

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
I.A. No. 44667 of 2021  
IN  
WRIT PETITION (C) NO.869 OF 2020**

**IN THE MATTER OF:-**

ASHWINI KUMAR UPADHYAY

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

**AND IN THE MATTER OF:-**

**Amina Sherwani**

**...APPLICANT**

AN APPLICATION FOR IMPLEADMENT

**PAPER BOOK**

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ADVOCATE FOR THE APPLICANT: **FUZAIL AHMAD AYYUBI**

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AMINA SHERVANI ...APPLICANT

**APPLICATION FOR IMPLEADMENT**

TO,

HON'BLE THE CHIEF JUSTICE  
AND HIS COMPANION  
JUSTICES OF THE HON'BLE  
SUPREME COURT OF INDIA.

THE HUMBLE APPLICATION OF  
THE APPLICANT ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant is filing the present Application for Impleadment in W.P. (C) No. 869/2020 to bring to the notice of this Hon'ble Court that the said Writ Petition has been filed in violation of Articles 25 and 26 of the

Constitution of India, purportedly to remove the anomalies in the various divorce grounds provided for and under the personal laws of different religious communities.

2. The Applicant herein is a Muslim woman who got married as per Muslim rites and traditions and is a recipient of the rights and entitlements provided to her and to other Muslim women by their personal law including such rights that may not be available under other marital laws. It is submitted that the present Writ Petition is a blatant attempt to take away the agency of women like the Applicant herein. It is further submitted that the Applicant being a Muslim woman and a follower and beneficiary of Muslim Law stands to be directly affected by any order that this Hon'ble Court may pass in the present Writ Petition as opposed to the Petitioner. In view thereof, it is imperative that the views of the Applicant be heard and considered by this Hon'ble Court by way of the present Impleadment Application.
3. That the present Writ Petition came up for hearing on 16.12.2020 and this Hon'ble Court issued notice therein.

True copy of the Order dated 16.12.2020 in WP.No.869/2020 is enclosed herewith and marked as **ANNEXURE A-1. (Page No. 14).**

**SUBMISSIONS:**

4. **Violation of Article 25 and 26 of the Constitution of**

**India:**

At the outset it is submitted that the present Writ Petition is a deliberate attempt to interfere with the cultural and customary practices and usages that enjoy the protection of Articles 25 and 26 of the Constitution of India. Further, it is submitted that the divorce issue raised in the Writ Petition transcends into the domain of cultural & customary rights that are intertwined with the right to freely profess and practice religion. Thus, it is submitted that the Writ Petition, if allowed, would be in violation of Articles 25 and 26 of the Constitution of India. In this regard reliance is placed on this Hon'ble Court's below mentioned finding in *Riju Prasad Sarma v. State of Assam* [(2015) 9 SCC 461]:

*“On considering the rival submissions and the relevant case laws, we are inclined to agree with*

*the submissions on behalf of the respondents that Article 13(1) applies only to such pre-constitution laws including customs which are inconsistent with the provisions of Part III of the Constitution and not to such religious customs and personal laws which are protected by the fundamental rights such as Articles 25 and 26...”*

5. **Methods available to Muslim Women for obtaining divorce:**

It is submitted that the Muslim Personal Law provides to a Muslim woman, the following options through which she can divorce her husband:

- i. *Talak-e-Tafweez* (the wife's right to divorce her husband is like that of the husband if the same has been incorporated in the *nikahnama* or where such a delegation has been made by the husband on a subsequent date);
- ii. *Khula* – The wife can get her marriage dissolved through *Darul Kaza* (Shariat Court)
- iii. *Talak-e-Mubarrah* - Divorce by mutual consent

- iv. *Fask*- The wife can get an annulment of marriage through *Darul Kaza* (Shariat Court)
- v. Dissolution of Marriage by Court- The wife can move the regular courts under the Dissolution of Muslim Marriages Act, 1939.

6. **Rights under Muslim marriage agreements:**

It is submitted that Muslim marriage is contractual in nature and as such the parties to it are allowed to impose conditions for regulating their matrimonial relations. Such conditions can be imposed before the marriage or at the time of the marriage or even after the marriage. The agreement has to be legal and as per the provisions of Muslim law.

The option to impose matrimonial conditions under Muslim law provides protection to Muslim women and safeguards their interests in the face of uncertainties of marital life. Additionally, such marital conditions provide adequate sustenance to Muslim women after dissolution of marriage as well as during the marriage.

For instance, through the marriage agreements, Muslim women are allowed, under Muslim law, inter alia, to:

- i) Divorce the husband on the happening of certain contingencies (reliance is placed upon *Sabra Jan v. Abdul Raoof*, AIR 1921 Lah 194);
- ii) Leave the husband's house in case of ill-treatment or disagreement (reliance is placed upon *Banne Saheb v. Abida Begum*, AIR 1922 Oudh 251));
- iii) Claim fixed or separate maintenance in certain circumstances (reliance is placed upon *Mohd. Muinuddin v. Jamal Fatima*, AIR 1921 All. 152);
- iv) Impose a condition on the husband to provide maintenance for the children of his wife's former husband or to provide some special allowance to the wife by way of maintenance (reliance is placed upon *Yussoof Ali v. Fyzoona*, 15 WR 296).

7. It is further submitted that in her own *Nikahnama* (marriage agreement), the Applicant herein had included conditions pertaining to divorce, custody of children and maintenance.



8. **Provisions of Mediation and Speedy settlement of matrimonial disputes:**

It is submitted that the resolution of matrimonial disputes through mediation is provided for under Islamic matrimonial jurisprudence. It is submitted that such dispute settlement protects the parties from protracted

adversarial litigation which entails immense hardship and humiliation to women in particular.

9. **Right to Mehr:**

It is pertinent to note that the right to *Mehr* is a Quranic right. The said right finds a specific mention in Chapter IV verse 3 of the Holy Quran wherein it is stipulated that:

*“And give women their dower freely and if they are able to remit any of it of their own free will, then enjoy it with a good conscience.”*

The *Mehr* is considered to be a symbol of respect to the wife and as such it is meant to be substantial. A meagre amount is wrong under Islamic principles. Further, if *Mehr* dues are not paid at the time of divorce, the wife is entitled to retain possession of her husband's property. In case of refusal by the husband to pay the *Mehr*, the wife is entitled to live separately and during this period she is entitled to claim maintenance from her husband.

10. It is relevant to point out the observations made by the Privy Council in the case of *Moonshee Buzloor Ruheem v. Shamsoonisa Begum* [(1867) 11 MIA 551] with regard to the

right of Muslim women upon marriage. The Privy Council observed as follows:

*“Distinction must be drawn between the rights of a Mahmmodan and a Hindu woman and in all that concerns her power over her property, the former is, by law, far more independent, in fact even more independent than an English woman. There is no doubt that a Mussulman woman when married retains her dominion over her own property and is free from the control of her husband in its disposition.”*

11. It is respectfully submitted that the present Writ Petition suffers from want of a valid *locus standi* and has been filed on frivolous grounds and ought to be dismissed with exemplary costs as the same may result in hurting the religious sentiments of the various religious communities mentioned therein.
12. That the Applicant seeks liberty to file additional submissions to supplement the present Application if required.

13. That the Applicant has no other efficacious remedy other than approaching this Hon'ble Court by way of this Application.
  
14. That this Application is being made *bona fide* and in the interest of justice. The Applicant has a *prima facie* case and the balance of convenience is in favour of the Applicant.

**PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Allow the present Application and permit the Applicant to be impleaded in the pending WP.No.869/2020;
  
- b) Permit the Applicant to make written and oral submissions in support of the prayers made in the instant Application;  
and
  
- c) Pass such other and further order or orders as may be deemed just and proper by this Hon'ble Court on the facts and in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN  
DUTY BOUND SHALL EVER PRAY.

Filed By:

FUZAIL AHMAD AYYUBI  
(Advocate for Applicants)

Drawn by:  
Ms. Rashmi Singh, Advocate  
Drawn on: 22.03.2021

Filed On: 23.03.2021  
Place: New Delhi