

Chapter 5

The Relational Space of Muslim Women: Marriage and Divorce

5.1. Introduction

Muslim women in Assam have a unique relational space, especially in terms of marriage and divorce, than the rest of the country. The kind of liberal spaces that Muslim women have in Assam is exceptional. Especially the Assamese origin Muslim women have far better relational space within the institution of marriage and family than other sects of Muslim women in Assam. However, the Shariat law still has a significant place in the practice of religious culture, traditions and customs among the Muslim women in Assam (Wahab & Khatun, 2015). The Islamic prescriptions and proscriptions interfere with prevalent cultural norms followed by the respective families. According to Christine Horne, norms are the rules or expectations that are socially enforced. Norms can be prescriptive (encouraging positive behaviour) or proscriptive (discouraging negative behaviour). The term is also used to refer to patterns of behaviour and internalised values. Religion as a structure is again confronted with debates based on different religious thoughts.

The subordination of women by men is a worldwide phenomenon, though the command and control differ based on culture and religion. Religion is one of the most vital institutions deeply rooted in the lives of both men and women. Women live in this institution more than men do. Religion is a belief system that directs the culture giving it a tradition and proscription to continue the community together. The norms and traditions prescribed in the religious texts become a part of a community's larger cultural dogma.

This chapter will look into how far Islam is being built-in the culture of the Muslim community in Assam and how the women in this community live this religion. This chapter particularly tries to explore the various lived experiences of Muslim women's relational spaces, especially in terms of marriage and divorce, how they perceive these in their everyday lives, and how they give meaning to these experiences. In doing so, this chapter also traces the colonial roots of the Muslim Personal Law in India and provides an account of the Islamic feminist debate on marriage and divorce in contemporary India.

5.2. Colonial Catalyst of Muslim Personal Law in India

The application of distinct family laws to specific cultural groups is how cultural diversity is recognised. However, the groups in any patriarchal societies like the Hindus and Muslims constitute unequal gender rights in family life. Indeed, policymakers had also incorporated unequal gender norms in forming such group laws (Subramanian, 2008). In India, pieces of evidence claimed that Muslim identity in India was greatly accelerated by the coming of the colonial regimes (Ansari, 2007; Daniyal, 2017). It has been documented that the Muslim family laws relating to marriage, divorce, maintenance, wills, legacies, succession, inheritance, adoption, dower, and guardianship were enacted during British rule in India (Ansari, 2007). To create a plural family law in a multicultural state like India, the colonial state, to some extent, had introduced a centralised system of plural family laws, 'in which the powers of adjudication were shared by the state courts and various community courts' (Subramanian, 2008, p.632). There were, however, two particular contexts of the formation of Muslim Personal Law in colonial India: first was to make surplus revenue from the agrarian economy and second was to maintain the political order of the society (Anderson, 1996). Anderson (1996, p.19) argues that 'colonial legal interpretations were arrested frozen forms of representation. They often had more to do with a limited kind of textual accuracy than a genuine appreciation of the norms by which people lived.'

The laws set by the colonial government become a significant feature of change in the traditional Muslim laws during the colonial India and to some extent, it has also applied by the Muslims (Daniyal, 2017; Menski, 2008; Subramanian, 2008). In the year 1937, the British government through the 'Judicial Committee of the Privy Council' had introduced '*Shariat law*' as above all the Muslim's customary laws. And despite their disagreements with some features of the Shariat, the Muslims in the colonial India have followed this

law. Later, however, the British government granted permission to use this law as “proof of special usage”. Gradually, as a part of secularisation process of laws in colonial India, the High Courts of Calcutta and the High Courts of Allahabad discontinued all the Muslim customary laws in 1882 and 1900 respectively (Daniyal, 2017). By the time, legislative Acts such as: The Mapilla Succession Act, 1918; Cutchi Memons Act, 1920; Mapilla Wills Act, 1928; North-West Frontier Province Muslim Personal Law (Shariat) Application Act, 1935; Cutchi Memons Act, 1938; Muslim Personal Law (Shariat) Application Act, 1937 (the last which had an all-India jurisdiction) have provided legislative protection to Islamic family law and accorded it supremacy over all contrary customs and usages (Ansari, 2007). Among all these Acts, the Muslim Personal Law (Shariat) Application Act of 1937 and its successor, the Dissolution of Muslim Marriages Act of 1939 (DMMA) were ensured and provided at least some rights to the Muslim women in India.

5.2.1. Muslim Personal Law (Shariat) Act, 1937

The British colonial government has passed the landmark, ‘*Muslim Personal Law (Shariat) Act*’ (MPL) in 1937 to provide a particular law code for Muslims in India. It mandates all aspects of Muslim marriage, divorce, maintenance, inheritance, and family relations. While formatting the laws for the Hindus and Muslims, the colonial government stated with regards to the Hindus that “clear proof of usage will outweigh the written text of the law” while, for Muslims, they provided their emphasis on ‘Quran’ (Roy Chowdhury, 2017). As a part of this process the British government tried to translate the religious scripts to English and applied them among the Muslims. This “scriptural” approach adopted by the colonial government, however, had adversely impacted on the Muslim identity politics in India as the fundamentalist groups rallied around this new identity; the Shariat laws also became a tool to organise Muslims especially during the Deoband movement in India and later this law has become a base for laws in Pakistan and Bangladesh (Patel, 2009).

However, Muslim people, especially women don’t know what the Shariat and the Quran say on women’s rights and duties within marriage (Tschalaer, 2008). Although the Muslim women started claiming their rights in the family property in the colonial courts, it was difficult for Muslim women to negotiate their rights in the newly established norms, rules, and legal cultures run by the British government (Kozlowski, 2007; Sunnetha, 2012). However, the MPL, 1937 tried to ensure the Muslim women's rights in colonial India. The

main reason behind this Act was to outlaw all the existing customary laws of the Muslims. In the initial phase, this Act was applicable all over the then undivided India except in the North-West Frontier Province as they had their own legislation under the NWFP Muslim Personal Law (Shariat) Application Act, 1935. However, later the Act was extended to all over the India under Section 1 (2) of the Act (Banerji, 2021).

The MPL, 1937, in its second section, talked about the application of Personal Law to Muslims. It stated that,

“Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, illa, zihar, lian, khula and mubaraat, maintenance, dower, guardianship gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).”

This section presents ten subject matters: (a) Intestate succession; (b) Dissolution of marriage that also includes all kinds of divorce as well namely talaq, illa, zihar, lian, khula, and mubarat; (c) Maintenance; (d) Dower; (e) The special property of the females; (f) Marriage; (g) Guardianship; (h) Gift; (i) Trust, and its associated properties; and (j) Wakf. This MPL, 1937, however, does not much talk on the legacies, adoption and wills. This MPL also excludes the domain of agricultural land from its realm and from the Act. This Act significantly deprived women of their legitimate land rights while their male Muslim counterparts could claim them. The exclusion of agricultural land from the scope of the Act obstructs the Act from achieving its purpose. The purpose of the Act is nullified, replacing customs with legislative enactments has no role to play (Banerji, 2021).

Unlike the second section, the third section does not give much attention to Muslim women’s rights. It only provides power to make declarations on (a) any person who satisfies the prescribed authority; (b) that he is a Muslim; (c) that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872 (9 of 1872), and(d) that he is a resident of [the territories to which this Act extends. It further states

that, “where the prescribed authority refuses to accept a declaration under sub-section (1) “the person desiring to make the same may appeal to such officer as the State Government may, by general or special order, appoint in this behalf, and such officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.” Thus, this section 3 provides the power to make a declaration, to a Muslim to be governed by the Muslim Law, in the absence of such declaration; the provision provides an implied power to the courts to not be bound by such law while deciding a matter ruled by Section 2, and 3 in dispute (Ibid, 2021). The Section fourth of the MPL of 1937 on the other hand, provided the rule-making power to the State governments while the section six of the Act talk about certain provisions of a few statutes which appears to be inconsistent with the provisions of the Shariat Act of 1937 (Ibid, 2021). Thus, there are many elements included in this personal law, which are not based on the shariat and applied as a matter of "justice, equity and good conscience" (Patel, 2009, p.45). This Act, however, have failed to ensures equal rights to both males and females. Indeed, this Act was mostly salient on Muslim women's issues and again falling within the earlier Muslim customary laws. Patel argues that this ‘this act actually deprived Muslim women of the right of maintenance under Section 125 of the Criminal Procedure Code, and thereafter this created a big upheaval in Indian politics (Palet, 2009, p.46). Although the Britishers had brought some fundamental change through this MPL, their intention was not to develop or empower women. Rather, they try to apply this as matter of policy to govern the colonial India (Fayee, 1977, p.12). This, however, encouraged Muslims to unify themselves and Muslim politics was mostly centered on this Act (Patel, 2009).

5.2.2. The Dissolution of Muslim Marriages Act, 1939

The Dissolution of Muslim Marriage Act was introduced in 1939 by the colonial government and applicable in all the states of India, excluding Jammu and Kashmir. This Act was a major law that tried to safeguard Muslim women’s rights during the colonial India. Mostly this is an ‘Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.’ In its second section, the Act stated that, ‘A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage based on: (i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years; (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards; (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years; (v) that the husband was impotent at the time of the marriage and continues to be so; (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease; (vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years (Dissolution of Muslim Marriage Act, 1039, p.1). However, the point of the Section 2 (ii) of the Act was a matter of debate in the courts of India. Say for instance, in Yousuf Rowthan case Judge V.R. Krishna Iyer regarded this right of the Muslim wife as wholly unconditional and was convinced that this view was in conformity with the breakdown theory of divorce on which the Islamic matrimonial law was based (Ahmad, 2015, p.323). And at the same time, as for a Muslim husband marrying a second time during the subsistence of first legal marriage, it was made clear that the wife is entitled to get separate maintenance and is not legally bound to cohabit with the husband (Ibid, p.325).

The section 2 of the Act also provided special protection to the Muslim married women from husband's cruelty and enables Muslim married women to apply judicial divorce on the ground that: 'the husband treats her with cruelty' and clarified cruelty on the ground that: (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or (b) associates with women of evil repute or leads an infamous life, or (c) attempts to force her to lead an immoral life, or (d) disposes of her property or prevents her exercising her legal rights over it, or (e) obstructs her in the observance of her religious profession or practice, or (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran; (ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law' (Ibid, p.1). Section 2 thus talks about the legal rights of a Muslim married women in India and is totally against any kind of cruelty Muslim husband and 'if any incident perpetrated by the husband with cruelty had made her communal life miserable then that would amount to cruel treatment as envisaged in the clause' (Ibid, p.2). This Act was thus passed for emancipation of victimised woman in India about 100 years back was totally in agreement with the established law of Muslims in India (Ahmad, 2015, p.324).

5.3. Islam and Women

The relation between Islam and women and how women live this religion depends on many factors across time and space. One of the most debated and criticised factor of her relationship with Islam is that she is the object of oppression in Islam. Does Islam preach patriarchy? This question is much argued between the Islamic scholars and the non-Islamic scholars. The verse which in the religious text of Quran, 2:228 says;

‘Divorced women shall wait concerning themselves for three monthly periods nor is it lawful for them to hide what Allah hath created in their wombs if they have faith in Allah and the last day. And their husbands have the better right to take them back in that period if they wish for reconciliation. And women shall have rights similar to the rights against them according to what is equitable; but men have a degree over them, and Allah is exalted in power wise.’

This verse where it says, “men have a degree over them...” makes the men superior over women and this is regarded as the patriarchal notion which is carried out to justify women’s inferiority in the gendered characteristics. However Islamic feminist scholars argue on the grounds that man is the protector, provider and supporter for the woman though she can perform the same towards the man, however this will lead to burdening her more and so the verse says that “men have a degree over them...”.

All religions have a patriarchal view, Christian theology regards Adam and Eve have to descend to earth as a form of punishment because of their disobedience to the Lord. Eve is less likely to attain salvation and is a symbol of temptation and sin. Whereas Islam’s view on Adam and Eve’s descending to earth holds a different meaning. According to Islam, it was already in the God’s plan to send Adam and Eve to the earth and heaven was a training ground to tell them that they will always be in need of Allah’s guidance. So regarding Eve as a symbol of sin is falsified by many Islamic scholars as it was all planned by God beforehand. *Hawwa* is Arabic translation of Eve and it comes from the word *Hay* meaning ‘living’. Islamic feminist also argue that Adam was created from clay or mud and Eve was created from Adam i.e. a living thing. So in that case a woman being created from a living thing makes her finer than a man who is merely created from clay, something which is lifeless.

In the recent decades, Islamic Feminist scholars have raised debates challenging the patriarchal readings of Qu'ran and Hadith (sayings of the Prophet). Asma Barlas says;

As many recent studies reveal, women's status and roles in Muslim societies, as well as patriarchal structures and gender relationships, are a function of multiple factors, most of which have nothing to do with religion. The history of western civilisation should tell us that there is nothing innately Islamic about my sogyny, inequality or patriarchy. And yet, all three often are justified by Muslim states and clerics in the name of Islam....(Barlas, 2002)

Women living Islam are following a tradition prescribed by the patriarchal notion of Islam. The clerics interpret Quran and Hadith in a way which supports and feeds their patriarchal views to persist.

5.4. Women and Religion

Catholic theology rejects the worldly body and focuses on preparing the body for the next life. Catholic morality aimed to repress pleasure in the interest of reproduction. The sexual act should be devoid of pleasure and if a husband enjoyed his wife, it is regarded as a sin. The same condemnation was applied to extramarital affairs because it was associated with pleasure, contraception and unnatural positions. Further it implied that a man may become parents of children and to whom they never want to pass the property to that illegitimate offspring (Turner, 2008). On the contrary to attaining spirituality through encouraging celibacy and abstinence from sexual pleasure, Islam have encouraged sexual desires in *Quran* saying that sexual desires are a blessing and should be enjoyed by the spouses. Many *hadith* of the Prophet also encouraged fulfilling of intimate rights by the spouses as an act of (*Sadaka*) worship. Hanafi jurist, Ibn Abidin says, "*Among the consequence of marriage is the permission given to each spouse to derive sexual pleasure from the other.*" (Radd al-Muhtar ala 'I-Durr al-Mukhtar 3/4)

Catholic theology considers women to be inferior on the basis of biological inferiority while, Islam views women to be a sexually active and a dangerous being. Indeed, in Islam, all sexual institution like polygamy, repudiation and sexual segregation are strategies to constrain her power (Mernissi, 1975, p.16). Muslim feminists view Islam as an oppressive patriarchal religion on the ground that the practices followed by the larger Muslim society

are overlooking women's needs and controlling her space and these feminists also argue that the original Islam is not to be viewed with a western perspective.

5.5. Marriage and Divorce among Muslims in India

Nikah is an Arabic word used for marriage, which means contract. The Quran particularly mentions marriage as *Mithaqun Ghalithun* which means 'a strong agreement' (Khare, 2018). It is a contract that allows a man and woman to live together with the terms and conditions laid down for them. It is important to know the aim of marriage in Islam and because it is a contract, it has authorised legal rights to each of the spouses. The desire of men and women for each other is natural and it needs to be fulfilled and if it is unfulfilled, it will cause the society to disrupt and dissonance. Mehr is always misunderstood as a payment received during divorce but it is actually paid as a gift by the husband at the time of marriage to his wife and it may only in the form of a prompt dower (mehar-a-muajjal). It is an exception and it is a pro-woman law that marriage should not be postponed if the women are voluntarily ready to defer their bridal gift due to poverty of their proposed husband. In such a case mehar can be paid later. But it does not mean that it should be paid after divorce or death. If it is to be paid later, then it becomes a debt and the property can be retained in lieu of mehar (Ahmad, 2015). So the Prophet ordered men to get married, if he is capable of which will help him to lower his gaze, guard his body from committing sin. The one who is not capable of getting married then he should fast abstain from committing sin.

A Muslim marriage is patriarchal in its outlook with the men being allowed to marry four wives and men has the authority to pronounce triple *talaq* in order to end the marriage. Women on the other hand have a little or no space in performing her relation and she is living this institution following the *Sharia* laid down for the fulfillment of the contract.

Islamic *fiqh* and *shariah* are solely under the domain of religious clerics. The common Muslim men and women who generally thrive to be good believers and always want to follow the Quran and Sunna depend on the clerics who may provide them with proper guidance for a happy and a blessed life on the earth and hereafter. But do this really happen? Do Islamic clerics are able to guide them through *Sunna*? Do men and women both follow the *sunnah*?

The debate on the personal law in India is to achieve equal rights for both men and women in a Muslim marriage which is a contract. The historic judgment on Shah Banu's case where she was divorced after 43 years of marriage, the Supreme Court ruled that Shah Banu was entitled to maintenance from her husband. Addressing itself to the issue of whether the Muslim Personal Law imposes an obligation upon the husband, the court further ruled that a Muslim woman, unable to support herself, was entitled to take recourse to section 125 of the Criminal Procedure code which applied to all communities regardless of their separate personal laws. But in case of conflict between certain provisions of the Criminal Procedure Code (CrPC) and Muslim Personal Law, the former would prevail. The interpretation of the Muslim Personal Law triggered reaction throughout the country and the Jamait-ul-Ulema-Hind took the initiative in demanding the restoration of the Islamic laws. Muslim community has resisted any change in the Muslim Personal Law on the ground that it is an integral part of the socio-religious identity of the community. Many organisations joined to mobilise the Muslims as a part to search for an identity and establish a status with its substantial minority position (Hasan, 1989).

In 2008 and 2009, Muslim women rights activists in Lucknow have surrounded the debate which is about the conjugal relationship in the post-colonial India. The attempt was made by the All India Muslim women's Personal Law Board (AIMWPLB), Bazme Khawateen and Bharatiya Muslim Mahila Andolan (BMMA) to destabilised patriarchal ideas of women's responsibilities and rights within marriage and family with their own versions of the contract. So the public talks about the conjugal rights and duties in a marriage will allow women to interact with the hegemonic religious bodies. One of the aims of All India Muslim Women Law Board is to make people aware that Muslim women have rights according to Sharia and Quran. Similarly, women lawyer activist around the world in Egypt, Morocco and Iran, Hassan and Amber has also made attempts to reform the marriage contract. They try to infuse formal discourse on marriage with women friendly messages on conjugality (Tschalaer, 2017; Abu Lughod: 2010; Mir Hosseini: 2006). Islamic Feminist likes Amina Wadud and Asma Barlashave raised many questions regarding its definitions and conceptualising feminism. They have raised debates challenging patriarchal readings of Qu'ran and Hadith. Islamic Feminism has started in Middle East in 1990s in Egypt and Iran when women were re-reading Quran to reclaim their religion and challenge both Islamist patriarchal views and western interpretation of Islam. According to them it is not the text but its interpretation that allowed patriarchy to

persist (Kynsilehto, 2008, p.9; Vatuk, 2007). They argued that Quran and Sharia are flexible and can be interpreted to stabilise the gender relation.

Women in her space of conjugal relationship have always been deprived of the rights they should be entitled to. The most contentious issues dealing with a Muslim woman's space in a marriage are under age marriages, non-payment of Mehr, pronouncing the triple talaq, domestic violence, receiving maintenance and polygamy. These issues can be dealt with proper model of *Nikanama*. Flavia Agnes initiated such a reform through a new model Nikahnama where it contained *Hidayatnama* (guidelines according to shariah) and *qarar*(declaration to abide by the shariah) (Suneetha, 2012).Suneetha in her paper, 'Muslim women and marriage laws: Debating the model Nikahnama', give an account of the debate that centered around the *nikahnama*. The women's activist Nikahnama fixed that the husband should not inflict physical harm, or wrongfully confine the wife; he should not indulge in any inhuman behavior, leave the wife in her natal home for longer period of time; accept dowry; not utter triple talaq or talaq in isolation. The women's group suggested that, the differences in marriage should be resolved through arbitration and suggests that a husband should seek permission from the first wife before marrying a second time. However, the AIMPWB approved the Nikahnama but deleted the mandatory clauses regarding triple talaq in 2005.

In Islam, divorce (talaq) is a long process and is described in the *Quran* in a whole chapter. Divorce is allowed in extreme circumstances by the husband, wife, and mutual consent of both. In legal terms, these three cases are known as talaq, khula, and mubarat. The Indian Muslim *talaq* ends a marriage with the utterance of the word *talaq* three times. This process is misunderstood and Justice V.R. Krishna Iyer presented it, saying that Quran forbids a man to seek pretexts for divorcing his wife so long as she remains faithful and obedient to the husband. If the wife by her unruliness, being unfaithful and bad character, allows a marriage to end without a serious reason, no man can divorce his wife. On the other hand, if the marriage does not serve the purpose, it should be dissolved and since it is a contract, Islamic law recognises the right of both the husband and wife to dissolve the marriage (Ahmad, 2012). Divorce and separation in conjugal relation in a society is an inseparable attribute. The difference between legal separation and divorce is that, if the spouses are separated, they are both legally married even if they are not living together and if both the spouses decide to get a divorce then one has to go through the legal

procedure to terminate ones marriage. A legal separation is similar to divorce in terms that one has to negotiate the terms of child's custody, visiting time, supporting a spouse and division of the property. In India under Muslim law, a husband can pronounce divorce by Talaq, Ila and Zihar. Ila and Zihar are the constructive divorce. In Ila, the husband takes an oath not to cohabit with his wife for four months. And if this period is over without sexual intimacy than marriage dissolves irrevocably. But in Shia school, if this period is over without cohabitation, the wife can file a suit for restitution of conjugal rights against the husband. If the husband resumes cohabitation within that period, marriage is not dissolved, and Ila is cancelled. In Zihar, he compares his wife with his prohibited relationships like mother or sister and does not cohabit with his wife. And after four months, the Zihar is complete. In this case, after the expiry of the fourth month, the wife has the following rights to go to the court and get a decree of judicial divorce and she can even ask the court to grant the decree of compensation of conjugal rights. If the husband again wants to revoke Zihar and resume cohabitation, then he can revoke Zihar by: (i) fasting for two months; (ii) or providing food to 60 people; (iii) or he frees a slave.

On the other hand a wife can get a divorce through talaq-i-tafweej and lian. In talaq-i-tafweej, a Muslim husband hands over his power of divorce to his wife, or any person as an agent on behalf of the husband to pronounce divorce. He may hand over his power absolutely, conditionally, temporarily or permanently. Asraf Ali Asghar Fyzee, an Indian jurist and Islamic scholar said about talaq-i-tafweej that, "this form of delegated divorce is perhaps the most potent weapon in the hands of a Muslim wife to obtain freedom without the intervention of any court and is now fairly common in India". Lian is a way of getting divorce by a woman when her husband levels false charges of unchastely and adultery upon his wife and considering this as a character assassination of his wife; the wife can file a divorce on this ground. These legal terminologies of Muslim law in the lives of separated Muslim women, apart from a female lawyer has hardly brought any relief or assistance to the common Muslim women since they are ignorant on the Muslim law on divorce.

Divorce in India among Muslims is always in debate. The women's wing of All India Muslim Personal Law claimed that the rate of divorce among Muslims was low compared to other communities and the issue of triple talaq was being politicised. The chief of the women's wing, Asma Zohra argued that women's rights are well protected in Islam.

Datas were collected from family courts from 2011 to 2015 and the statistics showed less divorce rates compared to other communities. She also argued that women are facing more difficulties in dealing with child marriage, dowry, female foeticide and domestic violence. So, these issues should be dealt first than politicising triple *talaq*. Darul Qaza is an Islamic Shariat court from where the cases were collected which indicated that 2-3 percent cases were related to divorce out of which women initiated most. According to the report prepared by Muslim Mahila Kendra with Shariah Committee for Women, the number of divorce cases among Muslims was 1,307 against 16,505. The cases of Christians in the districts were 4,827 and 8 for Sikhs (*The Indian Express Website*, 2017). The debates went on, and the model contract, nikahnama could stop men from pronouncing tripple talaq and on 22nd August, the Supreme Court deemed Instant triple talaq unconstitutional.

The Muslim Women (Protection of Rights on Marriage) Act 2019 passed on 26th July 2019 after a very long discussion and opposition got the verdict to all women. It made the triple *talaq* illegal in India on 1st august 2019. According to the act, the instant triple talaq (*talaq-e-biddat*) in any form- spoken, written or by electronic means such as email or SMS as illegal and void with upto three years in jail for the husband. Across the world many countries have reformed their laws with the changing of social conditions, the Islamic law of triple talaq have been disapproved (*legalreserachanalysis.com*, 2020).

5.6. Lived Experiences of Marriage and Divorce: Evidence from the Field

Empirical evidence shows that the Muslim women in Assam have diverse lived experiences of relational spaces. Despite the liberal social environments, Muslim women, especially Bengali and Hindi speaking Muslim women, have had more traditional ways of understanding marriage and divorce in their lives, supplemented by the customary laws of the Muslim religion. For instance, a Bengali speaking named Husna ara was 40 years old and had two sons. She was asked about her marriage, to which she replied that her husband left her for another women. She said that her husband didn't divorce her but instead brought a new wife. They are poor people, so her husband can't afford to feed both the wives and children. When asked that how she could allow another woman in her husband's life than replied, "*Allah has given the right to a man to marry four wives and how can I question that.*" When asked how she knew that, she can't question the marrying of four wives, to that she replied, "*I didn't go to school or Madrassa, but I knew it from childhood, since my father too married two women.*"

Another woman, named Mohiron, in her forties, asked about the number of children, she said that she has three daughters; younger one is in 10th standard. The older ones left school and one of them got married. Her husband too left her, don't take care and earn for them. It was she who works as a domestic helper in order to feed her children.

The above two cases reveal a woman's miserable condition in a marriage (*nikah*). God (Allah) has commanded to restrict a man to one wife if he cannot be just and treat both of them equally (al-Nisaa' 4:3). Another pre requisite of second marriage is that the latter one should be a widow with children (4:19-20; 127-129). It must be noted that, a bride during marriage has the right to demand her would be husband to agree in advance about certain conditions in the marriage contract, if her future husband is thinking about marrying twice latter. The poor section of the Bengali speaking women is in a miserable plight in her relation space with her husband where she cannot exercise any of her right as a wife unlike the Assamese speaking Muslim women and Hindi speaking women in the village Barika Chuburi and Saikia Chuburi. These two villages practice monogamy.

It can be seen that Husna, Mohiron, and their spouses are ignorant about their rights on each other. The religious texts interpreted by *Maulavi* (clerics) are not in safeguarding the rights of women but the women practicing Islam are so vulnerable that they consider their position to be the will of God and are least concerned about changing it since their main concern is not to get back their husband's love but to earn money to fight hunger and poverty.

The most perfect of believers are those most perfect in character; and the best amongst you are the one who are best to your spouses. (Sunan al-Tirmidhi: 1162)

The most Muslim men follow the clerics during *Sallah* (prayer) and especially they listen to the *kuthbas* (Islamic teachings) after the public prayer by the clerics on Friday. This allows a common man to get exposed to the Islamic teachings and implement it in their day-to-day life. Men bring these teachings to the household level where women contact them and follow them in her everyday life. *Kuthbas* are not interpreted correctly every time since the clerics put it in a way through which their patriarchy sustains. For instance, a *kuthbah* on the importance of mother,

A man came to the Prophet and said: "O Messenger of Allah! Who from amongst mankind warrants the best companionship from me? He replied: "Your mother." The man asked: "then who?" So he replied: "Your Mother." The man then asked: "Then who?" The Prophet replied again: "Your Mother." The man asked again: Then who? So he replied: "Your father." (Sahih Bukhari: 5971 and Sahih Muslim 7/8)

The prophet in this Hadith shows that, one should give more priority to the kind treatment to one's mother over the kind treatment towards one's father. But the clerics interpret it in contradicting the rights of wife saying that if a wife dies, her place may be taken by another, if the second wife dies, her place will be taken by the third one and so on. There is no term as 'step wife' but mother is only one and if she is gone than nobody can replace her. Such type of interpretation follows a subordinate position of a wife in her husband's house and allows a man to misbehave with his wife more likely in front of his mother. This type of interpretation allows even domestic violence inside household where her value is discredited.

First of all, every act of a Muslim is classified in terms of acts which earn a reward and an act which leads him to committing sin. Now according to the four schools of *fiqh*, it is not *fard* (obligatory) on the part of the wife to do the cleaning and cooking for her husband's and his relatives. But if her husband comes home and ask her to cook something, though she is not legally obliged to cook but rewards are associated in her act of cooking for her husband. Similarly the duties of a wife towards her in-laws are similar to the duties of a husband towards his in-laws. Wife cooking and cleaning for her husband's relatives and husband helping financially to his in-laws are acts of rewards. But this *Shariah* seems to be only in books.

A woman named Hanufa Begum, a hindi speaking girl, only sixteen years of age got married to a business man. She said she had six members including her in her husband's house. Her husband has two younger brothers, a father and a mother. She had to wash clothes for them, cook food for them and clean the house. She said that she has back aches at night. She said that, though these are house hold works but meeting the needs of all the five members of the family is a tough job, she gets sick sometimes. A newly married bride is obliged to do the tasks she don't know to do. She is asked to take care of each of her husband's relative's needs and is told that it is her ultimate duty to keep everyone happy, and denying doing this duty is a sin, is an oppression.

Islam don't encourage a patrilocal residence but rather a neo-local residence after marriage but in case the husband need to depend on the income earned by his brothers and father, than he can stay with them but needs to define the rights of his wife clearly. But in practice a woman's subordinating arrangements after marriage starts in the patrilocal residence of her husband along with her husband's relatives. Besides, women like the elderly mothers-in-law act as the agents of patriarchy through which the women have to compromise in a conjugal relation.

Since she got married, Roshan Ara Begum, a twenty-eight-year-old married woman, has been taking care of her bed ridden father-in-law. She surrounded her life around the old man. She wakes him up, cooks, cleans, washes clothes, bathes him, cleans his bed pan, and gives him medicine. She says that *"It's my duty to take care of him, he is my husband's father and ignoring this responsibility means earning hell fire..."* Roshan's own father was sick but she did not have time to attend him and eventually her father died. According to Sharia, a woman has no obligation towards her in-laws. She does not have to obey her husband's father, mother, brothers, or sisters regarding any matter, whether small or big, unless they tell her to do something obligatory in Islam or forbid her to do that which is unlawful in Islam. A wife's responsibility is only towards her husband and not her in-laws.

"O you who believe! Enter not houses other than your own, until you have asked permission and greeted those in them, which is better for you, in order that you may remember." (al –Noor 24:27)

The Prophet (saw) said "beware of entering woman." A man from the Ansaar (tribe in Arab) community said, "What about the in-laws, O Messenger of Allah? The Prophet replied, "The in-law is death." *Hadith, al – Bukhaari, 5232; Muslim, 2172.* Here the prophet meant that there is more fear with regard to him than anyone else and the temptation is greater because he can reach her without anyone denouncing that, unlike the case of a stranger (Al- Nawabi).

Because of the closeness of relationship with her in-laws, anyone who has an evil eye may be drawn towards her to develop an illicit relationship. After that, there may be suspicions and accusations that may jeopardise the relationship between the husband and wife.

Roshan is not aware of any *sharia* of this kind and think it to be a sin if she misses doing any kind of care taking act. Her duty is a *nafl* (not obligatory), but if she willingly cares for her father-in-law, it will be *Ehsan*, but Roshan makes it an obligation to serve her husband's father. Mehram is an Arabic word derived from the word Haram, something which is prohibited. Mehram relative is that with whom marriage is prohibited and non mehram relative is that to whom marriage is not prohibited. A woman's mehram relatives are her father, grandfather, grandfather, sons, daughter's sons, grandsons, brothers, sister's sons, paternal uncle and maternal uncle, son-in-law, father-in-law, step father, and step sons. These mentioned men are those, with whom a woman can be with them without Hijab. Husband's brothers and brothers-in-law are all non mehrams. She is allowed to talk with them in any matter but she should guard herself and never sit alone with them and she should be in hijab in front of them. Among the Mehrams, father-in-law is the Mehram bilhukmi, meaning he is the mehram by virtue of the nikah made by his son. Therefore, father-in-law should talk to her in front of her husband, mother-in-law or her own daughter but she can be without hijab in front of him.

When it comes to Roshan Ara, she hardly knows about the lawful and unlawful relationships and instead she bathes her father-in-law and makes him excrete which violates many Islamic rules of relationship. The wife is absolutely under no obligation to take care of her husband's family, and the duty solely lies on the direct offspring of the parents, but Roshan thinks it to be a sin if she does not take care of her father-in-law to such an extent that she did not visit her own father until his death.

5.7. Polygamy

Muslim women activists in India, defending their demands, seek guidance not through the rights given to them by the Indian Constitution or through any universal human rights but through the Quran. They argue that it provides them with all the rights that the patriarchal system refuses them. But many scholars have argued if referring to Quran as their guidance to attain equal rights will give them justice since some verses in the Quran seem to hinder the attainment of equal rights.

“And if you have reasons to fear that you might not act equitably towards orphans than marry among (other) women such as her lawful to you –(even) two or, three or, four: but if you have reason to fear that you might not be able to treat them with equal fairness than

marry (only) one or from among those whom your right hand possess. This will make you more likely that you avoid injustice.” (Sura 4, AnNisa, Ayat 3-3)

Muslims lost against the pagans in the battle of *Uhud* and after the battle, Muslim men were reduced to almost 400 men, leading to many widows and orphans. Similarly the latter battles also cost much with the lives of Muslim men and widows and orphans increasing in number. The verse 4:3 was revealed in Medina to protect the lives of widows and orphans. Here it is to be noted that normally an orphan is a child who do not have his/her parents but in Islam orphan is a child who lost his/her father or mother. The Muslim scholars argue that though that polygamy was the need at that period to solve the social problems created after wars but it is highly discouraged by setting up the phrase that “*and if you have reasons to fear that you might not be able to treat them (orphans) with equal fairness than marry (only) one..*” the purpose of the verse was to protect the orphans and to increase the number of Muslim population by allowing them to marry multiple wives. The clause asks men to be fair and just with his wives or not to marry at all though many Muslim men were decreasing. The Islamic Feminist Movement may make some concrete progress toward remedying the consistent failure of the religious authorities to implement those provisions of Islamic law that were originally designed to protect women but are widely ignored in practice today (Vatuk, 2008). The polygamy among the Muslims is a much-debated argument legalised by *Shariah* but *Shariah* is therefore a historically conditioned document’, combining both divine revelations and human intervention and was never intended to the blueprint for all future Muslim societies (Kazi, 1999).

There are different households in all the three categories of Muslims. A Bengali speaking Muslims have different household following different patriarchal values. Polygamy is one such practice which gives us a glimpse of the patriarchal values which the women live in the relational space. These practices have an implication to self and identity of women in this community.

A women named Rofijan Begum, 37-year-old, who is a domestic helper, said that she got married at the age of sixteen, she exactly don’t remember but she said that after getting married she slowly got to know that her husband already had a wife. She was in a state of sorrow but she can’t do anything only to accept that it was her destiny. She didn’t have option to return back to her parents as they were too poor to feed her whole life. So she decided to stay being his second wife but soon her husband left her when she was pregnant

and didn't return to her. She gave birth to a son and was helped by her parents financially and later she started to work as domestic helper to earn for herself and her son. So during her marriage, she didn't know her rights as wife, and after her husband left her she didn't know what was divorce. First, she had no knowledge of her rights associated with her marriage, nor did she know her rights in a divorce. A man marries a woman, without letting her know about his previous marriage, hence violating the marriage contracts, and even escapes the responsibility of his pregnant wife. When asked whether she had approached a lawyer for safeguarding her rights, she said that "I am a poor woman, rather paying fees to the lawyer to get my husband's assistance; I would earn and spend money on raising my child myself." It can be argued that though All-India Muslim Women's personal law Board was established but such cases of abandonment and divorces are never registered specially from such rural corners in different parts of India.

In her late fifties another woman, Rohima Begum, who is also a domestic helper, said that she was the second wife of her husband. Interestingly, she said that her husband's first wife approached and asked her if she would marry her husband. She said that she had six brothers and two sisters. Her father also married a second wife when her mother was still alive but had no children. When her mother died he married again and had four children from that wife. Her father asked her to get married though as a second wife because they were poor and had many stomachs to be fed, so she too thought it was better for her to get married to reduce some burden on the earning source. Secondly, Musna who asked Rohima to marry her husband was not happy to search a wife for her husband but she was compelled to do so because her husband was desperate to marry fought with her and threatened her to leave his house if she didn't allow him to marry again. So Musna had no other way to convince her husband but to search a new wife for him but instead of letting her husband search a woman, she decided to search a wife who will also be sympathetic about her feelings.

The above-mentioned cases show how the polygamous structure is being embodied in the lives of this category of women and that it is a common trend that occurs in their lives. Rofijan Begum, Rohima and Musna are women who share similar experiences and submit their will. The polygamous nature of these households reports a different patriarchal structure lived by this married woman, which makes them perform their 'self' every day as part of her relational space. However such cases are not reported among the Assamese

speaking Muslim households or among the Hindi speaking Muslims. Some Bengali Muslim families residing in the Assamese Muslim village do not have a polygamous family structure. These families are from the same economic status like the Assamese Muslims and Hindi speaking Muslims unlike the families who are daily wage labourers. All the three communities have different historical engagement regarding their settlement in Assam. With the introduction of civil administration, Railway department and Police department in Assam, the British provincial government had brought lot of Hindi speaking people in the Government services, as there was no scope of higher education and technical training in Assam. But many of the Hindi speaking Muslims came from central India for doing trade and eventually got settled in Assam. Traditionally Assamese Muslim community follows monogamy and has been residing in the village Barika Chuburi for more than two hundred years; much before the Hindi speaking Muslims who came before independence. This Hindi speaking community bought lands amidst the lands of Assamese Muslims and started residing with them to share a sense of security and identify themselves as a community as they both share same religion. Both these communities though shared the same religion but their religion was vernacularised.

Pollock argues that religion adds to a society and community's culture and vernacularises religion. They resided together for decades and through the passing of time, they adopted many approaches like the monogamy followed by the Assamese Muslims to merge themselves in this community. These Hindi-speaking women live their part of religion in a vernacular form so they have fewer problems living amidst Assamese neighbors. There are many instances narrated by a Hindi speaking Muslim woman Anuwara Begum about the Assam movement, when the Assamese community threatened them to leave Assam and go back to U.P and Bihar. Her husband came to Assam as civil engineer for R and B (Road and Building). Later he gradually brought his brothers for establishing business and settled down in Assam. They had to assimilate in the larger Assamese Muslim community and adopted ways like monogamy to secure their settlements and trade. Though they adopted much of the ways, they ideologically couldn't accept some traditions like celebrating Milad-un-Nabi (commemorating the birthday of the Prophet) as they consider it as *Bidah* (something which is forbidden in Islam). Their vernacularised religion does not allow them to form a single identity. Here the identity of Assamese speaking Muslims is based on culture rather than religion.

However, the Bengali speaking Muslims have a different historical background. Before independence, they were brought from East Bengal and settled in Assam for “Grow More Food program campaign”. Due to infiltration after independence, this community increased and settled in lands near the rivers (*char areas*). They are daily wage labourers and some of them are cultivators, fish mongers, and vegetable sellers. Though they are economically poor, they traditionally follow polygamy to have more children who will earn more for the family to survive. Besides, they consider more children to be blessings from God, increasing their *rizk* (sustenance). It could be seen that the Bengali speaking families who share the same economic background with the Assamese and Hindi speaking Muslims and reside together in village Barika Chuburi, do not follow any polygamy. So, the network of relation where a family resides manipulates the lives of the women members.

Salmara Khanam, an Assamese Muslim lady, was a football coach for both men and women. She was the youngest daughter who had two elder brothers and one elder sister. Though her father was a coach, he never encouraged his daughters to play football and they too didn't show interest. She inherited a good amount of property from her grandfather and as such her financial position in her husband's house was strong. She has domestic helps to do her work. She has two sons; the younger son is twenty-one years old and is paralysed by his legs since childhood. Her husband after returning from office makes tea for himself and Salmara. While her husband is not around, she takes care of the child, by giving him food, make him wear clothes, take him to urinate and excrete. Salmara, is financially sound and is allowed to go anywhere she likes but still she can't leave the house for her son and she hardly leaves the house. Though her husband comes home after office and takes care of his son by giving food and other things, she still take the important part of their son's responsibilities. She hardly visits her neighbors, weddings and gone on any vacation. Her mobility is controlled even though she has all the freedom to go out of her house, but she can't and being a mother, she didn't object.

The cases of Rofijan Begum, Rohima and Musna share a similar story with the same economic backgrounds. All three of them are domestic helpers with low level of income. They haven't received any form of schooling and are ignorant of any personal law to which they may turn to resulting in a harmful conjugal relation.

However, Salmara seemed that her financial strength have allowed her to trounce the patriarchal environment in her house when her husband made tea for her and their son. But her service in the house like taking care of her paralysed son is considered the most significant than any other work. It could be seen that the pattern of patriarchy observed was different from that of a polygamous household. She can't leave the house even if she wants to and her condition is no less than a hostage. Her increasing weight makes her feel that she might be looked down upon in any public gathering.

Sigmund Freud claims that a person's understanding of their self is inevitably entwined with their embodiment. Freud argues that the ego- the I – is produced only through a gradual separation and differentiating of oneself as a separate body from one's primary carer – typically one's mother – and the outside world (Bowden and Mummery: 2009). Salmara's identity is perceived by her when she knows her bodily boundaries and she said that her responsibility as a mother is more important than her freedom.

5.8. Lived Islam and Divorce

Women's lives in India are looked through the prism of western views on modernity. Particularly the minority community of Muslim women living inside the *purdah* system, their discrimination in the eyes of law, lacking behind in education, female segregation from work, depicts a picture of the oppression on women through the modernist view. Divorce is one of the many arrangements where a woman's life is subjected to many constrains and her role in the family and community is determined. "Like other Indian women, they (Muslim women) are subject to the interface between, gender, citizenship and community within the Indian social, political and economic context, and to the pressures and constraints of group identity for political purposes" (Phillips, 1998).

In western countries divorce rates have start to rise from 1990s, likewise in U.S. divorce rates have been continuing to rise since hundred years (Preston& McDonald, 1979; Jones,1997). Western demographers and sociologist view that the industrialisation and urbanisation will tend to increase the divorce rates in the west since these processes are related with decline in religious belief, lack of obligation towards traditional norms, lack of social pressure to maintain matrimonial relations, chasing for self interest, increasing economic independency of women; and increased levels of stress in family life (Jones, 1997). Muslim population in the Islamic Southeast Asia has witnessed a long history of

high divorce rates. Divorce was obtained either by husband or by the wife on slightest ground but throughout 1950s divorce rates started to fall in Singapore and Malaysia and since 1960, divorce rates started falling throughout Islamic Southeast Asia. The grounds behind the increasing of divorce rates in western countries became the same causes of downward trend in Southeast Asian Islamic countries. Jones argues that traditionally Malay society had a general tolerance of divorce; legal ease of arranging a divorce; availability of moral support after divorce, alternative arrangements of taking care of children after divorce are some of the causes that led to high divorce rates. Industrialisation freed these countries from traditional causes.

In India there is less availability of data regarding the separation and divorce after marriage. While Indian weddings are significantly famous through media worldwide as ‘great Indian wedding’, there are very less knowing data and facts of divorce and separation in India.

In Assam, the number of couples seeking a divorce is rising steadily and marriage counsellors have identified alcoholism and adultery as the leading causes of marital discord. Kaveri Sarma, assistant general secretary of Global Organisation for Life Development (GOLD), an NGO that runs family counselling centre with the help of Social Welfare Board, said over the years the number of couples seeking separation has gone up. “When we started the family counselling centre in 1999, we hardly used to get two to three cases in a year but this figure crossed the 100 mark last year, which is clear indication of the rise in number of couples heading towards divorce,” Sarma said. She also added that, on average, 20 divorce cases are filed in the family court in Guwahati every day, which speaks about the severity of the issue (*The Telegraph*, April 26, 2017).

Couples with ailing marriages where divorce seems inevitable are referred to the family counselling centre by family courts, police stations and women’s bodies for professional help in order to save their marriages. The rise of divorce cases is alcoholism, extramarital affairs, poor financial conditions of the husband, differences with in-laws, and domestic violence. Another significant cause of divorce is that the educated and financially independent women don’t withstand an obnoxious marriage (*The Telegraph*, April 26, 2017). Jones in *Modernisation and Divorce* has also argued that economic independency as one of the causes behind increasing divorce rates (Jones, 1997).

The census data of India 2011 shows that the ratio of divorce is 2.0 for Hindus and 3.7 for Muslims. Therefore, for every 1000 married Hindus, 2 are divorced and for every 1000 Muslims, 3.7 are divorced. Again among 1000 Hindu married women, 2.6 are divorced and among every 1,000 Muslim women, 5.6 are divorced. But for men the ratio is the almost same among the Hindu and Muslim men (1.5 for Hindu and 1.6 for Muslim). Another report shows that, in Guwahati only, 1950 divorce cases were registered in the last three years (Time8, 2018). This shows that Muslims are more likely to be divorced than the Hindus and Muslim women take up almost the entire burden of this difference. This difference is higher in poor regions (Goyal, 2017).

A Muslim husband in India can divorce his wife by pronouncing the word “Talaq”. A divorced wife on the other hand does not get any maintenance from her husband as, in theory, she has been provided Mehr at the time of her marriage. Amongst the Bengali speaking Muslims, such divorce cases are very common and getting a husband after divorce is not a problem for them. But among the Assamese speaking Muslims such divorce and remarriage is very rare. In spite of the Dissolution of Muslim Marriage Act, 1939, court cases under the Act are almost nil (Assam online portal).

Islam allows divorce if circumstances warrant or necessitate it, indeed reluctantly neither liking nor recommending it. The holy Quran states, “(a)nd if you fear that the two (both husband and wife) may not be able to keep the limits ordained by Allah, there is no blame on either of them if she redeems herself (from marriage tie).” The prophet Muhammad said among lawful things, divorce is most disliked by Allah. The general grounds as for divorce in Quran is perceived as a hopeless failure of one or both parties to discharge their marital duties and to consort it with each other in kindness, peace, and compassion (Hossain, 2003)

In the village SaikiaChuburi Muslim Gaon, a Hindi speaking woman named Asma Khatun, was asked how she was separated from her husband. She replied that her husband had a joint family with father-in-law, mother-in-law, one brother, and two sisters. She had to work all day with her mother-in law. Her husband had a cloth shop in the Tezpur town. As she was in a joint family there was much difference of opinion among the family members in the domestic environment with the two sisters. Her mother-in-law was a middle-aged lady and could not work too much. So she had to fulfil all the domestic needs of the household like cooking, cleaning and washing. Though she discussed the difficulties she

faces in day-to-day life with her husband, her husband said to her that he too struggles with the business and asked her to adjust with her daily life. So she stopped bothering her husband and tried to adjust her life in that environment. She tried to adjust for her husband because she loved him, but when she learned about her husband's affair with a young woman, she could not tolerate and fought with her husband. She said that without thinking much she left her husband's house. And now it has been five months, he hasn't sent any message and hasn't called her since she left his house. She also said that leaving her husband may be a wrong decision, as he wanted to get rid of her and her leaving him added a benefit. The above case of Asma showed that there is no divorce letter filed. She still hopes that her husband will come back to her but she also added that the divorce will make him pay sustenance to her which he could not afford so he too didn't file any divorce case. Her father has a small business of making mattress, blankets and pillows. She came back to her parents where she also has a brother who stays with his wife. Though Asma didn't talk much about them, she said that it is also difficult to be a burden on parents. She said that she takes tuition to earn some money to add up to their sustenance. Like the above case, there are innumerable separation cases that are not registered. In this case there is no counselling and no divorce. Here the separation is a hope for Asma and benefit for her husband. Her role in her mother's house is to take care of her brother's child, assist her mother and sister-in-law. She doesn't have children and without a divorce she can't marry. When asked her if she is willing to get married, to that she replied *"I am already married, and no one prefers a second hand wife and there is no guarantee that her second husband will treat her well. So it is better to be alone and earn myself."* She was depressed and unhappy at first but when she started to earn though a small amount she started to feel a sense of happiness. When she was asked about her rights on divorce, she said that Islam might have given men to marry more than one but I can't allow myself to be with a man who is immoral and has disrespected her. She said that Islam also permits a woman to take *khula* (to take divorce without getting the mehr) but she will not be the first one to negotiate the divorce. The self-dependency in Asma doesn't allow her to go back to her husband and create her identity living with her husband. Another reason behind separation and divorce is economical condition of women (Jones, 1997). A financially dependent woman is given in marriage by her earning father to a man who will feed her, protect her at his cost and hence she is obliged to follow her father and husband. But when a financially independent woman gets married, she would have a sense of freedom on economic grounds and hence will have less probability of surviving abusive relationships.

Another Assamese Muslim woman in village Barika Chuburi was interviewed, her name was Farzana Rahman. She is a graduate from Aligarh Muslim University and also a lawyer. Her father worked in the Food Corporation of India. At the age of 32, she got married to a business man who has three large cloths shops in Tezpur town. Her husband was rich and had a joint family with his parents, brother, wife, and two daughters. She said that she was a free-spirited girl, but her in-laws got her to follow many rules, like a time to get up in the morning, things to be cooked in breakfast, lunch, and dinner. Her household was too patriarchal as she had to wait to eat until her husband, father, and brother-in-law came home. She was also not allowed to go to court immediately after her marriage. She opposed the system in the family, and told her husband that she won't be able to follow each and every kind of rules. She consistently fought with her husband regarding her situation and eventually left him within two months. Later, she knew that she had conceived a child, but her husband didn't bring her back. She also said that in her entire pregnancy period, he didn't even send a fruit to her to eat but when she delivered a baby boy, he went to see his child but was not ready to bring her back and even she didn't wanted to stay with him. As their boy grew Farzana decided to allow her husband to meet the boy as it would be injustice, if she deprived her child from his father. It has been 8 years since she is separated from her husband. She said that might be because her child is a boy, so her husband is taking care of him, but he would have never come even to see his daughter if it were a girl. When asked about getting together with her husband, she said that, she has left her past and have moved on with her son. Financially she is good enough to feed her mother and her son and don't need any help. She does not regret protesting against her in-laws and has created a single mother's identity. Her mother no doubt wants her to marry again but she does not want to marry. She said that her child is enough reason for her to live. She also said that nobody in her family forced her to go back and adjust herself in an abusive relationship.

Asma tried to adjust her everyday life in that patriarchal situation in the first case. Still, when she found that her husband was cheating on her with another woman, she could not take it and left her husband in order to save her dignity and refused to be one of his two wives. In the second case, Farzana, being educated, she objected the patriarchal household and left her husband. Both the women had to be separated in the above cases; one tried to adjust but failed and the other protested and failed.

Abeda Khatun, a 22 years old Bengali Muslim woman, said that her husband cheated her with a girl and never came back. So in that case it is a separation since one year. She has a son, for whom she works as a domestic helper. She said that, "...he left me with no money, so I went to my parent's house where already my parents, my two unmarried sisters and my three brothers along with their wives and children were living. I stayed there for one month and later moved to a rented hut since there was no space and less earning source to feed me and my son in that house. Another women, Anuwara Begum, 18 year old woman said that she got married at a very young age of 10 years i.e., before puberty. Her father married her off because she already had four younger daughters to be fed. Her husband had a vegetable shop, but after four years of marriage, her husband left her for another woman when she gave birth to two children. She too went back to her father and stays with him with her kids. She too works as domestic helper and was again married to another man since she was young enough to get married.

Prophet Muhammad had advised a girl, on her complaint that her father had forced her to marry without her consent that she had a choice either to accept or invalidate the marriage (in Ibn Hanbal No. 2469). Here Anuwara, was so young that she didn't knew she had a choice. Moreover, attaining puberty is very important for a marriage contract. But it is confusing as when one gets puberty. Different Schools have different opinions regarding the age of attaining puberty. Hanafi School of determines it at the age of 15 years. Whatever is the age but puberty of both girl and boy is necessary to set the marriage contract terms. Here in Anuwara's case, she got married without attaining puberty when she was a child. She hardly knew what her father was doing and what her husband was going to do. Her body was a mere hungry stomach that her father wanted to get rid of to decrease a feeding mouth in the family. She on the other hand was not allowed to take her decision of getting married.

A Muslim woman is totally dependent on the male members in her everyday life. Here a Muslim woman is not divorced and separated not legally but left behind without any rights assigned to her. A Muslim woman deals separation in her everyday life as a normally happening fact. Asma, a middle class women living separately from her husband, two domestic helpers Abeda and Anuwara was left by their husbands and Farzana, a lawyer lives separately from her spouse. A lawyer, domestic helpers, or a housewife have different grounds for their separation. They are living their divorced lives as a fate which has

occurred to them and their divorced lives are not only lived by them but by their entire family. All of them, Asma from Hindi speaking Muslim community, Abeda and Anuwara from Bengali speaking Muslim community and Farzana from Assamese speaking community have accepted and adjusted to their everyday lives and considered it to an extent of normalising divorces and separation with its consequence. Their separations are so casual and normalised by patriarchy that they don't find it an issue to complain. Asma's husband cheated, so she left but her husband didn't come back for her. Abeda's and Anuwara's husbands left them with no valid cause and Farzana raised her voice against the regulations in her in-laws house and hence separated. All the above women have different experiences of everyday lives but the cause of their normalcy in their separation is internalised.

The above discussion, can say that, separation is there but it is not religion that matters, it is rather geographical spaces and culture where the woman resides matters. Their dealings with their separation are different in terms of geographical spaces. The categories of Assamese and Hindi speaking Muslims are different from the Bengali Muslims in terms of the affluent urban spaces and liberal values. The incidents of divorce and separation are very low among these categories whereas it's high among the Bengali speaking Muslim community. Marriage is there in the affluent spaces but people do not want to talk beyond that on talaq or separation. So a woman dealing with separation is different among the Assamese and Hindi speaking Muslim communities.

5.9. Muslim Personal Laws and Universal Civil Code: Some Practical Issues

Despite the availabilities of various Muslim Personal Laws including the most debated Universal Civil Code, the legal rights of the Muslim women in India is still measurable. Scholars (Agnes, 2017; Lemons, 2017, 2019; Menon, 2014; Menski, 2008) show that customary laws are still at the heart of Muslims in India. Similarly, the present study shows insufficient legal vocabulary among the Muslim women under study and inadequate state initiative in resolving the issues of marriage and divorce among the Muslim women. However, their legal rights have also been affected by the poor socio-economic condition especially among the Bengali speaking Muslim women. This chapter explored that the comparatively financial weaker women are bound to accept their everyday measurable conditions within their relational spaces. At the same time gendered social space and religious life also had a significant amount of interaction with the interactional spaces

shared by these Muslim women. Thus, the practical application of various Muslim Personal Laws and the use of Universal Civil Code have to be thought from diverse perspectives.

Although many changes has been taken place within the Muslim personal law and its practical uses in post-colonial India. However, the post-colonial governments in India continued the colonial legacy in its family laws specially to accommodate the Muslims in post-colonial India. The post-colonial India had also tension while promoting the gender equality in a multicultural society like India. Ansari, (2007), therefore argued that although the Indian constitution included a directive to homogenise family law in the indefinite future, leading to a Uniform Civil Code (UCC), policy makers have not followed this course. Menski (2019) has criticised the very western views embedded in the UCC and states' failed approach to the nation-building process. He further argued that:

“India’s socio-legal reality has evidently taken a different trajectory than modernists expected. The jungle of legal plurality is still there. We find more state law, but no Uniform Civil Code. The perennial calls for legal uniformity have become quieter and certainly much less convincing if one considers the new, incompletely studied developments that have occurred in the meantime. These illustrate the hybrid nature of all law and thus teach us about the central relevance and urgent necessity of understanding legal pluralism as a living reality” (Menski, 2019, p.112).

Other legal measure such as the ‘Maintenance Law’ has also not been properly implemented. Under Islamic law, husband is entitled to maintain his wife till subsistence of marriage and after divorce till the period of *iddat*. Section 125 of the CrPC, 1973 imposes an obligation to maintain wife that includes divorced wife with a caveat to maintain till she is not remarried (Ahmad, 2015). Say for instance, this study explored that Muslim woman who have had divorce were not received maintenance from their husbands. As mentioned above the economic constraints as well as gendered social and embodied patriarchal values largely emerged as an issue while claiming the maintenance among the studied Muslim women. Their limited knowledge with regard to legal rights also bound them to normalise divorce.

5.10. Conclusion

The lived experiences of women tell the stories of the three categories of Muslim women in the marriage and divorce. The Bengali and Hindi speaking Muslim women, have had more traditional ways of understanding marriage and divorce in their lives, supplemented by the customary laws of the Muslim religion. Though patriarchy persists in every household among the three categories of Muslim women, the pattern followed in different sections of these categories is different. The type of relational space followed among the economically well to do families, shows a different pattern where women enjoy the freedom of movement. But not all well-to-do families enjoy this freedom since some of the Hindi speaking Muslim women who after marriage moved to Assam follow the traditional veiling arrangement and do not move out of their home without covering their heads and bodies. The Assamese speaking Muslim families residing in the village Barika Chuburi are mostly government employees and are less engaged with trading. These families are well to do and the women folk enjoy their freedom in cooking, dressing, moving out of their house, and even doing jobs. There are no divorce cases in both the Assamese speaking Muslim villages, except separation. It could be seen that the personal law and constitutional laws haven't reached the lived experiences of the poor section of Muslim women where they consider it to be their plight and accept the polygamous relation to be a part of religion making attempts to live it. There are different households in all three categories of Muslims. Bengali speaking Muslims have different household following different patriarchal values. Polygamy is one such practice that gives us a glimpse of the patriarchal values followed by this community. These practices imply self and identity of women in this community. In all three categories of women, interviews showed polygamous relationships only among the Bengali Speaking Muslims. Bengali Muslim family residing in the Assamese Muslim village does not have a polygamous family structure. Unlike the daily wage labourers, these families are from the same economic status as the Assamese Muslims and Hindi-speaking Muslims.

Traditionally Assamese Muslim community follows monogamy and has been residing in the village Barika Chuburi for more than two hundred years, much before the Hindi speaking Muslims who came before independence. This Hindi speaking community bought lands amidst the lands of Assamese Muslims. It started residing with them to share a sense of security and identify themselves as a community as they both share the same

religion. Both these communities though shared the same religion, but their religion was vernacularised. Pollock argues that religion adds to the culture of a society and community also vernacularises religion. They resided together for decades, and with time, they adopted many approaches like monogamy followed by the Assamese Muslims to merge themselves in this community.

Divorce: Two of the Bengali women interviewed are divorced, and a Hindi speaking and Assamese speaking women were separated but are not divorced. There were no divorced women in both the Assamese Muslim villages.

Separation is there, but it is not religion that matters; rather, geographical spaces and culture where the woman resides matter. Their dealings with their separation are different in terms of geographical spaces. The categories of Assamese and Hindi speaking Muslims are different from the Bengali Muslims in terms of the affluent urban spaces and liberal values. The incidents of divorce and separation are very low among these categories, whereas it's high among the Bengali speaking Muslim community. Marriage is there in the affluent spaces, but people do not want to talk beyond *talaq* or separation. So a woman dealing with separation is different among the Assamese and Hindi speaking Muslim communities.

Whatever political and legal status Muslim women may have achieved in India, women are still vulnerable to society unless protected, ensuring a lack of mutuality in the roles of the man and the woman in all sections of the Muslim community (Pearl, 1976).

5.11. References

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