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PERSONAL LAWS AND GENDER EQUALITY: ANALYZING THE RIGHTS OF MUSLIM WOMEN IN INDIA

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ABSTRACT

This paper investigates the contentious relationship between Muslim personal law and the constitutional principle of gender equality in India. It focuses on marriage, divorce, maintenance, and inheritance rights, highlighting how uncodified personal laws often disadvantage women. Through a study of landmark cases — including Shah Bano v. Union of India (1985), Shayara Bano v. Union of India (2017), and Danial Latifi v. Union of India (2001) — the paper examines how courts have navigated tensions between religious freedom and gender justice. It argues that codification of Muslim personal law, consistent with both constitutional guarantees and Quranic principles of fairness, is crucial for the advancement of Muslim women's rights. The paper concludes by considering the implications of a Uniform Civil Code (UCC) and the challenges of balancing secular law with cultural pluralism.

Keywords: Muslim personal law, gender equality, triple talaq, maintenance, inheritance, Uniform Civil Code, India.

“There is no chance for the welfare of the world unless the condition of the women is improved. It is not possible for a bird to fly on only one wing.”

- Swami Vivekananda

INTRODUCTION

Women’s rights under personal laws remain a deeply contested issue in India. Despite constitutional guarantees of equality (Article 14), non-discrimination (Article 15), and personal liberty (Article 21), women governed by religious personal laws — particularly Muslim women — face systemic disadvantages. As per the 2011 Census, Muslims constitute 13.4% of India’s population, yet Muslim women remain among the most socially and economically marginalized groups. The absence of codified Muslim personal law has led to inconsistent interpretations based on *Shariah*, Hadith, and judicial precedents, which often uphold patriarchal norms.

The controversy surrounding Muslim women’s rights reached the national stage with the *Shah Bano* case (1985), followed by political compromises such as the Muslim Women (Protection of Rights on Divorce) Act, 1986, and later the Supreme Court’s decision in *Shayara Bano* (2017) outlawing instant triple talaq. These legal battles illustrate the tension between the constitutional ideal of gender equality and the protection of religious freedom under Article 25.

This paper examines Muslim women’s rights in the domains of marriage, divorce, maintenance, and inheritance, while assessing constitutional challenges and judicial interventions.

MARRIAGE AND CONSENT IN MUSLIM PERSONAL LAW

Before the arrival of Islam, women in Arabia were treated like animals and they lacked any legal protections. A man was capable of having multiple wives, it was quite easy to get a divorce and female infanticide was prevalent. Slavery and concubinage of women were widespread. Following

the establishment of Islam, women were accorded the proper social standing and were respectable members of the community. The prophet was committed to improving women's status. He advised people to see their brides before getting married and propagated the idea that a woman's noble character is the greatest qualification for marriage. The prophet changed society through the teachings of Islam. He instituted Nikah, a system that allowed women to be treated equally at par with men.

Marriage (*nikah*) in Islam is not a sacrament but a civil contract requiring consent and witnesses. The Prophet emphasized women's right to free consent and fair treatment within marriage. Yet, in India, forced marriages and denial of agency remain common. The *Kabinnama* (marriage contract) exists in theory but is often undermined by patriarchal practices.

The courts have recognized the importance of consent. For instance, in *Rashida Khatun v. Sk. Islam*, cohabitation with an assurance of marriage was held insufficient to constitute a valid *nikah*, reaffirming the contractual nature of Islamic marriage. Despite such rulings, societal practices often strip women of the protections Islam intended.

DIVORCE, TRIPLE TALAQ, AND JUDICIAL REFORM

Divorce remains the most argumentative area of Muslim personal law. Traditionally, men exercised unilateral power through *talaq*, including the controversial *talaq-e-biddat* (instant triple talaq).

- **Shah Bano Case (1985):** The Supreme Court held that Section 125 of the CrPC applied to Muslim women, granting lifelong maintenance rights. The backlash led to the 1986 Act, which restricted maintenance to the *iddat* period, but the Court later expanded its interpretation in *Danial Latifi (2001)*.
- **Shayara Bano Case (2017):** The Court declared instant triple talaq unconstitutional, calling it arbitrary and violative of Article 14. This ruling paved the way for the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalizing instant triple talaq.
- **Shamim Ara v. State of U.P. (2002):** The Court ruled that divorce must follow Quranic procedures, rejecting unilateral pronouncements without due process. The Supreme Court held that to receive a Talaq, one must follow the Quranic regulations, which require that

the Talaq be declared in accordance with the Quranic commandment. Muslim women were subjected to both dehumanizing and cruel ordeal when considering triple talaq. Despite several other arguments, people's perception of triple Talaq as immoral persisted.

These cases highlight how courts have acted as agents of reform, often filling the legislative vacuum left by political hesitancy.

MAINTENANCE AND INHERITANCE RIGHTS

Maintenance

Maintenance rights expose the conflict between personal law and constitutional equality. Under traditional interpretation, maintenance obligations ended with the *iddat* period. However, *Shah Bano* and later *Danial Latifi* extended maintenance obligations, interpreting “fair and reasonable provision” to cover lifelong support. Despite judicial interventions, divorced women remain vulnerable due to societal pressures and lack of enforcement.

Inheritance

Inheritance laws explicitly discriminate against women. A widow receives one-eighth of her husband's estate if children exist, while the widower is entitled to half of his deceased wife's estate. Daughters inherit half the share of sons. Courts have consistently upheld these Quranic provisions, creating a constitutional dilemma. Critics argue that such unequal distribution violates Articles 14 and 15, but defenders cite Article 25's protection of religious practices.

Constitutional Debates

The core debate revolves around reconciling **gender equality** with **religious freedom**:

- **For Reform:** Proponents argue that discriminatory personal laws violate Articles 14, 15, and 21. Codification or a UCC would ensure uniform rights for all citizens, eliminating gender bias.

- **Against Reform:** Critics argue that imposing a UCC undermines cultural pluralism and religious freedom guaranteed under Article 25. They contend that reforms must emerge from within the community to avoid alienation.

The judiciary, while progressive in interpretation, has refrained from striking down personal laws wholesale, often citing the delicate balance of secularism and minority rights.

THE ROLE OF THE JUDICIARY AND LEGISLATURE

The judiciary has consistently expanded women's rights through creative interpretation, but legislative responses have been inconsistent. While the 2019 law banning triple talaq marked progress, comprehensive reform of inheritance and maintenance remains absent. The All India Muslim Personal Law Board, dominated by male clerics, has resisted codification, claiming it would violate religious autonomy. This resistance underscores the political challenges of reform in a plural society.

CONCLUSION

Muslim personal law in India reflects the tension between tradition and constitutional modernity. While courts have championed women's rights in key cases, legislative reforms remain piecemeal and reactive. The absence of codification perpetuates uncertainty and allows patriarchal interpretations to dominate.

Reform is both possible and necessary. The Quran itself emphasizes fairness and dignity for women, but these principles have been eroded through cultural conservatism. Codification of Muslim personal law, harmonized with constitutional guarantees, offers a path forward. While a Uniform Civil Code remains politically divisive, incremental codification rooted in Islamic principles could provide Muslim women with justice without alienating religious communities.

Only when Muslim women are ensured equality in marriage, divorce, maintenance, and inheritance will India move closer to fulfilling its constitutional promise of equal citizenship.

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