s as a divine law for the eternal for humanity as it advocates, “This day I have perfected for you your religion and completed my favor upon you and approved for you islam as religion (Quran 5:3)”, however the interpolations, extrapolations, cultural influences, inflexible deduction of texts impede serious developments and its duty of welfare governments to appoint jurist and professors to re-read between the sacred text and interpret in true sense in form of revising before framing any muslim personal law just like second caliph has done in his tenure backed by quranic verse. Leaving huge muslim population lives in the hand of clergy’s verdict and un-codified sharia law will not only jeopardize happiness and tranquility of future generation but also seriously affects marriage institution.

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