
JUDICIAL APPROACH TOWARDS MUSLIM WOMEN IN INDIA

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ABSTRACT

“The judicial approach towards Muslim women in India has undergone significant transformation, emphasizing gender justice, equality, and constitutional principles. The judiciary has played an instrumental role in shaping Muslim personal laws to align with fundamental rights, addressing issues like marriage, divorce, maintenance, and polygamy. Key judicial pronouncements have contributed to the empowerment of Muslim women, but inconsistencies in personal laws continue to pose challenges. Legislative intervention is necessary to codify and reform these laws while respecting religious sentiments. Legal awareness and access to legal aid must be strengthened to ensure that Muslim women can exercise their rights effectively. The implementation of a Uniform Civil Code remains a debated but potential long-term solution to harmonize personal laws across different communities. A balanced approach that respects religious traditions while upholding constitutional rights is essential to fostering gender equality and justice for Muslim women in India.”

Keywords: Judiciary, Muslim women, gender justice, constitutional rights, personal laws, marriage, divorce, maintenance, polygamy, legal awareness, Uniform Civil Code, fundamental rights, legislative reforms, empowerment, equality.

INTRODUCTION

The present form of Muslim Law followed in India is not a pure reflection of Islamic jurisprudence but rather a distorted version, shaped largely by colonial interventions. This imperfect legacy from British rule has resulted in a personal law framework that often stands at odds with the Indian Constitution and the universally accepted principles of human rights. There is, therefore, an urgent need to reform and reconstruct Muslim Law in India, drawing inspiration from the progressive legislative developments seen in several Muslim-majority countries. However, considering the complex socio-political landscape and the experiences India has encountered since its independence, the practical implementation of a comprehensive and unified Muslim Law code seems highly unlikely in the near future. In this context, the judiciary plays a crucial role in interpreting the law in a manner that attempts to align more closely with authentic Islamic principles while ensuring conformity with constitutional mandates.

The distortion of Muslim Law in India can be traced back to the period of British colonial rule. When the British established their administration, they inherited the Mughal system of courts — civil (Diwani Adalat) and criminal (Faujdari Adalat). These courts were managed by British judges who lacked familiarity with India's deeply religious and community-specific family laws. To bridge this gap, the British appointed 'native law officers'—pandits for Hindu law and kazis for Muslim law. However, these law officers were often religious functionaries without formal legal training or expertise. Many of them lacked the qualifications necessary to interpret complex jurisprudential texts accurately, and their personal biases sometimes tainted their judgments. Consequently, a modified and diluted version of Muslim Law was institutionalized, which eventually became entrenched in the legal system of British India.

Several British legal scholars of the time recognized these flaws. Charles Hamilton, who translated key Islamic legal texts, admitted that many native law officers were inadequately informed and prone to corrupt practices. Similarly, Sir William Jones, another prominent British jurist, noted that the interpretations provided by these officers were often unreliable and susceptible to manipulation. While efforts were made to improve the system—such as the establishment of High Courts in 1861 and the eventual removal of native law

officers in 1864—the misinterpretation and misapplication of Muslim personal law persisted throughout the colonial period.

Even after independence, this colonial legacy continues to influence the application of Muslim Law in India. Unlike several Muslim-majority countries that have modernized their personal laws to balance religious principles with contemporary social realities, India remains encumbered by this historically distorted framework. The political sensitivity surrounding personal laws, particularly those based on religion, has further complicated attempts at reform.

Given these challenges, the Indian judiciary's role becomes particularly significant. Courts are often called upon to interpret and clarify aspects of Muslim personal law, striving to deliver justice while maintaining constitutional values such as equality, non-discrimination, and gender justice. In doing so, the judiciary attempts to restore, at least partially, the true spirit of Islamic jurisprudence within the Indian legal context.

MUSLIM MARRIAGE AND INDIAN JUDICIARY

The institution of marriage holds a central place in the personal, familial, and communal life of Islamic civilization. It serves as a foundational pillar in the social fabric of Muslim society, governed by religious principles and cultural norms. In India, the interpretation and application of Muslim marriage law have been shaped significantly by judicial decisions, beginning notably with the landmark case of *Abdul Qadir v. Salima*. In this case, the court was called upon to adjudicate a dispute where the wife refused to resume cohabitation with her husband. She claimed that an irrevocable divorce had been pronounced, the dower (mahr) remained unpaid, and she had been subjected to cruelty during the marriage.

Justice Mahmood, while addressing the legal questions involved, emphasized the need to consider various factors to reach a proper decision. These included understanding the essential nature and implications of marriage under Muslim law, the husband's responsibility to fulfill the dower obligation, and the mutual rights and duties associated with marital cohabitation. In his judgment, Chief Justice Petheram categorically held that, under Muhammadan Law, marriage is not a sacrament but rather a civil contract with defined rights and obligations for both spouses. This declaration marked a significant departure from the sacramental view of marriage common in certain other religious traditions, highlighting the contractual nature of Muslim marriage in the Indian legal framework.

The courts in India have since continued to analyze and develop Muslim marriage law primarily through reasoned judicial interpretation rather than mere criticism or blind adherence to tradition. For instance, in *Zubaida Begum v. Sardar Shah*, the Lahore High Court examined a petition filed under Section 2 of the Dissolution of Muslim Marriage Act, 1939. In this case, the wife sought dissolution of her marriage on grounds of desertion and cruelty, invoking the statutory provisions that grant Muslim women the right to seek divorce under specific circumstances. The court's decision further expanded the understanding of women's rights within marriage under Islamic law as applied in India, the courts have also referred to the teachings of the Quran while interpreting the rights and obligations in marriage. The Quran, particularly in *Surah Nisa*, allows Muslim men to marry up to four wives, but imposes a strict condition of equal treatment among all wives. The verse advises that if a man fears he may not be able to maintain justice and equality among multiple wives, he should marry only one. The Indian judiciary has recognized that equality in this context is not limited to material aspects such as food, clothing, and shelter, but also extends to non-material dimensions like emotional well-being, love, and affection. This judicial interpretation reflects an effort to balance religious teachings with contemporary ideals of fairness and justice.

Through these and similar judgments, Indian courts have sought to preserve the essence of Muslim personal law while ensuring that its application remains just, equitable, and aligned with constitutional values. The evolving jurisprudence reflects a sensitive balance between respecting religious freedoms and protecting individual rights within the framework of modern legal principles.

DOWER (MEHR) AND INDIAN JUDICIARY

In the case of *Abdul Qadir v. Salima*, Justice Mahmood¹ stated that according to Muhammadan law, dower signifies a specific amount of money or property that the husband pledges to give to the wife as a component of the marital agreement. The Lahore High Court examined the concept of dower in Muhammadan law and concluded that it is not regarded as a form of exchange or consideration in the strict technical meaning as specified in the Indian Contract Act.

In the case of *Fatima Bibi v. Lal Din*, the Supreme Court determined that dower

¹ 1886 ILR 8 All 149

functions as a duty placed upon the husband to demonstrate honour and respect towards his wife. The court highlighted that dower serves the purpose of safeguarding the woman from the capricious exercise of divorce authority by the husband, as well as restraining excessive spending in polygamous marriages.

Hamid Husain v. Kubra Begum² The Allahabad High Court clarified that dower is not consideration but a duty imposed on the husband. Marriage remains valid despite non-payment of dower. However, the wife has the right to demand unpaid dower anytime, and failure to pay affects cohabitation rights.

Nasra Begum v. Rizwan Ali³ The court ruled that a wife may lawfully refuse conjugal relations if prompt dower remains unpaid. The husband's failure to pay dower allows the wife to reside separately without being guilty of desertion, reinforcing dower's protective function in securing her financial interests.

Shamim Ara v. State of U.P.⁴ The Supreme Court declared that unilateral and arbitrary talaq is invalid. The judgment emphasized procedural fairness and acknowledged dower's role as a protective right. It strengthened Muslim women's marital security by curbing misuse of instant talaq and recognizing dower's financial safeguard function.

DIVORCE IN MUSLIMS AND INDIAN JUDICIARY

In the case of *Saiyid Rashid Ahmad v. Anisa Khatun*⁵ Justice Bahrul Islam, delivering the opinion on behalf of the Privy Council, laid down the essential principles regarding the correct procedure for *talaq* under Islamic law as derived from the Holy Quran. According to the judgment, a valid *talaq* must satisfy certain Quranic requirements: first, the *talaq* must be pronounced for reasonable and just causes; second, prior to pronouncing *talaq*, sincere efforts towards reconciliation and arbitration should be made with the involvement of representatives from both families; and finally, only if these reconciliation efforts fail, may the pronouncement of *talaq* take place. The Court recognized that the purpose of these requirements was to protect the sanctity of marriage and ensure that divorce is used only as a last resort, rather than as a

² AIR 1916 All 252

³ AIR 1974 All 273

⁴ AIR 2002 SC 3551

⁵ AIR 1932 PC 25

tool for arbitrary or impulsive separation.

The emphasis of the Privy Council in *Saiyid Rashid Ahmad* was on preserving the spirit of the Quran, which discourages hasty dissolution of marriage and instead promotes harmony, patience, and fairness within marital relations. The judgment served as a key reference point in future deliberations on the issue of unilateral divorce within Muslim personal law.

Several decades later, the issue came before the Indian judiciary once again in the landmark judgment of *Shayara Bano v. Union of India*⁶ In this case, the constitutional validity of *Talaq-ul-Biddat* (instant triple talaq) was challenged. *Talaq-ul-Biddat* allowed a Muslim husband to instantly and irrevocably divorce his wife by pronouncing *talaq* thrice in one sitting, without adhering to the Quranic requirements of just cause and reconciliation.

The Supreme Court, through a multi-bench decision, struck down the practice of *Talaq-ul-Biddat* as unconstitutional and void. Justice Khehar, along with other members of the bench, emphasized that any form of *talaq* that contradicts the fundamental teachings of the Quran is impermissible under Islamic law itself. The Court further noted that the practice violated Articles 14 (equality before law) and 21 (right to life and dignity) of the Indian Constitution.

This progressive ruling marked a significant milestone in the protection and empowerment of Muslim women in India. It underscored the judiciary's commitment to harmonizing personal law with constitutional values of gender equality, dignity, and justice. The judgment also paved the way for subsequent legislative reforms, such as The Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the practice of instant triple talaq.

MAINTENANCE OF MUSLIM WOMEN AND INDIAN JUDICIARY

In the landmark case of *Bai Tahira v. Ali Hussain Fissalli Chothia*⁷ the Supreme Court of India addressed the significant question of whether a pre-existing settlement agreement between a Muslim couple could bar the wife from claiming maintenance under general law. The case came under what was then Section 125 of the Criminal Procedure Code, 1973, now

⁶ AIR 2017, 9 SCC 1

⁷ AIR 1979, 2 SCC 316

replaced by **Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, which deals with maintenance of wives, children, and parents.

Justice Krishna Iyer, delivering the judgment, held that even if a settlement had been reached at the time of divorce, it does not necessarily absolve the husband of his continuing obligation to provide maintenance if the wife is unable to maintain herself after divorce. The Court emphasized that the statutory right to maintenance under general law, as provided under Section 125 CrPC (now Section 144 BNSS), is a secular remedy intended to prevent destitution and vagrancy, applicable to persons of all religions, including Muslims. The Court thus protected the financial rights of Bai Tahira, upholding her claim for maintenance despite the earlier settlement.

In another landmark judgment, *Mohd. Ahmad Khan v. Shah Bano Begum*⁸ the Supreme Court further expanded the scope of maintenance rights for Muslim women. The Court ruled that a Muslim husband is legally obligated to provide maintenance to his divorced wife even beyond the iddat period, if she is unable to sustain herself. The judgment firmly established that the husband's responsibility under the then Section 125 CrPC (now Section 144 BNSS) is independent of personal laws and remains applicable so long as the woman remains indigent.

Justice Chandrachud, writing for the bench, highlighted that the constitutional guarantees of equality and dignity override personal law provisions when they come into conflict with basic human rights. This case became a landmark example of judicial activism, where the Court prioritized the uniform application of secular law to uphold the right to maintenance and financial security for divorced Muslim women.

The rulings in both *Bai Tahira* and *Shah Bano* underscore the principle that **Section 144 of BNSS, 2023**, like its predecessor, continues to serve as a crucial protective mechanism for women, irrespective of religious affiliation. It aims to ensure that no woman, whether married or divorced, is left in destitution simply because of rigid interpretations of personal laws. These cases laid the foundation for later debates on uniform civil code and gender justice within India's plural legal system.

⁸ AIR 1985, 2 SCC 556

CONCLUSION AND SUGGESTIONS

The judicial approach towards Muslim women in India has significantly evolved, emphasizing gender justice and equality. The judiciary has played a crucial role in interpreting Muslim personal laws in alignment with constitutional principles. While significant rulings like the Shayara Bano case have helped in securing rights for Muslim women, inconsistencies in personal laws still exist. The Supreme Court has repeatedly stressed the importance of upholding fundamental rights over archaic practices. However, legislative reforms are necessary to ensure a uniform and just legal framework for Muslim women in India. There is a pressing need to eliminate ambiguities in personal laws, particularly in matters of marriage, divorce, and maintenance. The codification of Muslim personal laws with constitutional safeguards will provide clarity and consistency. Legal awareness among Muslim women should be promoted to help them understand and exercise their rights effectively. Enhanced access to legal aid and counseling centers should be encouraged to provide necessary support. The judiciary, legislature, and civil society must work collaboratively to bridge the gap between religious traditions and constitutional values, ensuring that Muslim women enjoy their rightful place in society with dignity and equality.

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