
CRITICAL ANALYSIS OF THE MODERNISATION OF MUSLIM MATRIMONIAL LAWS

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ABSTRACT

Islamic family laws are the set of rules and laws pertaining to upholding Muslim families that are derived from the Quran, hadith, regulations of Muslim scholars of law, and the Muslim community's ijma. It covers topics such as adulthood, marriage, sexuality, parenthood, adoption and guardianship, descent, misconduct, and other relevant topics. In the early years of Islam, conventional Islamic family law was largely a reflection of the feudal structure of the rural society. Not surprisingly, some of that law's structures and norms have been seen as being out of stride with the realities of modern Muslim society, especially in metropolitan regions where indigenous connections have broken down and feminist institutions have emerged. The issue of the legal foundation for changes has been a major concern for reformists in the Middle East. Given their societal acceptability, changes have needed to be substantiated in accordance with Islamic jurisprudential doctrine in order to be framed as an alternative but still acceptable interpretation of the sharia. Among the various other subjects covered by the Islamic family law, the legal framework that immediately replaced the archaic "hanafi" law was used to amend underage marriages and divorce laws in India. For example, The Dissolution of Muslim Marriages Act, 1939, in accordance with the English Matrimonial Causes Acts, allowed a "hanafi" spouse to seek a legally binding divorce on the common grounds of violence, abandonment etc. The Child Marriage Restraint Act, 1929 forbade marriages of girls below the age of fourteen and males less than sixteen under the threat of punishments. The contrasting envision reveals a range of reformation alternatives. The Hanafi doctrine is on the reverse extreme of the spectral as the most orthodox status, whilst Tunisian reform of law turns to reflect the most liberal alternative.

Thus, this paper shall attempt to throw light upon the journey of Islamic matrimonial laws into its modern legal framework in order to meet the legal

needs of the contemporary world. It shall also attempt to focus on the impact of these reforms on the conservative society that relied upon the taqlid doctrine of Islamic law which firmly adhered to the conservative approach.

Keywords: Islamic Law, Hanafi laws, Shia School, Sunnah, Quran, Marriage, Divorce, Reforms, Taqlid doctrine, Fatwas, Modernization.

INTRODUCTION

Nothing in this world remains static, even the laws are bound to change with the need of the dynamic society. So have the, Islamic laws seen transformational changes and reforms in the past from conventional practices to the present day legislation in order to meet the needs of the contemporary world. A significant component of interpretation rule has moved from individual jurists to the institutional structures of national legislatures as a result of the formalization of Islamic family laws in the 21st century, which is a modification far more significant than the shift to an entirely novel system consisting of articles may appear to indicate. Even if the authorities acknowledge that its legislation does not represent the sole legitimate version of Islamic family laws, by upholding and approving certain laws and customs. It aims to define "family" in accordance with Islamic law in a particular way. The term 'Muslim' is not just restricted to male or female but covers a broader scope of individuals who profess Islam or the one who acknowledges the unity of God and the prophethood of Mohammed. To address current socioeconomic requirements, classical Shariah laws have been altered in numerous different ways. The matter of the constitutional foundation for reform has constituted a significant concern for reformists in the Middle East. Given their social acceptability, changes have needed to be addressed in the context of Islamic jurisprudential doctrine in order to be framed as an alternative but still acceptable interpretation of the law of sharia. The Islamic concept of siyasath, or 'government' which permits the governing body having no constitutional authority in the genuine sense to make regulatory guidelines of two main forms, provided the legal basis for the transformation movement during the initial phases when the conventional doctrine of taqlid had not been officially observed.

The first category addresses process and documentation and confines the sharia court's

jurisdiction by directing them not to consider claims which do not meet specific empirical standards. The subsequent kind of bureaucratic regulation instructed the judiciary to implement a particular regulation out of the various alternatives. This order gave political authority the liberty to choose the perspective that was believed to be the most appropriate for the current societal scenario among those held by various schools of thought and legal professionals. For instance, the old "Hanafi" legislation that was in effect prohibited a wife from requesting a divorce based on any marriage offense perpetrated by the husband, which put neglected or mistreated spouses through severe suffering. However, Maliki law acknowledged a wife's right to a divorce if her husband had been irrational or had abandoned her, or had failed to pay alimony or maintenance.

Regarding the actual implications of legislative changes, there is an enormous social gap between the majority of the traditional community and the minority of westernized and contemporary citizens in many Muslim nations. For conservative individuals in rural regions or Muslim skeptics whose geographically defined and social dispersion transcends all visible bounds, initiatives that attempt to meet the ideals of modern metropolitan culture have a restricted significance. In pre-Islamic Arabia, people were distinguished into various tribes that were relatively hostile to one another. This period lacked a proper system of governance, there was no room for justice, equity and good conscience. The pre-Islamic period was gripped with immorality with no provision of any form of regulation to govern the society. For example, There was no state legal system, the duties of husband and wife were not laid down, undefined position of women and slaves in the society etc.

Muslim law in the pre-Islamic Arabia was nothing but a period of blatant ignorance especially in regards to the plight of women in society. Women at that period were completely subjugated, they merely existed without any active role in the community. Women had no choice but to be bound by the obligations of the patriarchal society in which she had no say. When a muslim dies, his spouse was to be inherited by the relatives of the deceased as though she was nothing but an article. Besides this, there was no limit on the number of wives a male could possess. Even in regards to inheritance, if a female died her property could be inherited by a male only, while women and minors were excluded from inheritance. The main objective of all these reforms in the Islamic law is to provide a remedy to the women who have been

unjustly treated by the conservative customs that hold no reasonability and to raise a voice for them in order to ensure the fundamental right to equality is ultimately sustained. Numerous institutions with a feminism-focused Muslim leadership collaborate with Muslim women all around the nation. These NGOs have been collaborating with feminist initiatives to oppose unfair laws and advance the adoption of legislation that are gender-just for all women.

Further, major reforms in muslim law emphasized on the alimony rights and the divorce rights that lay at the discretion of males alone. For example, The three-month iddat period following the first pronouncement of divorce, throughout which the former spouse is anticipated to stay in isolation, is the only time that Muslim men are legally required to support their ex-wives. After that time, it is up to the ex-wife's children or regional wakf boards (Muslim social services institutions primarily supported by private contributions) to take care of her if she becomes indigent. This practice continued until the 1970s.

A greater proportion of legislators emphasized state action to tackle some of the inequities in the field of family law and marital life as a result of continuous sociopolitical and cultural developments, even if they did not fully heed all calls to reduce gender disparity. Particularly courts grew more inclined to deviating from precedent to safeguard women in marriage disputes.

Courts used rather unique interpretation of legal statutes and collective ethical precedent to support change, as well as the fundamental freedoms to life, liberty, integrity, and fairness recognised by the Indian constitution.

Thus, the development of a practical perspective on the purpose of legislation within a community has been the one remarkable accomplishment of Islamic jurisprudence during the past few decades. The philosophy of taqlid had placed a contemplative and idealist approach on regulations, but contemporary jurisprudence views its role as finding solutions to the issues facing modern society.

OBJECTIVES OF THE STUDY

The objectives that this study shall attempt to serve is firstly to shed light upon various Islamic

matrimonial laws and develop a deep understanding of how these laws have modernized in order to address the needs of contemporary society. It shall also try to recommend certain changes that shall be incorporated into the muslim matrimonial laws to establish the rights and duties of individuals bound by espousal such that social and religious institutions like marriage are also governed by the rule of law.

RESEARCH PROBLEM

1. Whether the doctrine of taqlid in Islamic laws has applicability to address the matrimonial disputes in modern society.
2. Examining the emergence of Islamic laws protracted with the doctrine of taqlid into its modern stage to adapt to the needs of the contemporary world.

RESEARCH METHODOLOGY

In order to conduct this study, the researcher used the doctrinal technique of research, which involves conducting library-based research by referencing articles, books, journals, and case studies.

LITERATURE REVIEW

India is home to many different social, sacred, and cultural communities, each of which has unique traits, viewpoints, and methods for approaching the issue of Indian laws pertaining to marriage. The variety of Indian matrimonial laws is one of its key distinguishing features. Regardless of a person's faith, there is no universally applicable law that governs all marriage relationships. Islam views marriage as the cornerstone of a personal and societal edifice, serving as the fundamental building block of the entire society. One of the fundamental human rights acclaimed by all cultures is the freedom to get married and establish a household of one's own. It has often been acknowledged as an intrinsic component of the basic liberty of life according to Article 21 of the Indian Constitution by the judicial system. Prospective brides and grooms must adhere to specific customs and regulations that the matrimonial laws bind upon them.

According to the well-known and ongoing claim that family law is integrally linked with religions

in Muslim cultures, "Muslims considered this norm as reflecting particularly of the very threadbare fabric of their religion."¹ And marriage, primarily being a social and religious institution, shall be governed by established matrimonial laws to regulate relation between individuals for the purpose of executing civil and religious agreement whereby two individuals are united to establish household, procreating progeny and providing welfare and protection to the children.

Nikah in its primitive sense, refers to carnal conjunctions. It signifies conjunction and in the language of law it implies specific contract to legalize generation. It is a matrimonial contract not a sacrament, between man and woman within the Islamic community connoting permanent companionship of the two at the exclusion of others.

In the book, *Gender and Islamic Law in Ottoman Syria*, written by Judith Tucker, The approach to the subject of "Muslim" family law is utterly detached, almost inadvertently. This seems to be concluded. If a well-known body of law from an esteemed source of command is no longer available to explain and even extend it, then individuals with unconventional intellectual or professional backgrounds could participate in the discussion. It addresses citizenship as a focal point to study Muslim reform of family laws initiatives or to explore other topics, including feminism, through the prism of family law.²

The connotations of the dower are well examined in Pascale Fournier's "Islamic Marriages across western courts" as it travels to various courts and legal systems across the globe. There appears that there is only one thing that is extremely significant that would not ordinarily be included in the typical marriage registration in Muslim marital contracts in the English courts, and that is the dower.³ It lays emphasis on the preference of courts in the contemporary world that tend to invoke the norms and practices of contractual legislation instead of matrimonial laws since marriage in Islam is viewed as a contract rather than a sacrament as per most jurists.

Further, the question of whether the contract is legitimate is very significant since, in Schacht's words, "marriage is an agreement of civil legislation" and that this agreement between two parties

¹ Anderson, Michael. "Islamic Law and the Colonial Encounter in British India." In *Islamic Family Law*, Chibli Mallat and Jane Connors, 205-223. London: Graham and Trotman, 1990.

² Tucker, Judith E. *In the House of the Law. Gender and Islamic Law in Ottoman Syria and Palestine*. Berkeley: University of California Press, 1998.

³ Fournier, Pascale, *Muslim Marriage in the Western Courts*, Farham, Surrey: Ashgate, 2010.

would only be enforceable in establishing marriage. This means that it does not constitute a sacrament and that no sacramental ceremony (by itself) or the participation of spiritual individuals is necessary for the proper fulfillment of this contract.⁴

Although the legality associated with marriage is addressed under the framework of ‘muamalat’ (social transaction), legal professionals "that usually describe marriage as a form of devotion (ibada) ", rendering marriage one of the comparatively few agreement in ‘fiqh’ that transcends that boundary defining ‘ibadat’ and ‘muamalat’.

Moreover, while talking about modernization, the portion of legislation that requires major reforms is in regards to upholding the rights of women in the Islamic law. Lena Larsen in her work about the role of gender equality and rights of women in Islamic laws, offers a rationale for an alternative interpretation of pre-Islamic events and contends that the jurists of the early centuries of Islam, acting within the constraints of their respective time and culture, limited the liberties of women as a whole (and in the context of families particularly) in ways that went beyond the teachings of the Quran.⁵ Muslim law in the pre-Islamic period was nothing but a period of blatant ignorance especially in regards to the plight of women in society. Women at that period were completely subjugated, they merely existed without any active role in the community. Women had no choice but to be bound by the obligations of the patriarchal society in which she had no say. When a muslim dies, his spouse was to be inherited by the relatives of the deceased as though she was nothing but an article. Besides this, there was no limit on the number of wives a male could possess. Even in regards to inheritance, if a female died her property could be inherited by a male only, while women and minors were excluded from inheritance. Since the beginning of the 20th century, much research has been done over women's right to inheritance.

Overall, most of the customs that form an integral part of muslim matrimonial laws are gripped by conservative norms that must be altered in order to sustain a just society. Conservative Muslim resistance was muted by the limited scope of the constitutional alteration that rendered legislative reversal of these measures difficult. It implies that it is doubtful that the legal system would apply

⁴ Mir-Hosseni 2003, Shaheen Ali 1996,1974, 89-90.

⁵ Larsen, Lena. "Men are the Protectors and Maintainers of Women..." Three Fatwas on Spousal Roles and Rights." In *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, eds. Ziba Mir-Hosseini, Mulki Al-Sharmani and Jana Rumminger, 197-218. London: Oneworld, 2015

the egalitarian principles of the constitution to comprehensively rectify the gender based inequalities in the Islamic law and in other family laws.

DOCTRINE OF TAQLID IN ISLAMIC LAWS

Taqlid refers to literally as to mimic or emulate another. However, in terms of Islamic law, it implies to adhere to a mujtahid's interpretation of the prophet's teachings and commandments. An individual who is knowledgeable in Islamic law is known as a mujtahid. Taqlid is the notion that some scholars define as the acceptance by certain Muslims of the judgment of jurists as binding obligation on them and to obey it without questioning. Muslims are commanded by the Quran to obtain the advice of learned persons in areas where they lack understanding.

All Muslims must adhere to Islamic law as it is described in the Quran and the Sunnah. Any novel regulation that seeks to legally bind Muslims must abide by the requirements established by the Quran and Sunnah and be ratified by them; else Muslims could stumble into the trap that the Quran vehemently disapproves of in other religious communities, where it is stated that those who contest the revelation of Allah without any form of authority that is given to them are to be immensely despised by individuals who believe.⁶

However, in order to adapt to shifting human situations, the Quranic principles have enormous potential for growth and advancement over time. When Baghdad was in the year 656 A.H., taqlid began in the latter part of the subsequent century of the Islamic calendar. It was a time when judges embraced the teachings of the illustrious legal schools.

Regardless of being aware that they had access to the Quran and all the Prophet's teachings at that point in time, jurists of this era did not have the opportunity to engage in ijtiḥād. Additionally, the jurists have a responsibility to engage in autonomous ijtiḥād. However, the bulk of these jurists believed that their methods of exercising ijtiḥād were far inferior to those of the jurists who came before them.

One of the reasons for Taqlid was the assertion by some scholars of the time that they had the

⁶ Ibid

intelligence to carry out *ijtihad*. Out of concern that these individuals could deceive uninformed Muslims, other scholars made the assertion that no one possessed the intelligence to execute *ijtihad* while arguing that what the former scholars had left was sufficient.

A number of outstanding legal academics engaged in autonomous interpretations of the scriptures in the early era, executing their work by using legal techniques including analogous argumentation. With the rise of judicial schools focused on some of the finest scholars in the subsequent centuries, it became widely accepted that all significant legal issues had been resolved and that future generations no longer had the capacity to unilaterally comprehend the statutes of law. *Ijtihad* is, in fact, permitted till the conclusion of this specific term. Legal reasoning is permissible if a person satisfies the prerequisites above, but it is prohibited if those requirements are not met.

By contrast, Hanafi scholars and those who adhere to its teachings (such as the contemporary sect of the Wahabis) claim that one must go back to the original sources in order to independently assess their purpose. Muslim contemporary thinkers, most notably Jamal al-din al-Afgani and Muhammad Abul, participated in fierce debates against *taqlid* in the later half of the nineteenth century because they believed it encouraged the legal and economic stagnation of society.

As per the teachings of the prophet if any mujtahid could interpret or conduct *ijtihad* successfully, he shall be rewarded twice else he shall be rewarded once. Since it is believed that those who had the potential to rightly interpret the revelations of Allah are better individuals than those who simply obey to it.

Taqlid is really permitted in Islam as long as Islamic principles are upheld properly. All four schools' imams agreed that each time their beliefs diverge from the Quran or the Hadith, they should be disregarded since there is absolutely nothing superior to these holy scriptures.

So that Muslims in all stages of life may comprehend the Shariah in accordance with the present challenges and circumstances in their respective communities to address those issues, *ijtihad* and *taqlid* will always be available to Muslims from successive generations to generation. However, such interpretations and *taqlid* must always be based on the teachings of the Quran and Sunnah.

MUSLIM LEGAL SYSTEM AND MODERN VALUES

Among the different sources of Islam, the sharia is known to be most conservative. Sharia is Arabic for "the correct path taken". It is the term often used in Islam to describe the divine revelations that Muslims are obligated to abide by in order to lead upright lives and become closer to the almighty. Shariah is retrieved from the Quran, which is considered to be the exact commandment of the god's will, and 'hadith', which are numerous collections of sayings and customs ascribed by the Prophet Mohammed and which together constitute the 'Sunna'. Many of the customs, practices and texts included in these scriptures originated in both Christianity and Judaism, two other significant religions that are associated with Abraham. The 'Sunna', according to the 'Shiite Muslims', consist of certain prophet's preaching and certain practices. However, the traditions of interpreting the various provisions by Muslim jurists and scholars are mainly included in sharia. Islamic law and sharia are not exactly the same and there lies a fine line of deference between the two.

Muslims believe that Islamic laws constitute those that depend on interpretation of sharia, whereas sharia is said to be associated with the ideal, irreplaceable principles and norms comprehended by Almighty. Arabic language, legal concepts, competence, and in-depth understanding of the holy Quran and Sunnah are all essential for accurate and precise interpretation of sharia. However, the degree of literacy and the amount of time required to become an Islamic jurist (mujtahid) has not been prescribed by contemporary Islamic schools. Furthermore, sharia interpretations might differ contingent upon who undertakes to interpret these.

Islamic law differs across various nations, these are shaped by regional norms, and often change with time. Fatwas are legal interpretations that jurists make in accordance with demands from Muslims or authorities requesting assistance on a particular topic. 'Fatwas' are in relation to 'Sharia'. In 'Shiite Islam', adherents must abide by the regulations of the chosen spiritual leader; while in 'Sunni Islam', the fatwas are only recommendations.

Debate over modernisation of corporal punishments- Conventional deductions of the muslim law confer various penalties as well as sanctions that are deemed severe as compared to those in most contemporary legal systems for numerous offenses and conducts against the society, such as

stealing, slander, and immorality. The punishments, consisting of execution, battering, and amputations, are among them. (Stoning, which is an offense taken from the text of 'Deuteronomy' in the respective 'Hebrew and Christian' Bibles, however is not mentioned in the Quran.)

Scholars believe that such sanctions are usually intended to serve as a deterrence instead of having a punitive impact because they should attain greater substantive requirements for its application. Despite this, several nations with a majority of Muslims are still use corporal punishment in accordance with the state law; most of Islamic countries presently do not apply such sanctions. Countries across the globe, regardless of regional disparities and religious diversity, also refrain from carrying out such penalties because of overall global opposition.

Jihad'- Many people who are not Muslims think that this phrase, which means "to strive" only alludes to an offensive battle by Muslim radicals against non-Muslims. In contrast, as a principle of the Shariah it pertains to an attempt to fulfill a moral goal, such as engaging in an armed battle against discrimination, with an intention to improve an individual's ethics, or in order to pursue knowledge. Critics suggest that 'Sharia' compliant Islamic nations are more hostile to atheists and followers of other faiths and religions. According to various legal scholars, premodern limitations on individuals who do not belong to Muslim minorities in Muslim countries, which were reinforced by some 'hadiths' subsequently included into the Muslim scripture and calling for the death sentence for Muslims who apostatize, are substantially to be blamed for this prejudice. Furthermore, religious minorities in certain Muslim nations face discrimination and have less protection under the law than other groups.

Debate over Modernisation of Women Rights- Muslim law in the pre-Islamic period was nothing but a period of blatant ignorance especially in regards to the plight of women in society. Women at that period were completely subjugated, they merely existed without any active role in the community. Women had no choice but to be bound by the obligations of the patriarchal society in which she had no say.

Although the 'Quran' establishes that both women and men are ethically as well as morally equal, it also makes clear that females have certain responsibilities and roles in the household and in the society. Some nations employ Islamic law as a tool to drastically restrict women's liberties by

mandating what they should wear, how they should conduct themselves, forbidding them from entering particular places, or isolating them in such areas. Some sharia principles and sections pertain exclusively to women and their role in society. The modesty laws, according to its detractors, hinder women's access to higher education and career possibilities. Other traditions and customary practices forbid women from having their own opinion in the institution of marriages and divorces, which further encourages underage marriages and violence against women. Even in locations where discriminatory regulations have been overturned, mentalities and behaviors can be difficult to alter or even stubborn to do so.

Further, the conservative wing has exploited the one-sided triple talaq practice as a weapon for demeaning Muslims. The faith does acknowledge that marriages can end due to incompatibility or for no apparent reason of either spouse, and Muslims embrace a number of divorce choices. Our secular laws do not recognise a divorce without cause or the irretrievable dissolution of a marriage. All types of Islamic divorce must involve an effort at mediation and arbitration in accordance with Quranic application.

The abolition of triple talaq in recent times has thus laid down a setting step in liberating muslim women from the shackles of the blatant Islamic principles.⁷ This divorce process went against basic moral precepts like equal rights for women and secularism. It describes the offense that led to the constitutional approval, a blatant and inexcusable offense and casts doubt on women's dignity, righteousness, and the nation's basic human rights protections for Muslim women. One can contend that it was wrong for the triple talaq to continue to be used in a liberal and secular nation like India. Muslim women will practically have the same liberties as men and shall no longer be concerned of the Talaq since a legislation banning triple talaq is passed. The passing of this law will cause organizations that advocate for Muslims, such as the Muslim Personal Legislation Board, to alter their stances on other aspects of society.

Religious patriarchs have exploited their own faiths as a means of denying women's rights. Muslims who are conservative will protest loudly against giving Muslim women rights. Consideration of extremists' viewpoints as those of the whole society simply serves to exacerbate

⁷ *Shayara Bano vs Union Of India and Ors*, 2017, 9 SCC

divides and obscures the fights that these groups of women have engaged in for their liberties. We must recognise that women's voices matter just as much as those of other members of a community.

Case Laws that reformed the status of muslim matrimonial laws-

Imambandi v. Mutsaddi⁸

Facts of the case-

In this instance, the Mumbai High Court was dealing with an inheritance dispute between 3 wives of a Muslim person who had died. The appellant asserted that she was a parent of the child, the child's legitimate guardian, and consequently entitled to a part of the child's inheritance. In this instance, the idea of custody and the allocation of assets based on guardianship are discussed.

Judgment-

In this case it was held that the man is the sole guardian of the child or its grandfather or any paternal relative who is authorized to be the guardian and thus the wife would not be entitled to any part of inheritance and would not be considered as the sole guardian of the child.

Mohammed Ahmed v Shah Bano⁹

Facts of the case-

The principles of maintenance and the dower are essential following the defendant's divorce by triple talaq. The problem started when she asked her spouse for maintenance. In Muslim traditions, a woman has the right to Mehar, also known as a dower, which is given to her as a sign of gratitude and intended for her to use post the marriage or in the event that her spouse passes away. The issue raised in the above case was whether the code of civil procedure would apply in the personal matters of dispute.

⁸ Imambadi v. Mutsadii (1918) 6 20 Bom. L. R 1022

⁹ Mohammed Ahmed vs. Shah Bano and Anr, 1985 (3) SCR 844.

Judgment-

Considering the petition was filed in accordance with the provisions of Criminal process, the matter was sustainable before the supreme court, and the court determined that the Muslim lady should be entitled to financial support even beyond the Iddat period. However, the Muslim Women (Protection of Right on Marriage Divorce) Act, stated that Muslim men shall not be required to support their spouses beyond the Iddat period, however, overruled this judgment.

Noor Sabha Khatoon v Mohammed Qasim¹⁰**Facts of the case-**

The case especially addresses the idea of support for a child from their marriage after both parents have divorced. On account of the marriage between the appellant and the defendant, their three kids were born as a result. Without divorcing her, the petitioner's spouse left her with her children and later got married again. Later, the wife requested alimentary assistance for herself and her three children under Section 125 CrPC, and her request was approved. After divorcing her, the husband petitioned the High Court on the grounds that the Muslim Women Protection Act, 1986 should be in effect, which states that a man who has divorced is no longer required to support his spouse and kids after a period of two years after they were born.

Judgment-

The court ruled that under Section 125 of the Code of Criminal Procedure and as per the provisions of the Muslim Woman (Protection of Right on Divorce Act), children from divorce have the right to claim support. Until the child reaches the age of majority, when he must maintain and provide for himself, the father is obligated to make maintenance payments to the child. The father will also be responsible for supporting his daughter until she gets married.

Chand Patel v. bismillah Begum¹¹

¹⁰ Noor Sabah Khatoon vs. Mohammed Qasim, AIR 1997 SC 3280

¹¹ Chand Patel vs. bismillah Begum (2008) 4 SCC 774.

Facts of the case-

The appellant Chand Begum filed an alimony suit before the magistrate on behalf of self and her minor child on the grounds that since the defendant married his sister, she has been abandoned and was not being financially supported.

The issue raised in the above case was whether the marriage of the husband to his sister was valid or voidable. Also, whether he would be liable to maintain the wife or not.

Judgment-

The Supreme Court ruled that a man's second marriage is valid. It was suggested that this marriage would only be in a strange way. Additionally, it was proposed that the offspring of such a marriage would be eligible to his parental inheritance. It was additionally stated that a marriage when the woman is a Hindu would also entitle the kid born of such a union to inherit the properties. It further noted that marriages that occurred without witness or within the Iddat period that included the parties' prior wives are the only situations where the marriage amongst two individuals can be deemed invalid.

Shayara Bano v. Union of India and others¹²-**Facts of the case-**

This is one the most important cases that has played a revolutionary role in transforming muslim matrimonial laws since it is among the very few muslim laws that recognise the plight of women. The particulars of the case call for a woman who was resident of uttarakhand to stand up for the plight of several Muslim women. The petitioner had an abusive marriage, and her spouse granted her a triple talaq (talaq-ul-biddat) divorce.

The main issue raised in the above case was whether triple talaq was unconstitutional since it was violative of basic fundamental rights enshrined under article 14, 19 and 21.

¹² Shayara Bano vs. Union of India and ors, writ petition no. 118, 2016.

Judgment-

Considering only the husband in a marriage has the authority to apply triple talaq and the wife has no voice in the matter, the Supreme Court ruled that this custom is violative of Article 14 and goes against the idea of equality. Article 19 mandates that women must also have equal say and an opinion in the divorce process. Additionally, because this idea limits the wife's freedom, article 21—which guarantees the right to life and personal liberty—is also infringed.

The aforementioned case laws clearly show how Muslim marriage law has changed as a result of numerous rulings.

These are but a few of the numerous, profound reforms that have been made to Islamic family law. However, the entire legal reform process still has significant theoretical and practical issues to work through. Reinterpreting the foundational scriptures of the divine revelation is still fiercely rejected by a firm core of orthodox belief. The traditionalists contend that the scriptures are being misinterpreted in order to serve the reformer's anticipated goals, and that as a result, in contrast to the essential principles of Islam, social desirability, not God's will, ultimately determines the law.

Recommendations and Conclusion

The Islamic principles have enormous potential for growth and advancement via interpretation over time to suit the shifting needs of mankind. With the help of the judiciary, Muslim divorce and alimony laws have somewhat converged with Hindu law, which governs around the majority of the Indian population. The courts did not systematically eliminate the gender disparities in family law in connection to the fundamental rights of life, liberty, and equality, but instead only made amendments to maintenance and divorce law that they believed could be justified by Islamic conventional tradition. They did not accord Muslim women the right to unilaterally declare divorce or the right to receive a share in spousal property following divorce, or they did not treat daughters and sons equally when it came to the right to inherit. As an example, they did not consider Muslim law immaterial regarding divorce or maintenance among Muslims. A greater proportion of legislators emphasized state action to tackle some of the inequities in the subject matter involving family law and matrimonial life as a result of continuous sociopolitical and cultural developments, even if they did not fully heed all calls to reduce gender disparity. Particularly courts grew more

inclined to deviating from precedent to safeguard women in marriage disputes. Conservative Muslim resistance was offset by the limited scope of the judicial change, making legislative reversal of these measures difficult. It implies that it is doubtful that the judiciary would apply the egalitarian ideals of the Indian constitution to comprehensively address the gender inequities in Muslim law and in other family laws. The development of a practical perspective on the function of law in society has been the one outstanding accomplishment of Islamic jurisprudence during the past few decades. The philosophy of taqlid had placed an introspective and idealistic approach on law, but today's jurisprudence views its role as finding solutions to the issues facing modern society. After an extended period of passiveness, it has begun to embrace the mindset of the first Muslim jurists once more. These individuals sought to connect the directives of the divine intent to their personal social context. There are several conceptual and pragmatic problems with the overall law reform process that need to be resolved. A strong core of conservative belief continues to vehemently oppose any reinterpretation of the founding texts of the divine revelations. In contrast to the core tenets of Islam, conservatives claim that the teachings are being misconstrued in order to further the reformers' predicted aims, arguing that as a consequence, societal appeal, not the will of Allah, ultimately defines the law. The evolution that was traced back to many schools following the Prophet's passing revealed to us the autonomous character of thought based on the guidelines of the Quran. The Hadiths, Sharia law, and Fiqh all played important roles in the growth of Islam by rescuing it from the primitive, antiquated way of thinking.

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