



ISSN: 2583-7753

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 4 | Issue 1

2026

DOI: <https://doi.org/10.70183/lijdlr.2026.v04.116>

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ŞABR, JUSTICE, AND DIVORCE: RETHINKING ṬALAQ AND MARITAL TOLERANCE IN MUSLIM LAW IN INDIA

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I. ABSTRACT

The Islamic law of marriage is a civil contract that is based on mutual-consent, mutual-rights, and moral restraint. Although divorce (talaq) is legally allowed in this context, it is not generally encouraged and is controlled by the Quranic injunctions of emphasizing patience (şabr), reconciliation, and justice. However, nowadays in modern India, Muslim divorce laws and practices have been under severe constitutional and societal examination especially after the nullification and denaturation of instant talaq. Such developments have brought back the issue of marital tolerance, gender justice, and the validity of endurance among Muslim marriages. The critical issue in this paper is to determine whether the growing exposure of Muslim couples to divorce implies the lack of tolerance or it is actually the redefinition of the standards of marriage due to the Islamic morals, socio-legal revolution, and constitutional control. The study is based on a doctrinal/socio-legal approach using the principles of Quran, classical Islamic law, Indian personal law, constitutional adjudication and empirical indicators to the Muslim marital practices in India. The paper contends that the concept of tolerance in Islamic marriage was never unconditional.

II. KEYWORDS

Muslim Personal Law; Talaq; Marital Tolerance; Islamic Family Law; Gender Justice.

III. INTRODUCTION

Under Islamic law (nikah) marriage holds a special place, both legal and moral, which it shares with the sacramental conceptions of a number of other personal law systems in India. The concept of marriage in classical Islamic jurisprudence represents it as a civil contract (aqd), which is based on mutual consent, mutual rights, and on the

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obligatory commitments. Such contractual knowledge makes the possibility of marital dissolution both legal in nature and at the same time, lends the notion to some form of ethical restraint. Divorce (talaq), though not forbidden, is always referred to by jurists as an undesirable solution- allowed by law but not morally preferred.³ This two-sidedness supports tolerance not as a blind toleration, but as a value that is modulated by justice, fairness, and harm aversion.

Quranic order of relations in marriage is concerned with coexistence on the ground of kindness (maruf) compassion (rahma) and equity. The Quran calls upon married people to either to keep each other in benevolence or to free each other with justice⁴ which is to say that perseverance in marriage is not attained at the expense of injustice. On the same notes, the Quranic prescriptions that address marital discord have provided mechanisms of reconciliation including the family-based arbitration (tahkim) prior to dissolution being considered.⁵ These provisions demonstrate a normative juxtaposition in the Islamic law: waiting (şabr) is appreciated, yet the forceful persistence of marriage with the subsequent oppression (zulm) is forbidden.

Nevertheless, unlike this complexity of the doctrine, Muslim divorce in India has historically been a socially stigmatized phenomenon, especially among women. Patriarchal interpretations, cultural practices, and socio-economic dependency usually reduce talaq as a legally controlled tool to become an instrument of unilateral male control. The virtue of endurance commonly became the virtue of religion and the privilege of men to initiate a divorce was rarely challenged. This dislocation between ideals and realities of the doctrines creates a necessary contrast on which the modern discourse of Muslim divorce should be interpreted.

However, in post-independent India, the Muslim personal law has operated in a plural constitutional order, which has been given statutory weight by the Muslim Personal Law (Shariat) Application Act, 1937. Over many decades, the courts had assumed an attitude of restrained intervention, perceiving personal law as immune to constitutional review. This practice, in its turn, started to degrade when constitutional

³ Al-Mughni; Bidayat al-Mujtahid.

⁴ (Qur'an 2:229).

⁵ (Qur'an 4:35).

jurisprudence started to anticipate equality, dignity, and non-discrimination as the general principles that are applicable to the whole legal regimes that govern intimate relationships.

The case of *Shayara Bano v. Union of India*⁶ was a breaking point of this trend. The Court brought Muslim divorce practices within the constitutional framework of Articles 14 and 21, invalidating *talaq al-bidah* (instant triple *talaq*) as violative of the fundamental right to equality under Article 14 on the ground of manifest arbitrariness. The decision redefined tolerance in the context of marriage in terms of dignity and arbitrariness, and it was unnecessary to legitimise practices that caused disproportionate harm to women. The next legislative measure that employed a similar mechanism and solidified this change was the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalised instant *talaq* and asserted the substantive rights of women in marriage.⁷

The normative situation of Muslim divorce in India has been changed greatly due to these legal interventions. The meaning of *talaq* is no longer, and continues not to be, a purely religious privilege but is a legally governed action within the limitations of the constitution. This has changed the course of tolerance levels in Muslim marriages. The concept of endurance is also now evaluated not based on the concept of silent compliance, but based on principles of justice, procedural justice, and mutual obligation.

The rhetoric that surrounds Muslim divorce practices has tended to range in two directions: as an Islamic law that is permissive of arbitrary divorce, or a type of Muslim woman who has been oppressed by a religious institution. Both stories not only blur over the mutuality of doctrine, patriarchy, and constitutional government, but also conceal the complexity of their interaction. The classical Islamic jurisprudence incorporates various measures to prevent expressions of impulsive divorce such as waiting periods (*iddah*), revocability and the requirement to reconcile. Simultaneously, the socio-legal realities in India would lead to the fact that such

⁶ AIR 2017 SC 4609.

⁷ Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act No. 20 of 2019).

protective measures have been applied frequently unevenly, especially to the disadvantage of women.

This paper rejects the essentialist interpretations and places the practices of Muslim divorce within a changing socio-legal context. It poses the question of whether the higher rate of marital dissolution among Muslim couples indicates reduced tolerance or is it the change of morality founded on endurance into the rights-based judgment of marriage relations. It also discusses the way constitutional adjudication has changed the face of the Islamic divorce norms and has changed the tolerance as a gender expectation to a legally demarcated principle.

The central argument being put here is that the increase in the use of divorce mechanisms in the Muslim community does not indicate the decline in Islamic values, but a realignment of the Islamic values to justice (adl), dignity, and avoiding harm.

This study follows a doctrinal and socio-legal methodology based on the Quranic principles, classical Sunni jurisprudence, statutory law, constitutional case laws and empirical research

Although based on the Islamic legal theory, the interpretation places the Muslim divorce in the context of the constitutional framework of India, which acknowledges that individual law has now existed in the context of religious dogma and basic rights.

This paper aims to add to a more subtle and constitutionally appropriate of *ṭalak* in India, that is, which does not romanticise the idea of endurance, nor injure to religious tradition, but rather augments in foresight justice, dignity, and substantive equality in marital relations.

A. Research Objectives

The present study aims to achieve the following objectives:

1. To examine the concept of marital tolerance (*ṣabr*) within Islamic jurisprudence in relation to justice, dignity, and harm avoidance.
2. To analyse the legal transformation of Muslim divorce practices in India in light of constitutional adjudication, particularly after *Shayara Bano v. Union of India*.

3. To evaluate whether increasing instances of divorce among Muslim couples reflect declining tolerance or a redefinition of marital standards.
4. To assess the interaction between classical Islamic principles and contemporary socio-legal developments affecting Muslim marriages in India.

B. Research Questions

The paper is guided by the following research questions:

1. Does the increasing recourse to divorce among Muslim couples in India indicate a decline in marital tolerance, or a transformation in its meaning?
2. How does Islamic jurisprudence conceptualise tolerance in marriage in relation to justice and the prohibition of harm?
3. In what ways has constitutional adjudication reshaped the legal understanding and regulation of talaq in India?
4. How do sociological and psychological factors influence marital breakdown within the framework of Muslim personal law?

C. Research Methodology

This study adopts a doctrinal and socio-legal methodology. The doctrinal component involves an analysis of primary sources, including Quranic principles, classical Sunni jurisprudence, statutory provisions such as the Muslim Personal Law (Shariat) Application Act, 1937, and constitutional case law, particularly *Shayara Bano v. Union of India*. The socio-legal dimension incorporates secondary literature, empirical studies, and sociological data relating to Muslim marital practices in India. This combined approach facilitates an examination of both normative legal principles and their practical operation within contemporary social contexts.

IV. CONCEPTUAL FRAMEWORK: TOLERANCE, AND JUSTICE IN ISLAMIC MARRIAGE

The idea of tolerance in Islamic marriage cannot be discussed without extending this concept to wider ethical ideas that regulate interpersonal behaviour in Islamic jurisprudence. In contrast to secular paradigms that tend to equate tolerance with

survival alone, the Islamic legislative system places the context of marital tolerance in a moral universe organised around the principles of justice (*adl*), benevolence (*iḥsan*), and avoidance of harm. Thus, tolerance is not absolute and unconditional, but a value that is bounded by moral boundaries and mutual responsibilities.

The core idea of Islamic marital ethics is the relationship which is based on tranquility (*sukun*), affection (*Mawaddah*), and mercy (*rahma*).⁸ These standards determine the normative base upon which the behavior of marriage is judged. In a situation where such conditions are essentially compromised, the morality of perseverance in marriage is doubted. In this regard, tolerance is a tool to maintain peace, rather than a duty to tolerate injustice that is perpetuated.

Quran mentions several times the term *ṣabr* (patience) as the moral virtue, even on the family level. Quranic patience, however, does not mean that one suffers passively. Classical exegetes explain that *ṣabr* involves perseverance in righteousness and forbearance of injustice not submission in oppression.⁹ In the context of marriage, *ṣabr* is promoted in times of struggle yet it is always counterbalanced with the Quranic disallowance of harm and cruelty. This harmony is reflected in the commandment that the husband and wife need to live together either with good (*maruf*) or to part ways in a just (*iḥsan*) way.¹⁰

This moral equilibrium is also institutionalised in Islamic jurisprudence through procedural protections for marital discord. Quranic arbitration (*tahakim*) is mandatory in instances of acute marital dispute.¹¹ It can be selected as a direct indication of reconciliation with the use of community-mediation. Classical jurists understood this clause to mean that they have a moral, but not a legal, duty to come to reconciliation before divorce. Tolerance in this case is achieved by means of an intervention but not just passive suffering.

Notably, the Islamic law does not grant precedence to endurance rather than justice. Some of the juristic maxims, including *al-ḍarar yuzāl* (harm must be removed) and *lā*

⁸ (Qur'an 30:21).

⁹ Tafsir Ibn Kathir.

¹⁰ (Qur'an 2:229)

¹¹ (Quran 4:35)

ḍarar wa l la dirar (there shall be no harm nor reciprocating harm) are fundamental to all schools of Islamic jurisprudence. These maxims confine the extent of tolerance by outlawing the perpetuation of relations that result in long-term harm. In that sense, divorce is a remedial process aimed at averting injustice, and not of moral failure.

Classical Sunni jurists accepted that too much tolerance would also create injustice especially to women. In *Bidāyat al-Mujtahid*, Ibn Rushd notes that despite the disapproval of divorce, the option exists to acknowledge human error and the risks of coercion to coexist. Likewise, Ibn Qudāma al-Maqdisi insists that long term marital conflicts which are not resolved negate the ethical purpose of marriage. These juristic findings make simplistic interpretations of Islamic law to be based on endurance at any price.

In this context, tolerance is self-reciprocal. Regarding Islamic marital ethics, it is obligatory to both the husband and wife where the husband maintains (*nafaqa*), keep companionship (*muasharah bi-l-maruf*), and both parties respect each other. In such cases where such obligations are repeatedly violated, no tolerance expectations are morally and legally tenable. This give and take marks the difference between Islamic ideas of tolerance and culturally constructed practices that place unfair burdens on women to adjust and be silent.

However, in the Indian scenario, these doctrinal ideals have been different in terms of lived experiences of Muslim marriage. Historically, social organization and economic dependency were patriarchal, and tolerance was gendered as legal illiteracy.¹² This is a perversion of the principles of Islamic tolerance, and the need to separate normative jurisprudence and social practice is emphasized.

Contemporary constitutional intervention has further reshaped the conceptual boundaries of tolerance within Muslim marriage. Judicial scrutiny of *talaq* practices through the lens of equality and dignity has reinforced the Islamic principle that harm cannot be justified by formal permissibility alone. In *Shayara Bano v. Union of India*,¹³

¹² Raghuv eer G Kulkarni, "A Critical Analysis of Divorce Under Muslim Personal Law in India", 2, *AJVBCL*, 74, 74-89 (2025).

¹³ AIR 2017 SC 4609.

the Supreme Court's reasoning echoed the juristic maxim against arbitrariness and harm, effectively aligning constitutional values with foundational Islamic ethics

Therefore, the concept of tolerance in the Islamic marriage should be treated as a dynamic concept that is context sensitive. It involves patience, compromise, and reconciliation, yet it is constrained by justice, dignity and avoiding harm. Endurance becomes ethically invalid when it promotes disparity or pain, especially when reconciliation has not achieved its purpose.

This theoretical framework contradicts mainstream discourses that treat Islamic tolerance as blind obedience. Rather, it demonstrates a complex ethical structure in which tolerance is a stabilizing element, checked by a strong sense of commitment to justice. This balance is critical in determining current trends in the dissolution of marriages in Muslim communities and in determining the effects of constitutional governance on Islamic divorce.

V. SOCIOLOGICAL FACTORS AFFECTING MUSLIM MARRIAGES AND DIVORCE IN INDIA

To comprehend divorce and marital tolerance in Muslim societies in India, one should thoroughly consider the sociological circumstances that influence not only the expectations of marriage but also the use of legal opportunities in the context of Islamic law. The way in which Muslim marriages work does not take place outside the context of larger social changes; instead, it is far more deeply entrenched in the context of changing economic, educational, and institutional settings. The increasing marital dissolution of Muslim couples should then be questioned as a result of structural transformation and not necessarily via the religious doctrine or individual choice.

Urbanisation has become a major issue that affects the marital life of Muslims. Movement to urban areas has undermined the traditional kinship networks that once mediated marital conflicts by the elderly, religious, and extended family systems. In the nuclear families in urban areas, the spouses are being pushed to settle marital disputes without the intervention of the community. This change makes informal

processes of reconciliation less effective in slowing down or even preventing divorce, and thus, formal legal recourse is more available and, in certain instances, more instantaneous.¹⁴

Education has had a very transformative effect on the Muslim communities. More access to higher education, particularly among Muslim women, has changed the expectations of marriage, autonomy, and rights. According to sociological research, educated Muslim women tend to challenge the unequal marital arrangements and seek redress in case of neglect, emotional abuse, and abandonment.¹⁵ Education not only increases economic opportunity but also legal literacy, which means that one can be more involved in religious and constitutional remedies.

Economic aspects also overlap with education to affect marital stability. Although parts of the Muslim population still face economic marginalisation, the rise in the number of women in the workforce in the urban areas has changed the traditional dependency structures. Financial independence lessens structural pressure to tolerate abusive marriages, reestablishing the tolerance-exit balance. Notably, this change does not disregard Islamic moral inclinations towards reconciliation, but it does increase the practicality of divorce as a solution to problems.¹⁶

There is also a massive renegotiation of the gender norms in Muslim marriages. The male dominance and female adaptation traditions are still present in most situations, but they are accompanied by the desire to be equal and responsible to each other. The conflict usually occurs when normative expectations are fixed, and social realities are evolving. The sociological literature on feminism points out that the opposition to unequal power relations is often framed as a lack of tolerance, instead of a statement of dignity and agency.¹⁷

Legal reform has had a strong sociological influence. The criminalisation of instant talaq and its illegalization has not only changed the legal outcomes, but also the

¹⁴ The Sachar Committee Report, Social, Economic and Educational Status of the Muslim Community of India (2006).

¹⁵ Zoya Hasan, *Muslims in India: Economy, Society and Politics* (Oxford University Press, 2018).

¹⁶ Bina Agarwal, "Gender and Command over Property," *World Development* Vol. 22, No. 10 (1994).

¹⁷ Badran, M. (2019). *Feminism in Islam: Secular and religious convergences* (2nd ed.). Oneworld Publications. <https://doi.org/10.2307/j.ctv7h0s6m>.

bargaining in marriage. Empirical evidence indicates that Muslim women have gained more bargaining power in marriage, especially in cases of arbitrary or unilateral divorce.¹⁸

Meanwhile, the criminalisation of instant talaq has had complicated social impacts. Critics believe that criminal penalties can discourage impulsive divorce but can also increase the conflict in the marriage by creating the threat of imprisonment.¹⁹ These strains highlight the need to contextualise legal reform in the context of wider sociological theories and not to analyse it separately.

The reduction of social stigma on divorce has also contributed to the breakup of marriages among Muslim couples, especially in urban and educated backgrounds. Although divorce still has a lot of social costs, particularly for women, the peer norms and the visibility of divorced people have led to a lower moral cost of marital exit. This change is similar to the overall trends found in religious groups in India, which indicates that marital expectations are converging, and there is no religious exceptionalism anymore.

It is also a critical factor of generational change. Emotional compatibility, communication, and mutual respect are becoming more important to younger Muslim couples. Arranged marriages are still prevalent, though they are usually accompanied by more pre-marital interaction and negotiation. In cases where these expectations are not followed, younger generations are less disposed to identify endurance with virtue. This change of the generation is not an indication of denial of Islamic values, but a reevaluation of the same in the context of modern realities.²⁰

Notably, sociological study shows that divorce rates among Muslims are often distorted or dramatized in society. The empirical evidence shows that the divorce rates among Muslims in India are not significantly higher than the rates of the other religious groups in India.²¹ These distortions distort the structural aspects of marital failure and strengthen the communal stereotypes that are not empirically supported.

¹⁸ Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act No. 20 of 2019).

¹⁹ The Law Commission of India, Consultation Paper on 'Reform of Family Law' (2018)

²⁰ Economic and Political Weekly, studies on divorce and family change in urban India.

²¹ Census of India, Marital Status by Religion tables (2011).

In this way, the increasing marital break-ups in Muslim couples should be perceived as the result of interplay of sociological factors: urbanization, education, economic transformation, gender renegotiation, legal change, and generational change. These considerations redefine the way tolerance is exercised and assessed in marriage and determine when endurance is considered virtuous and when the exit is considered justified.

VI. PSYCHOLOGICAL DIMENSIONS OF MARITAL BREAKDOWN IN MUSLIM MARRIAGES

Although sociological structures influence the external circumstances of Muslim marriages in India, the psychological and relational level is usually the most acute in the marital breakdown. Emotional anticipation, communication styles, dignity perceptions, and mental health are decisive factors in assessing marital satisfaction and tolerance thresholds by the spouses. Modern Muslim marriages, as in other societies, are now under the pressure of greater emotional demands that cut across religious values and legal restrictions.

Islamic marital ethics are focused on emotional companionship and legal obligation. Classical jurists understood *mu'ahsarah bi-l-maaruf*, living together in kindness, as including not only material support but also emotional care, respect, and humane treatment.²² Indeed, psychological neglect, humiliation or chronic indifference therefore erode the ethical basis of marriage in cases where formal requirements are met in a technical sense. Surviving in such situations turns out to be morally dubious instead of morally right.

Emotional fulfillment has taken on greater importance in contemporary settings. The Muslim wives, especially in urban and educated areas, are demanding marriage to offer companionship, empathy and psychological support. The disappointment is felt more strongly where such expectations are not fulfilled. According to psychological literature, marriages that are typified by enduring emotional disengagement tend to

²² Al-Mughni.

produce more distress compared to marriages typified by overt conflict because emotional neglect undermines self-worth and relationship security in the long run.

Patterns of communication are central to mediation of emotional expectations. In India, most Muslim marriages are arranged or semi-arranged, with little pre-marriage interaction. Although the Islamic law does not forbid pre-marital communication within the ethical limits, social norms tend to limit emotional acquaintance before marriage. In the absence of effective communication in spouses, misunderstandings can lead to deep-seated resentment, which decreases tolerance and leads to relational fatigue.

The concept of mental health awareness has also transformed the perception of marital suffering. The growing awareness of depression, anxiety and emotional trauma has upset previous standards of quiet endurance. Specifically, Muslim women have been able to express psychological distress as a valid complaint and not a personal liability. This change is similar to other changes in the Indian society yet has a unique meaning in the context of communities where patience and sacrifice were historically valued as part of religious and cultural norms.

Psychological injury is not ignored by Islamic jurisprudence. The maxims of not harming are also applicable to emotional pain. The classical jurists admitted that the continual behavior that created anguish, the so-called *adha*, could be used as a reason to dissolve even without physical violence.²³ This position of the doctrine refutes claims that Islamic law tolerates emotional cruelty and supports contemporary legal interpretations that mental cruelty is a valid basis to dissolve a marriage.

In modern India, courts are more actively involved in the psychological aspects of Muslim marriage conflicts. Although the constitutional repudiation of instant *talalaq* preceded the constitutional repudiation of cruelty, litigation recognized cruelty, and even mental cruelty, as a basis of judicial divorce (*faskh*). The *Shayara Bano* decision has increased the judicial sensitivity to psychological injury, thus harmonizing the constitutional values with Islamic moral standards.²⁴

²³ *Al-Ashbah wa al-Naza'ir*.

²⁴ Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act No. 20 of 2019).

The anticipations about intimacy and companionship have a significant impact on marital stability. Although the topic of sexual dissatisfaction is still a socially taboo matter, empirical research has shown that chronic lack of intimacy has a significant effect on emotional health and trust in relationships. Islamic law philosophizes the sexual relations as a mutual right and duty in marriage, not a one-sided right. Continuous rejection or disregard of companionship, in turn, undermines the moral validity as well as the bonding of the marital relationship.²⁵

The supportive scaffolding of extended family and community has become weakened, and this has added to the psychological burden of marriage. Past generations relied on the elders or religious leaders to mediate conflicts; in the current generation, a good number of couples deal with conflict alone. This loneliness intensifies emotional distress and reduces tolerance levels particularly when reconciliation mechanisms are not available or ineffective.

It should be mentioned that such a loss of tolerance does not always indicate the lack of moral strength or the inability to act ethically. According to psychological scholarship, there are limits to tolerance in cases where exposure to distress is chronic. Resilience in such a situation can only worsen mental damage and not build resilience. Modern Muslim couples are more likely to evaluate marital continuation based on the theories of psychological safety, dignity, and self-respect, which are values that are both Islamic and constitutional.

Therefore, the psychological and relationship aspects demonstrate that divorce among Muslim couples is often caused by prolonged emotional abuse instead of an immediate dissatisfaction. These make reductive accounts, which blame divorce by falling tolerance, difficult and instead blame a changing moral economy where endurance is no longer heroised when it continues to cause psychological distress.

VII. LEGAL FRAMEWORK OF MUSLIM DIVORCE IN INDIA

The Indian legal control of Muslim divorce is at the intersection of classical Islamic jurisprudence, statutory acknowledgement of personal law, and constitutional

²⁵ *Bidayat al-Mujtahid*.

control. In contrast to the uniform civil divorce regime, the Muslim matrimonial law has developed over time under fiqhi interpretation and subsequently became statutory under colonial and post-colonial legal systems. Modern trends have redefined this paradigm and changed the procedural and normative elements of marital dissolution.

The legal basis of Muslim personal law in India is the Muslim Personal Law (Shariat) Application Act of 1937 that the issues concerning marriage and divorce among Muslims shall be subject to the Islamic law. Although the Act does not enshrine the divorce procedures, it confirms the legal status of the juristic doctrines that govern talaq, khul', mubaraqat and judicial dissolution (faskh).²⁶ The legal silence in the past allowed uncodified practices, especially unilateral talaq, to be practiced with little judicial review.

According to classical Islamic law, there are several tools of marital dissolution that are based on various ethical and procedural principles. Authorization Talalaq permits unilateral repudiation by the husband but is normatively restrained by deliberation, revocability, and an interregnum ('iddah).²⁷ Khul' allows the wife to divorce under consideration, whereas mubaraqat is a mutual agreement to terminate the marriage. Judicial divorce (faskh) allows courts or qazis to terminate marriage based on certain reasons like cruelty, neglect, or failure to maintain. All these mechanisms imply a pluralistic and context-sensitive approach to marital exit in the Islamic jurisprudence.²⁸

In Indian jurisprudence, faskh has taken on a special importance to Muslim women who seek to exit abusive marriages. The Hedaya and juristic opinion have historically guided courts in recognising cruelty and neglect as valid grounds for dissolution. This judicial approach must be understood alongside the landmark decision in Mohd. Ahmed Khan v. Shah Bano Begum, where the Supreme Court upheld the right of a divorced Muslim woman to claim maintenance under Section 125 of the Code of Criminal Procedure. The judgment triggered significant legislative response in the

²⁶ Dr. Paras Diwan, *Muslim Law in Modern India* (14th edn, Allahabad Law Agency 2021)82.

²⁷ Fyzee, A. A. A. (2018). *Outlines of Muhammadan law* (6th ed.). Oxford University Press.

²⁸ *Bidayat al-Mujtahid*.

form of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which sought to limit such claims. This trajectory of judicial intervention and legislative response laid the foundation for subsequent constitutional interpretation, including later developments that softened the coercive nature of forced endurance.

The constitutionalisation of Muslim divorce law must be situated within a broader doctrinal trajectory beginning with *Mohd. Ahmed Khan v. Shah Bano Begum*, followed by legislative intervention through the Muslim Women (Protection of Rights on Divorce) Act, 1986, and its constitutional interpretation in *Danial Latifi v. Union of India*. This evolution culminated in the decision of *Shayara Bano v. Union of India*, which marked a watershed moment in subjecting Muslim divorce practices to constitutional scrutiny. In rejecting arbitrary power, the Court invalidated the practice of instant talaq al-bidah and brought unilateral and instantaneous divorce under the scrutiny of Articles 14 and 21²⁹, thus rejecting it as against fundamental rights. The decision was a doctrinal change in which the judiciary had been deferential to active constitutional control of personal law practices.

The Muslim Women (Protection of Rights on Marriage) Act of 2019 came soon afterwards. The Act makes instantaneous talaq a crime, voids it and provides subsistence allowances and custody rights to women who are affected. Even though the Act aims at discouraging arbitrary divorce and protecting the rights of women, it has raised significant controversy on whether criminal penalties should be used in matrimonial disputes.³⁰

At the institutional level, the Muslim divorce issues are resolved by a mixture of civil courts, family courts, and informal religious institutions. The family courts are becoming more and more involved with the Muslim matrimonial issues and are implementing the constitutional principles together with the personal law doctrines. However, reconciliation mechanisms in these institutions are still not even. The lack of culturally sensitive counselling, the lack of trained mediators with a good

²⁹ The Constitution of India.

³⁰ The Muslim Women (Protection of Rights on Marriage) Act, 2019; Law Commission of India, 262nd Report (2017).

understanding of Islamic jurisprudence, and the delays in the procedure often prevent meaningful dispute resolution.³¹

The legal focus on reconciliation still reflects Islamic ethical tendencies of saving marriage where feasible. However, judicial logic is becoming more aware that forced reconciliation can be a continuation of harm. The courts have now put more emphasis on voluntariness, dignity, and psychological well-being of assessing the viability of marital continuation, especially in situations where there is a long period of separation or emotional abuse.

The more interesting part is that since 2017, the Indian legal environment has changed the way Muslim couples' bargain over marriage. This fear of a guy simply walking away has been removed by the ban on instant talaq and this gives women a better bargaining position. However, on the other side, the introduction of a criminal element has created a mess- people fear that the law will be applied on them or punish normal marital disputes too harshly. This is all an indication that we should not only look at the theory but rather look at the social vibes and what it is like in real life as far as relationships are concerned.³²

Thus the existing legal and institutional framework is more of a mid-transition. The Islamic law principles that emphasize on justice and preventing harm are beginning to intertwine with the calls of equality and dignity in the constitution. Nevertheless, there exist unresolved tensions excavating the correct combination of deterrence, making mends, and allowing people to do what they please.

This section of the paper is essentially demonstrating that the legal shake-up has completely re-formulated the way we consider tolerance within Muslim marriages. Endurance is no longer applauded when it only happens by chance or is destructive, and divorce is no longer viewed as an individual action but as a controlled remedy.

³¹ The Family Courts Act, 1984; Department of Justice, Government of India, Family Courts Reports.

³² Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011).

VIII. FALLING TOLERANCE OR INCREASING STANDARDS? RECONSTRUCTION OF TALAQ AND MARITAL BREAKDOWN IN MUSLIM MARRIAGE

Public discourse, including media and political narratives, often portrays Muslim divorce, particularly talaq, as evidence of declining marital tolerance and weakening commitment within relationships. Such narratives tend to suggest that contemporary Muslim couples are relinquishing patience in favour of convenience. This part makes the case that this is a huge error by examining whether the increase in divorces is the result of tolerance being undermined or is it simply that we are moving what we think is okay, under the pressure of Islamic norms, social-legal developments and constitutional amendments.

Historically, endurance was regarded as a central virtue in sustaining Muslim marriages. Social norms required couples to exhibit tolerance, resolve differences, and preserve family dignity, often at significant personal and emotional cost. Consequently, formal divorce rates remained low, with many couples either informally separating or continuing marital relationships under compulsion, particularly in the case of women.

However, within Islamic ethical principles, endurance is not intended to conceal or perpetuate injustice. Classical juristic discourse emphasised that marriage must align with its core objectives, including companionship, fairness, and the prevention of harm. Where these objectives fail, divorce remains a permitted, though not preferred, remedy. Accordingly, marital continuation is ethically justified only insofar as it does not result in injustice or oppression.³³

In contemporary India, increasing recourse to divorce among Muslim couples may be attributed to heightened awareness of rights, dignity, and mental health considerations. Education, the law, and the constitutional drive of rights have all altered the way men and women consider a marriage worthwhile. Conditions that were previously endured, such as emotional neglect, abrupt marital disruption, or

³³ Bidayat al-Mujtahid.

prolonged uncertainty, are now increasingly viewed as incompatible with both Islamic ethical principles and constitutional values. What may be perceived as declining tolerance can instead be understood as a refusal to accept injustice.

The courts have intervened to support this opinion, In *Shayara Bano v. Union of India*.³⁴ The Supreme Court said, you cannot accept endurance of arbitrary talaq as of course they ripped up the concept of instant repudiation and made it clear that no harm to women could be justified by either tradition or legality. That reasoning is equivalent to the juristic tranquility of the statement that you cannot do what is harmful, even though it is possible in the law.

Another indicator of this change is the new Muslim Women (Protection of Rights on Marriage) Act of 2019 that prohibits instant talaq. Although it is being debated by people, according to the law, some types of quick, one-sided break-ups are not permissible, as they are incompatible with dignity and equality. So, the law is driving tolerance to the silent suffering to the fair process and collective responsibility.

From a sociological perspective, there has been a notable increase in expectations regarding emotional fulfilment and equitable distribution of responsibilities within marriage. Contemporary spouses increasingly conceptualise marriage as a partnership grounded in emotional reciprocity and shared responsibilities. Where such expectations remain unmet, divorce is increasingly considered a viable course of action. This shift does not indicate a rejection of Islamic values, but rather their reinterpretation in light of contemporary lived realities.

At the same time, some scholars caution that heightened expectations may contribute to relational instability. With all the emotional needs invested in marriage and a weaker community mediation scene, there may be very little room to salvage the situation. The Islamic law continues to remind us of mediation and slow, drag-out divorces, which are still significant in situations where no one is really harmed.³⁵

A balanced approach requires distinguishing between resisting injustice and prematurely dissolving marital relationships. Not all complaints warrant a divorce,

³⁴ AIR 2017 SC 4609.

³⁵ Al-Muwatta.

and Islam does not support hasty divorces either. Only when it prevents people attempting to correct things, tolerance becomes a problem. However, it is not just to demand endurance when it continues to put one in emotional distress or inequality.

Contemporary judicial practice in Indian family courts reflects a similar normative tension. Courts continue to encourage reconciliation, while increasingly recognising the risks of compelling individuals to remain in substantively dysfunctional marriages. Such a mindset is consistent with constitutional concepts of dignity and Islamic restraints on harm-inflicting tolerance.

Accordingly, the increasing incidence of divorce among Muslim couples should not be construed as a moral failure. It is a change of a rule that you should tolerate things that are not bad to a new rule that you should treat marriage with dignity. Tolerance has not diminished; rather, it has undergone conceptual transformation. Contemporary Muslim couples may be less willing to tolerate arbitrary conduct or sustained suffering; however, this reflects not a rejection of marriage, but a principled resistance to injustice.

IX. TRENDS AND PATTERNS OF MUSLIM DIVORCE IN INDIA

Census data is the most reliable method of monitoring the changes in marriage over time. In the census tables of India, we find that the percentage of individuals who claim to be divorced or separated has gradually increased in all the major religions, including Muslims. The statistics fail to support the argument that Muslims divorce at an alarming rate compared to other groups. Indeed, several census surveys indicate that the Muslim divorce and separation rates in several places are equal to or even less than those of Hindus and Christians. This is contrary to the popular story that Muslim marriages are particularly volatile.

Urban-rural gaps stand out. Divorce and separation among Muslims are more prevalent in urban areas than in rural areas. That trend is indicative of more general social trends that are associated with education, employment, the law, and reduced social stigma in urban areas. Muslim women especially complain more of exits in their marriages in urban regions, which coincide with the increased levels of education and

increased work outside the home. These results indicate that increasing divorce is more of a changing opportunity than a declining cultural tolerance.

The NFHS does not directly record the divorce rates, but it informs us on marital strain, women's power and being exposed to abuse. Surveys conducted by NFHS indicate that Muslim women have been reporting increased marital problems; they are increasingly saying that they can make choices, and they are increasingly aware of legal alternatives.³⁶ What this indicates is that there is more talking up by women and not that marriages are simply collapsing.

According to the Justice Department and Law Commission reports, there are increased cases of Muslim families in court seeking divorce, maintenance and custody cases. Most of these situations are of individuals who are long-lost or continue to attempt to mend things before resorting to court, which disproves the notion that Muslim divorce filings are impulsive or without prior efforts.

Another indirect source of data is NCRB crime statistics on marriage, such as cruelty or abandonment. The statistics do not disaggregate divorce as such, but they indicate the frequency with which marital issues escalate to the stage of litigation. Researchers caution against confounding this information with divorce rates, but they observe that the increasing number of complaints indicates more apparent marital abuse, rather than an unexpected increase in divorces.³⁷

Qualitative research provides more information on the Muslim divorce practices. According to field studies, many Muslim women take much time before they seek legal assistance when their marriage is in distress, and they usually exhaust informal religious and family mediation options. In such cases, divorce turns out to be the final option after a very long tolerance process.³⁸

The formal numbers also lack evidence of informal separation and abandonment. It is the lack of a legal divorce that leads to women leaving without a legal divorce but being socially separated, which underscores the idea that low divorce rates can be

³⁶ The National Family Health Survey (NFHS-4, NFHS-5), Ministry of Health, and Family Welfare.

³⁷ The National Crime Records Bureau, *Crime in India* (chapters on crimes relating to marriage).

³⁸ Ahmad, R., Hassan, M., & Ali, S. (2020). Mediation and reconciliation in Islamic family law: Contemporary applications and effectiveness. *Islamic Law and Society*, 27(4), 398-425.

very misleading.³⁹ The identification of these latent forms compels us to redefine easy correlations between the rates of divorce and marriage stability.

Patterns are beginning to change after the legal changes of 2017, although we have not yet had much data due to its novelty. There are already indications that the instant divorce under one sitting is no longer as common, and people are turning to court proceedings and negotiated settlements.⁴⁰ This action helps to prove that the legal reform has redefined the divorce paths rather than increasing the overall rate.

In general, there is no evidence that Muslims are less tolerant in marriages. Rather, it demonstrates increased manifestation of marital distress of a legal nature, increased access to assistance, and evolving ideals of marriage. Divorce is not an exit decision that is an act of hot take but rather a controlled response to years of issues or injury.

This discussion supports my primary argument that the greater the visibility of Muslim divorce, the more to do with norms and institutions, not with moral decay. It also demonstrates why policy should be aimed at preventing harm and offering decent means of terminating marriages.

X. IMPLICATIONS FOR LAW, POLICY, AND REFORM

The above has highlighted to us that the increase in Muslim divorce is not due to the decreased cultural tolerance but due to the changes in legal standards, expectations of society and the constitution. The implications of these changes on the future appearance of Muslim personal law, family courts and policy measures are enormous. Any reform agenda must strike a balance between Islamic morality, the constitution and what the people are actually going through.

We must go beyond reactive legal Band-Aid solutions and create a consistent system of Muslim divorce. The prohibition of Instant talaq prevented a certain version of one-night divorce, but that was not a complete reform of the entire system of Muslim divorce and marriage. Fair and ethically grounded alternatives such as khul,

³⁹ Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011).

⁴⁰ Sohaira Siddiqui, *Triple Divorce and the Political Context of Islamic Law in India*, 2 J. Islamic L. (2021).

mubarakaat and a court-mediated divorce (faskh) should now be prioritised by the lawmakers over the use of punishment, which is mostly used by the lawmakers.⁴¹

According to Islamic law, reform ought to be internal to Islamic law, in particular, the objectives of the Shaar (maqāṣid al-sharī'ah), which are concerned with justice, welfare and prevention of harm. The latter objectives support reforms that introduce legal protections, mutual consent, and place rational considerations in the face of impulsive divorces. The system can be more legitimate by making laws and courts adhere to these goals without betraying the teachings of Islam.⁴²

The family courts must be empowered to deal with Muslim partnerships. Judges and assistants are not always well versed with the Islamic family law which results in inequitable rulings and general constitutional reasoning without understanding the religious subtleties. Developing competencies, such as judges and culturally sensitive mediation special programs, would help to make the process fairer and quicker.⁴³

Reconciliation mechanisms should also be reconsidered. Islam usually prefers to repair a marriage, but any attempt to reunite should be done out of choice, taking into account the emotional dangers. An obligatory or ritualistic method can drive individuals into a state of forced survival, particularly women who have emotional or mental distress. Policy should make a clear distinction between real mediation and pressure to ensure that a marriage stays alive at all costs.⁴⁴

The other important policy implication is post-divorce protections. Despite the statutory changes, Muslim women are still vulnerable economically after the dissolution of marriage. The application of the maintenance rights under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 125 of the Code of Criminal Procedure) and the corresponding provision of personal law remains uneven. The mechanisms that ensure the payment of maintenance on time, the security of housing and the implementation of the child custody agreements should

⁴¹ The Law Commission of India, Consultation Paper on 'Reform of Family Law' (2018)

⁴² Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (International Institute of Islamic Thought, 2008).

⁴³ The Family Courts Act, 1984; Department of Justice, Government of India, Family Courts Evaluation Reports.

⁴⁴ Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011).

be strengthened in case the legal separation out of the marriage is not to create disproportionate hardship.⁴⁵

Social discussions and legal training also have a critical influence on the development of the attitude to tolerance and divorce in society. The continued stereotypes about Muslim divorce being either too lenient or being oppressive in nature are misleading to legal analysis and policy responses. Learning programs, in law schools and civil society, ought to promote subtle interpretations of Islamic marriage ethics and constitutional values, in opposition to communalised discourses that mask the structural factors of marital misery.⁴⁶

On the constitutional level, further interaction with Muslim personal law should find a middle ground between two extremes: unquestioning respect that condones injustice, and homogenising intervention that ignores doctrinal plurality. The jurisprudence of the Supreme Court since *Shayara Bano* promises a way in between, exposing the practices of personal law to constitutional review and at the same time being mindful of internal ethics. This balance is crucial to the preservation of religious freedom and substantive equality.⁴⁷

Lastly, policymakers should be aware that the increased popularity of divorce is not necessarily a collapse of family values. Instead, it is an indication of a more articulate expression of marital injury and increased access to solutions. The correct reaction is not to hold back divorce, but to strengthen relational abilities through education, mediation, and economic assistance, and to provide a dignified exit in which reconciliation is not possible.

Overall, the Muslim-law approach emphasizes that tolerance in marriage should be limited by justice, dignity, and avoiding harm. The most viable way forward is legal and policy changes that strengthen these boundaries without compromising on doctrinal integrity. This strategy does not romanticise endurance and does not

⁴⁵ *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

⁴⁶ Zoya Hasan, *Muslims in India: Economy, Society and Politics* (Oxford University Press, 2018).

⁴⁷ Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act No. 20 of 2019).

destabilise marriage but conforms Islamic ethics to constitutional commitments in a plural legal order.

XI. CONCLUSION

The paper has discussed divorce and tolerance in Muslim marriages in India in the socio-legal and constitutional perspective, specifically focusing on the institution of talaq and its changing regulation. Going beyond the polarised discourse that portrays Muslim divorce as necessarily arbitrary or too limited, the analysis shows that the practice of marital dissolution in Islamic law is regulated by a complex ethical framework balancing patience (*ṣabr*), reconciliation, and justice.

Classical Islamic jurisprudence does not identify tolerance with unconditional endurance. Although divorce is not encouraged, it is a legal way of ensuring that harm, injustice, and long-term discord are avoided. The Quranic injunctions that lay stress on kindness, fairness and arbitration indicate that continuation of marriage is ethically dependent on the maintenance of dignity and mutual obligation. Endurance, when oppression or mental abuse continues, becomes morally invalid. This theological understanding contradicts naive arguments that Islamic law requires tolerance by all means.

These principles have, however, been historically misinterpreted in the Indian socio-legal context by patriarchal practice, economic dependency and restricted access to the law. Tolerance became a gendered duty of silence and sacrifice to many Muslim women, and male power in marital dissolution was not much put into check. The invisibility of divorce in the past cannot be interpreted as a sign of marital harmony, but it is a sign of limited choice and unofficial survival.

This landscape has changed dramatically in contemporary developments. Constitutional adjudication- especially in *Shayara Bano v. Union of India*⁴⁸ has exposed the practices of Muslim divorce to equality, dignity, and non-arbitrariness. The criminalization and nullification of instant talaq is a clear change of deference to regulation, which re-establishes the legal limits of tolerance in Muslim marriage.

⁴⁸AIR 2017 SC 4609.

Although these interventions are still controversial, they are an indicator of an institutional reluctance to justify endurance that results in disproportionate harm.

The fact that the increase in the visibility of Muslim divorce is also an empirical indicator that supports the conclusion that normative change is happening, and not a decline in morality. There is no evidence of disproportionately high divorce rates among Muslims; there is evidence, however, of more legal expression of marital distress, particularly among educated and urban women. The divorce cases are often preceded by years of struggle and unsuccessful reconciliation, which implies that divorce is not a hasty decision, but a final option.

This paper will contend that modern Muslim marital disintegration is more aptly viewed as a transformation in the morality of endurance to the morality of dignity in the assessment of marriage. Tolerance has not gone away; it has been redefined. Muslim wives are becoming less and less willing to accept arbitrariness, emotional abuse, and uncertainty, but that is not the institution of marriage that they are intolerant of. This recalibration is in line with the Islamic ethical principles as well as constitutional commitments.

Meanwhile, the analysis warns against blind exultation of divorce. Marital dissolution has a lot of emotional and socio-economic implications, especially in situations where post-divorce support is insufficient. The law and policy issue is how to enhance voluntary and trauma-informed reconciliation mechanisms and to provide a dignified exit in cases of failure of reconciliation.

The future of the Muslim divorce law in India therefore, rests on maintaining a fine balance. The constitutional control should still ensure that arbitrariness and gendered harm are prevented, but reform should not avoid Islamic jurisprudence but engage with it. The use of internal sources of doctrines like *maqashid al-sharieah* provides a good avenue of reform that is normatively legitimate and socially responsive.

To sum up, divorce among Muslim marriages in India is not to be considered a failure of tolerance or religious principles. Rather, it is an indication of a society that is renegotiating the ethical basis of marriage in the face of dignity, equality, and justice. The purpose of law is not to promote endurance, but to make sure that marriage and

its dissolution are both subject to fairness, procedural integrity, and respect for human dignity in a plural constitutional order.

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