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Muslim Women (Protection Of Rights On Marriage) Act, 2019 : Populist Or Egalitarian

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Abstract

In India, where religion-specific laws govern issues of marriage, divorce, maintenance, adoption and inheritance, the family laws of Muslims – the largest religious minority – have been a thorny issue in the post-independence period. In recent years, the major intervention in Muslim personal law reform came in the form of the invalidation of instant divorce or triple *talaq* by the Supreme Court of India. However, the minority opinion of the Supreme Court suggested the Parliament to consider appropriate legislation governing the practice of triple *talaq* in the Muslim community. Subsequently, a law was passed that criminalized the practice of instant triple *talaq*. By delving upon social indicators like education, financial inclusion and political participation, this paper shows that it is only by refocusing the debate from legislative measures to social indicators like education, financial inclusion and political participation that the trope of Muslim women's victimhood can be addressed.

Keywords: Instant Triple Talaq, Criminalisation, Social Indicators, Muslim Women.

Introduction

Instant triple *talaq* has always been a contentious issue in India. In the Shayara Bano case Indian Supreme Court ruled on August 22, 2017, that the practice of *Talaq-e biddat* (*talaq* that is uttered three times in one sitting) is set aside by a 3:2 majority. It was held that the correct law of *Talaq* as ordained by the Holy *Quran* is that, the *Talaq* must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters - one from the wife's family and the other from the husband's.

Consequently, Muslim Women (Protection of Rights on Marriage) Act, 2019 was passed. It appeared to have been a big win for Muslim women. The Act has been implemented to criminalise the practice of triple *talaq*, and the individual may face imprisonment for a duration of up to three years and, additionally, may be subject to a fine. The Act also provides the right of maintenance and custody to Muslim women in case of triple *talaq*, which is not granted under their personal laws.

The most heated debates concerning the bill have centred on the criminalization aspect. One argument posits that the declaration deeming the practice unconstitutional is adequate to imply that triple *talaq* would be legally nullified. Therefore, the question arises as to how such an act can be subject to criminalization. In contrast, the argument supporting its criminalization is that despite the judgment, the practice of triple *talaq* continues to persist, and hence, the Act was necessary to create strong support for the judgment.

Another facet of the bill subjected to criticism is that, by classifying the utterance of triple *talaq* as a non-bailable and cognizable criminal offense, it eliminates the potential for reconciliation. Moreover, it appears to overlook the socio-economic circumstances of women, typically from uneducated and economically

vulnerable backgrounds. Consequently, if the husband is incarcerated, the crucial question of how the woman will support herself becomes paramount—a consideration seemingly overlooked by the bill. A survey also suggests that having a criminal adjudication for triple talaq complicates the issue further for women, first in terms of its economic impact, and second, in terms of the community's negative perception of a woman seeking such criminal prosecutions for her husband. Arguments also suggest that the criminalising of triple talaq is "a clear attempt to create a homogenised group of 'oppressor Muslim husbands' and 'helpless Muslim women victims'". The global gendered implications of the othering of Muslims have been evident since 9/11, wherein Muslim men are essentialised, which is "the predilection to define cultures according to their presumed "essential" character, especially as regards politics", being portrayed as sinister terrorists, with Muslim women being shown as victims of their own culture who need saving. In India there is also a narrative that Muslim women act as an instrument to produce many children to overtake the Hindu majority.

In this context, the concern about personal laws and their impact on the rights of Muslim women provides an apt setting for the present government to construct a narrative portraying Muslim women as victims within their own religion and culture. This narrative suggests a need to rescue them from the perceived barbarism attributed to men. This leads us to the concept of the subaltern, as articulated by Spivak, where she delineates how the colonial project in India can be seen as a case of. . . "saving brown women from brown men". Thus, the government's actions of criminalising triple talaq do not come as a surprise, as it strategically uses the concrete plight of Muslim women for its own gains. However, in doing so, it introduces an element of Islamophobia by aligning with prevailing discourses without fully addressing the underlying socio-economic inequalities that persist among Muslim women. This raises questions on how far the government is really seeking to promote social justice or whether this is just another method to engage in debates that may appear to be for the benefit of gender justice but do not bring about a real change. The actions of the current government also need to be seen in the context of other allegations it continues to face, in line with the argument that the BJP is instigating anti-Muslim rhetoric through discourses on social media, law, and the claim that instances of violence against Muslim women have been on the rise since the Modi government coming into power.

Majoritarian Conception of Muslim Women :

The construction of the "Muslim woman" as an object of analysis and as an imaginary has a global as well as an Indian story. The dominant image of the Muslim woman who needs to be rescued from barbaric Muslim men has been propagated globally since 9/11, especially in the West but elsewhere as well (Abu-Lughod 2002). Notably, several depictions of veiled women have been and continue to be generated with the idea of the Muslim woman, denoting their position as "backward," submissive, silent, constrained, subjugated, and victimized by Muslim males and Islamic values. As two constituent aspects caught up in a problematic relationship of salvation and emancipation that cannot be accomplished until the two are separated, these images describe them as "Muslim" and "women." This very conception has produced various contradictory, yet parallel, imaginaries in which the Muslim woman figures as the victim of Muslim men, as a carrier of Islam and Islamic culture, and as a voiceless person (Hasan and Menon 2004). This image has also been used by Hindutva groups, such as the BJP and RSS, to solidify their political dominance as representatives of a self-described inclusive and progressive "Hindu nation." Hindutva politics has benefited greatly from the vilification of Muslim women as well as the demonization of Muslim males in print and visual media. It has made it possible for Hindutva organizations to portray Muslims as a backward and exclusive minority. (Cohn 1987; Appadurai 1993; Basu 1996; Jeffery and Jeffery 2002; Basu 2004; Gupta 2009; Basu 2015; Mander et al. 2016; Gupta 2018; Desai and Amarasingam 2020; Gupta 2021; Mander 2021; Quraishi 2021). During the instant triple talaq controversy, these cliches were used to further the political, cultural, and masculine domination of Hindutva by manipulating the language surrounding Muslim women's rights. However, there is an emerging body of literature that challenges the conventional understanding, imagination, and portrayal of "the Muslim woman," including the stereotypes and assumptions often invoked in public discourses, the media, and academic debates (Jeffery and Qureshi 2022).

In contemporary India, how a Muslim woman sees herself is often very different from the way dominant groups view her and label her. In this paper I try to bring forth the core issues faced by Muslim Women like educational backwardness, financial dependence, political representation etc.

Political Representation of Muslim Women :

Women in Post Independent India have the same right to vote as males, and they can run for office at all levels of government, from the local level to the federal parliament. Thus, since the first "Lok Sabha" election in 1952, Indian women have not only exercised their right to vote but also run for office. However, even with a 33 percent reservation, women's representation has been extremely low at the state (State Legislative Assembly), national (Lok Sabha and Rajya Sabha), and grassroots (Panchayati Raj) levels. They are still under 15 percent in the nation's parliament. In India, women are viewed as weaker sex than men in all spheres of life, including politics, society, and the economy.

Muslim women are not an anomaly. Since independence, Muslim women have had a disproportionately low presence in Indian politics when compared to their population share. Numerous previous studies show that while Muslim women's electoral participation has grown over time, their involvement in legislatures and governance has remained comparatively low.

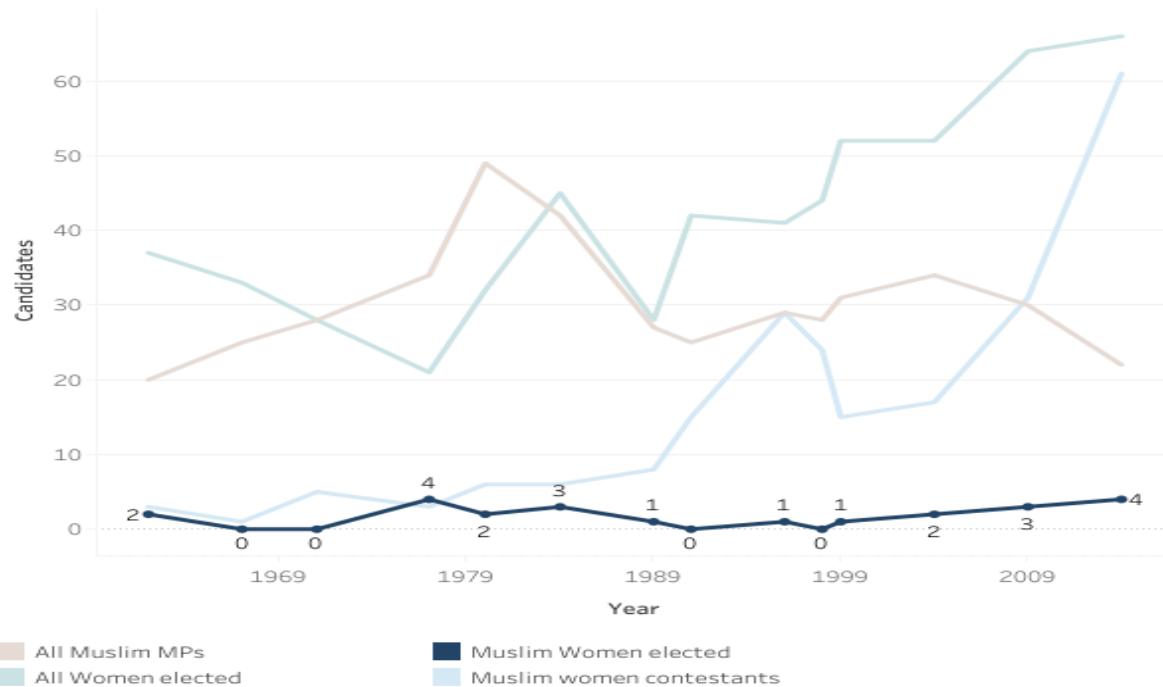
Table 1. Representation of Muslim Women in the Indian Parliament (Lok Sabha only) from 1st to 16th General Lok Sabha Elections

Election Year	Total No. of Seats	Total No. of Women Members	% of Women Members	Total No. of Muslim Women Members
1952	489	24	4.91	0
1957	494	24	4.86	02
1962	494	36	7.29	02
1967	520	32	6.15	0
1971	521	27	5.18	0
1977	544	21	3.86	03
1980	544	32	5.88	02
1984	544	45	8.275	03
1989	529	28	5.29	0
1991	509	42	8.25	01
1996	541	41	7.58	02
1998	545	44	8.079	0
1999	543	52	9.58	01
2004	543	52	9.58	02
2009	543	60	11.05	03
2014	543	62	11.41	02

The eighteenth Lok Sabha has the lowest share of Muslim MPs in six decades. Less than 5% of its members currently are Muslims despite people from the community forming over 15% of the country's population. In total, there are currently 24 Muslim MPs (4.4%) in the Lok Sabha. Partly, this is because mainstream political parties are reluctant to field Muslim candidates. In 2009, only 30 of 543 MPs (5.52%) were Muslim, according to an analysis by Christophe Jaffrelot, French scholar and columnist, published in *Seminar*, a monthly journal published out of New Delhi. That election saw only 832 Muslim candidates, of which nearly half or 47.12% contested as independents. Things weren't much better in 2014 when 320 of 3,2450 candidates (9.8%) who contested the general election were Muslim. The BJP fielded just seven Muslim candidates out of 428 (or 2%), Jaffrelot wrote in the March 2019 book *Majoritarian State: How Hindu Nationalism is Changing India*. None won. But Muslim women face a double bind--discriminated against both as women and as Muslims. "In terms of cumulative discrimination--being a Muslim and being a woman--there is a compounding effect for sure," said Gilles

Verniers, a political science professor at Ashoka University and co-director of the Trivedi Centre for Political Data (TCPD). “The usual barriers to entry that apply to all women, apply even more strongly to Muslim women.” “The candidacy of Muslim women has been abysmal ever since Independence and over time, the problem has worsened,” said Zoya Hasan, retired professor emerita at Jawaharlal Nehru University. There have been 690 women MPs elected to Lok Sabha till the end of 17th lok sabha. The present or the 18th Lok Sabha has as many as 74 women members. 5 out of 18 Lok Sabhas have had no Muslim member and their number never crossed four in the 543-seat lower house of parliament.

Lok Sabha Never Had More Than 4 Muslim Women Members



Source: Lok Sabha, Trivedi Centre for Political Data, Indian Legislators Dataset

Financial Inclusion of Muslim Women :

As defined by the Rangarajan Committee (2008), Financial Inclusion is “the process of ensuring access to financial services and timely and adequate credit where needed by vulnerable groups such as weaker sections and low-income groups at an affordable cost”. Financial inclusion has been shown to be important for poverty alleviation, increase in output, increase in savings and women’s decision making power (Burgess and Pande 2005, Aportela 2012, Ashraf, Karlan, and Yin 2010).

Numerous government and private research show that Muslims have a lower rate of work involvement than members of any other socio religious group. This is especially true for Muslim women, whose lowest rate of work participation is found in urban regions. The Sachar Committee report (2006) shows that in general, the mean per capita expenditure (MPCE) is the lowest for Muslims than for any other socio-religious categories at the national level except SCs and STs and the incidence of poverty (headcount) is also higher for Muslims than any other socio-religious categories of people (except SCs and STs). Similarly, the report of the National Commission of Women on the status of Muslim women (Hameed, 2000) indicates that the extent of unemployment and lack of wage-earning capacity among Muslims is much higher as compared to others. Most notably, Muslim women are underrepresented in conventional occupations compared to "Other Minorities." Similarly, statistics on Muslim women's employment as regular employees in cities show that they are only marginally represented in salaried positions, although a much larger percentage of Muslim women work for themselves than in other socio religious groups. These numbers are in line with other earlier studies that demonstrate a very low percentage of Muslims in regular employment, particularly in the

public sector, government, and large private sector. The work participation rate among different religious communities by sex is presented in Table 1

Table 1. Work Participation Rate among Different Religious Communities by Sex

Religion	Males	Females
Hindu	53.91	27.35
Muslim	49.51	14.77
Christian	52.90	31.16
Sikh	55.43	15.16
Buddhist	53.39	32.54
Jain	57.71	12.27
Others	53.22	43.82

Source : Census, 2011

Table 1 shows that the lowest rates of female employment are found among Muslims and Jains. According to data from the 2011 Census, only 14.77 percent of Muslim women are employed; in contrast, the percentages for Christian and Buddhist women are rather high, at 32.54 and 31.16 percent, respectively, while the percentage for Hindu women is very high, at 27.35 percent.

Educational Status of Muslim Women in India

One of the most illiterate groups in the nation is the Muslim community. Compared to women from all other cultures and their male counterparts, Muslim women and girls lag behind. The dropout rate among Muslims is 17.6%, which is greater than the 13.2% national average. Up to 25% of Muslim youngsters between the ages of 6 and 14 have either never gone to school or have left school early. The nation's highest dropout rate is among Muslims. In the top universities, just one Muslim student out of every 50 postgraduate students and one out of every 25 undergraduate students is a Muslim. The share of Muslims in all courses is low, particularly at the Post-Graduate level and marginal in the science stream (Sachar 2006)

Table 2: Literacy rate among religious communities in% age

Religion	Female	Male	Total
Muslim	51.9	62.41	57.15
Hindu	55.98	70.78	63.38
Jain	84.93	87.86	86.39
Christian	71.97	76.78	74.37
Sikh	63.29	71.32	67.30
Buddhist	65.6	77.87	71.73
Others	41.38	59.38	50.38

Source: Census of India, 2011

One of the key social variables that affects both an individual's and a community's success and development is education. It is evident that this is a very good option for creating jobs and raising living standards. Compared to Muslim men and women from other communities, Muslim women in India have a lower educational standing. They and the majority of them have the lowest rates of work involvement. Despite the fact that all women experience gender-based disparities in marriage, autonomy, and community mobility, Muslim women perform worse than the national average in a few crucial areas. These consist of education, labor force participation, occupational distribution, and socioeconomic status. (Hassan and Menon 2004). The studies by Nayer (2007), Hussain (2009) and Jafri (2010) also indicate Muslim women are marked with stark educational backwardness. According to 2011 Census of India, the percentage of illiteracy among Muslim female are 48.1% whereas the illiteracy among Muslim males are 37.59%. The difference between Muslim women and non-Muslim women in urban areas was 11%, which later increased to 19% over the years. Less than 4% of Muslims graduate from school compared to 6% of the total population. 6% of girl

students are forced to stop their education as parents think that education is not required for them. Only 5% Muslim women manage to get higher studies.

Table 3: Percentage of Literacy among Muslim Population in India.

Muslim Population in India	Illiterate		Literate	
17.22 Crore	42.72%		52.27%	
	Male	Female	Male	Female
	19.26%	23.45%	31.98%	25.29%

Source: Census Report, Government of India, 2011

Conclusion :

For Muslim women, the passage of the Muslim Women (Protection of Rights on Marriage) Act, 2019 was a significant victory. The Act has been put into effect to make criminalize triple talaq with three year jail term and a fine. The Act also guarantees the right of maintenance and custody to Muslim women in case of triple talaq, which is not granted under their personal laws

According to the findings of the paper, Muslim women are among the nation's economically poor, socially isolated, politically excluded, and educationally disenfranchised groups. Out of all the major religious groups in India, it has been shown that Muslim women are the least literate. At higher educational levels—matriculation, pre-university, graduate, and beyond—this initial disadvantage is progressively exacerbated. In comparison to women from two other minority groups in India—Buddhist and Christian—the Muslim community's female labor participation rate is extremely low. Thus, it is clear from the survey that Muslim women in India face discrimination on nearly all fronts.

By giving data on Economic, Political and Educational status of Muslim Women, this paper analyses the narrative behind the passing of Muslim Women (Protection of Rights on Marriage) Act, 2019. The paper also aims to highlight the point that the Act of 2019 was more rhetorical and populist in nature than aiming at empowering the Muslim Women. This paper provides data on three core aspects of social life of muslim women i.e political representation, Financial inclusion and educational Status.

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