



Reforms in Muslim Personal Law: Dissolution of Muslim Marriage Act 1939

Karuna Bhardwaj^{1*}, Himanshi Hudda²

Abstract— Every law must be revised to adapt it over time. So are Islamic personal laws. The Islamic Personal Law (Shariat) Application Act 1937 states that the personal affairs of certain Muslims are governed by their pure Sharia law. Several important provisions such as inheritance, childcare and custody, dissolution of marriage, polygamy, etc. have been modified, supplemented or reformed by both state laws and legal precedents. These reforms caused significant changes in the interpretation, application and interpretation of classical Islamic law. In many cases, the reforms so far deviate from the classical laws in these matters. This article attempts to examine and analyze these reforms based on whether they are compatible with Islamic legal sources.

Index Terms— marriage, polygamy, inheritance, precedents.

1. Introduction

The word "reform" literally means to reform, correct, improve and correct. Technically, reform means to move, correct or correct for a better result. Over time due to circumstances, economic and social changes; reform is necessary to keep pace with a changing world. Thus, changes are made to both state laws and personal laws. "Islamic law" means law based on the principles of Islam. Islamic law on personal rights is based on four sources. The main sources are the Qur'an and the Hadith. The Koran contains the words and commands of Allah and is therefore of divine origin, and the Hadith are the words and practices of the Prophet. The other two Ijma and Qiyas are secondary sources. Ijma is the consensus of recognized Islamic jurists and the latter is analogical reasoning. All four sources together constitute Sharia law or Islamic law.

In Islamic law, reform occurs through ijihad (analogical reasoning). In the legal system of each country, reform is done by passing mandatory laws, both according to the laws of the country and the personal rights of any religion. Under these circumstances, prominent Islamic jurist first reform through Ijtihad and then Ijtihad becomes binding law by issuing new legislation that can be enforced in the courts of that legal system. In addition to legislation, the law can also be reformed through legalism, or precedents, where judges use their legal acumen to interpret the law based on context and specific circumstances. The modern world means the present world, but in this article, it means the present Islamic world, not others. Adherence to the principles of Islam shows - whether the reforms carried out in Muslim countries are in accordance with

the basic Islamic commandments of Almighty Allah and His Holy Prophet Hazrat Mohammad (sm) or not.

This article is about the most important issues for Muslims personal law i.e. marriage, polygamy, registration of marriage, marriage, divorce, maintenance of minors, custody and guardianship, succession and reforms in these areas. Islamic law and Islamic personal law are used interchangeably here. The article tries to discuss Islamic theologies, the reforms made in the modern world and, in parallel, the compatibility of these reforms with the principles of Islam.

2. Historical Context

The British East India Company originally established trading posts in India in the early 17th century. Although primarily focused on trade, the company gradually expanded its territorial control and influence into Indian states.

Before British rule, India had a diverse legal landscape, with different regions having customary and religious laws, including Islamic law (Sharia). Islamic personal law, derived from Sharia, regulated matters such as marriage, divorce, inheritance, and family relations within the Muslim community. After the consolidation of British rule, the British East India Company and later the British Crown sought to establish a centralized legal system throughout India. The British adopted English common law and codified laws to regulate various aspects of Indian society, including personal matters. The British recognized the multiplicity of personal laws in India and initially refrained from directly interfering in matters of religion and personal law. However, they established regulations and courts to administer Islamic personal law along with other legal systems. The British also began work to codify Islamic personal law to standardize and facilitate the administration of justice. During British rule, several laws were passed that directly affected Islamic personal law, such as the Application of Islamic Personal Law Act 1937 and the Islamic Marriage Act 1939. These laws were intended to deal with specific issues of Islamic personal law, including marriage, divorce and inheritance, often based on Islamic principles but subject to British control and interpretation. British interference in Islamic personal law was often opposed by traditional religious scholars and community leaders who saw it as a violation of Islamic jurisprudence and local customs. But the British authorities justified their intervention as part of their civilizing mission and

*Corresponding author: karunabhardwaj2394@gmail.com

efforts to modernize Indian society.

3. Analysis of the Provision of Dissolution of Muslim Marriage act

The Muslim Divorce Act of 1939 provided for the dissolution of Muslim marriages in British India. Here is a detailed analysis of its main provisions:

A. Grounds for Divorce

The law provides several grounds for the dissolution of a Muslim marriage. These reasons include:

1. Location of the spouse: If the spouse has been missing for four years.
2. Failure of the maintenance: If the spouse does not provide maintenance for two years.
3. Imprisonment of the spouse: If the spouse has been imprisoned for seven years or more.
4. Impotence: If the husband is imprisoned at the time of marriage impotent and still is.
5. Cruelty: When a man treats his wife cruelly.
6. Abandonment: When a man abandons Islam.
7. Leprosy or venereal disease: When a man has suffered from a virulent and incurable leprosy or venereal disease.

These reasons are intended to provide a remedy of divorce in cases, if the marriage has become unsustainable or if one of the spouses is unable or unwilling to fulfill their marital obligation.

Procedure for Dissolution:

1. The law provides the procedures for obtaining a divorce decree. It provides that a woman married according to Islamic law can apply for divorce for any of the specified reasons.
2. The application must be made to a competent court and the court must follow the procedures required by law handling and resolution of such cases.
3. The Law also provides for the summoning and examination of witnesses, recording of evidence and other procedural aspects of final proceedings.

Legal Implications:

1. The court can decide the reasons for the dissolution of the marriage after the court has approved it.
2. The decision ends the marriage and releases both parties from the obligations of the marriage.
3. The law also determines the custody, care and education of the children, marriage and, if necessary, division of property.
4. The legal consequences of the law extend beyond the end itself to matters such as inheritance, guardianship and inheritance that may be affected by the end of the marriage.

4. How the Act Addressed Gender Dynamics within Muslim Marriages, Including Rights and Protections Afforded to Women

Many countries, including some predominantly Muslim countries, have implemented legal reforms aimed at addressing the gender dynamics of Muslim marriages. These reforms often

aim to ensure that married women have the same rights and protections as non-Muslim married women. Some common provisions of such legislation may include:

1. *Minimum age for marriage*: Laws may set a minimum age to marry to avoid child marriage and to ensure that individuals are mature enough to marry voluntarily.
2. *Consent*: Legislation may require that both parties consent to the marriage freely without coercion.
3. *Mahr (dower)*: Many Muslim marriages involve the husband payment of mahr to the wife. Legal provisions can ensure that mahr is agreed upon and paid fairly and that women have the right to maintain control of their mahr.
4. *Maintenance and support*: Laws can determine women's rights to receive financial support and maintenance from their husbands during marriage and after divorce, including provisions for alimony or spousal support.
5. *Polygamy*: Some legal systems restrict polygamous marriages and require spouses to obtain permission or demonstrate that certain conditions are met before taking an additional wife.
6. *Divorce*: Legislation may apply in divorce proceedings involving women's right to initiate divorce (khula) and division of assets and liabilities after divorce.
7. *Inheritance*: Inheritance rights may be regulated by law to ensure women's right to a fair share of marital property and inheritance. In addition, the implementation and enforcement of such laws may also affect the actual protection of women in Muslim marriages.

5. Impact of the Dissolution of Muslim Marriage Act on Societal Norms, Family Structures, and Cultural Practices within Muslim Communities

The Indian Muslim Divorce Act (1939) was a major legal reform aimed at ensuring the rights and protection of Muslim women in matrimonial and divorce matters. Its impact on social norms, family structures and cultural practices in Muslim communities was multifaceted:

Empowerment of women: The law gave Muslim women the right to ask for divorce in certain circumstances, such as cruelty, abandonment, impotence or failure to keep this empowerment of women challenged the traditional norms that divorces were mainly initiated by men and provided opportunities for women to seek help from abusive or unhappy marriages.

Change in gender dynamics: The law contributed to a gradual change in the gender dynamics of Muslim families such as the recognition of women's agency in marriage and divorce in questions. This change affected broader social attitudes regarding the rights and autonomy of women in Muslim communities.

Legal awareness and education: The introduction of the Islamic Divorce Act increased legal awareness and education in Muslim communities, especially among women. Women are more aware of their rights and entitlements, which leads to

greater advocacy of these rights and to the promotion of gender equality.

Effect on family structures: The law has also affected family structures in Muslim communities, which can lead to changes in marriage, relationships and family dynamics. Women previously trapped in violent or unhappy marriages were given the opportunity to legally dissolve such marriages, which may have contributed to the restructuring of family units.

Adaptation of cultural practices: Although the cultural practices of Muslim communities may be deeply rooted legal reforms such as the Muslim Marriage Act somewhat adapted these practices. For example, attitudes towards divorce and women's rights in marriage may have gradually evolved in response to changing legal frameworks.

Challenges and opposition: Despite its progressive nature, the law has faced challenges and opposition from conservative sections of Muslim communities who can see it as such is against Islamic principles or traditional cultural norms. This opposition sometimes prevented the effective implementation of the law and slowed down wider social changes.

6. Judicial Interpretations and Precedents Set by Court on Cases Related to Dissolution of Muslim Marriage Act

Although specific legal interpretations and precedents may vary depending on individual cases and their circumstances, I can outline some general themes and principles that have emerged in Islamic matrimonial law cases.

Interpretation of Divorce Causes: Courts have interpreted grounds for divorce of Muslim marriages listed in the law, such as cruelty, desertion, impotence and denial of maintenance. They provided guidance on the meaning and application of these principles in various contexts.

Application of Islamic law: Court decisions often involved reconciling statutory provisions with Islamic law (Sharia). Courts have interpreted the law in light of Islamic principles and jurisprudence, ensuring that legal decisions are consistent with both statutory provisions and religious norms.

Gender Equality and Women's Rights: Courts have consistently supported women's rights and promoted gender equality in Muslim marriages and divorce proceedings. They recognize the right of women to request a divorce in cases of abuse, neglect or other abuse and emphasized the importance of protecting the well-being and autonomy of women.

Consent and Capacity: Cases Related to Islamic Marriage the law dealt with issues of consent and capacity, especially in relation to the validity of marriages and the divorce declaration. Courts have looked at factors such as coercion, fraud and mental capacity to determine the legality of marriage and divorce proceedings.

Maintenance and Financial Rights: Legal interpretations have clarified Muslim women's rights to alimony and financial support under the law. Courts have defined the obligations of husbands to support their wives during marriage and after divorce so that women are not financially vulnerable.

Child custody and welfare: Cases involving the breakdown of Muslim marriages often involve disputes over child custody and welfare. Courts have interpreted the law to put the best

interest of the child first, considering factors such as parentage, stability, and the well-being of the child when determining custody.

Polygamy and Marital Rights: The law deals with issues related to children, polygamy and rights of women in polygamous marriages. Courts have clarified the conditions under which polygamous marriages are permitted and the rights of women in such unions, including the right to seek dissolution of marriage if certain conditions are not met.

7. Contemporary Challenges and Criticisms Faced by the Act

The Islamic Marriage Act of 1939, despite its progressive intent, faces contemporary challenges and criticism, especially in issues related to instant divorce (triple talaq) and protection of women's rights. Some of the challenges and criticisms:

Instant divorce (triple talaq): One of the main criticisms of the law is its perceived inadequacy in dealing with instant divorce (commonly known as triple talaq). A man can divorce his wife unilaterally and immediately by uttering the word "talaq" (divorce) three times. Critics say the law does not specifically address or prohibit the practice, leaving women vulnerable to arbitrary and unfair divorces.

Gender inequality: Despite the law's provisions on women's rights to seek divorce in certain circumstances, critics say it remains incomplete ensuring true gender equality in Muslim marriages. Some argue that the law does not go far enough to allow women to initiate divorce proceedings or guarantee their rights in matters of alimony, child support and property division.

Conservatism and resistance: Conservative elements in Muslim communities often oppose reform efforts or change the law regarding religious and cultural traditions. Some sections of society believe that any attempt to change or reinterpret Islamic laws related to marriage and divorce amounts to interference with religious beliefs and practices.

Legal loopholes and ambiguities: Critics point out that the law may contain legal problems loopholes or ambiguities that can be exploited to undermine women's rights. For example, it can be difficult to comply with the law's requirement that women prove specific grounds for divorce, especially in cases of mental or emotional abuse.

Insufficient enforcement: While the law provides legal protection for women, its enforcement can be inconsistent or ineffective. Women may be prevented from accessing legal remedies for reasons such as ignorance, social stigma or financial constraints. In addition, some women may face resistance from traditional or patriarchal family structures to secure their rights under the law.

Boundary-based challenges: Women from marginalized or disadvantaged backgrounds, such as lower socioeconomic status or rural areas, may face additional barriers to access legal protection under the law. The intersectional challenges of poverty, education and social status can increase gender inequality in Muslim communities.

Advocacy for reform: Women's rights activists and organizations continue to reform the law to address its

shortcomings and better protect people's rights. These efforts may include demands for legislative change, public education campaigns, and grassroots mobilization in Muslim communities to challenge discriminatory practices and promote gender equality.

8. Ongoing debates and Initiatives Aimed at Reforming Muslim Personal Law in India

India is under discussion to implement a Uniform Civil Code (UCC), which would replace religious personal laws with a common civil code applicable to all citizens regardless of their religion. Proponents argue that the UCC would promote secularism, gender equality and legal unity, while critics raise concerns about possible infringements on religious autonomy and cultural diversity. The UCC debate intersects with debates about Islamic personal law reform, as it raises the question of how much religious laws should affect civil law.

Some countries with large Muslim populations have implemented legal reforms aimed at modernization personal law compliance with laws and international human rights standards and principles of justice. These reforms may include amending existing legislation, introducing new laws to address emerging issues, or establishing special family courts to deal with matters related to marriage, divorce and inheritance. However, the pace and extent of legal reform varies by jurisdiction and is often subject to political, religious and social

constraints.

Initiatives to reform Islamic personal law also include engagement with religious scholars and leaders for reinterpretation traditional jurisprudence in a manner more consistent with modern human rights values and standards. Progressive religious movements and reformist voices in Islam recommend interpretations that prioritize principles of justice, equality and compassion and challenge conservative interpretations that perpetuate gender discrimination and oppression.

Debates and initiatives related to Islamic personal law reform. It is not limited to individual countries, but also intersects with the wider international and regional debate on human rights, gender equality and religious freedom. International organizations such as the United Nations and regional bodies such as the Organization of Islamic Cooperation (OIC) promote dialogue, share best practices, and promote reforms that promote universal human rights while respecting cultural and religious diversity.

9. Conclusion

This paper presented an overview on reforms in Muslim personal law.

References

- [1] <https://www.indiacode.nic.in/bitstream/123456789/2404/1/193908.pdf>