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JUDICIAL TRANSFORMATION OF MUSLIM WOMEN'S MATRIMONIAL RIGHTS IN INDIA: A CONSTITUTIONAL AND DOCTRINAL ANALYSIS

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ABSTRACT

The matrimonial rights of Muslim women in India exist at a complex intersection of religion, constitutionalism, gender justice, and legal pluralism. Unlike Hindu personal law, which underwent systematic codification during the mid-twentieth century, Muslim personal law remains largely uncodified, governed primarily by the Muslim Personal Law (Shariat) Application Act and selective statutory enactments. This structural feature has placed significant interpretative responsibility upon the judiciary, resulting in a jurisprudential trajectory where courts have progressively infused constitutional principles into personal law adjudication. The transformation of Muslim women's matrimonial rights, therefore, has been driven less by legislative codification and more by constitutional judicial review.

Historically, Muslim marriage (nikah) has been conceptualized as a civil contract under Islamic jurisprudence, conferring rights such as dower (mehr), maintenance (nafaqah), and certain protective conditions. However, patriarchal interpretations of classical Hanafi doctrine often limited women's effective autonomy. The husband's unilateral power of talaq, permissibility of polygamy, and conditional maintenance rights created structural gender asymmetries. These features, while doctrinally embedded within traditional jurisprudence, encountered constitutional scrutiny after the adoption of the Constitution of India in 1950.

The watershed moment in the constitutional engagement with Muslim matrimonial law emerged in Mohd. Ahmed Khan v. Shah Bano Begum, where the Supreme Court held that Section 125 of the Code of Criminal Procedure applies to divorced Muslim women beyond the

iddat period if they are unable to maintain themselves. The judgment affirmed the supremacy of secular welfare legislation over restrictive personal law interpretations and invoked constitutional values of social justice and equality. The subsequent enactment of the Muslim Women (Protection of Rights on Divorce) Act was widely viewed as a legislative response aimed at limiting the impact of Shah Bano. However, in Danial Latifi v. Union of India, the Supreme Court adopted a purposive interpretation to harmonize the Act with constitutional guarantees, effectively restoring long-term maintenance rights through interpretive expansion. The constitutional transformation intensified with Shayara Bano v. Union of India, where instant triple talaq (talaq-e-biddat) was invalidated. This judgment marked a doctrinal shift from interpretive harmonization to direct constitutional invalidation of discriminatory personal law practices. The plurality opinions invoked the doctrine of manifest arbitrariness under Article 14 and reinforced the centrality of dignity under Article 21. Parliament subsequently enacted the Muslim Women (Protection of Rights on Marriage) Act, criminalizing instant triple talaq, further demonstrating the dynamic interaction between judicial pronouncements and legislative action.

This research paper undertakes a detailed doctrinal and constitutional analysis of this judicial evolution. It examines the gradual constitutionalisation of Muslim matrimonial law through equality-based scrutiny and evaluates whether judicial interventions have effectively reconciled religious freedom under Article 25 with gender justice mandates under Articles 14, 15, and 21. The study also investigates the broader implications of subjecting personal law practices to constitutional review under Article 13.

The central argument advanced in this paper is that Indian courts have progressively transformed Muslim matrimonial law from a domain of insulated religious autonomy into one of constitutional accountability. This transformation has occurred incrementally through purposive interpretation, harmonization strategies, and eventually substantive invalidation of practices deemed arbitrary and violative of fundamental rights. However, the constitutionalisation of Muslim matrimonial rights remains incomplete. Persistent tensions between pluralism and uniformity, autonomy and equality, and religious freedom and constitutional morality continue to shape the discourse..

KEYWORDS: *Muslim Personal Law; Matrimonial Rights; Gender Justice; Constitutional Morality; Triple Talaq.*

RESEARCH QUESTIONS

1. To what extent has the Indian judiciary constitutionalised Muslim matrimonial law?
2. Can uncodified personal law practices be subjected to judicial review under Article 13?
3. How have courts balanced Article 25 religious freedom with Articles 14 and 21 equality guarantees?
4. Has judicial intervention produced substantive gender justice or merely formal equality?
5. What doctrinal and structural gaps continue to persist in protecting Muslim women's matrimonial rights?

RESEARCH OBJECTIVES

The principal objective of this study is to examine the judicial transformation of Muslim women's matrimonial rights in India through constitutional interpretation. Specifically, the study aims:

- To analyse the historical evolution of Muslim matrimonial law in India.
- To evaluate the constitutional interface between personal law and fundamental rights.
- To critically examine landmark judgments reshaping maintenance and divorce rights.
- To assess the impact of legislative interventions post-Shah Bano and post-Shayara Bano.
- To identify continuing doctrinal inconsistencies and enforcement gaps.

HYPOTHESES

H1: The Indian judiciary has progressively constitutionalised Muslim matrimonial law through equality-based scrutiny.

H2: Judicial interpretation has been more transformative than legislative reform in advancing Muslim women's rights.

H3: The doctrine of manifest arbitrariness has become central to reviewing discriminatory personal law practices.

H4: Despite doctrinal advancements, enforcement challenges persist.

RESEARCH METHODOLOGY

This study adopts a qualitative doctrinal research methodology supplemented by constitutional analysis. Primary sources include statutory enactments, constitutional provisions, and Supreme

Court judgments. Secondary sources include academic commentary, law commission reports, and peer-reviewed scholarship on personal law reform.

The doctrinal approach involves close reading of judgments, identifying interpretive techniques such as purposive construction, reading down, harmonization, and constitutional invalidation. The study also engages with feminist constitutional theory and legal pluralism to evaluate the normative implications of judicial reform.

LITERATURE REVIEW

The discourse surrounding the matrimonial rights of Muslim women in India has generated a substantial body of scholarship spanning constitutional law, feminist legal theory, Islamic jurisprudence, and legal pluralism. Academic writing in this field may broadly be categorized into four strands: (1) doctrinal analyses of Muslim personal law, (2) feminist critiques of gender asymmetry, (3) constitutional scholarship examining the interface between personal law and fundamental rights, and (4) socio-legal studies addressing implementation gaps. This review synthesizes these strands to position the present research within existing literature.

I. Classical Doctrinal Scholarship on Muslim Personal Law

Early scholarship on Muslim personal law in India largely focused on doctrinal exposition. Works such as Mulla's *Principles of Mohammedan Law* have historically served as authoritative references for courts and practitioners.¹ These texts elaborate the contractual nature of marriage (nikah), the concept of mehr, talaq, khula, and maintenance obligations under Hanafi jurisprudence. However, such doctrinal treatises have often been descriptive rather than critical, presenting classical principles without sustained engagement with constitutional equality norms.

Tahir Mahmood's scholarship marked an important transitional phase by advocating codification and reform of Muslim personal law within a constitutional framework.² Mahmood argued that the absence of codification perpetuated interpretive inconsistencies and enabled patriarchal distortions. He emphasized that Islamic jurisprudence itself contains egalitarian principles that could be harmonized with constitutional mandates.

Similarly, Fyzee's *Outlines of Muhammadan Law* highlighted the flexibility inherent in Islamic legal reasoning (ijtihad) and argued that Muslim personal law is not inherently static.³ Fyzee's

¹ Mulla, *Principles of Mohammedan Law* (22d ed. 2017).

² Tahir Mahmood, *Muslim Law in India and Abroad* (2d ed. 2012).

³ A.A.A. Fyzee, *Outlines of Muhammadan Law* (5th ed. 2008).

analysis undermines the claim that reform necessarily violates religious doctrine, thereby opening doctrinal space for judicial engagement.

II. Feminist Legal Critiques

Feminist scholars have critically examined Muslim matrimonial law as a site of structural gender inequality. Flavia Agnes argues that the Shah Bano controversy exposed the fragility of minority women's rights within communal politics.⁴ Agnes contends that reform efforts must avoid communal polarization while still centering women's autonomy. She critiques both conservative religious resistance and majoritarian political appropriation of gender justice rhetoric.

Zoya Hasan and Ritu Menon, in their socio-political analysis of Muslim women's rights movements, emphasize the agency of Muslim women activists who have challenged unilateral talaq and discriminatory practices from within the community.⁵ Their work shifts the narrative from state-imposed reform to grassroots mobilization.

Ratna Kapur and Brenda Cossman adopt a critical feminist constitutional approach, arguing that personal law debates often reproduce the binary of tradition versus modernity.⁶ They caution against simplistic narratives that portray personal law as inherently regressive while ignoring patriarchal elements within secular law systems.

These feminist critiques are crucial in reframing the discourse from abstract doctrinal debates to lived gendered realities. However, much of this literature predates the 2017 triple talaq judgment and therefore requires reassessment in light of recent constitutional developments.

III. Constitutional Scholarship and the Personal Law Debate

The constitutional status of personal laws has been a recurring theme in Indian legal scholarship. The decision in *State of Bombay v. Narasu Appa Mali*⁷, though not directly concerning Muslim law, held that personal laws are not "laws" under Article 13 and therefore cannot be challenged for violating fundamental rights. This decision has profoundly influenced judicial reluctance to subject personal law to constitutional scrutiny.

Scholars such as Gautam Bhatia have critically examined the Narasu doctrine, arguing that insulating personal laws from constitutional review undermines the transformative vision of

⁴ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).

⁵ Zoya Hasan & Ritu Menon, *Unequal Citizens: A Study of Muslim Women in India* (2004).

⁶ Ratna Kapur & Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (1996).

⁷ *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84 (India).

the Constitution.⁸ Bhatia suggests that the Supreme Court's later jurisprudence, especially in *Shayara Bano*, signals a departure from Narasu's restrictive approach.

Upendra Baxi's writings on constitutionalism emphasize the role of the judiciary in advancing social justice within plural societies.⁹ Baxi frames the Constitution as a transformative document that must engage with personal law when it perpetuates structural inequality.

The plurality opinions in *Shayara Bano* have prompted renewed scholarly debate. Some commentators argue that the invocation of manifest arbitrariness expands Article 14 jurisprudence into domains previously considered immune.¹⁰ Others caution that judicial overreach in religious matters risks destabilizing minority protections under Article 25.

IV. Maintenance Jurisprudence and Welfare Analysis

The *Shah Bano* judgment has been extensively analyzed in academic literature. Danial Latifi's reinterpretation of the 1986 Act is often cited as an example of "judicial rescue" through purposive interpretation.¹¹ Scholars note that the Court effectively restored substantive maintenance rights while formally upholding legislative validity.

Parashar's feminist critique argues that while judicial decisions expanded rights, they failed to dismantle deeper patriarchal assumptions embedded in personal law frameworks.¹² She highlights the economic vulnerability of divorced women and the limitations of litigation-based reform.

Recent scholarship also examines the criminalization of triple talaq under the 2019 Act. Critics argue that criminal sanctions may not necessarily empower women and could produce adverse consequences such as incarceration of husbands without guaranteeing financial security.¹³ Supporters contend that deterrence was necessary to prevent continued misuse despite judicial invalidation.

V. Legal Pluralism and Comparative Perspectives

Legal pluralism scholarship situates Muslim personal law within a broader framework of multicultural constitutionalism. Ayelet Shachar's theory of "joint governance" proposes models where state and community share regulatory authority in family law matters.¹⁴

⁸ Gautam Bhatia, *The Transformative Constitution* (2019).

⁹ Upendra Baxi, *The Indian Supreme Court and Politics* (1980).

¹⁰ *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

¹¹ *Danial Latifi v. Union of India*, (2001) 7 SCC 740 (India).

¹² Archana Parashar, *Women and Family Law Reform in India*, 27 *Sage J.* 45 (2003).

¹³ Muslim Women (Protection of Rights on Marriage) Act, No. 20 of 2019, Acts of Parliament, 2019 (India).

¹⁴ Ayelet Shachar, *Multicultural Jurisdictions* (2001).

Although developed in comparative contexts, her framework is relevant to the Indian debate. Comparative reforms in countries such as Tunisia and Morocco demonstrate that Muslim-majority jurisdictions have codified family laws to enhance gender justice while retaining Islamic legitimacy.¹⁵ This comparative perspective challenges the notion that reform is inherently anti-religious.

VI. Gaps in Existing Literature

Despite rich scholarship, certain gaps persist. First, there is limited integrated analysis combining maintenance jurisprudence, triple talaq invalidation, and constitutional morality within a single doctrinal trajectory. Second, post-2019 developments have not been fully synthesized into broader constitutional theory. Third, empirical assessments of enforcement remain fragmented.

The present study seeks to bridge these gaps by offering a comprehensive doctrinal narrative of constitutionalisation while situating judicial reform within feminist and pluralist frameworks.

I. HISTORICAL FOUNDATIONS AND COLONIAL CONSTRUCTION OF MUSLIM MATRIMONIAL LAW

The contemporary discourse on the matrimonial rights of Muslim women in India cannot be properly understood without examining the historical foundations of Muslim personal law and its transformation during the colonial period. Contrary to common perception, what is presently applied in Indian courts as “Muslim personal law” is not a direct and unaltered continuation of classical Islamic jurisprudence. Rather, it is a hybrid construct shaped by colonial judicial administration, selective textual reliance, and post-independence constitutional reinterpretation.

A. Classical Islamic Conception of Marriage and Divorce

In classical Islamic jurisprudence, marriage (nikah) is conceived as a civil contract rather than a sacrament. This contractual nature distinguishes it from Hindu marriage, which historically carried sacramental attributes. The contractual structure theoretically provides women with certain enforceable rights, including the right to dower (mehr), maintenance (nafaqah), and, under certain circumstances, dissolution through khula or judicial decree.

¹⁵ John L. Esposito & Natana J. DeLong-Bas, *Women in Muslim Family Law* (2d ed. 2001).

Under Hanafi jurisprudence, which predominates among Indian Muslims, the husband possessed the unilateral right to pronounce talaq without requiring judicial intervention. However, classical jurists distinguished between various forms of talaq:

1. Talaq-e-Ahsan (most approved form),
2. Talaq-e-Hasan (approved form), and
3. Talaq-e-Biddat (instant triple talaq).

While talaq-e-biddat was considered sinful or irregular by many jurists, it was often treated as legally effective.¹⁶ This doctrinal ambivalence would later become central to constitutional adjudication in India.

Maintenance obligations under classical law were contingent upon the wife's obedience and marital cohabitation. The wife's right to maintenance ceased upon dissolution after the iddat period unless otherwise provided. This conditional structure reflected patriarchal assumptions embedded within pre-modern legal frameworks.

B. Colonial Codification and Anglo-Mohammedan Law

The British colonial administration adopted a policy of non-interference in religious personal laws but simultaneously institutionalized them within a formal judicial system. Courts relied heavily on translated texts such as the Hedaya and the Fatawa-i-Alamgiri.¹⁷ However, the interpretive authority shifted from religious scholars (ulama) to British judges trained in common law reasoning.

This transformation produced what scholars describe as "Anglo-Mohammedan law" a version of Islamic law filtered through colonial procedural norms and evidentiary standards.¹⁸ The process often froze dynamic interpretive traditions into rigid precedents. The reliance on textual literalism limited the scope of ijtehad (independent reasoning) and marginalized contextual flexibility inherent in Islamic jurisprudence.

The enactment of the Muslim Personal Law (Shariat) Application Act sought to ensure that Muslims would be governed by Shariat rather than customary practices. However, the Act did not codify substantive principles; it merely directed courts to apply Muslim personal law in specified matters. This legislative minimalism preserved doctrinal ambiguity and left substantial interpretive discretion with the judiciary.

Similarly, the Dissolution of Muslim Marriages Act provided Muslim women statutory

¹⁶ Mulla, *Principles of Mohammedan Law* (22d ed. 2017).

¹⁷ A.A.A. Fyze, *Outlines of Muhammadan Law* (5th ed. 2008).

¹⁸ Tahir Mahmood, *Muslim Law in India and Abroad* (2d ed. 2012).

grounds for judicial divorce, including cruelty, desertion, impotence, and failure to provide maintenance. The Act represented a progressive intervention, expanding women's access to judicial remedies within an Islamic framework. Yet it did not fundamentally alter the unilateral talaq power vested in husbands.

C. Post-Independence Constitutional Framework

The adoption of the Constitution of India in 1950 introduced a transformative legal paradigm grounded in equality, dignity, and social justice. Articles 14 and 15 guarantee equality and prohibit discrimination, while Article 21 protects life and personal liberty, interpreted expansively to include dignity. Article 25 protects freedom of religion, subject to public order, morality, and health.

The coexistence of personal laws and constitutional supremacy generated immediate theoretical tension. While the Directive Principle under Article 44 envisions a Uniform Civil Code, the Constituent Assembly refrained from immediate codification, recognizing India's religious diversity.

The early judicial approach toward personal law was cautious. In *State of Bombay v. Narasu Appa Mali*,¹⁹ the Bombay High Court held that personal laws are not "laws" within the meaning of Article 13 and therefore cannot be struck down for violating fundamental rights. Although not a Supreme Court decision, *Narasu* significantly influenced subsequent jurisprudence by insulating personal law from direct constitutional invalidation.

This insulation meant that reform of Muslim matrimonial law would initially occur through interpretive harmonization rather than direct constitutional challenge.

II. MAINTENANCE JURISPRUDENCE: FROM SHAH BANO TO DANIAL LATIFI

A. Secular Welfare Legislation and Personal Law

Section 125 of the Code of Criminal Procedure is a secular provision designed to prevent destitution. It applies irrespective of religion and mandates maintenance for wives unable to maintain themselves. The provision embodies constitutional values of social justice and gender protection.

The constitutional confrontation between personal law and secular welfare legislation crystallized in *Mohd. Ahmed Khan v. Shah Bano Begum*. The Supreme Court held that a divorced Muslim woman was entitled to maintenance under Section 125 beyond the iddat

¹⁹ *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84 (India).

period. The Court emphasized that the liability under Section 125 arises from neglect and not from marital status alone.

The judgment invoked Articles 14 and 21 implicitly, framing maintenance as a matter of dignity and survival. It rejected the argument that Muslim personal law could override secular criminal procedure provisions.

However, the political backlash culminated in the enactment of the Muslim Women (Protection of Rights on Divorce) Act. The Act appeared to restrict maintenance to the iddat period, thereby reversing Shah Bano.

B. Judicial Harmonization in Danial Latifi

In *Danial Latifi v. Union of India*, the Supreme Court adopted a purposive interpretation to uphold the constitutionality of the 1986 Act. The Court held that the obligation to provide a “reasonable and fair provision” within the iddat period must extend to the woman’s entire future needs.

This interpretive move exemplifies judicial harmonization reading the statute in conformity with constitutional guarantees rather than striking it down. The Court effectively preserved substantive maintenance rights while avoiding direct confrontation with Parliament.

Danial Latifi represents a constitutional strategy of incrementalism. Rather than challenging *Narasu* directly, the Court infused constitutional values indirectly through statutory interpretation.

III. PROCEDURAL SAFEGUARDS AND SHAMIM ARA

In *Shamim Ara v. State of U.P.*, the Supreme Court held that mere pronouncement of talaq is insufficient; it must be proved and preceded by attempts at reconciliation. This decision introduced procedural safeguards into unilateral divorce practices.

Shamim Ara significantly curtailed arbitrary talaq by requiring evidence of pronouncement and reconciliation efforts. Although not framed explicitly as a constitutional judgment, it advanced gender justice by restricting misuse.

IV. CONSTITUTIONAL INVALIDATION: SHAYARA BANO AND MANIFEST ARBITRARINESS

The constitutional shift became explicit in *Shayara Bano v. Union of India*. A Constitution Bench invalidated talaq-e-biddat.

The plurality invoked Article 14 and the doctrine of manifest arbitrariness. The practice was held unconstitutional because it allowed instantaneous, irrevocable divorce without procedural safeguards, rendering women vulnerable to unilateral deprivation of marital status.

This judgment signaled a departure from Narasu's insulation theory. Although the Court did not explicitly overrule Narasu, it subjected a personal law practice to constitutional scrutiny.

Subsequently, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act criminalizing instant triple talaq.

V. POLYGAMY, EQUALITY, AND THE LIMITS OF JUDICIAL INTERVENTION

While maintenance and triple talaq have received extensive judicial attention, the issue of polygamy remains relatively under-litigated in Indian constitutional jurisprudence. Classical Islamic law permits a Muslim man to marry up to four wives, subject to the condition of equal treatment. However, modern feminist scholarship argues that structural inequality makes equal treatment practically unattainable, thereby rendering polygamy inherently discriminatory.

Unlike triple talaq, polygamy has not yet been invalidated by the Supreme Court. Judicial reluctance stems partly from the continuing shadow of *Narasu Appa Mali*, which insulated personal laws from direct constitutional scrutiny. Nevertheless, courts have increasingly applied secular statutes such as the Protection of Women from Domestic Violence Act, 2005 to protect women in polygamous marriages.

The constitutional challenge lies in determining whether polygamy constitutes an essential religious practice under Article 25. In *Shayara Bano*, while triple talaq was invalidated, the Court did not pronounce upon polygamy. The essential practices doctrine, developed in *Shirur Mutt*,²⁰ has often shielded certain religious practices from state interference unless they are deemed non-essential.

However, contemporary constitutional theory suggests a gradual shift from the essential practices test toward substantive equality analysis. If polygamy were to be challenged, courts may examine whether it violates Article 14's guarantee against arbitrariness and Article 15's prohibition of sex-based discrimination.

The absence of direct adjudication on polygamy indicates that the constitutionalisation of Muslim matrimonial law remains incomplete. Judicial reform has been incremental rather than comprehensive.

²⁰ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 (India).

VI. CUSTODY AND GUARDIANSHIP: WELFARE PRINCIPLE VS. PATRIARCHAL PRESUMPTIONS

In matters of custody (hizanat), classical Muslim law grants mothers preferential custody of minor children up to a specified age, while legal guardianship (wilayat) typically vests in the father. This distinction historically limited maternal authority in financial and legal matters concerning children.

Indian courts have increasingly prioritized the “welfare of the child” principle over rigid personal law doctrines. Although not exclusively concerning Muslim law, the Supreme Court’s jurisprudence in guardianship cases emphasizes that the child’s welfare is paramount.²¹ This principle effectively supersedes strict personal law rules when necessary.

By applying a uniform welfare standard across communities, courts have subtly diluted patriarchal guardianship presumptions. This approach reflects constitutional values without explicitly invalidating personal law provisions.

The welfare principle demonstrates how constitutional norms permeate family law adjudication indirectly, even where personal law retains formal authority.

VII. ARTICLE 25 VS. ARTICLES 14 AND 21: THE CONSTITUTIONAL BALANCING ACT

A central theoretical tension in Muslim matrimonial rights jurisprudence concerns the relationship between Article 25 (freedom of religion) and Articles 14 and 21 (equality and dignity). Article 25 guarantees freedom of conscience and the right to profess, practice, and propagate religion, subject to public order, morality, health, and other fundamental rights.

In *Shah Bano*, the Court implicitly privileged secular welfare over personal law claims. In *Danial Latifi*, it harmonized legislative action with constitutional values. In *Shayara Bano*, the Court explicitly invalidated a personal law practice under Article 14.

The plurality in *Shayara Bano* reasoned that a practice that is manifestly arbitrary cannot claim protection under Article 25 because constitutional morality limits religious autonomy.²² The invocation of “constitutional morality” marks a doctrinal shift, suggesting that personal law practices must conform to overarching constitutional values.

However, critics argue that judicial intrusion into religious domains risks majoritarian overreach. The delicate balance lies in ensuring that reform advances gender justice without

²¹ Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, Acts of Parliament, 1986 (India).

²² Muslim Women (Protection of Rights on Marriage) Act, No. 20 of 2019, Acts of Parliament, 2019 (India).

undermining minority protections.

The gradual movement from harmonization to invalidation reflects judicial confidence in asserting constitutional supremacy while navigating communal sensitivities.

VIII. MANIFEST ARBITRARINESS AND THE EXPANDING SCOPE OF ARTICLE 14

The doctrine of manifest arbitrariness, articulated in *Shayara Bano* and later reinforced in *Navtej Singh Johar*,²³ provides a powerful tool for reviewing laws and practices that are capricious or irrational.

Applying manifest arbitrariness to personal law practices signals an expansion of Article 14's scope. Triple talaq was invalidated because it allowed unilateral, instantaneous divorce without safeguards, rendering women vulnerable to arbitrary deprivation of status.

This doctrinal development suggests that future challenges to discriminatory personal law practices may rely on arbitrariness analysis rather than solely on essential religious practice tests.

The constitutionalisation of Muslim matrimonial law thus represents not merely reform of specific practices but an evolution in equality jurisprudence.

IX. LEGISLATIVE RESPONSE AND CRIMINALIZATION: THE 2019 ACT

The Muslim Women (Protection of Rights on Marriage) Act criminalizes pronouncement of instant triple talaq. The Act provides for imprisonment of up to three years and entitles the woman to subsistence allowance and custody of minor children.

While supporters argue that criminalization ensures deterrence, critics contend that incarceration may undermine economic security by removing the earning spouse. The shift from civil invalidation to criminal sanction reflects legislative assertiveness but raises questions about proportionality.

The Act demonstrates the dynamic interplay between judicial pronouncements and parliamentary response. It also underscores the politicization of personal law reform in contemporary India.

²³ *Commissioner, Hindu Religious Endowments v. Shri Lakshmindra Thirtha Swamiar of Shirur Mutt*, AIR 1954 SC 282 (India).

X. SYNTHESIS: THE TRAJECTORY OF CONSTITUTIONALISATION

The evolution of Muslim matrimonial rights in India can be traced across three phases:

1. **Interpretive Accommodation (Shah Bano Phase):** Secular provisions applied to protect women without directly invalidating personal law.
2. **Harmonization (Danial Latifi & Shamim Ara Phase):** Courts read statutes in conformity with constitutional values.
3. **Substantive Constitutional Scrutiny (Shayara Bano Phase):** Personal law practice invalidated for violating equality.

This trajectory reveals a gradual but discernible shift from deference to active constitutional oversight.

The judiciary has not abolished Muslim personal law; rather, it has reshaped it through constitutional infusion. This nuanced transformation reflects India's plural constitutional framework, which seeks to reconcile diversity with equality.

CONCLUSION

The judicial evolution of Muslim women's matrimonial rights in India reflects one of the most significant constitutional transformations within the domain of personal law. What began as a cautious engagement with secular welfare legislation has matured into a structured process of constitutionalisation, where personal law practices are increasingly examined through the lens of equality, dignity, and non-arbitrariness. This transformation has not been abrupt or revolutionary; rather, it has unfolded incrementally across decades of judicial reasoning, legislative response, and social contestation.

Historically, Muslim matrimonial law operated within a doctrinal framework shaped by classical Hanafi jurisprudence and later institutionalized through colonial Anglo-Mohammedan adjudication. The enactment of the Muslim Personal Law (Shariat) Application Act and the Dissolution of Muslim Marriages Act provided statutory anchoring but did not codify comprehensive substantive rules. As a result, courts inherited interpretive authority over uncodified principles, thereby positioning the judiciary as the primary site of reform.

The first decisive constitutional encounter emerged in *Mohd. Ahmed Khan v. Shah Bano Begum*. The Court's insistence that secular maintenance provisions apply to divorced Muslim women marked a shift from deference toward constitutional accountability. Although the subsequent enactment of the Muslim Women (Protection of Rights on Divorce) Act appeared to curtail this advancement, the judiciary reasserted constitutional values in *Danial Latifi v.*

Union of India through purposive interpretation. In doing so, the Court demonstrated an institutional strategy of harmonization preserving legislative validity while safeguarding women's substantive rights.

The jurisprudential culmination occurred in *Shayara Bano v. Union of India*, where instant triple talaq was invalidated as unconstitutional. This decision marked a doctrinal turning point. For the first time, a practice rooted in Muslim personal law was subjected to direct constitutional invalidation under Article 14. The invocation of manifest arbitrariness signaled the judiciary's willingness to expand equality jurisprudence into domains previously insulated by the *Narasu* doctrine. Although *Narasu Appa Mali* was not expressly overruled, its normative force was significantly weakened.

The legislative enactment of the Muslim Women (Protection of Rights on Marriage) Act further demonstrates the dynamic interplay between judicial pronouncements and parliamentary action. Yet the criminalization of triple talaq also exposes the complexities of reform: while intended as a deterrent, it raises questions regarding proportionality, economic security, and the appropriateness of criminal sanctions in matrimonial disputes.

From a constitutional perspective, the trajectory of reform illustrates three major shifts:

First, the judiciary has moved from a position of interpretive accommodation to substantive scrutiny. Early cases relied on secular statutes to indirectly protect Muslim women. Later decisions directly evaluated personal law practices against constitutional standards.

Second, equality jurisprudence has expanded beyond formal non-discrimination toward substantive equality. The emphasis on dignity under Article 21 and manifest arbitrariness under Article 14 reflects a transformative constitutional ethos.

Third, the tension between Article 25 religious freedom and Articles 14 and 21 equality guarantees has gradually been recalibrated. The courts have increasingly affirmed that religious practices cannot claim immunity when they infringe fundamental rights.

However, the constitutionalisation of Muslim matrimonial rights remains incomplete. Several doctrinal and structural challenges persist.

One unresolved issue concerns polygamy. Unlike triple talaq, polygamy has not been constitutionally tested before the Supreme Court in a definitive manner. If challenged, courts will need to reconcile equality analysis with the essential religious practices doctrine. The outcome may further redefine the boundaries of personal law autonomy.

Another concern relates to enforcement. Judicial pronouncements, however progressive, do not automatically translate into lived empowerment. Access to legal aid, awareness of rights, socio-economic dependency, and procedural delays continue to limit the practical realization of

matrimonial protections. Substantive equality requires not only doctrinal clarity but also institutional support mechanisms.

Further, the broader debate over a Uniform Civil Code continues to shape discourse. While Article 44 envisions uniformity, abrupt codification risks exacerbating communal tensions. The incremental judicial approach constitutional infusion without wholesale abolition may offer a more sustainable model of reform within a plural society.

The constitutional transformation of Muslim matrimonial rights also holds theoretical significance for Indian constitutionalism. It demonstrates that pluralism and equality are not mutually exclusive. The judiciary has attempted to navigate between respecting religious diversity and upholding constitutional supremacy. This balancing act reflects the distinctive character of India's transformative constitutionalism one that seeks reform through dialogue rather than rupture.

In evaluating the hypotheses advanced in this study, the findings substantiate that:

- The judiciary has progressively constitutionalised Muslim matrimonial law through equality-based scrutiny.
- Judicial interpretation has indeed been more transformative than legislative reform in advancing women's rights.
- The doctrine of manifest arbitrariness has emerged as a central constitutional tool.
- Nevertheless, enforcement gaps and unresolved doctrinal tensions remain.

Ultimately, the matrimonial rights of Muslim women in India have undergone significant normative transformation. The journey from Shah Bano to Shayara Bano reflects a constitutional narrative of expanding dignity and accountability. Yet the project of gender justice within personal law is ongoing. Future reform must integrate judicial vigilance, legislative coherence, and socio-legal empowerment to ensure that constitutional promises are not confined to courtroom pronouncements but become embedded in everyday lived realities. The story of Muslim women's matrimonial rights is therefore not merely a chapter in personal law reform; it is a testament to the evolving capacity of the Indian Constitution to engage with diversity while advancing equality. The constitutionalisation process is neither complete nor uncontested, but it represents a decisive movement toward substantive gender justice within India's plural legal order.

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