Law Audience Journal, Volume 5 & Issue 1, 5th March 2023, e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.497, Published at https://www.lawaudience.com/volume-5-issue-1/, Pages: 66 to 79,

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Cite this article as:

HARSH, "*Triple Talaq: Islamisation of Women and Global Perspective",* Vol.5 & Issue 1, Law Audience Journal (e-ISSN: 2581-6705), Pages 66 to 79 (5th March 2023), available at ***https://www.lawaudience.com/triple-talaq-islamisation-of-women-and-global-perspective/.***

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Publisher Details Are Available At:

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(E-ISSN: 2581-6705)

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ABSTRACT:

*"The issue of the **'triple divorce'** is regarded as highly sensitive among the Muslims, not only in India but elsewhere. The Holy Qur'an is very cautious in matters of divorce. Three talaqs have to be spaced over a period of 3 months to give husband and wife time for reconciliation through the intervention of relatives and friends. Moreover, talaq can be pronounced only when the wife is in a state of tuhur, i.e., purity after menstruation. Yet, despite clear Qur'anic injunctions to the contrary, immediate triple divorce is permitted, destroying marital life in one breath. The practice of immediate triple divorce is widespread among Sunni Muslims and has legal validity. Even then the jurists call it a **talaq-e-Bidat (innovative form of divorce).** Reports of some Muslims have highlighted the dispute instantly divorcing their wives by mail, over the telephone, and even through mobile phone text messages. This article explains the different theories of divorce prevailing in the contemporary Muslim world and what checks and restraints have been imposed by Islam over the exercise of husband's power of talaq. The article critically appraises the 'innovative triple divorce' by examining whether it is sanctioned by the Holy Quran or the sunnah and if there is a consensus of opinion (ijma) on the effectiveness of triple divorce[1]".*

I. INTRODUCTION:

THERE IS a proliferation of media images of a *burqa* clad thoroughly victimised Muslim women who is in need of protection through the liberal rights discourse. Such representation of a universally victimised subject creates knowledge of the 'other' as oppressive and consequently an opposite self-image of humane. Religious fundamentalism is often presented as a characteristic or feature of 'other' countries, `other' worlds, and most frequently of course, the Islamic world and the Muslim community.[2]This practice is reminiscent of the imperialist project of civilizing the ***"other"*** where imperialism was justified on the pretext of ***"white man's burden"*** where the knowledge production from the west created certain understanding about the culture of the non-west. Such discourse about the non-west was constructed through textual

[1] AVANTIKA TIWARI, *Triple Talaq- Counter Perspective With Specific Reference To Shayara Bano*, available at https://ili.ac.in/pdf/paper517.pdf.
2 RATNA KAPUR, *"The Fundamentalist Face of Secularism and Its Impact on Women 's Rights in India"* 333 *Cleveland State Law Review* 47 (1999).

interpretation and education. Such construction of the Muslim 'other' also shapes the Hindu identity. It is important to note that personal laws have become the pivotal in structuring the identity of both the Hindu and the Muslim community. The Hindu codification of personal law became the face of modernity of the community. Although it becomes pertinent to acknowledge that the codification did not empower Hindu women. These laws offer women limited rights to divorce and includes the 'right to conjugal rights'.[3] In the following two decades, there were several cases where husbands approached courts to stop their wives taking up gainful employment in a place of their choice by filing petitions for restitution of conjugal rights. Further as far as polygamy is concerned with only the Brahmanical idea of marriage being codified where *saptpadi* was a sine qua non to marriage, several customary conceptions were done away with, giving the Hindu man an opportunity to solemnise marriage with impunity. However, such codification was absurd as Hinduism was defined in the widest terms to include castes, sects and religions that did not follow Brahmanical rituals, and further, among many communities, the ceremonies prescribed for a second marriage differed vastly from those followed for the first marriage of a virgin bride.[4]

Further though the ***section 13 of the Hindu Marriage Act, 1955*** provides for the modes of divorce, section 29 (2) validates customary divorce. Hence, despite the law being codified, a Hindu need not approach any state authority either for solemnising the marriage or for dissolving it and can conveniently live outside the pale of official law.[5] In 2005 the Supreme Court in ***Rameshchandra Daga* vs. *Rameshwari Daga*[6],** while dealing with the problem with maintenance of Hindu women brought to forth the development in Muslim law which ameliorated the position of women. However, such developments have been ignored in the recent debates around triple *talaq* creating an imagery of a victimized Muslim subject who is need of protectionist reforms. The problems which are common between the women of both

3 GEETANGALI GANGOLI, *Indian Feminisms: Law, Patriarchies and Violence in India* (Routledge, 2016) 3 Flavia agnes, "Liberating Hindu Women" 15 *EPW* 10 (2015).
4 *Ibid.*
5 *Ibid.*
6 (2005)2SCC33.

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the communities have been ignored. It seems as though domestic violence and desertion are unique problems faced by Muslim women. The violence Muslim women endured itself is not important; it is her Muslim-ness and the projection that she is the victim of archaic and oppressive personal laws which alone can give her that special status and set her apart from all other victims of domestic violence.[7] In this paper the author shall deal with the question of triple *talaq* in the light of the recent petition filed in the Supreme Court for declaring such *talaq* invalid. The author shall argue that there is an already existing legal precedent established by the apex court with respect to triple *talaq* which should be followed instead of resorting to a confrontational approach which may become hegemonic to the Muslim women herself. The author shall advocate that taking cue from third wave feminism the identity of Muslim women must be understood at the intersection of gender and religion. The first part of the paper shall analyse the ***Shayara Bano* vs. *Union of India***[8], petition and the argument put forward by the same. The second part of the paper shall deal with the alternative legal remedies available to the Muslim women in the current legal set-up. The third part of the paper shall deal with a case study of ***Mohd. Ahmad Khan vs. Shah Bano Begum***, whereby the court pitched women rights against the Muslim identity which proved to be detrimental to the victimized women as inter-sectionality was not taken seriously.

II. THE CASE OF SHAYARA BANO:

The current debate around triple talaq is centred on the Sharaya Bano and several batches of petitions as well as Supreme courts own *suo moto* PIL to consider whether certain aspects of Islamic personal laws amount to gender discrimination and hence violates the constitution. The petition hence challenges the validity of triple *talaq* on the touchstone of article 14, article 15, article 21 and article 25. It is submitted that religious officers and priests like imams, maulvis , etc. who propagate, support and authorise practices like talaq-e-bidat, nikah halala, and polygamy are grossly misusing their position, influence and power to subject Muslim women

7 FLAVIA AGNES, *"Muslim Women's Rights and Media Coverage"* 15 *EPW* 22 (2016).
8 WRIT PETITION (CIVIL) of 2016. 9AIR
1985 SC 945.

to such gross practices which treats them as chattel, thereby violating their fundamental rights enshrined in Articles 14, 15, 21 and 25 of the Constitution. Then the petition goes on to explain the plight of the Muslim women who is suffering due to the abhorrent practice of triple *talaq*. The Muslim personal laws of India permit the practice of ***talaq-e-bidat* or *talaq-i-badai***, which includes a Muslim man divorcing his wife by pronouncing more than one *talaq* in a single *tuhr* ***(the period between two menstruations),*** or in a *tuhr* after coitus, or pronouncing an irrevocable instantaneous divorce at one go. This practice of ***talaq-e-bidat (unilateral triple-talaq)*** which practically treats women like chattel is neither harmonious with the modern principles of human rights and gender equality, nor an integral part of Islamic faith, according to various noted scholars. The practice also wreaks havoc to the lives of many divorced women and their children, especially those belonging to the weaker economic sections of the society. It is important to note that though the petition mentions several judgments which have dealt with the triple *talaq* conundrum; it does not rely on the ratio of any of the judgements but rather challenges the constitutional validity of the triple *talaq*. Further the petition discussed that as triple *talaq* is not an essential tenet of the religious belief of the Muslims it is not saved by article 25 of the Constitution of India. However, the petition nowhere questions the inherent discretion given to the Muslim husband to pronounce *talaq* to the wife, rather it only challenges the practice of triple *talaq*. Hence the Shayara Bano petition does not bring out the ills of triple *talaq*as it stands today.

Further in the public interest litigation here is no mention of Protection of Women from Domestic Violence Act, 2005 when it was clear that the woman had been subjected to worst kind of cruelty ranging from dowry demands to abandonment. There are several stipulations in the said act which provide for easier dispensation of justice especially considering the facts and circumstances of this case. The above resulted in a predictable reaction from the Muslim Personal Board which saw this move as a question on their Muslim identity. The counter-affidavit by the ***All India Muslim Personal Law Board (AIMPLB)*** to plead that the Supreme Court has no jurisdiction to adjudicate over Muslim Personal Law since it is inextricably interwoven with the religion of Islam, which is based on Quaranic injunctions and is not a law

enacted by Parliament, only serves to render the proceedings contentious and add to the controversy.[9] However such an argument does not hold good as the Supreme Court has in innumerable cases intervened in personal laws. Be it either ***Shamim Ara* vs. *State of U.P.*[10]**or ***Mohd. Ahmad Khan* vs. *Shah Bano Begum***[11]or ***Danial Latifi* vs. *Union of India***[12] the Supreme Court has been instrumental in reforming the personal legal position. From the above it is clear that the petition has created a discourse whereby rights of the Muslim women can be only guaranteed by confrontation with the Muslim identity. It is important to note that both the ignorance of the legal development in the Muslim personal laws by the lawyers as well as the illogical intervention by the Muslim Personal Law Board has gone on to construct this divide of 'us' versus 'them'. Such a divide has always proved to be detrimental to women as somewhere in this meta-truth of good and evil, oppressive and civilized the experiential realities of women are obliterated. It is important to understand that the Muslim women subject is formed from the very community which allegedly subjugates her. It is important for the courts to understand that constitutional rights would remain a dead letter if we do not understand the manner in which identity politics unfolds especially in case of women. The whole triple *talaq* issue has become a battleground for the culture v. modernity debate. It is important to realize that women's experiences cannot be understood in these reductive binaries as "she" is produced from the very power relations which subordinate them.

III. COMMITTEE REPORT:

The Sachar Committee gave a comprehensive report about the socio-economic and educational marginalization that signifies the lives of Indian Muslim community. Their report highlighted how the largest minority lives in poverty and backwardness with a sense of fear and insecurity from communal violence. They studied the condition of the whole community in detail although they were not tasked with a particular study of the condition of Muslim women. They have however, dwelt upon aspects such as access to education and health mechanisms, public

9 *Supra* note 7.
10 2002 (7) SCC 518.
11 *Supra* note 9.
12 (2001) 7 SCC 740.

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transport and public services as well as identity and security issues in relation to accessing these. The report mentions about the singling out and stereotyping about Muslim women that takes place in our society. However, we are aware that like their fellow male citizens the Muslim women face socio-economic challenges about inclusive education, livelihoods, health care etc. Additionally, and very importantly the Indian Muslim women face hardships in marriage and family emanating from the rampant misinterpretations of Quranic tenets related to marriage and divorce. Since January 2007, in the course of our work we have come across thousands of cases of oral talaq rendering women destitute with nowhere to go. We have been hearing numerous accounts of women being rendered homeless overnight along with their children as their husbands chose to unilaterally say talaq talaq talaq. In most cases the husband's mindset as well as action is dictated by a common sensical understanding about their " right " to pronounce talaq and part permanently with the wife as "given by Islam". Hardly is there any awareness about the actual Quranic injunctions or the meaning of triple talaq. Partly, the maulvis and Qazi's should accept their share in the prevalence of this malpractice as should those who have insisted on being sole arbiters of our religion in the country! Also, those who have been claiming to be speaking on behalf of all Indian Muslims have a lot to answer! All of them must accept that together they have failed to build an awareness about the Quranic tenets on divorce that call for a 90 day time period of discussion, dialogue, arbitration and considered action. Perhaps with the right education and awareness this problem would not have arisen at all. Once in a while we have witnessed an instance where the husband was repentant even ashamed when he was convinced with Quranic evidence about how Allah does not allow triple talaq! The problem has reached these proportions largely owing to wilful and deliberate misinterpretations being spread by some gatekeepers of religion in our country. Blame must also be put on ignorance about Quranic tenets of justice and fairness in our society. We must also blame the popular misconceptions about male superiority in the minds of ordinary Muslims thanks to the misinterpretations carried out by the vocal forces in our society! A lot of patriarchal thinking emanating from misogynic mindsets has been passed off as Islamic and thereby the malpractice of triple talaq as a widely accepted method of divorce!

The dissolution of marriage under Muslim law can be broadly categorized into two:

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1. *Judicial and*
2. *Extra Judicial*

» By the Husband [Talaq, Ila and Zihar] » By the wife [Khula and Talaq e tafweed], and » By common Consent [Mubarah].

The forms of talaq or divorce through extra judicial methods may be classified as follows:

Talaq al- sunna [ie in conformity with the dictates of the prophet]

» Ahsan [the most approved], and

» Hasan [Approved]

Talaq al-bid'a [of innovation, therefore not approved]

» three declarations or triple Talaq and

» one irrevocable declaration [generally in writing]. It is the second form of Talaq, that is Talaq al Bid'a that needs to be questioned and made to end in totality.

While the Ahsan method of divorce allows the couple to wait for three months once the first talaq has been pronounced to give them a chance to reconcile, the so-called triple talaq, the talaq albidah, does not allow any reconciliation and gives the husband the unilateral right to divorce his wife, by merely pronouncing the term 'Talaq' thrice. Not surprisingly, this form of talaq has found most favour with South Asian men and there has been widespread misuse of this male will to divorce leaving their wives without any redress and in the exacting social veracities of South Asia, particularly India, as has been noted in most of the cases in this Study, husbands do not honour their obligations of paying maintenance to their wives and children nor has payment of Mehr been common. What has been making the situation for Muslim women worst are the various fatwa's by religious seminaries upholding arbitrary divorces as valid and thereby adding on to the miseries by giving religious sanction to the unIslamic act of triple talaq in one go, to those women who are divorced unilaterally. The website of the Darul Uloom, looked upon by many around the world as an authentic source for interpretation of Quranic texts, is full of fatwa's on triple talaq and while answering queries on the pronouncement of talaq, in many cases, go to the extent of saying that a talaq is valid even if it is said in anger, or while the wife is pregnant, or even when sent as a written communication to her. In fact, in response to a query on the validity of a written talaqnaama sent to the wife,

in as recent as 2014, the Darul uloom writes that 'Talaq took place on your wife when you got the Talaq Nama written'! Some influential clerics may condemn such fatwas, but the fact that there is no action to declare these acts illegal. That such advisories and fatwas continue unabated speaks a lot about the state of affairs that Muslim women in India continue to face and live in. This tentamounts to a persistent denial of Quranic rights of a woman!

We urgently need reforms in the manner in which Muslim personal law is understood and practiced in India today. We need to bring about laws based on the principles of justice and fairness enshrined in the Quran. Muslim countries such as ***Morocco, Tunisia, Turkey, Egypt, Jordan*** and closer home even Bangladesh and Pakistan have codified personal laws dealing with marriage, divorce, guardianship and property. India may be an exception to the rule with a consistent ambiguity and obfuscation that guides these important components in a married couple's life. Plus, it clearly renders the woman believer as second class! Horrific practices such as triple talaq and halala bring a lot of suffering to ordinary women and also a bad name to the community! As several scholars have pointed out, the Muslim Personal Law prevalent in India is a large body of uncodified laws which have been a creation of the colonial British rule. It is applied to Muslims as a matter of legal policy and not as religious tenets. The largescale misinterpretations provide evidence about this. Therefore, reform would be a step forward in the direction of attaining Quranic justice and not the other way round as it is made out to be! Since inception, we have tried to bring about sanity on the side of justice in this unchecked march of misogyny. The present Study is yet another step in this direction. We embarked upon case study collection in August-September 2015 in the states of ***Rajasthan, MP, Maharashtra, Tamilnadu, Karnataka, UP, Odisha and West Bengal***. A questionnaire was prepared and 100 case studies were collected in this period. They speak volumes about the problem of triple talaq and the hardships faced by women. Because of socio-economic constraints and the inability to access the courts, most women who faced triple talaq have spoken out for the first time through this study. This may be representative of the situation of most women in the country who suffer an extra judicial divorce, specially divorce by pronouncement of the word 'talaq' thrice. What is startling is the ease with which men divorce

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their wives, some by a mere WhatsApp or an SMS and others by a simple communication through relatives or the local Jamaat. In many cases, the woman is informed of being divorced while she is outside her home, she is thus unable to go back to her husband's home to retrieve her belongings, in effect leaving her destitute. The situation is further aggravated if she has no maternal family to help her. It has been our endeavour to strive for the Quranic rights of Muslim women towards justice and equality in family and society. For doing this we have been criticized even maligned by some conservative male-dominated sections. Doubts about our intentions and our "affiliation" are being deliberately planted in the media by the same set of patriarchal gate-keepers who have presided over exclusion of women for far too long. However, we are determined to work towards countering this project of exclusion of women believers from the fold of the religion. We are determined to expand the number of women and ordinary Muslims who speak for themselves; we are determined to gather more and more evidence about how we are being systematically denied our Quranic rights; we are determined to find our rightful place as equal subjects who are loved by Allah; for we know that we were born female owing to the will of Allah; for we know that Allah does not discriminate.

IV. LEGAL ALTERNATIVES:

There has been plethora of cases both in the Supreme Court and several high courts declaring instantaneous triple *talaq* to be invalid. The apex court in ***Shamim Ara* vs. *State of U. P***[13] has already invalidated instantaneous triple *talaq*. While quoting ***Rukia Khatun* vs. *Abdul Khalique Laskar***[14] the court observed:[15]

the correct law of *talaq*, as ordained by Holy Quran, is: ***(i)*** *that 'talaq' must be for a reasonable cause; and* ***(ii)*** *that it must be preceded by an attempt of reconciliation between the husband and the wife by two arbiters, one chosen by the wife from her family and the other by the husband from his. If their attempts fail, 'talaq' may be affected*. The court further added that the

13 *Supra* note 13.
14 (1981) 1 GLR 375.
15 *Supra* note 13.

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"talaq to be effective has to be pronounced. The term 'pronounce' means to proclaim, to utter formally, to utter rhetorically, to declare to, utter, to articulate." ***The court further added:***[16], *None of the ancient holy books or scriptures mentions such form of divorce. No such text has been brought to our notice which provides that a recital in any document, incorporating a statement by the husband that he has divorced his wife could be an effective divorce on the date on which the wife learns of such a statement contained in an affidavit or pleading served on her.* Therefore, from the above judgment it is clear that a plain affidavit or *talaqnaama* without any efforts of reconciliation cannot effectuate a *talaq*. Further in the ***Daqdu Pathan* vs. *Rahimbi Pathan***[17]the full bench of the High Court of Bombay held that a Muslim husband cannot repudiate the marriage at will. The court added that *"to divorce the wife without reason, only to harm her or to avenge her for resisting the husband's unlawful demands and to divorce her in violation of the procedure prescribed by the Shariat is haram"*.[18]

A revocable talaq, the dissolution of marriage does not take place at the time of pronouncement but is automatically deferred till the end of the iddat period. This duration is specifically provided so that the man may review his decision and reconciliation can be attempted. A Hasan talaq is revocable. So also, are the first two talaq pronouncements in the case ccof ahsan talaq. Now, talaq-ebidaat has also been held by me to be operative as a single revocable talaq. In the recent ruling of ***Shakil Ahmad Shaikh* vs. *Vahida Shakil Shaikh***, the High Court of Bombay reaffirmed that the plea taken by the husband that he had given talaq to his wife at an earlier date does not amount to the dissolution of marriage, unless the talaq is duly proved and it is further proved that it was given by following the conditions precedent, namely, arbitration/reconciliation and valid reasons.[19] Hence from the above discussion it is clear that in order to pronounce effective talaq reconciliation is a *sine qua non*. Therefore, it is safe to conclude that the abovementioned cases obliterate the distinction between *talaq-e-biddat* and *talaq-e-sunnat*. It is important to note that in the Shayara Bano petition there is no challenge

16 *Ibid.*
17 II (2002), DMC 315 Bom FB.
18 *Ibid.*
19 *Supra* note 7. 26*Ibid.*

with respect to talaq-e-sunnat therefore the decision of the cases shall not serve as a legal precedent. In fact, the petition nowhere discusses the issues that plague the whole discretion debate. Further it is also a settled law that the deserted wife is entitled to maintenance and such right holds good even if the husband has pronounced *talaq* or sent the *talaqnama*. In *Daniel Latifi case*26the court had held that the wife's right to maintenance is not extinguished after the *iddat* period but continues for her entire life. Therefore, there were a lot of available legal recourses which could have been resorted to by the petitioner rather than pleading for such controversial which has already been invalidated by the Supreme Court back in 2002 had is being followed by all the high courts. However, such negation of these alternate remedies creates an image of a thoroughly victimized Muslim woman who has been oppressed by the archaic personal law and can be only rescued by the Supreme Court. Such an all-encompassing narrative completely invisibles the long-drawn feminist struggle which has successfully subverted the patriarchal practice prevalent in the community by approaching and negotiating with the same courts but without invoking the communal fervour. It is further important to note that such invocation would not change the lived experience of the Muslim women rather it places her at the crossroad as her oppression cannot be attributed to anyone source due to the interlocking between her Muslim identity and gender subjugation. The best example of confrontational politics leading to actual victimization of the woman in question was the *Shah Bano* case.[20] The case pertained to maintenance to the Muslim wife after *talaq* had been pronounced. ***The court while upholding the abovementioned right under section 125 of the CrPC observed that:***

It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that *"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India"*. There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous

20 *Supra* note 9. 28*Ibid.*

concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. The plea to invoke UCC and the adverse comments made by the court against the Prophet and Islam resulted in to a backlash from the Muslim community. It was seen by them as an attack on their cultural believes and faith and was perceived as a means to impose the hegemonic idea of uniformity and universality on them. Therefore, a statute based on Islamic jurisprudence was demanded. During this period the Muslim woman was situated within these sharply drawn binaries and was called upon to choose between her religious beliefs and community affiliations at one end and her gender claims at the other, which was indeed a difficult choice her.[21]

Such discourses led to Shah Bano renounce the maintenance given to her by the court under section 125. Ironically, the fury which was whipped up seemed to be divorced from the core component of the controversy, a paltry sum of Rs.179.20 per month, far too inadequate to save the middle-aged, middle class, ex-wife of a Kanpur-based lawyer, from vagrancy and destitution.[22] However Shah Bano declared that she would instead be a devout Muslim rather than claim maintenance. Such a statement warrants introspection from both the side of the controversy. The woman who was presented as the face of oppression of the Muslim community declined the relief given to her. It is important to appreciate her subject position of not just being a woman but a Muslim woman. Her identity was multifaceted, and she wanted to achieve empowerment within the boundaries of her faith. Such an example brings us back to the question put forward by Gayatri Spivak that ***"can subaltern speak?"***

V. CONCLUSION:

The question remains that whether declaring the practice of triple *talaq* unconstitutional would ameliorate the condition of Muslim women more than the invalidation has done. Further such

21 *Supra* note 7.
22 Flavia Agnes, "Shahbano to Kausar bano: Contextualizing the "Muslim woman" within a communalized polity" in A. Loomba and R. A. Lukose (eds.) *South Asian Feminisms* 33-53 (Duke University Press,2012).

a move would pit the rights of a Muslim woman against her social and cultural believes. It is important to understand that identity subversion is a very complex phenomenon. The problem with identity politics is that it does not transcendent difference but is rather shaped by the very difference. Drawing upon the post-modern scholarship the subjectivity of the Muslim women has to be understood to be constructed within the same socio-cultural context. For example, pious Islamic women may contest patriarchal regimes of Quaranic interpretation home, while at the same time articulating a sort of global solidarity.[23] It has to be understood that the identity of a Muslim woman is intrinsically linked to her Muslim-ness and cannot be divested from it. Therefore, the law reforms cannot take into account the linear narrative of victimisation through the patriarchal Muslim community but rather also has to provide space for assertion of multi-layered identities like these. Here we stand confronted by some of the most intractable problems of the conflict of rights where self-chosen sedimentation of identity within a religious tradition is at odds with forms of universalistic modes of de-traditionalization of the politics of difference demanding gender equality and justice.[24]

Here comes to the rescue the conceptualization of inter-sectionality were we can better acknowledge and ground the difference among us and negotiate the means by which these differences will find expression in constructing group politics.[25] So basically in case of Muslim women article 14, 15 or 21 cannot be seen to give a universal definition of equality or life applicable to all women. The conception of equality must also be informed by the difference in experiences of the women. It has to be understood that neither human rights are universal nor apolitical in fact they can sometime, though unconsciously, become the political tool of oppression. Therefore, the idea of equality which pitches the two identities which she is made from, against each other can never be a feminist achievement. It is a big success for feminist politics that now even the Muslim community is recognizing the *Shamim Ara* judgment and hence the whole community is acknowledging the invalidation of arbitrary talaq. However even

23 Upendra Baxi, *Future of human rights* (Oxford University Press, New Delhi, 2008).
24 *Ibid.*
25 Kimberley Crenshaw "Mapping the Margins: Intersectionality, Identity politics and violence against women of colour" 43*Stanford Law Review* 1299 (1991).

Law Audience Journal, Volume 5 & Issue 1, 5th March 2023, e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.497, Published at https://www.lawaudience.com/volume-5-issue-1/, Pages: 66 to 79,

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when gender concerns of the marginalised women hit the headlines, they do so primarily to strengthen the prevailing stereotypical biases against the community at large.[26] Hence ***'women rights'*** is a multifaceted issue which is embedded in broader political processes and consequently requires a complex response. Such response has to engender in a communally vitiated environment to actually have an impact on the lives of Muslim women. In the current scenario when the case is put before the court and if it hears it even after the Muslim Personal Law Board recognising the *Shamim Ara*[27], decision then the court shall again pitch the ***'gender versus community'*** debate thereby creating another Shah Bano.

26 *Supra* note 31.
27 *Supra* note 13.