

Shifting Identities of Kashmiri Women



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ABSTRACT: Secularism and Islamic Law are two of the most important factors in understanding the socio-religious aspects of Muslim society in non-Muslim nations. When it comes to Muslim Personal Laws, in India, a Muslim may choose to follow state law, which is based on religious law, which demonstrates that the state is trying to go in a more liberal manner. Half-widow has been a significant cause of discomfort in Kashmiri society, state and federal authorities, human rights, activists, and religious ulama for a long time, ever since the war began there. A search for their identity, survival, and safety was unnecessary as long as their spouses were part of mainstream society or culture. They are neither a married lady nor a widowed woman. Zoon's (one of the Half-widows from Jammu and Kashmir's district Srinagar) struggle that changeover her from wife to Half-widow and subsequently from Half-widows to widow would help us understand the crises of changing identities. Though the Half-widow problem is not easily comprehended, it may be grasped by examining the different societal ramifications that impact economic and theological reality. The purpose of this study is to examine how Islamic and State Laws are intricately woven together to ensure the operation of the Indian Muslim society.

KEYWORDS: Half-widows, Secularism, Marriage, Divorce, *Fatawa*.

INTRODUCTION

Islam's legal system was in its infancy during the Prophetic period, hence it was not established. Islamic jurisprudence was used to address new concerns and challenges that arose as Islam expanded around the globe. Over time, beginning with the prophetic age, the Caliphate, and the dynastic reign of the Umayyads and Abbasids, the Islamic Laws have been refined and expanded upon by successive generations. A vast variety of *Fatwas* have been developed by the Muftis throughout the years, which may be changed according to the time and the necessity of the hour by adopting various principles of *Usool al-Fiqh*. (Hallaq, 2009).

The two primary agencies to concentrate on in order to comprehend the socio-religious features that exist in Muslim society today under non-Muslim governments are Secularism and Islamic Law. The former may be seen as a 'doctrine and political' arrangement inside the contemporary state (Lemons, 2019), whilst the latter is concerned with the *Fatwa*'s development. In India, a Muslim can choose State Law over Religious Law when it comes to marriage and divorce procedures, such as the Sharia Act, Muslim Personal Law, and Dissolution of Muslim Marriage Act 1939, all of which are based on codes derived from Religious Law, demonstrating that the Indian constitution is still liberal and pluralistic. The 'Shifting Identities of Half-widows of Kashmir' is examined in this article in light of Islamic Pluralism and Indian secular legislation. The issue has sparked heated discussion among Indian state and federal authorities, Kashmiri society, human rights campaigners, and religious ulamas alike (clergy).

Islam like other religions, provides the mechanism to snap this marriage contract by either side of the partners. Although the right of *Talaqh*, in the *Shariah* is restricted to the Husband only, the wife has also been given a right to apply to a court of law, in certain situations, for the dissolution of her marriage. If the court is satisfied after hearing both the parties that the application is based on such grounds as warrant the dissolution of the marriage according to *Shariah*, it may pass a decree of dissolution whereby the marriage is dissolved. In this regard women's property is not divided during a divorce but of the man if divorce occurs. A woman is entitled to support and maintenance from her former husband if she requires. Despite, *Talaq* being an option for man, a woman can apply for dissolution of her marriage through *Khulah*, *Fasakh* etc. *Khulah* means redemption of marriage contract by partners and she can also apply for *Fasakh* in court, particularly in case when her husband is missing it is the duty of Qazi/Mufti to dissolve the marriage after valid investigation. Death is a natural reason that ends the marriage contract, which comes with rights of heritage for the widow or widower, but on the other hand divorce breakdowns the marriage agreement. Be it *Talaqh*, *Khulah*, *Fasakh* or death, a woman is intended to have a waiting period after the dissolution of her marriage, called the *Iddah* says Amer Ali. Likewise, a Half-widow after performing the *Iddah* for a particular period can go for second marriage.

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The work done in *Al-Hilat al Najizah al Ajizah* by Maulana Ashraf Ali Thanvi, a book on Muslim women's right to judicial divorce led to the enactment of the Dissolution of Muslim Marriage Act 1939. There are rulings for the wife of a missing person as it is not obligatory for her to remain in her marriage as she is not able to manage herself mentally or physically. Islam promotes remarriage option for both male and female. Giving preference to the Maliki school of thought states the wife of a missing person will have to wait for four years and after that she could remarry says Ashraf Ali Thanavi.

K.N. Ahmed in the book "The Muslim Law of Divorce" (1978) explaining the religious sanctioning of Divorce, says that the Muslim Law for the case of missing husband is based on a tradition of the Prophet Muhammad (p.b.u.h) in which it is reported that, "Prophet himself have said with respect to the wife of a missing person that she is his wife until such time as her husband's death or divorce shall appear. Ali (a.s), the fourth Caliph has followed this tradition and has stated that a wife, in such circumstances shall wait till she receives news of her husband's death or her divorce. Umar (a.s), the second Caliph is said to have subsequently adopted the view of Ali (a.s)", is described in one of the chapters titled "*Mafqud al-Khabar*" (pp 500-501).

The main purpose of marriage and family life in Islam is the maintenance of health, purity, piety and chastity; a Muslim woman has the right to be maintained even if she is herself rich; while having a right to earn, own and inherit property she cannot be forced to maintain anyone, not even her own-self, she is in an advantageous financial position, says M. Afzal Wani in his book "*The Islamic Law on Maintenance of Women, Children, Parents & Other Relatives*" (1995). Also, for the dissolution of marriage, he mentions that the *Quranic* provisions are not expressing whether the marriage tie is to be dissolved or not on the husband's inability, failure or refusal to maintain his wife. However, different jurists try to derive support in favor of their opinion from different *Quranic* verses for the dissolution of marriage on the ground of non-maintenance.

Anwar Ahmed Qadri in his work, "*The Dissolution of Muslim Marriage Act, 1939*" (1961) mentions that by enacting the Dissolution of Muslim Marriage Act, 1939, the legislature has made a distinct endeavour to ameliorate the lot of the Muslim wife, to follow the changing time, by taking into account the circumstances of actual life and the change of people's habits and mode of living. The book is a commentary on the Dissolution of Muslim Marriage Act, 1939, that helps to understand the context when the law was laid down.

M. A. Qureshi discusses the termination of Marriage through *Fasakh* (Cancellation of marriage), where the power of the *Qazi* or judge to pronounce a divorce is found to play a vital role. Before the Dissolution of Muslim Marriage Act, 1939 was passed Muslim ladies could only apply for the dissolution of their marriage under the doctrine of *Fasakh*. There existed no unanimity between the different school of Muslim law on the question of dissolution of marriage at the instance of the wife. The schools were also not clear on the question of the procedure to be followed. The rule of *Fasakh* is applied to the case of Half-widow for the dissolution of their marriage if they are willing to end the marriage contract.

Half widow, Half wife? Responding to Gendered Violence in Kashmir (2011) is a report that inspects the situation of women identified as 'Half-widows' whose husbands 'disappeared' but not declared dead. The year 2008, 2009 and 2010 is the period where women were recognized by common people as the Half-widows as revealed in this report. In the major finding the estimated figure of Half-widows is 1500, only in Kashmir. The Half-widows are unentitled for pensions and other government relief and thus face financial crises. Also, space is given to the Children of Half-widows who often face emotional hardships as being traumatized and are vulnerable to impoverishment and exploitation. On the other hand, the civil society organizations addressing various socio-economic insecurities faced by Half-widows are hindered by current laws, a lack of resources, and lack of outside support to develop programming for Half-widows and their children. Due to conflict Half-widows and their wards are not only victims of political conflict but are disposed to harassment both mental and social, stand as a contrast reminder of alienation, and thus impede resolution in Kashmir.

The report not only highlighted the situation faced by the Half-widows but also recommended the several initiatives. Out of four suggestions, the first three are for the Government and the fourth one is for the society in particular. According to the first suggestion, it talks about the immediate compensation for Half-widows along with convene a special bench of the High Court to expedite their case. The second proposal is for passing special legislation on enforced disappearances, keeping with the International Convention for the Protection of All Persons from Enforced Disappearances, which the Indian government has signed and must ratify. Legal immunity to the armed forces be amended and disappearance case in general be resolved and families be told about the whereabouts of their near ones, dead or alive is the third proposal. Lastly, the Civil society- local, Indian, and International must recognize issues faced by the half-widows and advocates the government for meaningful change, while itself funding initiatives such as health care programs and income-generating projects that take a rights-based approach to directly aid Half-widows and their children. This report will be used frequently in conducting this research.

In the article "*Women and Armed Conflict: Widows in Kashmir*" (2014), Farah Qayoom mentions that the armed conflict has direct and indirect effect on individuals living in Jammu and Kashmir. Particularly women became the vulnerable victims, but some of

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the women victims break the stereotype. Women who were only identified as housewives, after being victims of armed conflict came up as the bread-bearers of their family.

With time greater number of civilian casualties are involved in Jammu and Kashmir armed conflict, says Soludia Qutub in *Women Victims of Armed Conflict: Half-widows of Jammu and Kashmir* (2012), where women are the worst sufferers however their conditions are often not much visible or acknowledged. The phenomenon of Half-widows appeared after the large-scale disappearance of men in the ongoing conflict in Jammu and Kashmir particularly after the year 2008 and 2009. The traditional system where women were dependent on their men for food and shelter, all of a sudden changed after the disappearance of their husbands, which resulted in socio-economic vulnerabilities. Some who had children moved on for providing a better life for their wards but due to social pressures stopped searching about their disappeared husband.

Heena Qadir in her article *Social issues of Widows and Half-Widows of political conflict: A study of Anantnag district of Jammu and Kashmir* (2017) says that Kashmiri women have challenged the label of Victims and played a robust role in civil society, even though are not often seen in leadership positions. Widows and Half-widows are a stark and pernicious, often unidentified, face of the insecurity in Kashmir that stands as a hindrance to broader improvement.

Sadaf Anjum and Shahina Maqbool in the article *Role of Hope and Perceived Social Support in Predicting Posttraumatic Growth among Half-Widows in Kashmir* (2017), elaborate the significant positive correlation between hope, perceived social support and posttraumatic growth among Half-widows. The case study of Half-widows analyzed by the authors clearly states that religion and society is important for the upliftment of Half-widows. Kashmiri mostly are Muslims and some the followers of sufi orders, which help the victims to accept their vulnerable condition and so taking life positively. The upliftment is not only by providing financial support the moral and ethical behavior of the people can help the Half-widows and their wards bring them back to normal.

Kashmiri women who have lost their spouses or who are still missing are referred to as half-widow. Half-widows are going through an identity crisis since they don't know whether their spouses are living or dead (Anonymous, 2011). Because it is not recognised by state law, these half-widows have no legal rights to an equitable economic settlement based on the standards of goods or adequate prevailing in society at any given moment, as every government plan requires their husband's death certificate. Aside from that, they are entitled to government compensation if their spouses are killed in the course of innocent and custodial murders, of which they are still uninformed. In their optimistic fight for life and justice, these Half-widows have become emotionally and financially unstable. In Islamic Jurisprudence, however, the Arabic name 'Zoj Mafqud' for half-widows is recognised. (Thanawi, 2014).

It is important to understand that in today's Indian Muslim society, there are several main forums - *Dar ul Qaza*, *Dar ul Ifta*, *Mahila Panchayat* and some civil societies - to which Muslims can turn for assistance with marriage and divorce procedures. *Dar ul Qaza* is the most important of these forums. For example, the *Dar ul Qaza*, *Dar ul Ifta*, *Mahila Panchayat* and civil societies operate in parallel with state law (Lemons, 2019), following the Muslim Personal Law and the Dissolution of Muslim Marriage Act (both derived from religious laws) in support of the Evidence Act 1872, which has been chosen by half-widows in Kashmir as the legal framework. The concept of Half-widows changing their identities is difficult to grasp; however, the case study of Sheen (one of the Half-widows from the district Srinagar in the state of Jammu and Kashmir, name changed) provides a clear understanding of how Islamic Laws and State Laws are intricately intertwined for the functioning of Indian Muslim society.

CASE STUDY

In spite of the fact that she is 47 years old, Sheen has been living the life of a Half-widow for more than 23 years, and she is still hopeful that she would one day be notified of the location of her husband. When she went home from a relative's wedding on the night of the 7th July 1997, she had no idea how her life would alter. She began by searching for her husband in the neighbourhood, when she was told that her husband, Abdul Rasheed, had been abducted by a group of people dressed in army uniforms and brought away in an army bus. She was able to get information from her husband's buddy, who had been with him on that awful day, that the army and a group of people who were dressed in a casual manner had initially asked Rasheed to come to a halt from the window of the army bus. Rasheed came to a halt following the second call from the armed forces outside the JVC hospital and was forced to produce his identification before being carried away by the unknown assailants. They searched for her husband in every local police station, in every prison and army camp, and even in Tihar Jail in Jammu, where she was detained with her in-laws and two children.

As a matter of Islamic law, her case falls under the category of sensitive divorce cases known as *Fasak e Nikaah*, in which the Iddah and subsequent remarriage issues are handled under the supervision of a *Qazi/Muft*, and which have equal relevance under the Indian Constitution's Dissolution of Muslim Marriage Act, 1939. She never acknowledged her husband's death and never attempted to seek counsel on her predicament from the *Dar ul Qaza* (India's government-recognized Muslim Personal Law Board) or the *Dar ul Ifta* (India's Muslim Personal Law Board) (*Fatawa* giving Institutions).

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Putting her emotions aside, she sought assistance from the Association of Parents of the Disappeared Person-APDP, (a civil society) and received some financial assistance at the outset, but she eventually managed to obtain legal guidance in order to be declared a widow by law, allowing her to receive the compensations from the government that are available to widows of those who have disappeared. She followed up on the matter for a total of 10 years in a row, and finally an order was issued to the lower court to investigate the disappearance of her husband, which was carried out. Only then was she presented with the F.I.R. stating that her husband had gone missing, and the situation comes under the category of custodial disruption under Section 364 of the RSP. It was also almost difficult to request a fresh inquiry at this time. She almost lost everything in her hunt for her husband, and she was unable to find any more evidence of his whereabouts. Between then and now, she used to attend APDP demonstrations, hoping that the government would bring about justice for all of the cases that had been brought by the party, including her husband's case, which was one of them. An order was issued pronouncing her marriage to be automatically dissolved under the Dissolution of Muslim Marriage Act 1939, after the filing of the lawsuit at the lower Court of Jammu and Kashmir by APDP-provided lawyers.

In general, the Indian government has approved the Dissolution of Muslim Marriage Act 1939, which gives Indian Muslim women the authority to terminate their marriage contracts with their husbands. Particularly relevant to half-widows in Jammu and Kashmir are the first three clauses of the Act, which provide grounds for a decree of dissolution of marriage in the following circumstances: when a wife does not know where her husband is; when a wife does not receive maintenance for a period of time or more; and in some cases, when a wife is aware that her husband has been sentenced to imprisonment for seven years or more. Following the Evidence Act of 1872, the half-widows are issued with a death certificate for their spouse, making them eligible to qualify for government initiatives in the future. Sheen was eventually able to get compensation from the government in the amount of Rs 3 lakh after the ruling.

ANALYSIS OF THE CASE STUDY

Sheen is dealing with her identity, and she is unable to identify as either married or a widow at this time. The case study of Sheen sheds insight on the following aspects of her personality::

1. Given that she has no idea where her spouse has gone, she is attempting to establish her own sense of self in the community.
2. Throughout her journey, she was subjected to social humiliation, emotional agony, and financial hardship.
3. She took the financial aid from APDP, a civil society of Jammu and Kashmir, an internationally recognized human rights organization following laws laid down by the State law.
4. She took legal support from APDP over the guidance she could have received from *Qazi/Mufti* through All Indian Muslim Personal Law Boards or through the *Dar ul Ifta*, where she performed Iddah for four years.
5. Since her case was decided through judicial interpretation of Dissolution of Muslim Marriage Act 1939 by the Judiciary, her identity shifted from a Half-widows to a widow. And she became eligible for the financial support provided by the government besides what she will inherit from her deceased husband's property.
6. If her case would have been resolved in accordance with Personal Law (*Dar ul Qaza* or *Dar ul Ifta* by All Indian Muslim Personal Law Board) without judicial intervention, then she would have been declared a divorcee and would have been eligible for the maintenance through the Property Inheritance Right.

CONCLUSION

In India, Islamic Laws are regarded within the jurisdiction of the State Law, which takes into account the basic right to religious freedom. It is shown that the Qazi/muftis are given the authority to discuss issues that have been approved by the Indian government by the All India Muslim Personal Law Board, which is a private organisation working to protect Muslim personal laws, liaise with and influence the Government of India, and guide the general public about marriage and divorce. Their powers are limited in comparison to those of the Indian judiciary, but they work in tandem to improve the lot of Indian Muslims. Identities of half-widows differ depending on whether they are following the Indian Judiciary or the Personal Laws. Depending on her status, she may be considered a widow, or a divorcee, which may affect her eligibility for government-sponsored financial assistance in India.

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