

Muslim Women, Marital Dissolution and Uniform Civil Code in India

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Abstract

In many ancient societies, divorce was a recognised extension of marital rights. Interpretations varied among cultures, including the Hebrews, Israelites, and Romans. Although a few religions recognise divorce, Islam was the first to formally acknowledge it as a valid method of dissolving a marriage. England, on the other hand, only legalised divorce around a century ago. Divorce was illegal among Hindus in India before the Hindu Marriage Act of 1955, when it was legalised. Divorce was widespread and simple in early Arab societies. Some of this leniency is still evident in Islamic law, which has been shaped by this history. However, considering its effects on child-rearing and marital harmony, the Prophet considered divorce to be the most despised acceptable act. Islam allows divorce, but the way Muslim personal laws are applied in India frequently exposes women to gender-based discrimination, particularly when it comes to polygamy, talaq (unilateral divorce), custody, and inheritance. These problems are brought to light by the Uniform Civil Code (UCC) controversy. There are differing views within the Muslim community: many women's rights organisations support the UCC to advance gender justice, while others oppose it for religious reasons. This study investigates whether a shared civil code could respect religious freedom while addressing the systemic disadvantages Muslim women face. In India's diverse democracy, legal reform must balance individual rights with collective identity while also taking gender and cultural considerations into account. Family life is still rife with gender bias. Muslim women are increasingly speaking out against unfair traditions and supporting reforms throughout the Islamic world. Using successful global reform movements as a guide, they interact with contemporary feminist and legal frameworks to promote more equitable legislation. Ensuring Muslim women's legal rights in areas such as polygamy, child marriage, halala, muta, misyar, inheritance, custody, guardianship, and adoption is crucial as UCC discussions progress.

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1. INTRODUCTION

Equality and justice have been central topics in legal and political discourse throughout history, often entwined with controversy and discussion. For thousands of years, women have played essential roles in society; around 3000 BCE, leaders like Merideth came into being. Both men and women hold leadership positions worldwide, even in modern times. However, true equality is still unattainable. The status of Muslims in India differs significantly from their actual

situation, primarily as determined by the 2011 Census. This gap becomes even clearer when evaluating the rights and conditions of Muslims in India against those in predominantly Muslim countries. A truly dignified life entails that an individual has rights throughout their existence. Every person is born free, with no imposed duties, and has the right to select their path. Those who restrict another's freedom for personal gain violate the essence of a just life. India is a secular and sovereign country that embraces people from various

backgrounds and is dedicated to treating all citizens with dignity and equality. Its religious diversity is the cornerstone of its national identity. The nation boasts multiple faiths-including Hinduism, Islam, Christianity, Sikhism, Buddhism, and Jainism-collectively influencing India's cultural and social landscape. With a Muslim population exceeding 182 million, India stands as the third-largest Muslim-majority nation worldwide and possesses the largest Muslim minority globally. Notably, around 10.3% of the global Muslim population resides within India.¹ According to the 2011 Census, India had more than 84 million Muslim women compared to 88 million Muslim men, indicating a 5% gender gap in birth rates. Educational statistics from the same census further depict disparity: only 1.7 million Muslim women achieved graduate-level education, whereas over 3 million Muslim men reached graduation. Furthermore, marriage statistics indicated that 43 million Muslim women were married, in contrast to 37 million Muslim men. These statistics highlight the persistent infringement of Muslim women's rights, not just in India but across the globe. A comparative examination of Muslim personal laws in various nations illustrates India's distinct position. Unlike many Muslim-majority countries, India permits the coexistence of personal and statutory regulations, allowing Muslim women to seek justice through the judiciary. For example, in Egypt, Article 2 of its Constitution designates Sharia as the primary source of law, which has substantial implications for women's rights, including limitations on financial support, younger legal marriage ages for girls, and regulated but legally sanctioned polygamy. Similar circumstances exist in many other Islamic countries. Islam sees marriage as a sacred bond and a social institution that permits a man and a woman to have sex. Procreation, love, mutual support, and the formation of families-all regarded as the pillars of society-are the main goals of these relationships. Islam, like Hinduism, strongly promotes marriage. However, Hinduism sees marriage as a sacrament, while Islam sees it more as a contractual agreement. Many Islamic scholars believe that marriage is a religious requirement that enables individuals to pursue parenthood lawfully. The Quran, Ijma (consensus), Qiyas (analogical reasoning), customs, urf (local practices), judicial precedents, equity principles, and other written and unwritten sources are the foundation of Islamic law, or Sharia. Four major schools of Thought-Hanafi, Hanbali, Maliki, and Shafi'i-represent the Sunni tradition. Despite having different interpretations, these schools acknowledge one another's legitimacy and have participated in academic discussions for centuries. In India, the Hanafi school is the most popular. Sadly, a thorough examination of Muslim personal laws shows that a few of their provisions severely disadvantage women. The more restrictive rights accorded to women under Muslim personal law and the constitutional rights granted to them in India differ significantly. Although there is widespread gender inequality in Indian society, Muslim women frequently encounter more difficulties. Distinct roles and rights for men and women are outlined in the Quran itself, and laws that are fundamentally biased against women are reflected in customs like polygamy, purdah, and unequal property distribution. The legal status of Muslim women in India is still a hotly contested topic. It highlights the contradictions in personal laws by

addressing issues of minority rights, religious freedom, and gender inequality. Legislative bodies and court decisions have reinterpreted and modified personal laws, which are rooted in religious doctrines, concerning family-related issues. They are distinct from other legal categories in the Indian legal system because they apply to people according to their religious affiliation.² There are several ways in which a marriage can be terminated under traditional Islamic law, with the most significant being the husband's exclusive right to initiate divorce through talaq (legal guardianship), which comes in different forms and has varying degrees of finality. Historically, the wife's ability to divorce was restricted. In certain situations, such as abuse or neglect, she may seek legal action to terminate the marriage. Also, khula or mubarat divorces were possible, where the wife would usually be required to pay an amount to the husband as compensation. Many countries have gradually implemented changes to these long-standing practices, intending to promote women's rights and ensure that divorce is granted on more equitable grounds under Islamic legal principles. To clarify the legal options available to Muslim women seeking divorce, such as conversion and marital rights, was enacted in 1939 with the introduction of the Dissolution of Muslim Marriages Act. This act provided nine reasons on which a Muslim woman could ask the court to dissolve her marriage. Unlike traditional laws that favour the husband's divorce rights, this Act exclusively empowers the wife to initiate separation. It also addressed a contentious belief prevalent in British India-that a woman's conversion from Islam automatically ended the marriage. While this idea drew criticism, it was frequently upheld by courts relying on outdated interpretations of Muslim marital law. The overview of these legal frameworks underscores the limitations imposed on women's autonomy in matrimonial matters, along with the social stigma tied to divorce. Nevertheless, it also points to evolving legal interpretations and practices that better accommodate modern understandings of marital relationships and individual rights. In 2017, a significant ruling was delivered by the Supreme Court of India through a five-judge constitutional bench in the Shayara Bano case, declaring the practice of instant triple talaq as unconstitutional. The bench voted 3:2 in favour of annulling the practice. Shayara Bano had approached the court to challenge a divorce notice in which her husband declared "talaq" three times in front of witnesses. She asked the court to invalidate the divorce, claiming it infringed upon her fundamental rights. Following this judgment, the government proposed the Muslim Women (Protection of Rights on Marriage) Bill, 2017, in the Lok Sabha. This Bill made instant triple talaq, also referred to as Talaq-e-Biddat, a criminal offence, in line with the Supreme Court's ruling issued on 22 August 2017, in the Shayara Bano case. The court described the practice as "manifestly arbitrary" and highlighted that, because such a divorce is immediate and final, it eliminates any opportunity for reconciliation, which is crucial for maintaining marital relationships. Later, President Ram Nath Kovind endorsed the Muslim Women (Protection of Rights on Marriage) Second Ordinance in 2019, as confirmed by the Law Ministry.³ The Union Cabinet also approved the reissuance of this ordinance. The bill, which had already received assent

¹ Aditee Arya, *Rights of Muslim Women in India*, iPlaers (12 June 2025, 5:38 AM) <https://blog.ipleaders.in/rights-of-muslim-women-in-india/>

² Charvi Arora, *Discriminatory Muslim Laws Against Women*, iPlaers (12 June 2025, 07:49 AM) <https://blog.ipleaders.in/discriminatory-muslim-laws-against-women/>

from the Lok Sabha, was pending approval from the Rajya Sabha. Critics, including opposition leaders and community representatives, raised concerns about the law's legality in imposing a prison sentence on a husband for divorcing his wife. Nevertheless, the government defended the legislation as a measure to ensure justice and equality for Muslim women. Under the 2019 ordinance, declaring instant triple talaq was labelled illegal and void, and a prison term of up to three years was imposed on the husband. A previous bill intended to convert an earlier ordinance issued in September 2018 was stalled in the Rajya Sabha, leading to the issuance of a new ordinance. Safeguards were included to protect against possible misuse. Although the offence is considered non-bailable, the accused can petition for bail from a magistrate before the trial begins, provided the magistrate hears the wife's account. Additionally, the law specifies that a woman divorced through this method is entitled to financial support from her husband and retains custody of her minor children. Specifically, Clauses 5 and 6 of the Bill grant a divorced Muslim woman the right to a subsistence allowance for herself and her dependents, as well as custody of her children if the husband pronounces triple talaq. According to Law Minister Ravi Shankar Prasad, the legislation upholds constitutional principles, including gender equality and justice for Muslim women, while safeguarding their fundamental rights by eradicating discrimination and promoting empowerment. Nevertheless, detractors contend that the phrase "subsistence allowance" diminishes women's status, as existing legal frameworks grant married women an equitable share of household resources and the right to reside in their matrimonial home, devoid of violence or its imminent threat. Proponents of the law's provisions regarding child custody perceive it favourably, particularly because traditional Muslim personal law imposes limitations on a mother's rights concerning her children beyond a certain age. However, this perspective is contested by legal realities. In custody conflicts, judicial authorities adhere to the principle of the child's best interests, frequently resulting in custody being awarded to the mother. Moreover, Muslim families are subject to the Guardians and Wards Act of 1890 in these instances. Notably, if a marriage remains legally valid, the question of custody does not even emerge. The employment of terms such as "subsistence allowance" and "custody" erroneously suggests that the marriage has been dissolved solely by the utterance of triple talaq. This position contradicts the Supreme Court's ruling.

The Court's pronouncement that triple talaq is void effectively signifies that such a declaration does not dissolve the marriage. Historically, triple talaq was construed as a singular revocable talaq, permitting an iddat period during which reconciliation or a formal second declaration could transpire. Consequently, criminalising a practice without legal ramifications engenders inquiries regarding its rationale and necessity. Even if a deterrent is deemed suitable as a policy decision, it need not encompass criminal sanctions. Drawing comparisons between this matter and other criminal offences is erroneous, as those offences result in unequivocal legal repercussions. In contrast, the Supreme Court has elucidated that the pronouncement of triple talaq no longer entails such consequences. Sound public policy dictates that criminal law ought not to intrude into private lives unless warranted by significant concerns such as physical abuse. Numerous factors

that may culminate in divorce do not justify criminal prosecution. Hence, criminalising triple talaq may constitute an overreach in issues that are more appropriately resolved through civil remedies.

In modern India, the discussion regarding adopting the Uniform Civil Code (UCC) is among the most controversial and politically sensitive topics. A considerable segment of the Muslim community, particularly groups like the Popular Front of India (PFI) and the All-India Muslim Personal Law Board (AIMPLB), has expressed strong dissent against the UCC. Their opposition, however, is not primarily due to religious oppression, but from a concern about losing specific privileges safeguarded by conservative and communal entities-privileges that have often worked against the well-being of women, the larger Muslim community, and the ideals of equality and justice in India.⁴ Many Muslim women's organisations have shown support for the UCC as a means of reforming personal law within the Muslim community, in contrast to some who are against it. By implementing the UCC, significant changes would be made to existing practices, challenging many old-fashioned norms that still exist under the umbrella of personal law. It is worth noting that several predominantly Muslim countries, such as Turkey, have effectively implemented secular, gender-sensitive laws. Likewise, Muslims living in Western countries often maintain their religious identity while complying with local laws. It is erroneous to assume that cultural identity can legitimise practices that discriminate against women. In the same way that India effectively bans old Hindu traditions like Sati, it should also defend all religions and cultures from injustice and discrimination. The UCC is not just about legal modifications, but also a movement towards standardising individual laws across religious and cultural boundaries, which can spark critical debates on equality. One of the main arguments made by groups like AIMPLB is that the UCC undermines India's spirit of unity in diversity. Instead, it entails embracing pluralism within a legal framework that assures equal rights and dignity for all individuals. Crucially, the UCC does not seek to intrude upon personal freedoms, such as practising one's religion, wearing preferred clothing, or observing personal customs. These rights remain intact. The primary concern lies in legal provisions that institutionalise gender inequality-something the UCC strives to abolish in favour of an equitable legal system for every citizen. It is easy to understand why organisations like the AIMPLB oppose the UCC, as its establishment would undermine their authority, which often parallels that of formal legal institutions. By championing the UCC, the Uttarakhand government and others are advocating for a cohesive set of laws that reinforce equality and diminish the influence of such unofficial authorities. The evidence supporting the need for reform is compelling, as demonstrated by research from the Bharatiya Muslim Mahila Andolan (BMMA), which conducted surveys across ten states. The results indicate that over 90% of Muslim women favour a ban on oral and unilateral talaq and are against polygamy. Approximately 91.7% believe a man should not be permitted to remarry while still married to his first wife. Moreover, 83.3% of the surveyed women backed the codification of Muslim family law to ensure justice. These results from states like Maharashtra, Bihar, West Bengal, and Jharkhand underscore an intense yearning for transformation among Muslim women. They are raising their voices, seeking justice, and demanding a

[d Discourse on Triple Talaq Bill and the Muslim Woman's Voice](#)

⁴ Shantanu Pandey, *Uniform Civil Code & its Impact on Muslim Personal Law*, iPleaders (12 June 2025, 09:29 AM)
<https://blog.ipleaders.in/ucc-in-muslim-personal-law/>

legal system that honours their rights. Community leaders and religious figures must begin to listen to these voices and advocate for significant reforms.⁵

The Uniform Civil Code (UCC) in India is a suggested reform designed to replace personal laws based on different communities' religious texts and traditions with a standardised legal framework that applies to all citizens. These personal laws oversee matters like marriage, divorce, inheritance, adoption, and maintenance, separate from public law. Proponents of the UCC contend that a standard legal system could promote national cohesion. They assert that Hindus and Muslims lived under a shared "customary Hindu civil code" until 1937, when the "Muslim League-British alliance" enacted the Muslim Personal Law (Shariat) Application Act, thereby imposing Sharia on Muslims. However, historical evidence indicates that only a few Muslims had followed Hindu customs before 1937. Even those people had legal options, like the Cutchi Memons Act of 1920 and the Mahomedan Inheritance Act of 1897, that permitted them to adopt Islamic law voluntarily. Most Indian Muslims had already adhered to Islamic legal principles before the Shariat Act was enacted. The historical basis for applying Islamic law in India goes back to 1790, when Governor-General Cornwallis established a three-tier judicial structure in Bengal, which was later expanded throughout the country. This structure involved appointing Qazis and Muftis as legal advisors for British judges. The highest criminal court, the Sadr Nizamat Adalat, depended on the rulings (fatwas) of these Islamic legal authorities in cases concerning Muslims. These fatwas remained binding until 1817, when a resolution enabled British judges to override them, as noted by Rudolph Peters in *Crime and Punishment in Islamic Law*. Despite implementing Islamic law, specific entrenched customs retained legal significance even when in conflict with Islamic tenets. For example, women were frequently denied their lawful inheritance because prevailing customs dictated that property they inherited or received as gifts would revert to male heirs. These customs, which undermined women's Islamic rights, prompted many Muslims to advocate for the exclusive application of Muslim personal law to safeguard their religious rights.⁶

Muslim Personal Law in India presents unique challenges, particularly when examined within the nation's legal system and complex socio-political landscape. In India, laws are generally enforced based on either geographic location or religious identity. Issues related to marriage, divorce, inheritance, adoption, and family dynamics are predominantly governed by personal laws specific to various communities. The Constitution grants state and central authorities the power to legislate on personal law matters. During colonisation, personal laws in India began to be codified, with particular attention given to laws for Parsi and Christian communities, and later, some partial reforms were implemented to protect Hindu women's property rights. A more extensive overhaul of Hindu law occurred in the 1930s, leading to four significant laws, including the Hindu Code Bill of 1956, that regulate Hindu private affairs. The bill was passed later. In comparison, Muslim personal laws primarily utilise two primary pre-independence statutes: The Muslim Personal Law (Shariat)

Application Act of 1937 and the Dissolution of Muslim Marriage Act. The Shariat Act ensured that marriage, divorce, maintenance, and inheritance were regulated in compliance with Islamic law, rather than any other customs. Discussions about implementing a Uniform Civil Code have focused on how Sharia law will impact Muslim women. A crucial element of gender equality is financial autonomy, and property rights are essential. Before the enactment of the Shariat Act, numerous customary practices undermined the rights conferred upon women by Islamic principles, particularly concerning inheritance. The Act ensured that Islamic law prevailed over such customs, especially in succession and women's property matters. During that period, Indian society was predominantly patriarchal, and women, regardless of religion, had minimal legal rights. For instance, Hindu women were prohibited from being coparceners and faced severe restrictions on property ownership. Some Muslim communities that had transitioned from Hinduism continued to adhere to Hindu customs, which included denying women equal inheritance rights. According to Islamic inheritance rules, both men and women have entitled shares; however, societal opposition rooted in patriarchal norms hindered the fair implementation of these laws.⁷ Studies in rural northern India have indicated that many Muslim women either lack awareness of their inheritance rights or feel obliged to forgo them to preserve family cohesion. Social pressure and the fear of familial estrangement often silence women and prevent them from claiming their rightful inheritance. This suppression is further bolstered by religious conservatism and patriarchal governance, which aim to keep property within the male lineage. Historically, during the early years of Islam, Muslim women held a more active and empowered status, serving as businesswomen, poets, scholars, and even warriors. Despite historical precedent, Muslim women are often seen as being solely responsible for household chores. Islamic law stipulates that women are entitled to half of men's inheritance, but this statement must be interpreted more comprehensively. Despite being beneficiaries, women have multiple roles and don't necessarily belong to one. Why? For a thorough exploration of gender stereotypes in Islamic law, one must first understand the principles of *usul al-fiqh* in Islam. However, women have historically been deprived of this knowledge, and in India, many Muslim women (and even some men) lack both secular and religious education. Why is this? Therefore, females are frequently deprived of their legal entitlements due to ignorance or manipulation by male family members.⁸ The fear of damaging family relationships or needing male support in the event of a divorce prevents many from pursuing their rights. A similar scenario exists in Hindu law, where agricultural land is subject to different legal procedures. Thus, both Hindu and Muslim women confront legal barriers to gaining property rights, supporting patriarchal norms. Finally, gender disparity in property stems from cultural norms rather than theological dogma. Polygamy has been illegal in India since the Hindu Marriage Act was enacted in 1955, which deems any subsequent marriage while the first marriage is still valid as null and penalises it under Section 494⁹ and 495¹⁰ of the Indian Penal Code 1860 [Now Sections 82(1)¹⁰

⁵ Amana Begum, *an Indian Muslim Women, need UCC. It challenges power of self-appointed judicial bodies*, The Print (9 February 2024, 03:25 PM) <https://theprint.in/opinion/indian-muslim-women-need-ucc-it-challenges-power-of-self-appointed-judicial-bodies/1960673/>

⁶ Asha Rani, *A Term Paper on Uniform Civil Code*, Vol 2 Issue 6, IJARIIT, 64-66 (2016) <https://www.ijariit.com/manuscripts/v2i6/V2I6-1279.pdf>

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⁷ Saadiya Suleman, *Muslim Personal Law & Gender Equality Concerns*, ResearchGate (12 June 2025, 10:33 AM) https://www.researchgate.net/publication/324562216_Muslim_Personal_Law_And_Gender_Equality_Concerns

⁸ The Indian Penal Code, 1860, § 494 (Repealed)

⁹ The Indian Penal Code, 1860, § 495 (Repealed)

¹⁰ The Bharatiya Nyaya Sanhita, 2023, § 82(1)

and 82(2)¹¹ of BNS 2023]. Nonetheless, Muslims are an exception to this rule, as their laws regulate them. Notably, the state of Goa stands apart by prohibiting polygamy for Muslims as well under its unique Portuguese Civil Code, where customary laws take precedence over religious personal laws in specific situations. Although the Muslim Personal Law (Shariah) Application Act of 1937 allows a Muslim man to have up to four wives, this practice is not common due to changing socio-economic conditions and cultural shifts. The legal allowance for polygamy in Islamic law has long faced criticism for perpetuating gender inequality in marital frameworks. The Supreme Court of India emphasised this point in the landmark case of *Khursheed Ahmad Khan vs. State of Uttar Pradesh* (2015), ruling that although polygamy is permitted by Muslim personal law, it is not an essential or untouchable religious practice.¹² The case concerned a government worker who married again while his first marriage was still going strong. The Court stated that such behaviour may result in disciplinary action. It clarified that Article 25's protection of religious freedom does not extend to behaviours inimical to morality, public health, or public order.¹³ Additionally, there have been constitutional challenges to polygamy, claiming that its legalisation goes against Articles 14¹⁴ and 15¹⁵ of the Constitution, which guarantee legal equality and forbid discrimination based on gender or religion. According to these petitions, allowing Muslim men to practise polygamy exclusively compromises gender equality and goes against the secularism and justice tenets of the constitution.

Sameena Begum vs. Union of India (2018) was a landmark case in which a Muslim woman contested the legitimacy of polygamy because it violates women's fundamental rights and diminishes their dignity.¹⁶ A broad ban on polygamy within the framework of Muslim personal law was proposed in that petition. It endorsed the adoption of a Uniform Civil Code (UCC) that would ensure equal regulations for all individuals, regardless of their religious beliefs, thereby maintaining the constitutional principle of equality and non-discrimination. But the debate on polygamy is not dead. Advocates for reform advocate for uniformity and gender justice, while others argue that a total ban could violate Article 25's religious freedom. Adopting a balanced and culturally sensitive approach is essential, not just imposing an all-out ban. Collaborating with Muslim scholars, Islamic jurists, and women's rights advocates is crucial to bring about these legal changes through awareness and community action. The most significant obstacle to address is the inability to reconcile respect for religious diversity with gender equality. Muslim women in India must receive justice and equality alongside religious freedom, which should be carefully considered when amending Muslim personal law. Muslim intellectuals and scholars are urged to work towards creating a formal legal structure that accurately reflects the teachings of the Quran. Although Islamic personal law is a progressive area of practice, it has faced criticism on issues such as instant triple talaq and unrestricted polygamy. Even though a complete prohibition on polygamy may not be feasible, it should be strictly monitored under the Quran's teachings. To thoroughly understand polygamy, reading verses 4:3 and 4:129 is necessary. Monogamy is prohibited for men who are not capable of equal

treatment of all their wives, as stated in verse 4:3. The Bible instructs against this practice. It is almost impossible to achieve genuine equality between wives, as stated in verse 4:129. The Quran's essence is at odds with unchecked polygamy within these constraints. Likewise, any proposed laws in India should clearly define the circumstances under which a man may marry again, such as if the first wife is suffering from a terminal illness or is confirmed to be medically infertile. Even in such cases, this should only occur with the first wife's consent and permission from an appropriate court. Historically, polygamy was intended by the Quran to provide support to vulnerable individuals like widows and orphans, rather than to exploit women. Therefore, there is an urgent necessity for a codified personal law that could serve as a model for other nations practising Islamic law. This would guarantee that Muslim women receive full rights regarding divorce, marriage, and property. Consequently, the prevalent view that polygamy is an inherent right of Muslim men is misguided. Polygamy is meant to be the exception, not the standard, with the Quran portraying monogamy as the favoured arrangement. The misuse of this provision can and should be regulated through suitable legal measures, such as those found in the Dissolution of Muslim Marriages Act, 1939.

Additionally, the issue of triple talaq enacted in one sitting presents significant challenges for numerous Muslim women in India. Although still observed in some regions, this practice lacks any foundation in the Quran and was explicitly discouraged by the Prophet. Quranic instructions for divorce include appointing one arbitrator from each spouse's family, alongside two reliable witnesses. The Quran indicates that if conflict is anticipated, both parties should appoint arbitrators to pursue reconciliation, and if both wish for peace, Allah will facilitate resolution. Thus, the Quran establishes a comprehensive and considerate approach for divorce - yet the ongoing reliance on informal and arbitrary methods leaves Muslim women exposed and without means for recourse. Islam unequivocally denounces the frivolous application of divorce and includes protections for women's rights. Justice Krishna Iyer, a former Supreme Court judge, once commented that Islamic divorce law, when accurately interpreted, is rational, pragmatic, and contemporary. He also remarked that misinterpretations from the colonial period and specific decisions by the Privy Council erroneously permitted Muslim men to initiate divorce at their discretion. These misrepresentations have endured, often perpetuated by inadequately trained religious scholars who misconstrue the authentic significance of Quranic divorce laws.¹⁷ Halala refers to the process that allows a divorced couple to remarry after a formal separation. However, women who pursue halala are often vulnerable to financial manipulation, coercion, and even sexual exploitation. This concern came before the Bombay High Court in a case involving singer Adnan Sami, who had married in 2001, divorced in 2004, and remarried the same woman in 2007. Since the couple had not undergone the halala procedure, the family court declared their second marriage invalid. However, the Bombay High Court ruled differently, stating that halala is not a requirement when the divorce occurs through khula or talaq-e-ahsan-methods recognised by the Quran. The court clarified that halala is only necessary in cases

¹¹ *The Bharatiya Nyaya Sanhita*, 2023, § 82(2)

¹² AIR 2015 SC 1429

¹³ *The Constitution of India*, Art 25

¹⁴ *The Constitution of India*, Art 14

¹⁵ *The Constitution of India*, Art 15

¹⁶ Petition (Civil) No. 222 of 2018

involving triple talaq. Consider the situation of a woman whose husband impulsively divorces her using triple talaq, possibly under the influence of anger or intoxication. If the couple later wishes to reconcile, the woman faces a difficult choice: she must either marry another man, consummate that marriage, and wait to be divorced again before returning to her first husband, or remarry her original husband without performing halala, thereby risking the legality of the union. In the latter scenario, her matrimonial rights would be in jeopardy, as the validity of the second marriage could be contested. Should she attempt to enforce her rights in court, the husband could argue that their remarriage is legally void.¹⁸

2. MARRIAGE IN MUSLIM LAW

Marriage within Muslim law is intricately connected to the cultural and historical context from which it emerged. It cannot be viewed in isolation from the traditions and values that have influenced it over the centuries. The issues faced in Muslim marriages are not distinct; they arise from deep-rooted customs that highlight marriage as a revered institution in society, closely intertwined with an individual's religious identity. Before the rise of Islam, women's roles in Arab society were significantly undervalued, with societal norms heavily tilted in favour of men. Child marriages were prevalent, and men could enter marriages without substantial restrictions. While some limitations were in place, such as prohibitions against marrying close blood relatives like mothers or sisters, other family unions were typically accepted. Divorce was predominantly a male-controlled process, granting men the exclusive authority to end marriages, while women generally lacked rights to property or inheritance. In numerous instances, women were treated as belongings of their male guardians.¹⁹ With the emergence of Islam and the teachings of the Prophet Muhammad, considerable reforms were brought about concerning women's rights and status. Islam conferred dignity on women and acknowledged them as equal to men in various elements of civil law. In Islamic jurisprudence, marriage, Nikah, is regarded as a civil contract that recognises a woman's legal identity even post-marriage. This contractual arrangement ensures voluntary consent, facilitates lawful procreation, and provides stability and respect within the marriage institution. The concept of Nikah signifies a legitimate union between the sexes, grounded in the principle of maintaining social order. This framework includes the husband's responsibility to provide a Mahr (dower), representing respect and accountability towards the wife. Islamic teachings place a strong emphasis on marriage, unlike some other religions that encourage celibacy among their clergy. Within Islam, marriage is deemed essential, not only for individual satisfaction but also for fostering a cohesive and ethical society. It is perceived as a vital institution that upholds social order, and religious leaders are expected to marry, acknowledging that their marriages contribute to societal stability and help avert moral decay. In family law, arbitration offers a beneficial alternative to conventional court proceedings, allowing for a private, efficient, and adaptable approach to resolving conflicts. Parties can reach equitable and self-directed resolutions by choosing an unbiased arbitrator or

a panel knowledgeable in legal issues and Islamic principles. This approach is organised, conserves time, and is in harmony with the tenets of Islamic law and the Qur'an. In India, where religious and legal factors commonly intersect, the Arbitration Council of India can play a vital role in facilitating arbitration in family law cases. Furthermore, the Council can consider marriage agreements when making rulings to ensure that the outcomes honour cultural and religious traditions.²⁰ In Muslim marriages, mutual agreement is essential. The bride and groom must consent to the marriage willingly, creating a relationship grounded in respect and autonomy. Additionally, witnesses must confirm the marriage, safeguarding both individuals, particularly the woman, and averting conflicts. A legally binding Islamic marriage must be freely entered into by individuals who possess the capacity to marry, and it should include the presence of witnesses to ensure clarity and legality. It is equally crucial for emotional and physical needs to be addressed within the institution of marriage rather than through rash actions. Furthermore, marriage legally acknowledges children, ensuring their healthy development within a secure family structure. Islamic marriage also mandates that parties meet legal eligibility criteria and refrain from unions that fall within forbidden degrees of kinship. Although there are variances in interpretations between Sunni and Shia sects, such as the Shia acceptance of temporary marriage (Muta), both schools emphasise lawful and ethical marital relationships. An Islamic marriage includes shared duties, where the husband is expected to support his wife and children, and the wife receives the Mahr as a token of respect and commitment. These responsibilities extend to inheritance matters and broader family obligations. Islamic marriage fosters love and understanding between partners and acts as a means for social harmony and moral discipline. It constitutes a legal agreement and a process for nurturing unity and accountability within the community.²¹ A Muslim marriage, often known as Nikah, is an officially recognised agreement that is the cornerstone of family life according to Islamic law. For a marriage to be considered valid, it must include specific key components. These components not only validate the marital relationship but also protect the rights and responsibilities of both partners. The Islamic marriage process starts with a formal proposal, Ijab, and its acceptance is called Qubool. Both actions must occur within the same gathering; the proposal becomes invalid if the acceptance is delayed until a later meeting. The individuals involved must be capable of entering into marriage based on three primary criteria: reaching puberty, possessing mental soundness, and adhering to the Islamic faith. Puberty is typically assumed to occur by the age of fifteen, although this can vary, and when minors are involved, the consent of a legal guardian is necessary. Guardianship, known as Wilayat, usually falls to male relatives such as the father, brother, paternal uncle, or grandfather. A Qazi or the state may assume this role if a suitable guardian is unavailable. In the case of Khaledur Rahman v. State of Kerala (2023), the Kerala High Court determined that Muslim marriages are not exempt from the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Therefore, when one of the parties is a minor under eighteen, the provisions of the POCSO Act take

¹⁸ Chaitanya Lakhsni, *Uniform Civil Code-A Boon to Indian Women*, Legal Service India (12 June 2025, 11:45 AM) <https://www.legalserviceindia.com/legal/article-5305-uniform-civil-code-a-boon-to-indian-women.html>

¹⁹ Dr SS Das and Keertika Singh, *Rights of Muslim Women in India: A Critical Review of Socio-Legal Perspectives*, Vol 8 Issue 8, IJCRT, 3462-3480 (2020) <https://ijcrt.org/papers/IJCRT2008412.pdf>

²⁰ Naheed Mustafa, *Uniform Civil Code and Muslims in India: Exploring the Potential of Arbitration Clauses and Marriage Stipulations*, Vol 21 Issue 4, MJTILP, 94-111 (2023) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5256763

²¹ Khushi Rastogi, *Marriage under Muslim Law*, iPleaders (12 June 2025, 10:51 AM) <https://blog.ipleaders.in/marriage-under-muslim-law/>

precedence over personal law, even if the marriage is otherwise deemed valid under Islamic law.²² Additionally, both individuals must be of sound mind when entering the marriage contract. Those who are mentally incapacitated, such as those suffering from idiocy or temporary insanity, are generally prohibited from marrying. However, if a person with a mental illness experiences moments of clarity, marriage during these lucid periods is allowed. Religious identity is also a vital factor. Both parties must be followers of the Islamic faith, although inter-sect marriages within Islam are permitted. Muslim men are allowed to marry women from Ahl al-Kitab, Christians, Jews, and, according to some interpretations, Sabians, due to their common Abrahamic roots. Conversely, Muslim women are generally not permitted to marry non-Muslim men, as this raises concerns about religious conversion and the potential effects on the spiritual upbringing of children. Islamic teachings expressly forbid marriages with polytheists or idolaters. Consent is a crucial element as well. Both the bride and groom must willingly and voluntarily agree to the marriage. Marriages that occur under coercion, pressure, deception, or misunderstanding are regarded as void. Another requirement is the provision of Mahr or dower, a compulsory gift from the groom to the bride. This must be agreed upon before cohabitation and acts as a form of financial security for the woman. If the bride is a minor, her guardians can accept the Mahr on her behalf. Certain legal restrictions can make a marriage void or irregular. These restrictions are categorised into absolute and relative prohibitions. Absolute prohibitions include outlawed marriages due to close blood relationships (consanguinity), such as between parents and children, siblings, and close aunts or nieces. Affinity prohibits marriages to relatives by marriage, such as stepmothers or daughters-in-law, while fosterage prevents unions between individuals who the same woman breastfed. A Sahih Nikah, or permissible Muslim marriage, adheres to all legal requirements established by Islamic law. The word "sahih" indicates that the marriage is accurate or legally valid, whereas "Nikah" refers to the union of marriage. For a marriage to be recognised as valid under Sharia, it must meet essential criteria that include mutual agreement between a man and a woman, a definite proposal and acceptance (Ijab and Qubool), the presence of witnesses, and the provision of a dower (Mehr) from the groom to the bride. These elements ensure that the marriage contract is legally binding and free from flaws. The marriage is considered sahih once every condition is fulfilled and no permanent or temporary prohibitions apply. The legal implications of such a valid marriage are numerous. Firstly, it legitimises the cohabitation of the spouses. Secondly, any children born from this marriage are considered legitimate and have the right to inherit from both parents. Moreover, the spouses acquire reciprocal rights to inherit each other's assets upon death. The marriage also establishes a prohibited relationship between the couple concerning future marriages. The wife's right to dower becomes definitive, and she gains the right to maintenance from her husband. Should the marriage end, the woman must observe the period of Iddah, during which she cannot remarry?

Conversely, a Batil Nikah, or null marriage, is invalid from the outset and fails to establish legal rights or responsibilities. These types of marriages occur in situations of permanent prohibitions, such as consanguinity (like marriage

between close blood relatives), affinity (for instance, marriage to a stepchild), or fosterage (for example, being breastfed by the same woman). They also include unions involving a person already married or a woman during her Iddah period. Because these marriages are completely unlawful, they hold no legal validity. Children born from such marriages are deemed illegitimate, and the individuals involved cannot claim maintenance or inheritance from one another. A Fasid Nikah, or irregular marriage, arises from temporary obstacles that can be corrected, thus validating the marriage once the issues are addressed. Examples of such irregularities include the lack of appropriate witnesses, marriage to a woman during her Iddah period, absence of a guardian's consent when it is necessary, differences in religion, marriage to a fifth wife, or marriage to a pregnant woman (provided that the pregnancy was not a result of adultery). Though initially considered irregular, these marriages are not inherently prohibited and can be regularised if the impediment is removed. The consequences of an irregular marriage include the legality of cohabitation and the legitimacy of children, who have the right to inherit. If the marriage is consummated, the wife is entitled to the dower. However, unlike in a valid marriage, the spouses do not automatically have rights to each other's property. If no physical intimacy occurs, the wife is not obligated to observe Iddah if the marriage is subsequently dissolved. Muta marriage, denoting "pleasure marriage," constitutes a transient union acknowledged exclusively within the Ithna Ashari Shia sect. This marriage, established for a defined duration, has predominantly diminished in prevalence within India and is not endorsed by Sunni traditions or the Indian legal framework. It permits cohabitation for a finite timeframe, following which the union is automatically terminated. Nonetheless, this mode of matrimonial association has faced significant criticism in contemporary contexts, especially concerning its exploitation of vulnerable women under the pretext of religious endorsement. Despite its limited practice in contemporary India, Muta marriage retains specific legal ramifications. The parties involved in a muta marriage typically lack mutual inheritance entitlements. Alimony is not automatically conferred unless expressly delineated within the marriage contract. However, the wife may petition for maintenance under Section 125 of the Code of Criminal Procedure, 1973,²³ provided a written agreement exists (now Section 144 of BNSS 2023).²⁴ This principle was substantiated in the case of Luddun vs. Mirza Kumar (1882), wherein the Calcutta High Court determined that, notwithstanding the absence of maintenance provisions in Shia law for muta marriages, the wife retains the right to seek redress under the CrPC.²⁵ When the marriage remains unconsummated, the wife is entitled to receive half of the dower and must observe Iddah should she become pregnant. Notably, the legitimacy of offspring born from such unions is acknowledged under Islamic jurisprudence. In Sadiq Hussain vs. Hashim Ali (1916), the Allahabad High Court affirmed that children arising from muta marriages are legitimate and possess the right to inherit the estate of both progenitors.²⁶ Each matrimonial form-valid, void, irregular, and temporary-exemplifies the heterogeneity within Islamic marital jurisprudence and elucidates the variances in rights and responsibilities contingent upon adherence to religious and legal stipulations.

²² (2023) 01 KL CK 0005

²³ The Code of Criminal Procedure, 1973, § 125 (Repealed)

²⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023, § 144

²⁵ (1882) ILR 8CAL 736

²⁶ (1916) ILR 38ALL 627

3. DISSOLUTION OF MUSLIM MARRIAGES

Under traditional Mohammedan law, Muslim women do not possess a separate or independent right to initiate divorce. However, a Muslim husband has the power to delegate his ability to pronounce divorce to another person, including his wife. Usually outlined in a formal agreement before or after marriage, this delegation can be absolute or conditional, permanent or temporary. If such an agreement is in place, the wife may file for divorce, but only if the conditions specified in the contract are met, such as the husband abusing his position or getting married to someone else. Crucially, divorce does not always occur when a condition is met; the wife may decide to exercise the authority granted to her. The divorce is final and irrevocable as soon as she chooses to use this authority to issue talaq. In socio-religious contexts, the Muslim community is often criticised for following patriarchal laws and customs that unfairly impact women. Although men are granted equal rights and status within Muslim personal law, there is a perceived gender inequality that is harmful to women. It's essential to recognise that many of these practices are not rooted in the Quran but rather have evolved through patriarchal interpretations that lack any genuine connection to religion. Through Talaq al-Bain, Muslim men retain the exclusive right to dissolve marriages, which permits a husband to declare divorce without any explanation. Despite being quite extensive earlier, Islamic law enforced some limitations in later periods. This is known as "restrictive power". In contrast, Khul'a, a form of mutual consent dissolution, allows the wife to return her dowry in exchange for the husband's declaration of divorce. This practice is considered permissible under Islamic law. Depending on Islamic law's specific context and scholarly interpretations, Khul'a is subject to diverse justifications and distinct processes. When the Muslim Women (Protection of Rights on Marriage) Act, 2019, was passed, the legal system experienced a dramatic change. This law outlaws instant triple talaq, whether it is announced orally, in writing, or online. Additionally, it makes the act illegal, carrying a fine and a maximum of three years' jail sentence. According to the wife's report, law enforcement may detain the husband without a warrant since it is a cognisable offence. The accused cannot be released on bail unless the wife's version of events is considered. In addition, if the husband has issued a talaq, the law grants the wife custody of any minor children. Divorce is a significant life event that affects all parties involved, regardless of its legal form. Emotionally, people often experience grief, sadness, anger, and guilt because it marks the end of a shared life and future. Anxiety and emotional distress can also result from uncertainty about living arrangements, money, and child custody. Though the social stigma may be less harsh than in previous times, it can still result in feelings of isolation and scrutiny from others. Financially, divorce can diminish household income and lower living standards, especially when children are involved. Asset and debt division can lead to disputes and financial difficulties. Maintaining separate households usually results in increased costs for both individuals. Children frequently endure the adverse consequences of disruptions associated with divorce. They may experience academic setbacks due to emotional upheaval, demonstrate behavioural difficulties such as withdrawal or aggression, and undergo significant emotional distress.

Additionally, they may grapple with feelings of being caught between their parents, which can result in confusion and insecurity.²⁷ For women, comprehending their legal entitlements during the divorce process is paramount. Numerous legal frameworks provide for spousal support or maintenance, particularly when the woman was financially reliant during the marriage. This provision aims to sustain her standard of living following the dissolution of the marriage, with the amount determined by various factors, including the length of the marriage and income disparities. Another crucial component is property division, which involves allocating assets acquired during the marriage, including homes, cars, and investments. Some legal systems consider each spouse's contributions, while others support equal property division. Custody and support agreements are made in the child's best interests in situations involving children. The parent awarded primary custody typically receives child support to address related financial obligations. Women may additionally retain specific benefits post-divorce, such as continued access to health insurance or a portion of the husband's pension, contingent upon local legislation. Importantly, women may use divorce to leave abusive relationships. Protections against domestic violence remain accessible even after separation, ensuring that women continue to possess legal safeguards against harm and harassment. Although Muslim personal law historically restricts a woman's right to initiate divorce, recent modifications in statutory law, most notably the 2019 Act, and a growing societal consciousness have facilitated avenues for gender-sensitive legal reforms. The advancing discourse underscores the necessity of reconciling religious convictions with the principles of gender justice and human dignity.²⁸ Under Sharia law, historically, Muslim women have faced restrictions in their options for terminating a marriage, lacking complete control over dissolving the marital agreement. However, Islamic jurisprudence provides a few avenues for women to initiate divorce. One such avenue is Talaq-e-Tawfiz, in which the husband entrusts his right to initiate divorce to his wife. This appointed authority enables the wife to commence a divorce on behalf of her husband without requiring court involvement, if the husband has given his explicit permission. Nevertheless, in patriarchal societies, it is often improbable for a husband to willingly grant such authority. Even when Tawfiz has empowered a woman, she must demonstrate that her husband indeed conferred this right. According to Section 6(3) of the Muslim Marriages and Divorces (Registration) Act, 1974, the Nikah registrar cannot authenticate a Talaq-e-Tawfiz unless the husband has signed a document that is registered under the Registration Act, 1908, or a certified marriage record indicates the delegation of divorce rights.²⁹ Another possibility is Khula, a divorce initiated by the wife with the husband's agreement. In this situation, the wife proposes to give up her legal rights, such as dower or property, in return for the husband's consent to dissolve the marriage. However, Khula is valid only when both partners mutually consent to end the marriage. Islamic jurist Rashid once indicated that the husband's approval is crucial, as he must accept the offered compensation. This suggests that the wife does not have unilateral authority in this context, and the success of the Khula process relies entirely on the husband's consent. Nonetheless, in the significant case of *Khurshid Bibi v. Baboo Muhammad*

²⁷ Dhananjay Gupta, *Exploring the Legal & Socio-Cultural Dimensions of Marriage Dissolution: A Comparative Analysis of Hindu & Muslim Personal Laws*, Vol 6 Issue 3, IJFMR, 1-11 (2024) <https://www.ijfmr.com/papers/2024/3/21610.pdf>

²⁸ Raman & Dr Rekha Kumari, *A Comparative Study of History and Reforms in Muslim Personal Laws in India*, Vol 9 Issue 6, IJNRD, 246-257 (2024) <https://www.ijnrd.org/papers/IJNRD2406317.pdf>

²⁹ The Muslim Marriages and Divorces (Registration) Act, 1974, § 6(3)

Amin, the court affirmed the wife's right to Khula despite the husband's refusal, reasoning that the marriage could not be maintained.³⁰ While this ruling supported a woman's claim, it does not equate to an independent or absolute right to divorce like a husband. Mutual dissolution can also occur through Mubarat, where both parties agree to terminate the marriage. Unlike Khula, where the wife takes the initiative and proposes

compensation, either spouse may suggest Mubarat. The defining feature of this type of divorce is the shared desire to part ways, irrespective of who starts the process. Like Khula, this divorce method is valid only if the husband and wife agree to end the marriage, Women's Divorce Rights Across Major Religions in India, Comparative Table are shown in table 1.

Table 1: Comparative Table: Women's Divorce Rights Across Major Religions in India

Aspect	Muslim Law	Hindu Law	Christian Law	Parsi Law
Grounds for Divorce	Limited; under the Dissolution of Muslim Marriages Act, 1939 (e.g., cruelty, neglect, impotence)	Multiple grounds under the Hindu Marriage Act, 1955 (e.g., cruelty, adultery)	Grounds under the Indian Divorce Act, 1869 (amended 2001)	Under the Parsi Marriage and Divorce Act, 1936 (like Hindu law)
Unilateral Divorce Right	Only men have the unilateral right (Talaq); women require Khula (husband's consent)	No unilateral right; only court-decreed	No unilateral right; only through courts	No unilateral right; only through courts
Maintenance Rights	Maintenance limited to Iddat period; later extended by SC rulings (e.g., Danial Latifi)	CrPC Section 125 + HMA Sections 24 & 25 for alimony	Indian Divorce Act Sections 36 & 37	Parsi Act Section 40 provides for financial maintenance
Custody of Children	Based on the Guardians and Wards Act, 1890, + judicial discretion	Based on the welfare of the child	Based on the welfare of the child	Based on the welfare of the child
Right to Remarry	Permitted after observing Iddat	Permitted after court decree	Permitted after court decree	Permitted after court decree
Triple Talaq Status	Declared unconstitutional in <i>Shayara Bano v. Union of India</i> (2017)	Not applicable	Not applicable	Not applicable

4. RIGHTS OF MUSLIM WOMEN IN INDIA

The condition of civil liberties for Muslim women in India has experienced a notable shift since the time of colonial rule. Under British governance, different religious groups, including Muslims, were subjected to their laws, a policy intended to honour religious traditions. The current legal issues, however, were brought about by its inadvertent promotion of a strict interpretation of religion as legal doctrine. After India gained its independence in 1947, a significant change occurred. Justice, equality, and fairness for all citizens were the guiding principles of the creation of the new Constitution. But even though the Constitution acknowledged that personal laws continued to apply to different religious communities, this duality created a significant conundrum: how to balance gender equality and women's rights while maintaining Sharia-based personal laws? The 1930s and 1940s saw a surge in support for Muslim women's rights. The Dissolution of Muslim Marriages Act, 1939, was a landmark law that gave Muslim women certain legal rights, such as inheritance rights, maintenance, and custody of children in certain situations; however, the 1985 case of *Mohd. Ahmed Khan v. Shah Bano Begum* clarified the conflict between cultural traditions and constitutional protections. In this instance, Shah Bano, a Muslim woman who had been divorced, asked her ex-husband for maintenance. Although the Supreme Court upheld her right to maintenance, the ruling caused a national uproar. It revealed the tension between the constitutional guarantee of gender equality and religious personal laws that sought to limit her claim.³¹ The Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted by the government in response. By restricting support to the iddat period, this law effectively limited the

maintenance provisions, despite its stated goal of protecting the rights of Muslim women who have divorced. This court case brought to light the larger difficulty of balancing religious traditions to guarantee Muslim women's equal rights. The Muslim Women (Protection of Rights on Marriage) Act, 2019, which made Triple Talaq a crime, was another critical turning point. By saying "Talaq" three times, a husband could use this technique to get a final divorce from his wife. The goal of the law was to end one of the most severe instances of gender inequality in Muslim marriage customs.³² Despite these advancements, the ultimate objective of achieving equality remains unattainable. Several queer individuals and marginalised groups are still facing discrimination. The discussion of the Uniform Civil Code (UCC) reflects the ongoing friction. Under the UCC, all citizens should be subject to the same legal regulations regarding marriages and divorces, as well as those related to adoption, regardless of their religious beliefs. Advocates argue that it may enhance the rights of women, but critics warn that this could violate Muslim personal laws and cultural autonomy. Also, implementing legal reforms is insufficient in addressing the social challenges that prevent women from accessing justice. Poor living standards, inadequate education levels, and patriarchal interpretations of Sharia law are common obstacles to legal rights for Muslim women. A comprehensive approach must encompass legal training and education, accessible legal aid, and progressive religious texts. Through knowledge and reform, women can gain more visibility in the legal system and their communities. Hence, the development of Muslim women's rights in India has been marked by steady growth, persistent struggle, and unrelenting pursuit of justice.

³⁰ PLD 1967 SC 97

³¹ 1985 (2) SCC 556

³² Shraddha Choudhary, *Criminalisation of Without an Object: Critical Reflections on the Muslim Women (Protection of Rights on Divorce) Act, 2019*, Vol 17 Issue 2, SLR, 105-135 (2021) <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1089&context=slr>

5. INDIAN LAWS ON THE RIGHTS OF MUSLIM WOMEN

The Muslim Women (Protection of Rights on Divorce) Act, 1986

By Islamic personal law, the Muslim Women (Protection of Rights on Divorce) Act, 1986, was introduced in India to protect the financial rights of Muslim women going through a divorce. This law ensures that these women get financial support from their former husbands, including maintenance for a predetermined amount of time and the payment of Mehr (dower), also known as the dowry agreed upon during the marriage. A divorced Muslim woman is entitled to maintenance and a fair and reasonable provision from her ex-husband during the iddat period, which generally lasts three lunar months after the divorce, by Section 3(1)(a) of the Act.³³ The husband is legally required to support the woman financially during this time, which is customarily observed before she can get married again. In *Danial Latifi & Anr v. Union of India* (2001), the Supreme Court made it clear that the husband is responsible for providing fair and reasonable maintenance for the duration of the iddat as well as for a more extended period, including costs associated with any children born out of the marriage. The Court emphasised that the purpose of this clause is to provide the woman with financial security following the divorce.³⁴ In Section 3(1)(c), a divorced woman is also granted the right to retrieve any property given to her before, during, or after the marriage. This includes gifts from her husband, family, relatives, or friends. The law safeguards her ownership of all such property, ensuring it remains with her following the divorce.³⁵

Section 3(1)(b) deals with the maintenance of minor children. It allows a divorced woman to seek financial support from her ex-husband for their children until they reach the age of two.³⁶ This ensures that the father takes part in the child's early upbringing. In *Iqbal Bano v. State of UP* (2007), the Supreme Court asserted that a divorced Muslim woman can claim maintenance for herself as well as for her minor children, reaffirming the father's ongoing financial obligations.³⁷ If a woman finds herself without a source of income after the iddat period, Section 4 allows her to request help from the local Wakf Board, which was established under the Wakf Act, 1954.³⁸ This provision is particularly crucial for women on their own, lacking family or community support, and unable to care for themselves. In *Noor Saba Khatoon v. Mohammad Quasim* (1997), the Supreme Court emphasised the welfare of children and permitted maintenance claims from the Wakf Board for their benefit.³⁹ While the main aim of the Act was to provide subsistence during the iddat period, this was also perceived as a limitation, as the responsibility then shifted to the woman, her relatives, or the Wakf Board after this period. However, in *K. Zunnaiddin v. Ameena Begum* (1997), the court clarified that the phrase "within the iddat period" in Section 3(1)(a) does not limit the husband's duty solely to that period. Instead, he remains responsible for his ex-wife's support until she

remarries.⁴⁰ If she remains single, the obligation to provide for her may continue for her lifetime.

The Dissolution of Muslim Marriages Act 1939

The Dissolution of Muslim Marriages Act 1939 grants Muslim women in India the legal power to initiate divorce proceedings in line with Sharia law. This law is essential in educating Muslim women about their legal rights concerning marriage dissolution.

Divorce Due to Husband's Disappearance

According to this legislation, a Muslim wife is entitled to file for divorce if her husband has been missing for a continuous period of no less than four years.⁴¹

Divorce on Grounds of Desertion

If a husband neglects to provide financial support to his wife for two successive years, she can seek a judicial decree for separation. This provision shields women from being left without financial assistance.⁴²

Divorce Due to Imprisonment of Husband

A woman can seek a divorce if her husband has been sentenced to prison for seven years or more. This enables her to start anew when her husband's prolonged incarceration adversely affects her life.⁴³

Divorce for Non-Fulfilment of Marital Duties

When a husband has failed to meet his marital obligations for three years without a legitimate excuse, the wife is eligible to petition for divorce. This ensures that women are not trapped in marriages where their partners neglect their duties.⁴⁴

Divorce Based on Husband's Impotence

If a husband's impotence at the time of marriage is established and persists, the wife can file for divorce through the court. This prevents women from remaining in a relationship where physical intimacy is unattainable due to the husband's condition.⁴⁵

Divorce on Grounds of Cruelty

A Muslim woman has the authority to end her marriage if she experiences cruelty from her husband. This encompasses physical violence, emotional distress, financial neglect, religious oppression, or failure to fulfil marital commitments. This clause offers significant protection against various types of abuse and mistreatment.⁴⁶

The Muslim Women (Protection of Rights on Marriage), 2019

The Muslim Women (Protection of Rights on Marriage) Act, 2019, renders all types of talaq, whether verbal, written, or conducted via electronic means, legally invalid. This law aims explicitly at talaq-ul-biddat-the method where a Muslim husband declares 'talaq' three times in one sitting-and makes this form of divorce a criminal offence. It defines this practice as a cognisable offence, with a penalty of up to three years in prison and a financial fine.

Protection Against Instant Triple Talaq

According to Section 3 of the Act, any instance of divorce, whether it is spoken, written, or electronically communicated, issued by a Muslim man is considered unlawful. This section explicitly prohibits the practice of instant triple talaq (talaq-e-

³³ *The Muslim Women (Protection of Rights on Divorce) Act, 1986*, § 3(1)(a)

³⁴ *AIR 2001 SC 3958*

³⁵ *The Muslim Women (Protection of Rights on Divorce) Act, 1986*, § 3(1)(c)

³⁶ *The Muslim Women (Protection of Rights on Divorce) Act, 1986*, § 3(1) (b)

³⁷ *AIR 2007 SC 2215*

³⁸ *The Wakf Act, 1954*, § 4

³⁹ *AIR 1997 SC 3280*

⁴⁰ (1997) 2 *MLJ 464*

⁴¹ *The Dissolution of Muslim Marriages Act, 1939*, § 2(i)

⁴² *The Dissolution of Muslim Marriages Act, 1939*, § 2(ii)

⁴³ *The Dissolution of Muslim Marriages Act, 1939*, § 2(iii)

⁴⁴ *The Dissolution of Muslim Marriages Act, 1939*, § 2(iv)

⁴⁵ *The Dissolution of Muslim Marriages Act, 1939*, § 2(v)

⁴⁶ *The Dissolution of Muslim Marriages Act, 1939*, § 2(vi)

biddat), which often leaves women defenceless and facing immediate divorce without any recourse.⁴⁷ In the significant case of *Shayara Bano v. Union of India* (2017), the Supreme Court deemed this practice unconstitutional, setting the stage for this law. The ruling highlighted the necessity of protecting women from arbitrary and unilateral divorce.⁴⁸

Entitlement to Financial Support

As laid out in Section 5, a Muslim woman who has experienced divorce through talaq is entitled to request financial support from her former husband for herself and her dependent children.⁴⁹ Although the Act does not specify a particular amount, it is up to the magistrate to determine what is

reasonable. This clause ensures financial security for divorced women and their offspring. The prior case of *Shamim Ara v. State of UP* (2001) also affirmed the importance of valid reasons and reconciliation attempts before declaring talaq, which helped establish maintenance rights.⁵⁰

Authority Over Custody of Minor Children

The Act further empowers Muslim women to seek custody of their minor children following a divorce. The magistrate will determine the specifics of custody, with the child's welfare serving as the primary consideration in such rulings.⁵¹ All Legal Reforms Affecting Muslim Women in India (1937–2019), Timeline of Legal Reforms are shown in table 2.

Table 2: Timeline of Legal Reforms Affecting Muslim Women in India (1937–2019)

Year	Law / Event	Impact / Summary
1937	Muslim Personal Law (Shariat) Application Act	Applied Islamic law to marriage, divorce, inheritance, and overriding customs
1939	Dissolution of Muslim Marriages Act	Gave Muslim women legal rights to divorce under certain conditions
1973	Mohd. Haneefa v. Pathummal Beevi	Recognised Khula divorce as valid if husband consents
1985	Shah Bano Case	The Supreme Court granted maintenance beyond the iddat period under CrPC Section 125
1986	Muslim Women (Protection of Rights on Divorce) Act	Restricted maintenance to the iddat period; later clarified to include fair provision
2001	Danial Latifi v. Union of India	SC ruled that "fair and reasonable provision" must cover post-iddat support too.
2017	Shayara Bano v. Union of India	Instant triple talaq (Talaq-e-Biddat) declared unconstitutional
2019	Muslim Women (Protection of Rights on Marriage) Act	Criminalised triple talaq; ensured custody and maintenance rights

6. UNIFORM CIVIL CODE & RIGHTS OF MUSLIM WOMEN

Article 44 of the Indian Constitution calls for establishing a Uniform Civil Code (UCC) throughout the nation.⁵² It instructs the State to work towards implementing a standardised set of personal laws for all citizens, superseding religion-specific regulations and fostering legal uniformity in areas such as marriage, divorce, inheritance, and adoption. The principal aim is to merge fundamental human values into a singular code, promoting equality and minimising discrimination based on gender and religion. The makers of the Constitution saw the UCC as a forward-looking instrument for social reform, mainly aimed at enhancing women's status and granting them rights that previous personal laws failed to provide.⁵³ Although initially intended to be incorporated into the fundamental rights under Article 35, it was ultimately categorised under Directive Principles due to apprehensions that it could infringe upon the religious freedoms guaranteed by the Constitution.⁵⁴ More than seventy years later, the need for the UCC is becoming increasingly apparent. Discrepancies in personal laws, particularly those that disadvantage women, violate the principles of equality outlined in Articles 14 to 18 of the Constitution. The UCC is perceived as a possible solution to eradicate unjust and discriminatory personal laws, especially those related to marriage and divorce, that often disadvantage women. In the current political scenario, where religious

identities increasingly shape governance, women's rights have frequently been overlooked. Implementing the UCC could refresh national unity and advancement ideals by transcending social divides like caste, religion, and gender, promoting women's empowerment and equality. Critics of the UCC frequently argue that it would conflict with Article 25, which ensures the freedom to practice and propagate religion. However, this argument weakens when considering the exception clause in Article 25, allowing the State to enact reformative laws. Consequently, a law such as the UCC, which seeks to establish gender equality, promote religious harmony, and provide legal clarity, should not be easily rejected based on infringing religious freedom. A comprehensive examination of Muslim personal law, particularly concerning marriage and divorce, highlights several areas where women's rights are undermined. One significant issue is the legal age for marriage. In contrast to most laws that conform to the Indian Majority Act, 1875, which defines the legal age of majority at 18, Muslim law considers a person eligible for marriage upon reaching puberty. In the case of *Attika Begum v. Mohmand Ibrahim*, the court determined that the legal age of majority for marriage under Muslim law is 15 years, and even younger if puberty is established. Moreover, a guardian can arrange a marriage for a girl before she attains puberty, thus enabling child marriage under traditional Muslim law.⁵⁵ This framework poses serious concerns. Merely because a girl is biologically

⁴⁷ *The Muslim Women (Protection of Rights on Marriage) Act, 2019*,

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⁴⁹ AIR 2017 SC 4609

⁵⁰ *The Muslim Women (Protection of Rights on Marriage) Act, 2019*,

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⁵² AIR 2002 SC 3551

⁵³ *The Muslim Women (Protection of Rights on Marriage) Act, 2019*,

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⁵⁵ *The Constitution of India, 1949, Art 44*

⁵⁶ *Puneet Agarwal & Dr Anna Nath Ganguly, Uniform Civil Code Implementation: Challenges & Implications in Indian Diversity, Vol 6 Issue 2, IJFMR, 1-7 (2024)*

<https://www.ijfmr.com/papers/2024/2/14939.pdf>

⁵⁷ *The Constitution of India, 1949, Art 35*

⁵⁸ *Mohammad Ali, Personal Law and Gender Justice & its Controversy Perspective of Uniform Civil Code in India, Vol 6 Issue*

equipped for childbirth does not imply that she is mentally or emotionally ready for marriage and its responsibilities. Early marriages often rob girls of educational opportunities, expose them to health hazards from early pregnancies, and confine them to lifelong dependency on their husbands. The power dynamics are further aggravated when young girls are married to significantly older men, leaving them with minimal voice or autonomy in domestic affairs. The introduction of the UCC could assist in abolishing child marriage by establishing a uniform legal age for marriage across all religions. This would empower girls to finish their education and enter marriage when they are both mentally and physically mature, thus decreasing the likelihood of forced or premature marriages. Another problem is polygamy, which is allowed for men but not for women under Muslim personal law. Muslim women are only allowed to have one husband, but Muslim men are allowed to marry up to four women. Women are mistreated by this gender inequality, which diminishes their identity to that of childbearing. With contemporary options like IVF, surrogacy, and adoption, the widely accepted defence of polygamy—that a wife is incapable of becoming pregnant—no longer holds water. By essentially outlawing polygamy, the UCC would bring about a long-overdue social change that would safeguard women's dignity and shield them from exploitation. It's interesting to note that polygamy is illegal in Islamic nations like Iran, Tunisia, and Pakistan, where Islam is the official religion. India, a secular country that respects human rights, should do the same.⁵⁶

7. CONCLUSION

The paper provides an extensive analysis of the systemic inequalities that Muslim women encounter under the prevailing personal laws in India, with a specific focus on marriage and divorce. It elucidates the legal, religious, and cultural dimensions that persistently infringe upon women's rights, notwithstanding the constitutional guarantee of equality. The research emphasises that, although Islam has historically conferred a variety of rights upon women, particularly in the domains of marriage, divorce, and inheritance, patriarchal interpretations and societal norms have considerably diminished these rights over time. Polygamy, unilateral divorce (talaq), and unequal property rights are just a few of the ways that Muslim personal law, which is mainly regulated by the Shariat Act of 1937 and the Dissolution of Muslim Marriages Act of 1939, continues to expose women to injustice in India. A judicial recognition of these disparities is demonstrated by

rulings such as *Khursheed Ahmad Khan v. State of UP* (2015) and *Shayara Bano v. Union of India* (2017), highlighting the need for more extensive legislative reforms. It argues that the Uniform Civil Code (UCC) is a practical solution to these injustices. The argument maintains that the UCC could harmonise personal laws among different communities, eliminate gender discrimination, and promote genuine secularism and equality as outlined in Articles 14 to 18 of the Indian Constitution, rather than imposing religious freedoms. Notably, it alludes to intense grassroots activism for reform, which was initiated by Muslim women and substantiated by surveys conducted by groups like the BMMA. Although opposition from right-wing religious groups is based on concerns about cultural breakdown and loss of autonomy, the paper suggests that such issues should be examined critically against the realities confronting millions of women who are routinely denied justice in our legal system. It also cites examples of successful legal reforms in Muslim-majority countries, such as Tunisia, Iran, and Pakistan, showing that religious identity can be compatible with progressive legislation. According to the paper, any reform, whether in the form of the UCC or the codification of Muslim personal law, should be sensitive to women's sex attenuation, reflect constitutional principles and be developed through dialogue with Muslim scholars, jurists, and women's rights advocates. Moving forward, it is essential to redefine pluralism and ensure that all Indian citizens have the same rights, dignity & justice as before, especially Muslim women, who are historically marginalised in discourse surrounding legal reform.

Author Contribution

The author conceptualized the research, conducted the literature review and doctrinal analysis, drafted the manuscript, and finalised the article for submission.

Conflict of Interest

Conflict of interest declared none.

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