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Unveiling Matrimonial Landscapes: Lessons from Egypt in Shaping Muslim Personal Laws of India

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Muslim personal laws play an essential role in shaping India's laws but have constantly faced criticism owing to their gender discrimination principles. As these laws are governed by religious texts and customs, reforming them has been challenging however, Egypt provides valuable insights about developing equitable laws that respect one's religious beliefs. This paper focuses on Egypt's journey through significant personal law reforms concerning areas such as marriage and divorce, highlighting how these changes could positively impact Indian society. Legal aspects concerning the implementation of such changes get special attention given their significance in bringing about equalitarian change for all genders. By considering legal and social perspectives simultaneously, this paper identifies potential challenges associated with implementing progressive reforms, at the same time identifying opportunities through learning experiences from similar ongoing struggles for gender equality across the world. The ultimate goal of this paper is to create a balance between traditional religious values & progressive socio-legal reforms establishing an inclusive society free of discrimination & inequalities based on gender identity.

Keywords: *muslim personal laws, marriage, and divorce, quran, equality.*

INTRODUCTION

India has many religions and different sets of personal laws which apply to different kinds of people, mainly focused on provisions for marriage and divorce. Personal laws are a group of regulations that govern and control connections between two or more individuals. These components include marriage, blood, and affinity. Personal law also regulates and rules issues or areas of the private sphere, such as guardianship, support, succession, minors, and marriage and divorce. With a few notable exceptions, most of India's privacy rules are based on biblical laws that are divided according to religion.

The union of two persons known as marriage might take the form of a sacrament or a contract. According to the procedures outlined by the individual's law, the marriage is solemnized. On the other hand, divorce refers to the formal dissolution of a marriage. The marriage is terminated through a divorce, and the parties return to being single. The law concerning marriage and divorce in the case of Muslims is the personal law recognized under the Muslim Personal Laws (Sharia) Act, 1937¹ as well as the Muslim Dissolution of Marriage Act, 1939². The most common law in the world that is based on religion is Islamic law. In reality, marriage is governed by the law in all Muslim nations, however; these regulations vary from one nation to the next. Egypt is a significant Islamic nation, whereas India is a secular nation. Both of these two nations are centered on the idea of ancient "Sharia law," which is partially based on the Islamic religion. Even though both countries derive their laws from similar sources, this paper will highlight some significant discrepancies between how they interpret and apply these laws.

Islam is the dominant religion in Egypt almost 90% of the population follows Islam. The legal System differs from one country to another as Egypt has the majority of the Muslim population and in India, they are in the minority, every country has its unique style of culture, society, traditions, and religious beliefs therefore personal laws are shaped, framed keeping all these

¹ Muslim Personal Laws (Sharia) Act 1937

² Muslim Dissolution of Marriage Act 1939

factors in mind. Additionally, marriage and divorce laws create a deep impact on society at large.

LITERATURE REVIEW

Books:

Book on Islamicate Societies:³ It explains the transformation of the nature of the Islamic society of Egypt and Muslims in India. Effects of religion, culture, legal aspects, the society which also include ethnic and minority relations, gender relations even their education system, etc. It is a case study of Egypt and Muslim Indian reforms, modernization, and aftermath.

Book on Nature and Scope of Marriage and Divorce Laws in Egypt and Iraq:⁴ This book defines personal laws related to marriage and divorce under Islamic laws in the Arabic country Egypt it also gave a wide view on reforms that took place in Egypt and the introduction of Khula as a provision for divorce which gave empowering rights to women to seek divorce.

Articles:

Concept of Divorce under Muslim Law by Setu Gupta:⁵ This article explains modes of divorce under the Dissolution of Muslim Marriage Act, 1939, categories of divorce, and Husband pronouncement of unilateral divorce. Conditions of valid talaq in which free consent of both the parties and capacity is included. Divorce initiated by women Talaaq-i-tafweez, Lian, by Dissolution of Muslim Marriages Act 1939. It also talks about irretrievable marriages. Maher which is an important part of offer and acceptance within the marriage contract can be deferred as well as given at the same time.

³ Dr. Husain Kassim, *Islamicate Societies: A Case Study of Egypt and Muslim India Modernization, Colonial Rule, and the Aftermath* (37 Edn, Lexington Books 2012)

⁴ Zuhair E Jwaideh, *Nature and Scope of Marriage and Divorce Laws in Egypt and Iraq* (Library of Congress, Law Library 1976)

⁵ Setu Gupta, 'Concept of Divorce under Muslim Law' (*Legal Service India*, 2022)

<<https://www.legalserviceindia.com/article/I393-Divorce-under-Muslim-Law.html>> accessed 12 May 2023

Muslim Marriage in India by Harshit Khare: This article shows changes in Islamic personal laws regarding marriage and divorce to lay down the institution of marriage. Every Muslim is required to marry, which is both a religious obligation and a societal necessity. The Prophet further stated that marriage is my tradition and that anyone who opposes it is not one of us. This article also includes the contractual style of marriage which creates a binding between couples. The status of men and women in the community's social structure is equal in every way. However, Islam separates the rights, responsibilities, and roles of the two genders before stating their status regarding family problems.

Egypt's proposed marriage law can usher in more advances for women's rights by Heba Yosry:⁶ In this Article, the author includes that The Parliament of Egypt suggested the law which will mandate any husband who intends to wed more than one wife must notify the court of his intentions. The man's current wife or wives will be asked by the court if they want to be co-spouses, and the new bride will be informed of the man's prior unions. In light of this, the court will make sure that the husband meets the financial demands of his first wife and their kids. The new law represents a progressive step that tries to restore balance to the power dynamics that were traditionally skewed in favor of the husband.

Reports:-

Comparative Analysis of Marriage under Islamic Law between Saudi Arabia and Egypt by Rakan Alharbi:⁷ In this report, the author discusses the formation of families by Islamic law in Egypt and Saudi Arabia but because of differences in places the laws, cultures, and practices differ. In this Author briefly discusses marriage according to Islamic law, the legal framework of Islam and its contribution to the formation of families, examination of schools of

⁶ Heba Yosry, 'Egypt's proposed marriage law can usher in more advances for women's rights' (*Alarabiya News*, 19 April 2022)

<<https://english.alarabiya.net/views/2022/04/19/Egypt-s-proposed-marriage-law-can-usher-in-more-advances-for-women-s-rights>> accessed 13 May 2023

⁷ Rakan Alharbi, 'Comparative Analysis of Marriage under Islamic Law between Saudi Arabia and Egypt' (2014) Researchgate

<https://www.researchgate.net/publication/318457978_Comparative_Analysis_of_Marriage_under_Islamic_Law_between_Saudi_Arabia_and_Egypt> accessed 13 May 2023

interpretation in Islam. Overall view and the slight difference in laws on marriage in both Muslim-dominated countries Saudi and Egypt.

The Implementation of ‘the Khula Law’ in Egyptian courts some preliminary results by Nadia Sonneveld:⁸ In this report, the Author explains the different viewpoints of people on the introduction of khula as a form of divorce. This way of divorce somewhere helped pendency cases of family law in Egyptian courts. But this report also includes the disadvantages of khula as it became a problem for the dower constitution, many husbands in Egypt had filed cases in family court against their wives for the amount of dower paid at the time of marriage. Plus this also includes major developments in the personal laws of Egypt.

Case Laws:-

Mohammed Ahmed Khan v Shah Bano Begum:⁹ The Maher or dower paid by the husband to his wife is out of respect or a token of respect. The Maher paid is either paid at the time of divorce or deferred to be payable at the time of renouncement of marriage. Court also stated that women after divorce has the right to get maintenance.

Shayara Bano v Union of India:¹⁰ The common practice of man pronouncing talaq three times (Talaq-e-bidder) was held unconstitutional and the provision of divorce by this kind was struck down. As this practice was not held with the valid consent of the wife. Court said that talaq-e-biddat was protected by religion but laws are framed by parliament.

Md. Khan v Shahmai:¹¹ In a prenuptial agreement, a Khana Damad husband promised to cover the father-in-law's share of the wedding costs if he left the home and granted his wife the right to file for divorce. “The spouse refused to pay the money and left his father-in-law's home. The wife made use of her right and filed for divorce. In using the authority granted to her, it was

⁸ Nadia Sonneveld, The Implementation of ‘the Khula law’ in Egyptian courts some preliminary result, 21-35, (2004) 21 Recht van de Islam

<https://www.verenigingrimo.nl/wp/wp-content/uploads/recht21_sonneveld.pdf> accessed 14 June 2023

⁹ *Mohammed Ahmed Khan v Shah Bano Begum* (1985) AIR 945

¹⁰ *Shayara Bano v Union of India* (2017) 9 SCC 1

¹¹ *Md Khan v Shahmai* (1972) J&K 8

determined that the divorce was legal. Even in post-marriage arrangements, power might be delegated. Therefore, where it is stated in an agreement that the will have the right to declare divorce on herself if the husband does not provide for her maintenance or marries a second woman. The terms of such an agreement are reasonable, and lawful, and do not violate public policy. It should be highlighted that even in the event of a scenario, the woman has the discretion to decide whether or not the power would be used”¹². Divorce is not always the result of a contingency event occurring.

Abdul Kadir v Salima:¹³ Mr. Justice Mahmood, The family, which is the fundamental pillar of human civilization, is established through marriage. For the human species to continue to survive, healthy families are crucial. So Allah forbids unbelievers from getting married despite the moral, spiritual, social, and psychological advantages.

Nawab Sadiq Ali Khan v Jai Kishori:¹⁴ Because menstruation marks the start of puberty for Shia females, the Privy Council in Shia cases decided that the age of majority in the case of the girl is nine years old.

OBJECTIVES

- To understand the role of Islam religion in the law of Egypt and India.
- To analyze personal divorce and marriage laws in Egypt and India respectively.
- To understand the stand or role of women in Egypt.
- To get a comparative understanding of laws in Egypt and India.

SHARIA LAW

Sharia law means the ‘correct path’ shown by Allah. It is divine guidance that is followed by all Muslims across the world to live moral lives and to connect directly to the divine god. The main

¹² Anuja Shah and Shahhbaz Malbari, ‘Divorce in various Personal Laws’ (*Doc Share*, February 2017) <https://docshare.tips/divorce-in-various-personal-laws-1_58a0c9a3b6d87f5ebd8b527c.html> accessed 13 May 2023

¹³ *Abdul Kadir v Salima* (1886) 8 All 149

¹⁴ *Nawab Sadiq Ali Khan v Jai Kishori* (1928) 30 Bom LR 134

source of this is Holy Book Quran. Sunna is the original teachings of the Prophet. The Prophet Mohammed is regarded as the most spiritual of all believers, and other Muslims are expected to follow in his footsteps. The fiqh way of interpreting the law has been refined through many generations. Sharia is distinct from Islamic law. Muslims view Islamic laws as those that are founded on Sharia interpretations, even though Sharia is thought to refer to the perfect, unalterable principles recognized only by God. Correct Sharia interpretation involves skill in Arabic, acquaintance with legal theory, and in-depth study of the Quran and Sunna. Sharia law is not uniform across different parts of the world; rather it is shaped by individual regions' interpretations. Legal scholars analyze both the Quran and Hadith to arrive at fatwas - legal rulings that can differ according to cultural norms or societal contexts. Muslim-majority countries tend to implement Sharia alongside civil laws; normally addressing personal issues via separate courts known as "Sharia courts". However, levels of integration between these two systems vary greatly from wholehearted adoption (Saudi Arabia) through partial application (Indonesia/Malaysia). With these divergent interpretations/versions out there regarding Islamic Law, all parties involved in any discussions around the subject matter need to approach it sensitively while acknowledging these differences.

BACKGROUND OF MARRIAGE AND DIVORCE IN ISLAM

Marriage: The basic principles of marriage in Islam are unbreakable obligations or marital commitments. 'The establishment of Islamic families builds a firm foundation and guarantees security and mature intimacy Islam views marriage as the highest form of righteousness and as a manifestation of responsible commitment. Islam recognized the religious virtue, the social necessity, and the moral advantages of marriage.'¹⁵ In Islam, marriage is a moral obligation, a serious commitment, and a social safety net. Islam marriage is something extraordinary having highly special qualities of both a sacramental and contractual nature. It is neither a sacrament nor a basic legal contract. Prophet Muhammad once said, 'No house has been created in Islam more valued in the sight of Allah than through marriage.' Marriage makes the life of a person

¹⁵ Dr Ahmad Meraj, 'The importance of marriage in Islam' (2018) 6(11) International Journal of Research-GRANTHAALAYAH <<https://doi.org/10.29121/granthaalayah.v6.i11.2018.1082>> accessed 13 May 2023

complete. This form of marriage between a man and a woman is the *nikah*. There can be a written as well as oral contract between the parties. *Maher* or dower from the groom's side is mandatory as it is a token of respect towards her wife. It is one of the duties of the husband that he has to follow, from this dower a married woman can say that it is legally her wealth, it is her wish to save it, invest it, or spent the whole money. "In return for all this, the husband obtains what is known as *milk al-nikah*, *milk al-'aqd*, or *milk al-bud'*, "ownership (or control) of marriage (or intercourse), the marital contract, or [the wife's] vulva," in exchange for the payment of dower. This *milk* is a requirement for permissible intercourse. The meaning of the marriage contract varies according to the schools of Islamic law which are Sunni Schools and Shia Schools. The contract is invalid in the Sunni school, but it defines transitory marriage (*Nik mut'ah*) in the Shia school. The general requirements for *nikah* are that the parties be capable of getting married, that the proposal (*ijab*) and acceptance (*qubool*) be accepted, that both parties consent, that there be no legal obstacles, and that there be witnesses. 'Both men and women have responsibilities in a marriage. Marriage establishes the foundation of the family, which is the basic building block of human civilization.¹⁶ Healthy families are essential for the continued existence of the human species as a whole. Therefore, despite the moral, spiritual, social, and psychological benefits, Allah prevents unbelievers from getting married. The Promised Messiah's successor, Khalifa, has emphasized the significance of marriage in helping us fulfill our duties to one another, which are only second to our connections to God. He made it quite clear: It is our responsibility to assure that it is scrupulously observed and duly honored. Although both men and women bear a significant amount of responsibility, I find that very few people are aware of this. When it is tried, it is extremely insufficiently done. Only two sets of rules are distinguished by Islamic law. One is related to God Himself, and the other is related to other people. Marriage, which may be said to be its principal advocate, thus represents the second category. Even though Islamic law has made the most of it, many people don't seem to fully understand the law.

¹⁶ Egyptian Constitution 2014, art 14

They also don't try to gain something for themselves. Their situation is similar to that of a young child who would gladly exchange a priceless gem for a common cent. If only people could understand the value of marriage. In Islam, marriage serves the dual purposes of bringing a man and a woman together to share a life of love and happiness, to bear children and provide a secure environment for their upbringing, and as a legally binding union that protects society from cultural and ethical deterioration.

Marriage performed under coercion or without the consent of women or men is illegal however, a woman needs a guardian (wali) for this arrangement. Islam allows both men and women to meet before marriage. Muslim men are allowed to practice polygamy and can have more than one wife or up to four wives at the same time, but women are not allowed to practice polygamy i.e. they cannot have more than one husband at the same time. Once a boy or girl reaches the age of puberty then they are permitted to marry under Muslim personal laws. According to many Muslim jurists, Muslim women can only marry Muslim men but Quran explicitly allows Muslim men can marry Christians as well as Jews. The wife has the right to refuse to live with her in-laws if she wants, and can live separately with her husband and children. Adulterous relationships are prohibited under Islamic law.

DIVORCE: According to Islamic law, a divorce or dissolution of a marriage can occur through an agreement between the parties or through a judicial order. “Divorce is an exception to the status of marriage in Islam. In the worst-case scenario, divorce is also a possibility, thus one should take all precautions to keep their marriage intact”¹⁷. However, there are occasions when this evil is required since it is preferable to let a marriage end than to make the partners coexist in a hostile and unhappy environment. When the marriage's sides are unable to maintain their connection through mutual love and devotion, this happens.

A husband is completely free to end a marriage with no explanation. It is sufficient for him to say the words that make it clear that he wants to end the marriage or disown his wife. Talaq is a form of divorce initiated by the husband. It can be pronounced either orally or in writing, and

¹⁷ Prof. (Dr.) Pradeep Kulshrestha et al., ‘Gender Ratio Disparities and Social Equilibrium’ (Bharti Publications 2022)

in some cases, even through electronic communication like email or text messages. There are three types of talaq recognized under Muslim personal laws:

Talaq-e-Sunnat: This is a revocable form of divorce where the husband pronounces talaq once, and a waiting period known as the "iddat" follows. During the iddat period, which is typically three menstrual cycles, the marriage can be reconciled, and the husband can take back the wife without any need for remarriage. However, if the iddat period expires, the divorce becomes final.

Talaq-e-Hasan: This is also a revocable form of divorce but involves three pronouncements of talaq made during the wife's period of purity (tuhr) in which sexual relations are prohibited. After each pronouncement, a waiting period (iddat) follows. If the husband does not revoke the divorce during the iddat period, the divorce becomes final.

Talaq-e-Biddat (Triple Talaq): This form of divorce has been a subject of controversy and has undergone significant legal changes in recent years. Triple talaq involves the husband pronouncing talaq three times in one sitting or quick succession, even without the presence of the wife. In 2019, the Indian government passed the Muslim Women (Protection of Rights on Marriage) Act, which makes the pronouncement of triple talaq void and illegal, protecting Muslim women against instant divorce.¹⁸

Khula is a form of divorce initiated by the wife. It involves seeking dissolution of the marriage by offering a financial settlement or forfeiting her financial rights. The husband's consent is generally required for the khula to be granted by the court, although some interpretations allow it even without the husband's consent. The court may also intervene in determining the terms and conditions of the khula if necessary.

Divorce proceedings under Muslim personal laws can be subject to legal challenges and require adherence to procedural requirements, which may vary based on regional customs,

¹⁸ 'Shah Bano Case: When Rajiv Gandhi overturned SC judgement protecting Muslim women's right to maintenance during talaq' (*OP India*, 20 August 2020) <<https://www.opindia.com/2020/08/shah-bano-case-rajiv-gandhi-surrender-muslim-hardliners-supreme-court-order-overturn/>> accessed 13 May 2023

interpretations, and the courts involved. The legal landscape surrounding divorce under Muslim personal laws in India has undergone significant changes and debates in recent years, with ongoing discussions about reforms to ensure gender equality, protection of women's rights, and alignment with constitutional principles.

MUSLIM LAWS IN EGYPT

MARRIAGE: In Egypt, even though the rights of women are protected by marriage contracts many Muslim women are married without their consent and often before they become an adult. Laws that govern matters relating to marriage and family relations of the majority Muslim population in Egypt are not codified in one comprehensive and exhaustive piece of legislation. Instead, they are partially codified in a series of laws and include. They are not well informed about their rights and mostly, at the time of negotiation they are not even present there. Egyptian marriages are more of a contractual nature including consent as a main part, for Muslims looking to enter into a marital union in Egypt traditional Islamic law (also called Sharia law) serves as the primary legal basis. The interpretation and implementation of these laws fall under religious courts presided over by Qadis or Maazuns.

Age Requirements: The general age requirement in Egypt, the legal age to get married is 18 for men and 16 for women unless there is consent from both parties¹⁹ legal guardians and judicial approval. Marriage Contract: A legally binding 'Katb Ketab' contract must be completed before any marriage can be recognized under Islamic principles.

Two adult Muslim males or one male plus two females typically witness this signing.

Consent Standards:²⁰ Both partners need to willingly agree before entering into a union contract under this system of marital regulation while acknowledging that the bride's guardian typically needs to provide approval before formalizing such an agreement.

¹⁹ Civil Status Law 1994, art 31

²⁰ Bernard Maugiron and Baudouin Dupret, 'From Jihan to Susanne: Twenty Years of Personal Status Law in Egypt' (2002) 19 *Recht van de Islam* <http://www.verenigingrimo.nl/wp/wp-content/uploads/recht19_dupret.pdf> accessed 13 May 2023

- Providing a dowry known as the 'Mahr' is compulsory for grooms when they wed their brides. This act symbolizes their pledge and financial contribution toward their partners. Before getting married both parties come together and mutually decide on the amount and form of Mahr.
- **Polygamy:** Islamic law allows men to have up to four wives, provided that they can treat each wife equally and fairly. However, polygamy is not as common in modern Egyptian society, and a man must seek the permission of a court and prove his ability to treat all wives equally before entering into additional marriages.
- **Marriage Registration:** After the marriage contract is signed, it should be registered with the local civil registry office (Ma'had al-Ahزاب) within a specific timeframe to ensure legal recognition. Failure to register the marriage may result in certain legal and administrative complications.

DIVORCE: The method of divorce for Egyptian men is much easier than for women as under Islam men are considered as a wiser party and the wise do not have to go through judicial or legal proceedings. They just have to pronounce divorce by saying talaq three times which makes divorce binding upon wives. After this, they just have to register the divorce to a religious notary within 30 days. A renounced woman has to wait for one year and in this one year, it is forbidden for her to wed another man. When it comes to marital breakdowns in Egypt involving women who have been renounced by their spouses numerous legal considerations must come into play. For instance, it would be expected for any unsettled portions of a previously agreed-upon dowry arrangement would need to be fulfilled. Furthermore, maintenance payments (nafaqa) are required during the waiting period as well as potential compensation (muta) which can equate to no less than two years' worth of support payments based on various factors including duration of the marriage and unique circumstances surrounding the divorce. However, many Egyptian women who are seeking divorce knowingly give up their financial rights to avoid unpleasant judicial proceedings. At the same time, Egyptian women have a burdensome process of filing a divorce they can file for divorce through court actions only (tatliq). Women can initiate divorce through options fault-based divorce and non-fault divorce (khula).

Fault-based Divorce: For this type of divorce, the woman must demonstrate that she can no longer cohabitate with her husband. 'The court accepts the following four reasons for fault-based divorce: (1) Disease, which includes mental illness, venereal disease, and impotence; (2) Non-Provision of Maintenance or Financial Support; (3) Absence or Detainment; and (4) Injury which encompasses a range of forms of physical and mental harm.'²¹ For the same, she has to obtain legal counsel, provide evidence for harm, and to submit a report for compulsory mediation. If women already knew about these grounds of divorce and tolerated their husbands for several years then they should not be granted divorce to save the institution of marriage. Particularly the burden of proof is in the hands of women. Filing a fault divorce for women is very difficult.

Non-Fault Divorce: In the year 2000 concept of Khula came up where Egyptian women were they were granted the ability to seek a divorce based on 'incompatibility,' and they are also immune from the burden of proof and do not need to provide any grounds for the divorce. When they consent to give up their rights to alimony, she postponed dowry (mukhtar), and to reimburse her advanced dowry, a divorce request will be taken into consideration (muqaddam). Men in this case are not permitted to appeal this no-fault divorce to the higher court. Khula was opposed by many Islamic jurists as they think that judges do not have the right to grant divorce like Prophet and they believe that divorce leads to the destruction of many Egyptian families as now the provision of divorce is much easier for women and they will not believe in the reconciliation of families.

COMPARATIVE ANALYSIS OF MUSLIM PERSONAL LAWS IN EGYPT AND INDIA

Reforms in Muslim personal laws in India and Egypt have had different trajectories due to their unique historical, cultural, and legal contexts. While it is difficult to draw direct lessons from Egypt's experience to inform reforms in India, some key aspects can be observed that have been considered in both countries' contexts.

²¹ Ron Shaham, 'Family and the Courts in Modern Egypt: A Study Based on Decisions by the Shari'a Courts 1900-1955' (2001) 93 *Studia Islamica* <<http://dx.doi.org/10.2307/1596131>> accessed 14 May 2023

Constitutional Framework: Both India and Egypt have constitutional provisions that protect religious freedom and grant individuals the right to practice their religion and follow their laws. However, the interpretation and application of these provisions differ.

Egypt is a predominantly Muslim country, and its legal system is influenced by Islamic law (Sharia). The Constitution of Egypt states that Sharia is the principal source of legislation. Islamic law governs many aspects of personal status, including marriage and divorce. Egypt has a system of Sharia courts that handle matters related to personal status, including marriage and divorce. The Sharia courts apply Islamic law to resolve disputes and make decisions. Whereas India is a secular country, which means that it does not have an official state religion. The Constitution guarantees religious freedom and allows individuals to follow their personal laws based on their religion. Therefore, different religious communities in India have separate marriage and divorce laws. Marriage and divorce laws are governed by personal laws, which vary based on religion. For example, Hindus follow the Hindu Marriage Act, Muslims follow the Muslim Personal Law (Shariat) Application Act, Christians follow the Indian Christian Marriage Act, and so on. Each personal law governs the marriage, divorce, inheritance, and other related matters for individuals belonging to that religion.

Civil Society Movements and Women's Rights: In both countries, civil society organizations and women's rights activists have played a crucial role in advocating for reforms in Muslim personal laws. They have sought to address issues such as gender equality²², marriage, divorce, inheritance, and child custody.

Legal Reforms: Egypt introduced significant legal reforms in 2000, known as the "Khul" law, which made it easier for women to obtain a no-fault divorce. Additionally, reforms related to polygamy and the age of marriage have also been enacted. India has seen some legal reforms as well, such as Muslim women's maintenance and divorce rights were addressed by the Muslim Women (Protection of Rights on Divorce) Act of 1986.

²² Egyptian Constitution 2014, art 53

Judicial Interpretation: “Courts in both countries have played a role in interpreting and applying personal laws. They have often been tasked with reconciling religious and cultural practices with constitutional rights and principles of equality. In Egypt, courts have interpreted personal laws in a way that provides greater rights and protections for women. Egypt has a system of specialized Sharia courts that handle family law matters. These courts interpret and apply Islamic law in marriage and divorce cases, considering the principles and teachings of Islam while making decisions. The judges have a certain degree of discretion in interpreting and applying Islamic law in marriage and divorce cases. They may consider various factors, including the specific circumstances of the case, social customs, and the best interests of the parties involved. The interpretation of Islamic law can sometimes lead to debates and differences among judges regarding the application of specific provisions. Different judges may have varying interpretations of Islamic principles, leading to inconsistencies in decisions across different cases or regions.

Whereas in India the Supreme Court of India has played a significant role in shaping the interpretation of marriage and divorce laws. Through its judgments, the Supreme Court has often sought to strike a balance between religious practices, fundamental rights, and principles of gender equality. In recent years, there have been efforts to harmonize and reform personal laws in India, aiming to promote gender equality and address discriminatory practices. The judiciary has played a role in interpreting and aligning these laws with the constitutional principles of equality and non-discrimination. The Indian judiciary has been known for its activism in protecting women's rights and addressing social issues. In cases related to marriage and divorce, courts have intervened to interpret laws in a manner that advances gender justice and upholds fundamental rights. Indian courts have also made significant rulings on issues such as triple talaq (instant divorce), providing relief to women”²³.

Public Discourse and Political Will: Public discourse and political will have influenced the pace and direction of reforms. Debates, discussions, and evolving societal attitudes have shaped the

²³ Monika Lindbekk, ‘Inscribing Islamic Shari’a in Egyptian Divorce Law’ (2076) 3(2) Oslo Law Review <<https://doi.org/10.5617/oslaw4081>> accessed 14 May 2023

approach toward reforming personal laws. The political will to address women's rights and gender equality has been an important factor in both countries.

It is important to note that while there may be some similarities, each country's legal system, socio-cultural dynamics, and political environment are unique. Therefore, any reform in Muslim personal laws needs to be tailored to the specific context and consider the perspectives and concerns of all stakeholders involved, including religious scholars, community leaders, women's rights activists, and legal experts. When considering potential changes to Muslim personal laws in India, it may be helpful to examine certain aspects of Egyptian Muslim personal laws as a point of reference. While the specific changes will depend on the aspirations and needs of the Indian society. India can potentially learn several lessons from Egypt with respect to marriage and divorce laws, here are some areas that India could consider:

Divorce Reforms: India can explore reforms in divorce laws, taking cues from Egypt's 'Khul' law. This could involve simplifying and streamlining divorce procedures, providing women with greater agency and the ability to initiate divorce on a no-fault basis. Divorce in Egypt is regulated by Sharia law. Muslim men can initiate divorce through Talaq, while Muslim women can seek divorce through Khula, where they forfeit some financial rights in exchange for ending the marriage. The courts also have the authority to dissolve marriages under certain circumstances. Whereas Divorce laws in India vary based on personal laws. For instance, Hindus can seek divorce under the Hindu Marriage Act, which provides for both mutual consent and contested divorce. Muslims can seek divorce through various means, such as Talaq (divorce initiated by the husband) or Khula (divorce initiated by the wife). Christians can seek divorce under the Indian Divorce Act.

Age of Marriage: The legal minimum age for marriage in India is 18 years for females and 21 years for males. Child marriages were prevalent in the past, but laws have been enacted to prohibit and penalize such practices. Efforts are being made to raise awareness and enforce the legal age of marriage. India can review the age of marriage for Muslim women, taking into account Egypt's legislation that has risen the minimum age of marriage. The legal minimum age for marriage in Egypt is 18 years for both males and females. However, religious personal laws

may allow for marriage at a younger age with parental or judicial consent. Child marriages, although decreasing, still occur in some rural and impoverished areas. This can help protect the rights and well-being of young girls and ensure their education and development.

Polygamy: Polygamy is not permitted for Hindus, Sikhs, Jains, and Buddhists in India. However, it is allowed for Muslims under certain conditions, such as obtaining permission and treating all wives equally. Polygamy is a subject of ongoing debate and discussion in India, with calls for its abolition. India can have discussions on the regulation of polygamy within Muslim personal laws. Learning from Egypt's approach, there could be stricter guidelines or conditions imposed, such as requiring the consent of all parties involved and ensuring equitable treatment of multiple wives. In Egypt, polygamy is allowed under certain conditions according to Islamic law. Men can have up to four wives, provided they can treat them equally and obtain permission from the first wife. However, many women in Egypt may not opt for polygamous marriages, and it is not as common as it once was.

Inheritance Reforms: India may consider reforms in inheritance laws, focusing on gender equality and addressing disparities that may exist within Muslim personal laws. Some activists and scholars argue for a uniform civil code that would provide a common set of laws for all religious communities in India, including Muslims. The idea behind a uniform civil code is to harmonize personal laws across religions and promote gender justice. Egypt has implemented reforms in this area, and India can explore similar measures to ensure the fair distribution of assets and inheritance rights for women. Egypt has witnessed significant reforms in recent years regarding Muslim personal laws. In 2000, the Egyptian government introduced a new Personal Status Law that aimed to improve women's rights in matters of marriage, divorce, and inheritance. The law sought to address gender-based disparities by granting women more rights and protections. In terms of inheritance, the 2000 law allowed individuals to choose whether to adhere to traditional Islamic inheritance rules or opt for the civil code's provisions. This provision gives people the option to distribute their property according to their own preferences, deviating from the default Islamic rules. This change aimed to provide individuals with greater autonomy and the ability to ensure fairness in inheritance matters.

Women's Rights and Gender Equality: India can emphasize the principles of gender equality and women's rights within Muslim personal laws. Learning from Egypt's experience, specific provisions can be incorporated to safeguard women's rights in matters such as marriage, divorce, child custody, and property rights. Egypt has made efforts to promote gender equality and women's empowerment. The country has enacted laws and established institutions to combat gender-based violence, improve access to education and employment opportunities, and increase women's participation in public and political life. Cultural and societal factors can impact the effective implementation and realization of women's rights in both countries. The status and experiences of women can also vary significantly based on factors such as education, socioeconomic background, and geographical location within each country.

Awareness and Education: India can promote awareness and education about rights and legal provisions within Muslim personal laws. Egypt has engaged in public discourse and awareness campaigns, which can serve as a model for raising awareness and facilitating informed discussions on reforming personal laws.

Mediation and alternative dispute resolution: Egypt encourages mediation and alternative dispute resolution methods to resolve marriage and divorce disputes. Mediation can help couples reach mutually acceptable agreements, reducing the adversarial nature of legal proceedings. India can promote and establish mediation centres to facilitate amicable resolutions and reduce the burden on the court system.

Reforming personal laws is a complex and sensitive process that should be carried out with careful consideration of the legal, cultural, and social contexts of India. The aim should be to balance the protection of individual rights, gender equality, and respect for religious and cultural values.

ARE EGYPTIAN PERSONAL LAWS BETTER THAN INDIAN LAWS?

It is not appropriate to categorically label one set of Muslim personal laws as 'better' than another, as the assessment of what constitutes 'better' is subjective and dependent on individual perspectives and values. The evaluation of personal laws should consider factors such as gender

equality, protection of individual rights, cultural norms, and societal context. Indian Muslim personal laws and Egyptian Muslim personal laws have their unique characteristics, influenced by different legal systems, historical contexts, and social dynamics. Both countries have made efforts to address certain issues within their laws, but there are ongoing debates and discussions on further reforms. The concept of 'better' is subjective and depends on individual priorities and values. Different societies may prioritize different aspects within their laws based on their own cultural and social contexts. It is essential to approach this topic with sensitivity and respect for diverse perspectives and to strive for continual improvement in ensuring gender equality and protecting the rights of individuals within the framework of Muslim personal laws.

In Egypt, several legal reforms have been implemented to grant Muslim women greater rights and protections within marriage and divorce laws. There are some powers and rights that Egyptian Muslim women have in marriage and divorce law that are:

- **Consent to Marriage:** Women have the right to provide their free and full consent to marriage. Marriage without the woman's consent is considered invalid.
- **Mahr (Dower):** Women have the right to negotiate and receive a mahr, which is a financial gift given by the husband to the wife as a form of security and economic independence.
- **Dissolution of Marriage (Khula):** Women have the right to seek a divorce through a process known as khula. Khul allows a woman to initiate a no-fault divorce by relinquishing her financial rights in exchange for the dissolution of the marriage.
- **Divorce with Judicial Intervention:** Women can seek divorce through the court system based on several grounds, including harm or harm anticipation, abuse, neglect, or incompatibility. In such cases, women can file for divorce and present their cases before the court.
- **Maintenance (Nafaqa):** Women have the right to seek financial support, known as nafaqa, from their husbands during the marriage and after divorce. This includes provisions for housing, living expenses, and other necessities.

- **Custody of Children:** Women have the right to seek custody of their children in the event of divorce. The court considers the best interests of the child when making decisions regarding custody.

It is important to note that despite these legal reforms, societal attitudes, cultural practices, and individual interpretations can still influence the implementation of these laws. Moreover, there may be differences in the application of these laws among different regions and communities within Egypt. Additionally, it is worth mentioning that legal reforms in Egypt are an ongoing process, and the specific rights and powers of women within Muslim personal laws may evolve as new legislation is introduced or interpreted by the courts. For accurate and up-to-date information on the powers and rights of Egyptian Muslim women in marriage and divorce, it is advisable to refer to the official legal sources and consult with legal experts familiar with Egyptian family law.

CONCLUSION

This paper is a comparative analysis of reforms made in Muslim laws in India and all lessons India can take by analyzing the practice of Muslim Laws in Egypt. It concludes the whole Muslim law concerning marriage and divorce in countries like Egypt and India. It is found that the laws in India are much broader and more cooperative than in Egypt. Earlier in Egypt Muslim women have to struggle for their rights but now laws are somehow evolving and empowering women. It was discovered that divorce for Muslim women in India is simpler as a result of judicial decisions. Additionally, the Supreme Court of India has also struck down the provision of triple talaq now it has made it a punishable offense under the Constitution of India.

In the past few years, we can see some changes in Egyptian laws which are a bit bend towards women but the cultural and stereotypical mindset is still the same. Islamic law is highly misunderstood and misjudged by people as they blame religion for the unequal treatment of males and females. Muslim women are alienated in Indian society. To promote them and achieve equality in society, institutional reforms are becoming highly necessary. In Egypt, women are more dependent on men. Before 2000, they didn't even have laws for women to seek

divorce without any judicial proceedings. Laws in India for Muslims are a bit more lenient than other Muslim countries. This paper, it is analyzed the rights and duties of both men and women concerning divorce and marriage in Egypt. Many jurists from Egypt gave conflicting viewpoints on Khula as they said this type of divorce is only for rich girls who can afford to return the whole amount of dower, in reality also no-fault divorce created financial pressure on women. But in India to initiate khula an offer has to be made by the wife and the husband should accept it with consideration. It is mutual.