# Muslim Women Protection of Rights on Divorce: Analytical Essay

Nowadays the relation between politics and religion is going through continuous conflict which makes it a topic of utmost importance. religion is considered to be a system of beliefs that is based on the faith in god. In other words, when a group of people have faith in one god, it unites them into one single community. For example, the Muslims follow Allah and Hindus follow incarnation of supreme deity in form of numerous avatars. The politics is derived from the Greek word ‘polis’ which means community and ‘poli’ means many. The politics can be defined as the laws, methods, and practices of group which makes decisions i.e. a government over a community. Politics is the science of government, it is a systematic body of knowledge that deals with the government and regulations, maintenance and development, and augmentation and defence of the state. It also deals with the protection of rights of the citizens, enhancement of morals and safeguarding, and peace and harmony of human relations.

India is a secular country where are various religious groups leaves which they have different practices, cultures, faiths and beliefs in gods. The population in India is 1 billion where the Hindus are 85 percent, Muslims are 10 percent, and the Christians are 2.5 percent and rest belongs to the other religious minorities like Sikhs, parses, Buddhists, and other group. In India the politics and religion is inter-related or inter-dependent, religion plays the key role in the politics and politics plays the role in the development of the religious group and protect the rights of the particular community. The politics is a systematic body which helps the religion to regulate the society for the development of the community as whole and expects, support of the society to keep themselves in a power or enrich the political carrier through gaining maximum votes from particular community. The political frame work of India is within the country’s constitution; the constitution provides six fundamental rights among which freedom of religion is also included. Different religious groups have different faiths and have different customs, practices and traditions. So, the different religion and beliefs, it becomes necessary to protect and secure the rights regarding faith of each and every religion. The article 25 to 28 of the Indian constitution states that the freedom of religion. The rights were provided like right to worship, right to visit religious places (i.e. temple, mosque, church) that is each individual has the right to practice their own religion, the state will not be swayed by religious motives or ideologies.

## Definition of religion:

### According to Emile Durkheim,

“A unified system of beliefs and practices relative to sacred things, that is to say things set apart and forbidden-beliefs and practices which unite into one single moral community called a church, all those who adhere to them.”

### According to Paul Tillich,

“the state of being grasped by an ultimate concern, a concern which qualifies all other concerns

as preliminary, and concern that in itself provides the answer to the question of the meaning of our existence.”

### According to max Lynn Stackhouse,

“A comprehensive worldview or ‘metaphysical moral vision’ that is accepted as binding because it is held to be in itself basically true and just even if all dimensions of it cannot be either fully confirmed or refuted.”

## Definition of politics:

### According to Aristotle “the father of political science”.

“It is the master science through which individuals collectively set structure, purpose, and ideals in their lives. Politics, therefore, does not emerge from the activities of a single individual but from that of many.”

### According to Max Weber,

“Politics is the struggle for power or the influencing of those in power.”

### According to Fauley,

“Politics includes a study of the organisation and activities of states and the principles and ideals which underlie political organisation and activities”

### According to Harold and Lass Well and Kaplan,

“Politics as an empirical enquiry is the duty of shaping and sharing of power.”

## The relation or role of religion in politics and vice-versa:

Religion plays an important role in politics. In India there is merely anything that is not connected to religion, particularly politics. religion influences politics and politics influences religion There are various religious group and all have a specific status in the society. The particular community needs that to develop his community and the political parties motive is to gain votes from the particular groups. The political parties give assurance to the particular community for development and gain votes from the community. However, the promises are merely assurances which blows up in smoke once vote is gained. Political parties use religious groups for merely gaining votes and once elections are over they turn their back towards religious group. however certain instance where the ideology of some parties are religion centric and they only focus on the growth and development of a particular religion and tend to forget the general welfare of the society. This is where it becomes a threat to the concept of democracy.

India is a country where people have predominantly being divided on religious lines to gain vote and a post in the government. The first and the main instance being the Two Nation Theory of

Mohammad Ali Jinnah. Jinnah was the first one to realize the importance of religion in politics as a vote bank. His Two Nation Theory was solely based on religious lines. It was his contention that Muslims are not safe in the hands of a Hindu government and for that very purpose he sought to create a different nation of religious grounds. The fact being it was a myth. The real fact is that he merely wanted to gain political supremacy and form his own government and he actually succeeded in satisfying his ambition and became the Qaid-e-Azam of Pakistan. The Muslims who stayed back in India have probably developed more and have secured more rights than the Muslims of Pakistan. However, it could be seen how effectively Jinnah used the tool of religion to gain political power. The promises he made are to be fulfilled till date. Religion is a matter where people get influenced very easily and start believing anything and everything. As Karl Marx effectively stated, religion is the opium of masses. Religion takes away the power to apply rational mind and intellect and when it comes to religion people often tend to stop asking question and lose their integrity and start believing whatever are told to them.

## Religion as a political ideology:

Religion has always played a key role in determining political ideologies. The prime example could be the political ideology of Adolf Hitler. Adolf Hitler had a clear political ideology against a particular religious community, i.e. the Jews. He had an ambition to increase living space for the supreme German Aryan race and persecuted Jews and passed several anti Jews laws and it all ended with mass killing of Jews. Hitler, however gained the confidence of the masses and rose to power. Religion could be used as an effective tool to gain vote and power.

Arguably similarity could be drawn between religion driven political ideology of Hitler with that of religion driven political ideology of Rastriya Swayamsevak Sangh (RSS) which acts through its political outfit, the Bhartia Janta Party (BJP). A pure rightist political party with its fundamental manifesto regarding building Ram Mandir in Ayodhya, having Uniform Civil Code, Abrogation of Article 370 from Kashmir and finally and the most destructive ideology being the creation of a Hindu Rahstra. The political party grew in power in the 2014 General Elections and from then onwards has witnessed a steep rise in its popularity. The policies of the government are arguably in furtherance to their religious ideology.

There are several other political outfits which tend to target a particular religious community, on religious grounds to seek vote and power. It has always been witnessed in India that although there exist several minority religions but appeasement of Muslim community plays a major role gaining votes as they form the majority within the minority community. Parties such as All India Majlis-e-Ittehad-ul-Muslimeen (AIMIM) led by leader Asaduddin Owaisi have a repute of Muslim appeasement and are very vocal stating that they are not shy of doing politics on religious grounds. The fundamental theory of such party is always to threaten the minority in the name of the majority so that they can act as messiah to the minority and in order attract votes.

However, recent results of General Elections of 2019 have shown that probably the citizens of India have discarded the vote bank politics and instead have adopted a far more advanced developmental politics. However, it still is the case that a party of a particular religious policy, when forms the government tries to impose its policies with its ideologies.

## Major instances of religious influence in governmental decisions:

There have been several instances where religion has influenced governmental decision and policies. The prime example being the passage of the Muslim Women Protection of Rights on Divorce Act 1986 by the Rajiv Gandhi Government. In the case of Mohd. Ahmed khan v. Shah Bano Begum , was a controversial maintenance suit in India in which the Supreme Court passed a judgment favouring maintenance given to the divorced Muslim woman. Then the government of Congress approved a law with its most controversial aspect being the collect of maintenance for the amount of iddat, after the divorce, and shifting the responsibility of maintaining the Waqf Board or relatives. It had been seen as biased because it refuses right to basic conservation available to non-Muslim women under secular law. Shah Bano, belongs to indore, Madhya Pradesh, who is 62-year-old and mother of 5, was divorced by her husband in 1978. She filed a lawsuit within the Supreme Court of India, she won and get right to collect alimony from her husband.

Supreme Court held that 'there is not any dispute between the provisions of section 125 and the Muslim Personal Law on the question of the Muslim husband's responsibility to supply maintenance for a divorced wife who is unable to keep up herself.' After refer to the Quran, holding it to the best authority on the topic, it held that there was little doubt that the Quran inflict an duty on the Muslim husband to form provision for or to provide maintenance to the divorced wife. Shah Bano filed a criminal suit in the court for demanding maintenance from her husband. When the case was filed before the Supreme Court of India, seven years had passed. The Supreme Court invoked Section 125 of Code of Criminal Procedure, which applies to everyone irrespective of caste, creed, or religion. It ruled that Shah Bano be maintenance money, the same as alimony.

The Court also regretted that article 44 of the Constitution of India in respect to bringing of Uniform Civil Code in India remained a dead letter and held that a uniform civil code will help the reason behind national integration by removing different loyalties to laws which have different ideologies.

## Annulling the effect of the judgment:

In the 1984 election, Indian National Congress had won relative quantity within the Indian parliament. After judgment of shah bano case, many leaders within the Indian National Congress advised to the Prime Minister of India, Rajiv Gandhi that if the government failed to approved a law in Parliament overturning the Supreme Court judgement, the Congress would face genocide within the polls ahead.

In 1986, an act was passed by the Indian parliament 1986 titled The Muslim Women (Protection of Rights on Divorce) Act, 1986, that abolished the Supreme Court's judgment in the Shah Bano judgment. diminish the Supreme Court judgment, the act allowed maintenance to a divorced woman only during the amount of iddat, or till 90 days after the divorce, in keeping with the provisions of jurisprudence. This was in simple disparity to Section 125 of the Code. The 'liability' of husband to pay the upkeep was thus restricted to the amount of the iddat only.'

The Act’s 'Declaration of Objects and Reasons' signified that 'the Shah Bano agreement had led to some dispute on the requirement of the Muslim husband to pay maintenance to the divorced wife and hence opportunity was therefore taken to define the rights which a Muslim divorced woman is entitled to at the time of divorce and to secure her interests.'

## Reactions to the act:

The law received severe assessment from several sections of the society. The Opposition called it another act of conciliation towards the minority community by the Indian National Congress. AIDWA (The All India Democratic Women's Association) organised a protest of Muslim women against the move to deprive them of rights that they had shared with the Hindus. This law has been speculated to are brought by then prime minister Rajiv Gandhi for Muslim conciliation.

The (BJP) Bhartiya Janata Party regarded it is an conciliation of the Muslim community and discriminatory to non-Muslim men and saw it as a 'violation of the sanctity of the country's highest court'. The 'Muslim Women (Protection of Rights on Divorce) Act' was seen as discriminatory because it denied divorced Muslim women the correct to basic maintenance which women of other faiths had access to under secular law. Makarand Paranjape sees the overruling of Supreme Court verdict in Shah Bano case which happened when the Congress party was in power, the samples of the party's strategy which allowed 'cynical abuse of faith for political ends'. The minister and lawyer of India, Ram Jeth Malani has denominated the act as 'retrogressive obscurantism for short-term minority populism'. Arif Mohammad khan, the colleague of Rajiv Gandhi who was INC member and a minister in Gandhi's cabinet quitted from the post and party in protest.

Critics of the Act means that while divorce is within the purview of non-public laws, maintenance isn't, and thus it's discriminatory to exclude Muslim women from a civil law. Exclusion of non-Muslim men from a law that appears inherently beneficial to men is additionally noticed by them. There was a contention by Hindu nationalists that a separate Muslim code is tantamount to special treatment and demanded a consistent civil code.

## Later developments

The Act has led to Muslim women receiving an oversized, one-time payment from their husbands during the amount of iddat, rather than a maximum monthly payment of Rupees 500 an upper limit which has since been removed.

The Shah Bano case had another time spurred the talk on the Uniform Civil Code in India. The Hindu Right led by parties just like the Jan Sangh in its metamorphosis because the Bhartiya Janata Party, became an advocate for secular laws across the board. However, their opposition to the reforms has supported the argument that no similar provisions would be applied for the Muslims on the claim that they weren't sufficiently advanced.

## Suggestions/recommendations:

1. The religious community leaders play active role in governmental decision making, the interference of religious community leaders in administrative matters can prove dangerous to India’s secular democracy.
2. In the secular country politics and religions should not be intermixed and it must be kept separate. religion unite people with similar belief into a moral community and politics unite all people of region into a single community regardless of practices and personal beliefs, thus when then two are mixes the result are to be a disastrous.

3. Politics might not be use of religion to gain votes at the time of elections if they gain votes from any religious group and comes into the power in the state then the party have to fulfill the needs of the group from which they gained votes and also targets the other communities for development as well as state.
4. When election came every political parties plays a game for gaining votes, makes promises from the communities for development and the development of states but even after coming into the power they do not fulfill their promises

## Conclusion

The way of life in India is secularism where at least 12 religions, over 300 castes, 400 sub-castes, and 100 major languages and more than 300 dialects and the main point is freedom of religion as per the Indian constitution everyone have right to follow any cultures, practices and faith in any God. The religion and politics relationship begin between the both, when they play a role between each other, The use of politics in religion is the development of particular community and the use of religion in politics to gain votes and support from the particular community and maintain the power in the state for governance is the development of some power-greedy people. Religion has been always used by the politicians to capture power and wealth which resulted in in creating disharmony between different sections of society. Divide and Rule was a well-known tactics which had been used by the Britishers to rule this country. The same method is being used by the Indian Politicians to meet their political goals. Considering the present circumstances, it will not be mistaken to say that politics and religion are the two sides of the same coin.