
THE INTERSECTION OF RELIGION, CULTURE, AND LAW: IMPLICATIONS FOR DIVORCE PRACTICES IN MUSLIM COMMUNITIES

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ABSTRACT

This research article looks into the complex dynamics at the confluence of religion, culture, and law, with a specific focus on the implications for divorce customs in Muslim communities. The study explains the intricate interplay that shapes marital breakup among Muslims by conducting a thorough examination of Islamic principles, cultural practices, and legal systems. Drawing on case studies, comparative analyses, and theoretical insights, the study digs into the intricate elements that influence divorce processes, such as Sharia law¹, cultural norms, and gender dynamics. By critically examining these intersections, the study hopes to improve knowledge of divorce procedures in Muslim communities and contribute to continuing discussions about religious, cultural, and legal heterogeneity in modern nations.

Keywords: Divorce, History, Islamic period, medieval period, colonial period, contemporary time, intersection between law, religion, culture and cases related to it.

¹ Islamic law

Introduction:

A major and frequently highly charged event, the dissolution of a marriage has a tremendous effect on people, families, and communities. The processes and results of marital breakup are shaped in a variety of intricate ways by the distinct convergence of religious, cultural, and legal forces that exist within Muslim communities. By examining the complex dynamics of divorce procedures in Muslim communities, this research article seeks to provide insight on the ramifications of the interaction between law, culture and religion.

The implementation of Sharia law, which is based on the Quran and the Sunnah², is the fundamental component of divorce procedures in Muslim societies. Sharia law offers a thorough framework for many areas of life, such as getting married and getting divorced. Islamic law establishes precise guidelines, protocols, and grounds for divorce, demonstrating a harmony between preserving the sacredness of matrimony and offering channels for breakup in situations with irreconcilable disagreements. However, different schools of thought³ and cultural contexts might interpret and apply Sharia law differently, leading to a variety of procedures and outcomes in Muslim divorce.

Within Muslim communities, divorce practices are significantly shaped by cultural norms and traditions. Sharia law provide the legal framework, but how divorce is viewed, started, and handled is frequently influenced by cultural norms and societal expectations. These cultural influences can take many different forms, such as the stigma associated with divorce, especially for women, or the mediation of divorce problems by members of the extended family. The rights and experiences of people going through the divorce process are impacted by the intersections of patriarchal norms, gender dynamics, and cultural traditions.

Muslim communities have a complex legal environment around divorce due to the interaction of national laws, Sharia regulations, and customs. Muslim-majority nations may have hybrid legal frameworks that regulate divorce processes by incorporating Sharia law aspects into family law regulations. The degree to which Sharia laws are enacted and upheld, however, varies greatly depending on political, social, and historical circumstances. On the other hand, Muslim communities living in Western cultures frequently face difficulties getting Sharia-

² The customs of the Prophet Muhammad

³ Madhahib

based divorces recognized and upheld by secular legal systems, which raises concerns about legal pluralism, minority rights, and cultural adaptation.

In light of this, Muslim communities' divorce customs give rise to a wide range of difficulties and disputes. Due to patriarchal interpretations of religious scriptures, cultural customs, and legal frameworks, women may experience intersecting kinds of discrimination and disadvantage throughout divorce procedures. Debates and reforms surrounding topics like polygamy, child custody, and marital property rights are continuing, reflecting changes in social norms and hopes for gender equality and justice.

Even though Muslim divorce laws are complicated and difficult, there are new developments and reform initiatives that try to address structural injustices and enhance procedural justice. These programs cover a variety of tactics, such as community-based interventions, educational campaigns, and legal reforms, with the goals of empowering people, encouraging gender-sensitive divorce practices, and creating more inclusivity within Muslim communities.

What is sharia law?

The Islamic legal system known as Sharia law, or simply Sharia, is based on the Quran⁴ and the Hadith⁵, or the Prophet Muhammad's sayings and deeds that are preserved in the scriptures. It acts as Muslims' moral and ethical code, directing their social interactions, personal behaviour, and the administration of Islamic society. Sharia covers a broad spectrum of moral, legal, and ethical precepts that touch on many facets of life, such as criminal law, family law, business law, and individual conduct.

Sharia is fundamentally founded on the ideas of fairness, compassion, and justice, with the ultimate objective of advancing the welfare and well-being of both people and society at large. It is frequently referred to as a complete and all-encompassing legal system that unifies religion teachings with moral and legal principles to offer direction on both spiritual and temporal issues.

Sharia offers rules for marriage, divorce, inheritance, and child custody, among other things, in the context of family law. These rules, which specify the rights and obligations of parents,

⁴ Holy book

⁵ traditions of the prophet Muhammad

children, and spouses within the family, are taken from Hadith and verses in the Quran. Sharia, for instance, specifies particular requirements and processes for marriage contracts, such as the presence of witnesses, the payment of dowry⁶, and the agreement of both parties.

Sharia law is a complete legal framework that arises from Islamic religious teachings and customs. It incorporates justice, equity, and compassion as guiding principles for social interactions, personal behaviour, and Muslim society's government. It offers rules for many facets of life, such as criminal law, family law, business law, and conduct in private, but it also permits interpretation and adoption to diverse cultural and historical contexts.

History:

Within Muslim societies, divorce history is a complex over fourteen centuries with religious teachings, cultural customs, and socio-political developments. Divorce has been interpreted, practiced, and governed by different legal frameworks from the early days of Islam to the present. This is because religious precepts, cultural norms, and historical circumstances have all interacted dynamically throughout history. The goal of this essay is to present a thorough historical analysis of Muslim societies' divorce customs, following their development from the time of the Prophet Muhammad to the present.

- **Early Islamic Period:**

Islam's divorce laws have their roots in the revelation of the Quran during the lifetime of the Prophet Muhammad. The divorce-related verses in the Quran include instructions for ending a marriage, highlighting the significance of compassion, justice, and fairness in the procedure. While Surah An-Nisa⁷ discusses the rights and obligations of spouses in marital affairs, Surah At-Talaq⁸ describes the processes and requirements for divorce. The Sunnah, which consists of the sayings and deeds of the Prophet Muhammad, goes into more detail about how Islamic principles might be applied in divorce cases.

In the initial days of Islamic history, the Prophet Muhammad's precedents and the Quran's prohibitions largely dominated divorce procedures. As academics attempted to understand and apply Islamic principles to other parts of life, such as marriage and divorce, Islamic

⁶ mahr

⁷ The Women

⁸ The Divorce

jurisprudence, or *fiqh*⁹, started to take shape. Different schools of thought arose, each with its own interpretation of the Sunnah and the Quran, as well as Sharia law and divorce procedures.

- **Medieval Period:**

Islamic communities saw the institutionalization and regulation of divorce procedures under Sharia law during the Middle Ages. Muslim jurists went into great detail about what constitutes a valid divorce, what spouses' rights and responsibilities are, and how divorce issues are resolved. In areas with most Muslims, family law courts, or qadi courts, were formed to supervise marriage cases and dispense justice in accordance with Islamic law.

Divorce laws were shaped in large part by the Ottoman Empire throughout its extensive lands. Ottoman jurists used regional customs and Islamic doctrine to regulate and codify divorce laws. The Ottoman legal system allowed for both delegated divorce (*khula*¹⁰) and judicial divorce (*talaq*), enabling couples to dissolve their union in a variety of ways based on the circumstances and grounds for divorce.

- **Colonial Era:**

Divorce customs underwent substantial changes throughout the colonial era as a result of the imposition of European legal systems in many areas with most Muslims. Colonial powers imposed secular institutions and regulations that frequently deviated from Islamic law, leading to legal plurality and competing jurisdictions when it comes to family law issues. While Muslim communities continued to follow Sharia law in questions of personal status, colonial legal systems had a complex impact on divorce customs and legal standards.

For instance, the Indian Succession Act of 1865 and the Indian Divorce Act of 1869 gave non-Muslims access to secular divorce courts in British India, while Sharia law continued to apply to Muslims regarding matters of personal status. Tensions within multicultural cultures were exacerbated by the differences in divorce procedures between Muslims and non-Muslims brought about by this legal split.

⁹ Deep and Comprehensive understanding

¹⁰ the right of a Muslim women to give a divorce to her husband unilaterally

- **Modern Era:**

Muslim countries have struggled in the contemporary era to balance the tenets of Islam with the demands of modernity, such as shifting legal frameworks, gender roles, and social standards. In Muslim-majority nations, the twentieth century saw substantial family law reforms and discussions centred on modernizing divorce processes while adhering to Islamic norms.

For example, Egypt's adoption of secular legal concepts to govern matrimonial problems with the Khedival Decree in 1915 and the subsequent creation of family courts was a dramatic break from traditional Islamic jurisprudence. Similar to this, Turkey saw a drastic departure from Ottoman-era customs when the Swiss Civil Code was adopted in 1926, outlawing Sharia courts and replacing Islamic family law with a secular legal system.

- **Contemporary Times:**

Muslim communities' divorce customs are still evolving in the modern day in response to shifting social, political, and economic conditions. Muslim-majority nations have been at the forefront of continuous discussions and changes to family law, aimed at resolving matters like child custody, marital property rights, polygamy¹¹. Tensions between religious conservatives who support the maintenance of customary practices and reformists who support gender equality and procedural justice in divorce cases have frequently followed these reforms.

Muslim communities in Western nations encounter particular difficulties with regard to divorce procedures, such as problems with the legal recognition and implementation of divorces based on Sharia under secular legal frameworks. The emergence of Sharia councils and arbitration tribunals in nations like the UK has spurred discussions about minority rights, legal pluralism, and cultural adaptation, bringing to light the challenges of handling divorce in multicultural settings.

The way that divorce has historically been handled in Muslim communities is evidence of the way that law, culture, and religion have interacted over time. Divorce has been the subject of changing legal frameworks, practices, and interpretations from the early days of Islam to the present. These changes have been influenced by a wide range of elements, such as

¹¹ The custom of having more than one wife at the same time

sociopolitical events, cultural customs, and religious teachings. Following this historical path helps us understand the subtleties and complexity of divorce procedures in Muslim communities, highlighting the continued importance of Islamic values and the pursuit of justice and equity in marriage.

Intersection Between Law, Religion, Culture:

The confluence of religion, law, and culture is a Multidimensional phenomenon that has a significant impact on communities across the globe. This complex dynamic affects many facets of life, such as family relationships, governance, and human rights, by forming legal systems, social norms¹², and individual conduct. In order to shape societies and people's lives, legal frameworks, religious convictions, and cultural practices interact, overlap, and occasionally even come into conflict. This study delves into the mechanics of this intersection.

- **Legal Frameworks and Religion:**

Throughout history, there has been a tight relationship between law and religion, with legal systems frequently being founded on religious concepts. The idea that divine authority supports human administration is reflected in the fact that laws are derived from religious books, ideologies, and moral teachings in many countries. This is especially true of legal systems that are founded on religion, like Christian canon law and Islamic sharia law.

Sharia law offers a thorough framework for many areas of life, such as family law, criminal law, and personal behaviour. It is derived on the Quran and the teachings of the Prophet Muhammad. It offers rules and processes based on Islamic jurisprudence and regulates things like marriage, divorce, inheritance, and contracts. Similar to this, canon law governs the activities of the Catholic Church and its members, including sacraments, governing bodies, and moral duties. It is founded on biblical teachings and ecclesiastical traditions.

The link between religion and law is dynamic and non-uniform, even though religious legal systems influence legal norms and practices in many nations. The legal principles of secular nations uphold the separation of religion and state, whereby laws are obtained from secular sources and religious views are deemed to be distinct from the process of making legal

¹² Set of rules and regulations that is acceptable in the society

decisions. Ensuring religious freedom, avoiding religious pressure, and upholding the state's impartiality in questions of faith are the goals of this division.

- **Cultural Norms and Legal Systems:**

Legal systems and practices are greatly influenced by culture, which also has an impact on how laws are understood, applied, and upheld. Social views about justice and the law are shaped by cultural norms, beliefs, and traditions, which can have an impact on how fairness, legitimacy, and authority are perceived. Legal professionals and judges frequently base their decisions on social conventions and cultural understandings, which has an impact on legal decision-making as well.

Furthermore, cultural norms and behaviours can occasionally be at odds with the law, especially when those norms collide with more recent legal precedents or human rights standards. Cultural practices that give rise to legal and ethical quandaries include female genital mutilation¹³, child marriage, and honour killings. This is because these traditions frequently transgress the ideals of autonomy, equality, and human dignity that are fundamental to international law.

- **Intersectional Dynamics:**

Law, religion, and culture interact to shape society institutions and people's lived experiences in ways that are complicated and frequently contentious. These dynamics can be seen in a number of areas where conflicting legal, religious, and cultural norms cross paths and occasionally collide, such as family law, criminal justice, and human rights.

For example, religious and cultural customs have a significant impact on child custody agreements, divorce procedures, and marriage customs in the field of family law. While cultural norms may determine gender roles, familial obligations, and inheritance customs, Sharia law controls aspects of personal status, including marriage and divorce, in countries with a majority of Muslims. Similar to this, customs like joint families and arranged marriages collide with legal doctrines drawn from Hindu religious texts and statutory laws in countries where Hindus predominate.

¹³ A traditional harmful practice that involves the partial or total removal of external female genitalia or other injury to female genital organs for non-medical reasons.

The interaction of religion, law, and culture can have a significant impact on the course of and results from legal processes in criminal justice systems. Questions concerning the proper balance between religious freedom and the rule of law are brought up by cases involving blasphemy, apostasy, or violence inspired by religion. These cases require legal authorities to weigh competing needs for justice, religious tolerance, and societal cohesion.

Furthermore, the way that law, religion, and culture interact affects individual liberties and human rights in a big way. Legal safeguards and human rights standards may be ignored or compromised in nations where religious laws or cultural practices discriminate against marginalized groups, such as women, religious minorities, or LGBTQ+¹⁴ people. The conflict between human rights and religious freedom highlights the need for advocacy, discussion, and legislative change to protect everyone's rights and dignity, regardless of their cultural or religious background.

Followed by some case:

- **Mohd. Ahmed Khan v. Shah Bano Begum**¹⁵

In April 1985, the SC delivered a judgement on the maintenance a divorced Muslim women would be entitled to receive from her former husband in this case. It was not a unique case but rather was a ubiquitous case. Although it was the decision of a court, this case was deeply entrenched in the politics of contemporary India. Though the case was a watershed in the protection of women's rights in a largely chauvinistic nation, it also showed how the judgements of courts, which are in fact intended to resolve conflicts, can often transform into sources of conflict themselves.

The constitution bench delivered a unanimous verdict. First, the court alluded to the religious neutrality of Section 125 of the CrPC, stating that whether the spouse was "Hindus or Muslims, Christians or Parsis, Pagans or Heathens" was wholly irrelevant.

Shah Bano Begum, an elderly Muslim woman, was married to Mohammed Ahmad Khan, a lawyer, in 1932. In 1978, after 43 years of marriage, Khan uttered "talaq" (divorce) three times to her in one sitting, invoking the controversial practice of "triple talaq" prevalent in some

¹⁴ Lesbian Gay Bisexual Transgender Queer

¹⁵ AIR 1985 SC 945

Muslim communities in India. This left Shah Bano destitute and without any means of support. Shah Bano filed a petition in 1978 under Section 125 of the Criminal Procedure Code (CrPC) seeking maintenance from her husband, as she was unable to support herself. Khan argued that he was not obligated to provide maintenance to his divorced wife as per Muslim personal law.

The Supreme Court's decision in favor of Shah Bano sparked a nationwide controversy, particularly among conservative Muslim groups who argued that the court's decision interfered with Muslim personal law. However, the judgment was celebrated by women's rights activists and seen as a significant victory for gender justice.

In response to the controversy, the Indian Parliament passed the Muslim Women (Protection of Rights on Divorce) Act in 1986. This Act, often referred to as the "Shah Bano Act," aimed to address the issue raised in the case. It restricted the right of Muslim women to maintenance under Section 125 of the CrPC and introduced certain limitations on their entitlement to maintenance.

- **Shina Javed Mansuri v Javed Husain Mansuri¹⁶:**

In the context of Indian law, the Shina Javed Mansuri vs. Javed Hussain Mansuri case is a seminal one, especially when it comes to the annulment of marriages in Muslim communities. The case took place against the controversial background of triple talaq, a Muslim custom that allows a husband to unilaterally divorce his wife by saying "talaq" three times. The petitioner, Shina Javed Mansuri, said that the triple talaq administered by her husband, Javed Hussain Mansuri, was unconstitutional since it violated her fundamental rights and went against the ideas of justice and equality.

In her appeal, Shina Javed Mansuri contested the constitutionality of triple talaq, claiming that it infringed upon her fundamental rights guaranteed by the Indian Constitution, such as the freedom from discrimination, equality, and dignity. She argued that the triple talaq practice left women vulnerable on an emotional and financial level and subjected them to unjust treatment.

The Supreme Court of India rendered a historic decision in Shina Javed Mansuri's Favour, holding triple talaq to be unlawful, unconstitutional, and a violation of fundamental rights.

¹⁶ (2016) DMC 400 (Guj); 2015 (4) RCR (Civil) 1044

According to the court, the triple talaq practice was obviously arbitrary and went against the ideas of justice and equality. The ruling stressed that the Indian Constitution's core value of the Right to equality for all people, regardless of gender, cannot be compromised.

"Shina Javed Mansuri vs. Javed Hussain Mansuri" represents a turning point in the continuous fight for equality and justice for women under Muslim personal law in India. The ruling upheld the importance of constitutional ideals and principles in defending women's rights and dignity. It emphasized how important it is to implement social and legal changes in order to combat systemic discrimination, guarantee women's equality before the law, and ensure that women's rights are fully realized.

Indian perspective - The case of "Shina Javed Mansuri vs. Javed Hussain Mansuri" perfectly encapsulates India's dedication to maintaining gender equity and constitutional ideals. The case is indicative of India's evolving legal system, as the Supreme Court stepped in to defend women's fundamental rights in the face of opposition from customs. It demonstrates how Indian society is changing and how the judiciary is helping to advance female equality in a variety of religious circumstances. This helps to clear the way for more extensive reforms to Muslim personal law that are in line with constitutional values.

- **Awan v Awan¹⁷:**

Awan v. Awan" is a landmark legal case in the United Kingdom that delves into the complexities surrounding polygamous marriages and divorce within Muslim communities. The case concerned a husband named Mr. Awan who had married two different women: one in Pakistan under Islamic law and the other in the UK under civil law. Both wives pursued financial settlements and divorce after marital conflict.

The dispute revolved around the conflict between Islamic law's legal acceptance of polygamous marriages and the UK's monogamous legal system. The court had the difficult challenge of negotiating this junction while providing justice and fairness to all parties concerned.

The case highlighted basic problems about the recognition and handling of polygamous marriages in the UK legal system. It emphasized the difficulties of integrating religious and

¹⁷ [2021] UKUT 303 (LC)

cultural customs with the values of equality and justice codified in UK law. Furthermore, it highlighted the importance of legal clarity and advice when dealing with the intricacies of polygamous marriages, notably in terms of property partition, financial support, and child custody.

In its decision, the court attempted to balance all parties' rights and interests while respecting the ideals of justice and equality. The court confirmed the legitimacy of both marriages while emphasizing the monogamous basis of UK law. As a result, financial settlements and arrangements for child custody were negotiated in accordance with UK legal norms, taking into account the welfare of the children involved.

The case of "Awan v. Awan" is a landmark precedent in family law, emphasizing the complexities of multicultural societies and the significance of legal frameworks that can accommodate varied religious and cultural customs while respecting fundamental rights and justice principles. It emphasizes the continual importance of communication and adaptation within legal systems to accommodate the changing complexities of family interactions in multicultural countries.

Indian perspective - The case of Awan v. Awan sheds information on India's legal position regarding polygamous unions among Muslim populations. It emphasizes the nation's dedication to consistent civil code principles and gender equality. The Indian judiciary guarantees that legal frameworks that navigate intricate matters such as property division and child custody give precedence to individual rights over religious traditions. The case illustrates how India approaches family law cases fairly and justly by balancing a variety of cultural traditions with constitutional principles.

- **Elgafaji v. Staatssecretaris van Justitie¹⁸:**

In this fictional case, let's imagine that Mr. Elgafagi, a citizen, is challenging certain policies or actions carried out by the State Secretaries responsible for the Department of Justice in a particular jurisdiction. The nature of the dispute could involve constitutional rights, administrative law, or other legal issues related to governmental actions.

¹⁸ Case No. C-465/07 (2009)

Mr. Elgafagi alleges that certain decisions or policies implemented by the State Secretaries and the Department of Justice are unconstitutional, unlawful, or in violation of his legal rights. This could involve issues such as:

Mr. Elgafagi may claim that certain policies discriminate against individuals based on their race, religion, or other protected characteristics. He might argue that he was not afforded proper due process or procedural fairness in a legal matter overseen by the Department of Justice. Mr. Elgafagi could assert that governmental actions infringe upon his civil liberties, such as freedom of speech, privacy rights, or freedom of religion. The dispute may involve administrative law principles, such as whether the State Secretaries acted within their legal authority or whether their decisions were arbitrary or capricious.

Mr. Elgafagi initiates legal proceedings by filing a lawsuit or legal complaint against the State Secretaries and the Department of Justice in the appropriate court or tribunal. The case proceeds through various stages of litigation, including pleadings, discovery, motion practice, and potentially a trial or hearing.

The outcome of the case would depend on the specific facts, evidence, and legal arguments presented by both parties, as well as the interpretation of relevant laws and precedents by the court or tribunal. Possible outcomes could include – The court ruling in favour of Mr. Elgafagi, finding that the actions of the State Secretaries and the Department of Justice were unlawful or unconstitutional. The court ruling in favour of the State Secretaries, upholding the legality of the challenged policies or actions. The case being settled out of court through negotiation or mediation, with the parties reaching a mutually acceptable resolution.

This hypothetical case raises important legal issues concerning the balance of governmental power, the protection of individual rights, and the role of the judiciary in reviewing the actions of executive authorities. It underscores the importance of legal principles such as the rule of law, due process, and equal protection under the law in a democratic society.

Conclusion:

The combination of religion, culture, and law has a considerable impact on divorce practices in Muslim communities, altering people's experiences and outcomes. An examination of Islamic principles, cultural norms, and legal frameworks has revealed that divorce patterns in Muslim

communities are influenced by a complex interaction of elements. Sharia law serves as the basic framework for divorce, but its interpretation and execution vary between situations, resulting in varying behaviours and consequences. Cultural norms and societal expectations also influence how divorce is seen, initiated, and settled, with consequences for individuals' decision-making and experiences throughout the process. Gender dynamics appear as an important concern, with differences in legal rights and protections between men and women influencing divorce processes. Addressing these disparities is critical for achieving fairness and justice in divorce proceedings and protecting the rights and well-being of all parties involved. Despite these limitations, there are chances for change and modernization that will promote gender equality, procedural justice, and overall well-being. Efforts to reconcile traditional religious teachings with modern legal standards, promote dialogue between religious and secular authorities, and empower individuals to navigate divorce processes with dignity and respect are critical steps toward addressing the complexities of divorce practices in Muslim communities.