LEGAL AND CIVIL RIGHTS OF WOMEN IN MUGHAL INDIA

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Abstract: This paper explores various documents preserved in National Archives of India; examine nikahnamas and assess the legal and civil rights of women in Mughal India. We find Mughal women inheriting property, could impose certain conditions in nikahnamas and also acted as wakil.

Keywords: Mughal Women, Nikahnamas, Property Rights, Legal Rights.

Introduction: There have been numerous studies on Mughal administration as well as administration of justice but these were confined to judicial set up specifically.[1] The enquiry into the practice of civil law by the officials as well as of the petitioners has received less attention. However some recent works on Civil Law and Justice under the Mughals endeavour to throw more light on this aspect.[2] Thus we learn that there were two officials in-charge for the sūba to administer justice under the Mughal rule. The first was the sūbadār who acted on the judicial powers entrusted to him by the Emperor. In his absence, the dīwan was the chief judge.[3] The second being the provincial qāẓi, dealt with the religious and civil cases mostly.[4] The qāẓi of the sūba was appointed by the Emperor under the seal of the qāẓi al-quẓẓat (the chief qaẓi).[5] At times a complaint against the judgement of a qāẓi could also be taken up by the chief qāẓi if a formal complaint of wrong judgement or of justice denied was made.[6]

When a civil suit was filed in a court would first specify the name(s) of the muqīr and then try to establish the rights ḥuqūq and claims istiḥqāq of the seller or owner mālik over the property (milk, imlāk, mamlūka) with the help of the testimony (shaḥādat) of at least two witnesses (shaḥid, gavāh).[7] The importance of the witnesses can be determined from the testimony of 'Abū'l Faẓl, who writes that it was the obligation of the qāẓi to examine each witness separately upon the same point before reaching a conclusion.[8] Another important information which needs to be mentioned is that before any business transaction, the deponent or the vendor had to establish his mental and physical soundness and his right sense (sihat- i nafs wa sabāt-i 'aql). One more testimony was taken into account that his affirmation was voluntary and of his own accord (ta'i'an wa rāghebatan) and was being entered into it without any overt or covert pressure (bila ikrāh).[9]

Munsh'āt i Namakīn, also a large number of legal and contractual documents which throw considerable light not only on legal procedures that were followed during that period but also inevitably reflect the conditions obtaining in the contemporary society. There are documents relating to nikaḥ which throw interesting light on the institutions of marriage.[10] Besides mentioning meḥr, four very significant conditions are mentioned in the marriage contract and all these are in favour of women. These conditions are referred in the documents as the four condition of shari'at, which are well known among the Muslims. This would mean that these were the usual terms of marriage contract during that period. First, the man would not enter into marriage contract with any other woman. Secondly, the man would not stay away from the woman for one complete year in a manner that her maintenance would not reach her and in case this happens, the woman would be entitled to terminate the marriage with one final talāq (talāq i bain). Thirdly, unless warranted by some serious offence or perfidy committed by the woman, the man would not beat her in such a manner that leaves its impression on any part of her body. In case of the materialization of any of these conditions, the woman would be at liberty to dissolve the marriage with one final talāq (talāq i bain) from the man who is guilty of a religious crime (mujrim i shara'i) whenever and wherever she desires and the settlement amount would be payable to her. The fourth condition is that the man would not bring a concubine of any description upon her, be it Indian, Armenian or of any other description. In case he brings a concubine, she would be free to sell the same at the prevalent price and keep the price as part of her marriage settlement. It was only with these stringent conditions that a marriage was solemnized.[11] Similar conditions of marriage are mentioned by a series of documents belonging to the late seventeenth and eighteenth centuries from Gujarat. These documents, analysed by Shireen Moosvi go on to show that these conditions, as earlier mentioned by 'Abū'l Qāsim's Namakīn were not aberrations but prevailed all over the century and were quite known and popularly understood up to at least, the eighteenth century.[12]

There are also references of individual conditions in few nikaḥnāmās of Surat which a wife might impose over her husband and take surety from him, that in case of non-compliance she would be deemed legally free to divorce him. In one document dated 2 November 1633, we find a husband, a cook by profession, giving surety in the court that he had

abstained from consuming liquor for a period of one year. In case he is found indulging in this vice in future, he nominates his wife as wakīla, to approach the law and get a decree of divorce.[13] It shows that the drawing up conditions even after marriage was quite common.

The conditions mentioned in the documents do not appear to be only theoretical, as there are cases where women were given divorce due to their husbands' violation of these conditions. For example a woman named Ḥabīb Baī got her divorce in 1628 as her husband Isḥāq failed to provide any maintenance and was absconding for a long period.[14] A similar case is seen in 1633 of Salīma Khatoon getting her divorce approved on the same grounds.[15] In 1632, we find Maryam Jī declaring a slave girl independent in lieu of 30 mahmūdīs, and getting rid of her.[16]

The concern of lower class women was more for maintenance, as it is reflected in one of the document from 1619 concerning Maryam and Muḥammad Jiu. As stated above, that the husband was obliged to provide maintenance to his wife and if he failed to do so, the wife had the right to seek divorce automatically. Maryam left him and after a certain period the husband returned, and asked her to come back. She refused. On her doing so Muḥammad Jiu approached the court asking for restitution of conjugal rights. She in turn produced before the court the written contract and asserted that she did not receive any maintenance for five years, on which the court turned down the appeal of Muḥammad Jiu and ordered that she had a right for divorce, and thus gave the verdict in her favour. It appears that she ultimately chose not to divorce him and agreed to remain his wife as we find that two years later a person named Ibrahim takes a surety before the qāẓi on behalf of Muḥammad Jiu for his payment to her maintenance.[17]

Thus it is apparent that the poor women had no respite even after incorporating these conditions and getting divorce from a penurious husband, or perhaps it was difficult to find an appropriate and generous husband for women of Maryam's class.

However worth noting is that, as a non-muslim wife, they were also entitled for meḥr. In one of the document (dated 11Februrary.1686) baināmā-cum-hibanāmā, a baqqāl (banya) purchased a residential building at Cambay for Rs. 701/- Ālamgīri- for the payment of meḥr of his wife, and gave it to her along with gold and silver jewellery, utensils etc.[18] Another document of 16October 1660 records a woman named Phūlan to have a share in the ownership of a house from her husband as meḥr.[19]

A document of 1550 refers to a Muslim family of Bilgram where we find a daughter and daughter in law of the family share the same residential plot of land (zamīn i sakni) in a way that one having inheritance from father and the other in meḥr from her husband.[20]

A tamlīknāmā executed by Musammat Bībī Sappo, daughter of Miyān Shaikh Daulat, and wife of Miyān Shāh Muḥammad, transfers voluntarily all her rights in a plot of land in village Samauddinpura, jointly owned by Shāh Muḥammad and Miyān Usmān, son of Miyān Shamaud Dīn Ahwazi, and inherited by her husband as part of her dower, to Miyān Shaikh 'Abdul Ḥalīm son of Miyān Shaikh Barkhurdar. Accordingly Shaikh 'Abdul Ḥalīm has taken over possession of the said property.[21]

It therefore appears from our documents that the meḥr could be of two kinds. It could be in cash or in kind. It was further divided into meḥr i mu'ajjal and meḥr i muwwajjal. Meḥr i mu'ajjal was usually 1/3rd of the actual agreed amount, which had to be paid immediately. Meḥr i muwwajjal was the deferred dower and had to be paid later. It was generally 2/3rd of the actual dower.[22]

There is much evidence in these documents about women inheriting and controlling property. A number of documents from Cambay preserved in the national archives certify that the non-Muslim women enjoyed the right of inheritance over parental property.[23] There are also references of a daughter inheriting the whole property in case there was no male inheritor.[24] Mothers also endowed in favour of their daughters share out of their property. A document thus is evidence for a mother giving her daughter share in a property spread over several villages.[25] Of crucial importance, certainly, is not just the ownership but control over property which is evident from the following instance of 1730, where there is a reference of a Brahman father bestowing a house on his younger daughter by way of sila (gift) and tabarru (voluntary) donation.[26] The women were free to sell or mortgage the property without any difficulty. We have a reference of sale deed as early as from the reign of Ḥumāyūn dated 29th August 1531. A sale deed executed by Bībī Shukir, daughter of Salār Tharu and wife of Salār Sulaimān, in favour of Qāẓi 'Abdud Daim, son of Ilhadād for selling 16 out of 20 biswās known and reputed as milk and khoti of village Sharafuddinpur, together with cultivated land of village Shaikhanpur, qasba Bilgram for 450 tanka i 'Adlī. The vendor transfers her rights including milk of trees, fruits, water channels, tanks, takab etc., but excluding mosque and graves.[27] Yet another sale deed comes from the reign of Akbar dated 22 June, 1574, executed by Baī Pomi, wife of Gardi Asdin and Vura Shapur Asdin in respect of a house sold to Eravd Padam Mahiyar. It bears signatures of the vendors, Baī Pomi and Shapur Asdin, as also of the witnesses.[28] Another comes from the year 1579 of Bībī Baghi, daughter of Farīd 'Ataullāh in respect of a piece of land measuring four biswās.[29] A sale deed dated 19

November 1626 executed by Musammat Bībī Ḥaibat, daughter of Miyān Madan, in respect of half of the house, sold to Miyān Abdul Ḥalīm, son of Miyān Shaikh 'Abdul Ḥamid for Rs. 2.[30] These documents confirm that the women had the right to property: she could own and dispose off the land and property as she willed.

There are also several instances of women acting as wakīl. A perusal of our documents show that the civil suits could be filed, argued and fought on behalf of the deponents; as it was only in 1671 when Aurangzeb formally appointed wakīl i shar'i (lawyers) in all the towns and subās.[31] The earliest evidence for th e appointment of a wakīl from our documents of Gujarat is of 1621 when a husband authorised his wife to be his wakīlah.[32] However the term here appears to stand for a representative rather than a lawyer. Another document from 1629 reflects the same practice of representation where a mother appointed her daughter as her wakīl over her property; she was then given the right of either mortgage or sell the house as per her need.[33] Not leaving the men behind in this genre, there is an instance of a husband acting as the wakīl of his litigant wife, and fighting the case on her behalf.[34] A case of 1692 shows three men acting as wakīl on behalf of their sister in the court of the Qāẓi of Cambay.[35] Old women and mothers could also have their sons fighting their legal battles as their wakīls.[36]

Where such liberties and privileges were enjoyed by the women of that period, there are also references of some misuse of these civil liberties. A case of April 1736 is evidence for the same. Bel Bāī, is seen to be converting to Islam to get a share in the property of her deceased father, as per the shar'a. Mirza Muḥammad Ṭaqi who filed a suit on the behalf of his wife on the ground that Nāthi, the women's mother declined, saying that as her daughter Bel Bāī had converted to Islam, the demand could not be acceded to. The dispute was handed over to the 'ulama (doctors of law) who gave the ruling that to give the share would be in contravention of the dīn (faith) as the wirsa (law of succession) does not apply to her. Therefore Bel Bāī had to withdraw her claim, and ultimately, due to the intervention of certain individuals a sum of Rs. 10/- was given to her mother in view of her poor condition.[37]

As we have already seen from several instances that the Muslim as well as non Muslim women, specifically daughters, had share in property. There are examples of daughters inheriting property when no male inheritor was there. Instances are also of family disputes at times when the division was made among the sons and daughters together. There are also instances when brothers were seen trying to appropriate better portions of lands belonging to their sisters.[38]

Thus we can safely assume that the women of Mughal India whether they belonged to the royalty or were belonging to the middle strata, had legal priviliges similar to men of that period. Even if adorned with honorific titles which made their image in the official chronicles as 'chaste' and 'virtuous' women we find that this did not weigh down their activities and did not meant that they had to behave in a particular way because of their titles. As far as the ordinary and 'middle class' women of the period are concerned, even they had all the rights to inherit the property and enjoy full control over it. They could even impose conditions in the nikaḥnāmās which in turn gave them the right to free themselves from the vulnerable conditions they could get into.

References:

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2. See for example Rafat M. Bilgrami, Religious Departments of the Mughal Period 1556-1707, New Delhi, 1984; Syed Ali Nadeem Rezavi, Civil law and Justice in Mughal Gujarat, Proceedings of Indian History Congress, 54th Session, Mysore, 1993.
3. R. Orme, The Historical Fragments of the Mughal Empire, New Delhi, 1974, p. 284, cf. S.A. Nadeem Rezavi, Civil Law and Justice in Mughal Gujarat.
4. Nadeem Rezavi cites, Ali Muhammad Khan, Mirat i Ahmadi, I, Baroda, 1927, pp 277-83, 309; (supplement), p. 174; he also refers that Arif Qandhari makes a mention of yet another officer, shahna-i 'adalat, who were appointed in all the provinces under Akbar.
5. Mirat i Ahmadi, op.cit., supplement, 1930, pp.179,199, 261.
6. Ibid, I, p. 309
7. NAI 2695/1-44, docs. 13,14, 15, 18 etc.
8. Abul Fazl, Ain i Akbari, ed. Blochmann, Calcutta, 1867, Vol. I, p. 283. Nadeem Rezavi says, possibly it was for this reason that at times the huliya of the deponent would also be taken into account, but this noting of huliya of the deponent appears confined to Gujarat, this tradition has not been found prevalent in the document of other regions.

9. NAI 2695/1-44, Doc. 1, etc., almost all the documents full this legality.
10. Abul Qasim Khan, Munshat i Namakin, ed. Ishtiyaq Ahmad Zilli, Lytton Farsiya, Docs no. 205-206, pp.333-335; Zilli opines that "Munshat i Namakin is among the largest known collections of insha writings surviving from early Mughal period. The documents put together in this collection provide information on a wide range of subjects relating to the political, institutional, cultural, legal and even religious aspects of Akbar's reign."
11. Munshat i Namakin, p.69-70; Farhat Hasan in his work State and Locality in Mughal India Power Relation in Western India, c.1572-1730, holds that "Such instances of the appropriation of shari'a by Muslim women were not typical of South Asia. Women were exploiting the contradictions in shari'a in quite a similar manner in other Islamic countries, as well. It is interesting to note that the marriage stipulations included by women in the sixteenth and seventeenth centuries in Egypt and Ottomon Kayseri were quite similar to the ones we find in Surat: prohibition from taking additional wives, protecting domestic violence, etc. this not only suggests that the anxieties of women were quite similar across North Africa and west and South Asia, but also underlines the fact that women in all these places were well aware of the strategies to manipulate shari'a to protect their material and symbolic interest."p.81
12. Shireen Moosvi, Travails of a Mercantile Community Aspect of Social Life at the Port of Surat (Earlier Half of the Seventeenth Century), People, Taxation, and Trade in Mughal India, Oxford University Press, 2012, pp.275-287; see also Shadab Bano, Women and Property in Mughal India, Proceedings of Indian History Congress, Delhi 2008, pp. 406-415
13. MS.Blochet, Supp. Pres.482, A microfilm in the Research Library, CAS in History, AMU has been used, Surat Doc. ff 205 (a) - (b);
14. MS.Blochet, Supp. Pres.482, Surat Doc. fff.195 (a)-196(a).
15. MS.Blochet, Supp. Pres.482, Surat Doc. f.205(b)
16. MS.Blochet, Supp. Pres.482, Surat Doc.f.194 (b)
17. MS. Blochet, Supp, Pres. 482, Surat Doc. ff 206 (b)- 207 (a) and 207 (a)- 207 (b)
18. NAI 2695/1-44, Doc. No. 8
19. NAI 2695/1-44, Doc no. 26
20. Documents from Bilgram (Awadh), Transcripts in dept of History Aligarh, No. 6
21. Mughal Documents, Document no. 303, p. 132
22. MS.Blochet, Supp. Pres.482,Surat doc. Ff. 198 (a)-(b), 218 (a), 218 (b)- 219 (a), 201 (b)- 22 (a) etc.
23. It was only under the Hindu succession Act of 1956, that a Hindu (non Muslim) woman was given equal right of inheritance. NAI 2695/1-44, Doc. No. 6, 10, 11, 15 etc.
24. NAI 2695/1-44, Doc. No. 1, 5
25. Shamsabad and Bilhaur Documents, Transcripts in Centre of Advanced Study in History, A.M.U., no. 39
26. NAI 2695/1-44, Doc. No. 26
27. S.A. I Tirmizi, Mughal Document, Document. No. 5, p.46
28. Ibid, Document No. 34, p. 53
29. Ibid, Document No. 49, p.57
30. Document no. 312, p. 133
31. Khwafi Khan, Muntakhab ul Lubab, Calcutta, 1925,II p.p 249,253; Mohd. Sadiq Khan, Tarikh i Shahjahani (Rotograph in Deptt. of History, AMU), f. 148 (a) - (b).
32. MS.Blochet, Supp. Pres.482, Surat doc, ff. 207 (a)-(b)
33. MS.Blochet, Supp. Pres.482, Surat doc, ff. 202 (a)-(b)
34. NAI 2695/1-44, Doc no. 5, 29; Surat doc. ff 200 (b) (a)
35. NAI 2695/ 1-44, Doc no. 12
36. NAI 2695/1-44, Doc no. 2, 20
37. NAI 2695/1-44, Doc. No, 29; Another argument which was rightly pointed out by Syed Ali Nadeem Rezavi in his article Civil Law and Justice in Mughal Gujarat, the term shara connote "law" and not necessarily "Islamic law". Therefore the invocation of the shara was meant to be understood as "rule of law", which once entered into, had not to be violated. It was perhaps this same "law", which was dictated by the customs and traditions of the Non-muslims.
38. Shamsabad and Bilhaur Documents, Transcripts in Centre of Advanced Study in History, A.M.U., no.48

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