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DISSOLUTION OF MARRIAGE UNDER MUSLIM LAW WITH SPECIAL REFERENCE TO TRIPLE *TALAQ*: A FEMINIST CRITIQUE

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I. ABSTRACT

This paper advances a feminist critique of legislative interventions across both the colonial and post-colonial eras, examining how such interventions have profoundly shaped the evolution of Muslim personal law, with particular emphasis on the dissolution of marriage and, specifically, the practice of triple talaq. Public conversation surrounding triple talaq is largely confined to the celebrated case of Shayara Bano and the consequent criminalization of the practice, yet the issue encompasses a far wider and more complex set of concerns. This paper undertakes a critical inquiry into whether triple talaq is genuinely the core problem that media portrayal has made it out to be, or whether it is merely a consequence of the persistent failure to codify Muslim personal law in a comprehensive and systematic manner. It further raises the pointed question of why, despite the perceived severity of the problem, no meaningful legislative steps were taken toward such codification. The analysis is organized across two broad phases. The colonial phase examines the Muslim Personal Law (Shariat) Application Act of 1937 and the Dissolution of Muslim Marriages Act of 1939, exploring how colonial administrative logic shaped these enactments. The post-colonial phase then turns to the Muslim Women (Protection of Rights on Divorce) Act of 1986 and the Muslim Women (Protection of Rights on Marriage) Act of 2019, critically examining the motivations and limitations of these legislative interventions from a feminist standpoint.

II. KEYWORDS

Triple Talaq, Muslim Personal Law, Feminist Jurisprudence, Dissolution of Marriage, Post-colonial feminism.

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III. INTRODUCTION AND RESEARCH PROBLEM

Muslim women are frequently constructed within a binary framework as passive victims, grounded in essentialist assumptions, or alternatively as agents of reform and resistance. Both representations are deeply embedded in post-colonial nationalist discourse. These competing narratives have engendered a persistent crisis, adversely affecting Muslim women's status as equal citizens, as they remain subject to discriminatory practices entrenched in inequitable personal laws.[3] Such discrimination manifests in practices like the now-criminalized institution of instant triple talaq, the permissibility of polygamy, inequities in maintenance entitlements, and broader constraints on their civil rights. This paper interrogates both colonial and post-colonial discourses surrounding Muslim women's rights, demonstrating how their identities and struggles have been instrumentalised by religious authorities as well as political actors, while foregrounding their ongoing quest for substantive equality within the framework of citizenship.[4]

The research problem centers on the systemic marginalization of Muslim women through unilateral and arbitrary forms of divorce, which persist in India despite constitutional guarantees of gender equality. This issue is deeply rooted in the historical "freezing" of Islamic law during the British colonial era, a process that replaced a dynamic, interpretive tradition with a rigid, monolithic code that favored patriarchal "deserts-based justice" over modern "egalitarian" models.[5] While the *Muslim Women Act, 2019* succeeded in delegitimizing *Triple Talaq*, it introduced a new set of challenges by prioritizing the criminalization of the husband over substantive civil remedies and institutionalized reconciliation, often leaving women in a state of

[3] Rina Verma, *Reconceptualizing the Nation-state: Religion, Personal Law, and Ethnic Conflict in India, 1920–1986* (Cambridge: Harvard University, 1998)
[4] Shilpi Pandey, "The Burden of Being a Muslim Woman in India—The Instrumentalisation of Muslim Women at the Intersection of Gender, Religion, Colonialism, and Secularism" 15 *Religions* 291 (2024). *available at:* https://doi.org/10.3390/rel15030291
[5] Elisa Giunchi, "Gender and Equality in Muslim Family Law, Justice, and Ethics in the Islamic Legal Tradition," 31 *American Journal of Islam and Society* 118–20 (2014); Srimati Basu, "Separate and Unequal," 10 *International Feminist Journal of Politics* 495–517 (2008).

legal and financial vulnerability.[6] Ultimately, current legal and social structures frequently treat Muslim women as subjects under male "tutelage" rather than autonomous agents entitled to "participatory parity" in the matrimonial contract.[7] Consequently, the central challenge lies in navigating the tension between religious identity and a Uniform Civil Code, ensuring that any reform avoids "blind uniformity" and instead prioritizes a model of substantive "gender justice" that protects women's rights as a fundamental requirement of the 21st-century *Weltanschauung.*[8]

A. Research Objectives

1. To examine how colonial legislative interventions through the Shariat Act of 1937 and the Dissolution of Muslim Marriages Act of 1939 constructed and institutionalized a patriarchal interpretation of Islamic jurisprudence governing dissolution of Muslim marriage in India.
2. To investigate whether triple talaq is the root cause of gender injustice within Muslim personal law or merely a symptomatic consequence of the absence of comprehensive codification of Muslim personal law in India.
3. To critically analyze the post-colonial legislative interventions of 1986 and 2019 from a postcolonial feminist perspective to determine whether they genuinely advanced Muslim women's rights or primarily served political interests.
4. To offer a postcolonial feminist critique that challenges both religious patriarchy and state paternalism as twin structures that have systematically denied Muslim women equal legal protection and dignity in matters of dissolution of marriage.

[6] Sohaira Z. M. Siddiqui, "Triple Divorce and the Political Context of Islamic Law in India," 2 *Journal of Islamic Law* (2021); Khanak Agarwal, "Triple Talaq: A Feminist Point of View," 9 *International Journal for Research in Applied Science and Engineering Technology* 84–9 (2021).
[7] Talita Syamanta *et al.*, "Towards feminist justice: Reforms and challenges in islamic courts for gender equality and women's rights," 1 *Syariat* 36–57 (2024);
[8]

B. Research Questions

1. How did colonial legislative interventions through the Shariat Act of 1937 and the Dissolution of Muslim Marriages Act of 1939 shape and freeze a patriarchal construction of Muslim personal law governing dissolution of marriage in India?
2. Is triple talaq the fundamental cause of gender injustice within Muslim personal law or a symptomatic effect of the broader failure to comprehensively codify Muslim personal law in India?
3. To what extent did the Muslim Women (Protection of Rights on Divorce) Act of 1986 and the Muslim Women (Protection of Rights on Marriage) Act of 2019 genuinely protect Muslim women's rights rather than serving majoritarian political agendas?
4. In what ways have both religious patriarchy and state paternalism operated through colonial and post-colonial legislative frameworks to deny Muslim women agency, dignity, and equal legal protection in matters of dissolution of marriage?

C. Research Methodology

This paper adopts a postcolonial research methodology to critically examine the legislative construction and subsequent development of Muslim personal law in India, with particular reference to the dissolution of marriage and the practice of triple talaq. Postcolonial methodology, drawing from the foundational works of scholars such as Edward Said, Gayatri Chakravorty Spivak, and Homi Bhabha, proceeds from the fundamental premise that colonial rule did not merely govern territory but actively produced knowledge, constructed legal categories, and institutionalized particular interpretations of indigenous customs and religious practices in ways that served colonial administrative interests rather than the welfare of the colonized people.

In the context of Muslim personal law in India, this paper argues that the British colonial administration selectively codified and froze a particular patriarchal version

of Islamic jurisprudence through enactments such as the Muslim Personal Law (Shariat) Application Act of 1937 and the Dissolution of Muslim Marriages Act of 1939, thereby displacing more flexible and women-friendly interpretations that had historically existed within Islamic legal tradition. The postcolonial analytical lens is further extended into the post-independence period to interrogate how the Indian state, rather than dismantling this colonial legal inheritance, continued to perpetuate and politically manipulate it through legislative interventions such as the Muslim Women (Protection of Rights on Divorce) Act of 1986 and the Muslim Women (Protection of Rights on Marriage) Act of 2019, in both cases deploying Muslim women as political subjects rather than treating them as autonomous rights-bearing citizens deserving of genuine legal protection.

The methodology relies on qualitative and doctrinal analysis of primary legal sources including constitutional provisions, statutory enactments, parliamentary debates, and judicial decisions, read alongside secondary sources comprising postcolonial legal scholarship, Islamic jurisprudence, feminist theory, and historical records, all interpreted through the critical postcolonial framework that consistently asks whose interests the law serves, whose voices it silences, and whose power it legitimizes and reproduces.

D. Literature Review

The scholarship on Muslim personal law in India is extensive, contested, and politically charged. This review maps the major strands of the literature as they bear on the research problem.

1. Feminist Scholarship

Flavia Agnes's foundational work *Law and Gender Inequality: The Politics of Women's Rights in India*[9] remains the most comprehensive feminist legal analysis of the intersection of personal law and women's rights in India. Agnes argues that the post-colonial Indian state inherited a colonial framework of personal laws that was simultaneously communalised (divided by religion) and patriarchalised (internally

[9] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).

governed by male-dominated interpretive traditions), and that subsequent legislative interventions have consistently prioritised communal peace and electoral calculation over women's substantive rights. Her critique of the 1986 Act and the 2019 Act is incisive: both interventions, she argues, used Muslim women as symbols while leaving the structural conditions of their inequality intact.

Archana Parashar's *Women and Family Law Reform in India*[10] provides a comparative analysis of Hindu and Muslim personal law reform, demonstrating that the Indian state's professed commitment to gender equality has been applied selectively and inconsistently across religious communities. Parashar shows that even the supposedly progressive Hindu Code bills of 1955-56 retained significant patriarchal elements including the joint family property system and discriminatory succession rules that a genuinely gender-just approach would have reformed. The implication for the Muslim personal law debate is significant: if Hindu law itself was incompletely reformed, the UCC cannot be invoked as a panacea for Muslim women's disadvantage without confronting the inadequacies of all personal law systems.

Nivedita Menon's *Seeing Like a Feminist*[11] offers a critical perspective on what she terms 'instrumentalised feminism' the deployment of feminist rhetoric in the service of political agendas that are not genuinely committed to women's liberation. Menon's analysis of the Shah Bano controversy and its political aftermath is particularly relevant: she demonstrates how the Congress government's reversal of the Shah Bano judgment through the 1986 Act, and the BJP's subsequent invocation of Muslim women's rights in the lead-up to the 2019 Act, both exemplify the instrumentalisation of gender for communal-electoral purposes.

2. Post Colonial Scholarship

Lucy Carroll's scholarship on Anglo-Muhammadan law[12] is foundational for understanding the colonial construction of Muslim personal law. Carroll demonstrates that colonial courts applied a textualised, predominantly Hanafi version

[10] Archana Parashar's *Women and Family Law Reform in India* (Sage,1992).
[11] Nivedita Menon's *Seeing Like a Feminist* (Penguin, 2012).
[12] Lucy Carroll, "The Muslim Family in India: Law, Custom, and Empirical Research" 17(2) *Contributions to Indian Sociology* 205-222 (1983).

of Islamic law, departing from the diversity of regional customs and jurisprudential schools, and that this homogenised construction was in many respects more patriarchal than the customary practices it displaced. Carroll's work explains why the 1937 Shariat Act ostensibly a measure to return Muslims to 'their own law' in practice entrenched a colonial construct.

Pathak and Sunder Rajan's essay 'Shahbano'[13] provides a poststructuralist reading of the Shah Bano controversy, demonstrating how the multiple subject positions of Muslim women as wives, as Muslims, as citizens were constructed and contested by the state, the judiciary, Muslim religious organisations, and feminist groups. Their analysis anticipates subsequent scholarship on the impossibility of speaking of a unified 'Muslim woman' whose interests can be straightforwardly identified and protected by law.

3. Islamic Scholarship

Asghar Ali Engineer's *The Rights of Women in Islam*[14] argues that the progressive potential within the Quranic text and the diversity of Islamic jurisprudential traditions (the Maliki, Shafi'i, Hanbali, and Ja'fari schools alongside the dominant Hanafi school) have been suppressed by the political entrenchment of patriarchal interpretations. Engineer's scholarship supports the legislative strategy adopted in the 1939 Act drawing on Maliki jurisprudence to expand women's grounds for judicial divorce and points toward a broader programme of intra-Islamic reform that can provide Muslim women with rights without requiring the displacement of religious personal law by a Uniform Civil Code.

The Bharatiya Muslim Mahila Andolan's Draft Muslim Family Law[15] represents the most systematic legislative proposal for comprehensive reform of Muslim personal law within an Islamic framework. The BMMA's draft proposes compulsory marriage registration, minimum age requirements, codification of mehr as an immediately enforceable right, restriction of polygamy, recognition of the wife's delegated right to

[13] Zakia Pathak and Rajeshwari Sunder Rajan "Shahbano" *14*(3) *Signs* 558–582(1989).
[14] Asghar Ali Engineer, *The Rights of Women in Islam* (Sterling Publishers, 1992) 102.
[15] Bharatiya Muslim Mahila Andolan, Draft Muslim Family Law (2014) cls 6–12.

divorce (*talaq-e-tafwid*), and post-divorce maintenance commensurate with the marriage's duration. The absence of legislative engagement with this proposal is itself a datum about the political choices that have shaped Muslim personal law reform in India.

The Law Commission of India's 2018 Consultation Paper on Reform of Family Law[16] departed significantly from earlier Law Commission recommendations by concluding that a Uniform Civil Code was 'neither necessary nor desirable at this stage,' instead recommending internal reform of each community's personal law. This position reflects a scholarly consensus, articulated by Parashar[17] and others, that the UCC debate has been politically instrumentalised and that genuine gender justice requires reform of all personal law systems Hindu, Christian, Parsi, and Muslim rather than the absorption of minority personal laws into a majority-inflected uniform code.

IV. RESEARCH AND ANALYSIS

A. Colonial Selectivity and Post Colonial Continuity

The relationship of colonialism and personal law in colonial India is an intricate intersection of power, gender and legal structures.[18] Vrinda Narain's statement in this regard highlights this issue: "in India, the location of Muslim women at the intersection of gender, community, and nation exposes the inclusions and exclusions of post-colonial nationalist ideology, the mendacity of equal citizenship, and the inherent dangers of a forced identity based on primordial, essentialist definitions."[19]

B. Selective Non-Interference: The Politics of the "Personal"

Prior to the advent of British rule in the subcontinent, both Hindus and Muslims understood themselves to be governed by their respective religious legal systems. Although Muslim rulers had consolidated political authority by the thirteenth century and the Shariat ostensibly functioned as the law of the land, scholarly accounts suggest

[16]Law Commission of India, Consultation Paper on Reform of Family Law (August 2018) paras 2.1–2.4.
[17]*Supra note* 8 at 187.
[18] Kimber Williams Crenshaw, "Mapping the Margin: Intersectionality, Identity Politics and Violence Against Women of Color" 43 *STAN. L. REV*. 1250-63 (1991).
[19] Vrinda Narain, *Reclaiming the Nation: Muslim Women and the Law in India* 3(University of Toronto Press, Toronto: 2008).

that Hindus were, in practice, largely permitted to regulate their affairs in accordance with their own religious norms, except in the domain of criminal law.[20] Importantly, neither tradition drew a formal distinction between "personal" and other spheres of law for the purpose of regulating conduct. The very notion of "personal laws" was a colonial construct, introduced by British administrators and reflective of the European dichotomy between personal and territorial laws. Furthermore, given that ecclesiastical law in Europe governed such personal matters, British authorities readily mapped these concerns onto religious laws in the Indian context.[21]

Subsequently, colonial governance in India evolved through a blend of negotiated political arrangements, such as treaties, alongside territorial conquest. Legal and administrative developments unfolded unevenly across the provinces and Presidency towns; however, a significant early step involved the establishment of courts vested with judicial authority. The Warren Hastings' Judicial Plan of 1772 proved foundational in shaping what would later crystallize as the regime of religious personal laws. Notably, Article 23 of Regulation II under this plan expressly preserved the right of Hindus and Muslims to be governed by their respective religious laws in matters relating to inheritance, marriage, caste, and other religious usages or institutions.[22] Subsequent regulations, charters, and legislative enactments reinforced this framework, authorizing courts albeit in varied language and scope to apply Hindu and Muslim religious laws in adjudicating disputes that gradually came to be categorized as "personal" matters.[23]

The 1772 decree mandated that in matters of "inheritance, marriage, caste, and other religious usages or institutions," the laws of the Quran were to govern Muslims, while those of the Shastras were to be applied to Hindus.[24] This Victorian-era articulation of

[20] David Pearl, *A Text Book on Muslim Law* (Croom Helm, London:1979).
[21] Archana Parashar, "Religious personal laws as non-state laws: implications for gender justice", 45(1) The Journal of Legal Pluralism and Unofficial Law, 5-23 (2013). DOI: 10.1080/07329113.2013.773804
[22] Ilbert, Courtenay, *The Government of India: A Brief Historical Survey of Parliamentary Legislation Relating to India* (Clarendon Press, Oxford, 1907).
[23] Archana Parashar, "The Concept of Religious Personal Laws." In Towards Legal Literacy, (ed.) by Kamala Sankaran and Ujjwal Singh, 147–154 (Oxford University Press, Delhi: 2008).
[24]Partha Chatterjee, *The Nation and Its fragments: Colonial and Postcolonial Histories* (Princeton University Press, Princeton:1993).

"non-interference" in personal laws effectively confined state intervention to instances where reform was sought from within the community itself.[25] Although such an approach may appear ostensibly democratic within a colonial framework, the deliberate preservation of personal law regimes in both colonial and post-colonial India was closely aligned with the political imperatives of the ruling elite. Moreover, this principle was not applied uniformly across communities. The extent to which personal laws were subjected to intervention often depended on which segments within a community aligned with governmental interests. Consequently, the doctrine of non-interference operated in a conditional manner its application being circumscribed by its utility in reinforcing and perpetuating the power structures upon which the state depended.[26]

Situated within this paradigm of selective intervention and deliberate non-interference, the trajectory of Hindu reform movements largely championed by the Hindu elite reveals a discernible alignment with European cultural and intellectual currents, particularly in the reconstitution of indigenous social and cultural identities.[27] This transformation was significantly shaped by contemporaneous debates unfolding in late eighteenth- and nineteenth-century Europe. Within this milieu, the British "civilising mission" became deeply entangled with the so-called "women's question," a highly contentious discourse that gained particular prominence in Bengal during what is often described as the Renaissance.[28] Framed under the broader rubric of "reform," these initiatives sought to modernize personal laws in pursuit of social progress, especially with regard to gender equality.[29] However, in stark contrast, the colonial and subsequently post-colonial state demonstrated a persistent reluctance to effectively address the inequities and abuses experienced by Muslim women under the regime of personal laws.[30]

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[25] Rina Verma Williams, *Postcolonial Politics and Personal Laws: Colonial Legal Legacies and the Indian State* 100 (Oxford University Press, Delhi: 2006)
[26] *Ibid.*
[27] Rachel Dwyer, *Hindu Reform Movements in British India. In Key Concepts in Modern Indian Studies* 103-8 (New York University Press, New York: 2016).
[28] *Supra note* 22.
[29] Rina Verma Williams, "Gender, Nation, Religion: Political Discourse and the Personal Laws in India, 1952-1956." 5 *Journal of the Southwestern Conference on Asian Studies* 51-83 (2005).
[30] *Ibid.*

British policy toward Muslim customs and traditions amounted to "more than a concession to native opinion," rooted in the pragmatic need of colonial rule to secure the support of select communities for economic extraction.[31] As imperial authority expanded across the subcontinent, British officials possessed only a limited understanding of Islamic legal systems. Following the proclamation of "non-interference" in personal matters, the colonial administrative apparatus nevertheless required a working knowledge of indigenous Muslim legal norms to facilitate governance. This endeavor, however, was fraught with challenges, including linguistic barriers, a paucity of trained administrative personnel, and the internal diversity of the Muslim population, which was regulated by varied and sometimes divergent legal practices.[32]

C. The Muslim Personal Law (Shariat) Application Act- Creation of Static Law of Sharia

Confronted with the plurality of Islamic systems of governance, the British found it necessary to acquire a functional understanding of these norms in order to administer and engage with local populations with minimal expenditure of labour and resources.[33] In the process of instituting the "rule of law" for Muslims in India, they developed and codified Anglo-Muhammadan law, drawing upon a framework of legal presumptions, translations, selective codifications, and emerging juridical techniques. This project rested on the assumption that *Shari'a* derived from the Qur'an and Hadith constituted the primary source of legal authority for Islamic jurists; in doing so, however, it largely overlooked the complex social realities and internal diversity of Muslim communities within the subcontinent.[34]

Thereafter in the early twentieth century, the *ulema* grew concerned that in certain regions Muslims were adhering to local customary practices rather than *Shariat*, resulting in landed elites transferring property exclusively to male heirs instead of distributing shares in accordance with Islamic law. In response, they introduced a bill

[31] Michael R Anderson, "Islamic law and the colonial encounter in British India. Institutions and Ideologies" 15 *A SOAS South Asia Reader* 165, 168 (1993).
[32] *Ibid*, 171.
[33] *Supra note* 29.
[34] *Ibid.*

in 1937 aimed at standardizing the application of Islamic law across India, presenting the enhancement of women's rights as a key justification. It was also emphasized that Muslim women had expressed considerable support for the measure. Endorsing the bill, Muhammad Ali Jinnah underscored that a woman's economic status is fundamental to her recognition as an equal to men and to her full participation in social life.[35]

This process of codification culminated in the enactment of the Muslim Personal Law (Shariat) Application Act[36], a colonial legacy shaped by British objectives. Chief among these were the extraction of economic surplus particularly through agrarian revenue and the consolidation of political control at minimal administrative cost. To secure these ends with limited resistance, the British elevated the Qur'an as the definitive and authoritative source of Muslim law.

Under the guise of a "civilising mission" that purported to respect local communities, cultures, and traditions, the British reconfigured long-evolved indigenous systems in pursuit of a constructed, universalised "rule of law" that facilitated economic extraction and imperial domination. In this process, they portrayed Hinduism as regressive and Hindu women as subaltern, while simultaneously imposing a more rigid, text-centric legal framework on Muslim society grounded in the Qur'an. This led to the crystallisation of a stringent legal regime later recognised as Muslim Personal Law (MPL). The resulting "scripturalisation" of Muslim law has had enduring consequences, particularly in shaping identity politics within the community. Over time, this constructed identity became a political instrument, with both state actors and fundamentalist groups mobilising it to resist reform, often framing any legal change as an impermissible intrusion into Islam.[37]

In their attempt to locate a semblance of legal uniformity within a fragmented Muslim society in India, the British turned to pre-colonial legal scholarship grounded in *Shari'a*, which had historically been adapted in diverse ways as an instrument of

[35] Martha C. Nussbaum, "India: Implementing Sex Equality Through Law," 2(1) (4) *Chicago Journal of International Law* (2001) Available at: https://chicagounbound.uchicago.edu/cjil/vol2/iss1/4
[36] The Muslim Personal Law (Shariat) Application Act, 1937 (Act No. 26 of 1937).
[37] Razia Patel, "Indian Muslim women, politics of Muslim personal law and struggle for life with dignity and justice" 44(44) *Economic and Political Weekly* 44–49 (2009).

governance. These varied formulations had been employed by successive regimes, including the Sultanates, the Mughal Empire, and emerging eighteenth-century polities.[38] During the Mughal period, reliance on *Shari'a* assumed particular significance, both as a perceived religious obligation and as a means of legitimizing imperial authority, with substantial dependence placed on the *ulema* as interpreters of law. This era also witnessed the compilation of the *Fatawa-e-Alamgiri*, a comprehensive body of legal opinions within the *fiqh* tradition, reflecting Aurangzeb Alamgir's endorsement of the Hanafi school. This represented only one among multiple interpretive traditions of Islamic law, as numerous scholars across the subcontinent continued to engage with and reinterpret these legal frameworks in varied ways.[39] In contrast to the Hindu community whose elites often regarded custom as an autonomous source of law Muslim elites made concerted efforts to assert the primacy of *Shari'a*. Nevertheless, many local Muslim communities sought to preserve their autonomy by continuing to govern themselves in accordance with customary practices and localized traditions.[40]

The British largely overlooked the internal diversity of Muslim communities, some of which even adhered to practices influenced by Hindu customs. In their effort to identify a uniform "Muhammadan" law for application within Company courts, colonial administrators erroneously treated Islamic scriptural sources as a fixed and binding legal code, effectively elevating the Qur'an to the status of a comprehensive legal system for Muslims in India. This approach entailed heavy reliance on the interpretations of *qadis* and, subsequently, the *ulema*, who were regarded as authoritative interpreters of *Shari'a*.[41]

The colonial impulse to locate a stable and determinate source of law culminated in the publication of *Principles and Precedents of Mohamedan Law* (1825), which compiled *fatwas* and introduced broad generalisations. This work, and others that followed, obscured the inherent plurality and interpretive flexibility of Islamic legal traditions,

[38] *Supra note* 25.
[39] *Ibid*
[40] Mahmood Mamdani, *Citizen, and Subject: Contemporary Africa and the Legacy of Late Colonialism* 111 (Princeton University Press, Princeton: 2018).
[41] *Ibid.*

instead presenting them as a coherent and unified system. In doing so, these texts reconstituted *Shari'a* as something it had never historically been a rigid and immutable body of rules, insulated from interpretive variation and judicial discretion.[42]

Classical *fiqh* interpretations of the Qur'an have largely been shaped through a predominantly male lens, often resulting in readings that misrepresent or distort its original ethos; contemporary Muslim women are increasingly contesting and seeking to rectify these entrenched interpretations.[43]

D. The Dissolution of Muslim Marriages Act, 1939

Judicial dissolution, commonly called faskh in classical fiqh writings, forms one of the most carefully shaped channels for women to seek termination of the marital bond when ordinary remedies fail. The doctrine was elaborated by early jurists like Imam Malik and Imam Ahmad who accepted that a court could dissolve marriage upon clear harm or intolerable discord. Hanafi scholars originally used a narrower approach but later Indian reformers such as Ashraf Ali Thanvi and scholars tied to the Deoband tradition suggested that *faskh* must be applied in wider manner due to social realities faced by women in South Asia, where many had no effective exit despite doctrinal permission.[44] After codification through the Dissolution of Muslim Marriages Act 1939, *faskh* obtained a statutory presence, though courts continued mixing doctrinal logic with constitutional commitments under Articles 14 and 21. The constitutional vision of dignity, fairness and liberty encouraged judges to broaden interpretation when required, even if older writings had restrictive tone.[45]

Divorcesolution of Muslim Marriages Act 1939[46] emerged from years of pressure by reformers who believed that the classical rules concerning women's rights to seek

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[42] *Supra note* 11.

[43] Noorjehan Safia Niaz, 'Islamic feminism and Indian Muslim women's movement', in Noorjehan Safia Niaz and Zakia Soman, *Indian Muslim women's movement: For gender justice and equal citizenship 407* (Notion Press, Chennai, 2020). This volume, used throughout this article, is a compilation of journalistic pieces formerly published by these co-founders of the Bharatiya Muslim Mahila Andolan (henceforth BMMA).

[44] *Ibid.*

[45] Narendra Subramanian, "Islamic Norms, Common Law, and Legal Reasoning: Muslim Personal Law and the Economic Consequences of Divorce in India" 24(3) *Brill* 254-286 (2017).

[46] The Dissolution of Muslim Marriages Act, 1939 (Act No. 8 of 1939).

divorce must be clarified. Maulana Ashraf Ali Thanvi strongly influenced the drafting of the Act, particularly through the *fatawa* of the Deoband scholars who argued that women had broader dissolution rights than colonial courts admitted. The Act was passed partly because courts had reached very inconsistent outcomes, especially in cases involving cruelty and non-maintenance. The legislation created explicit grounds and therefore made judicial dissolution more accessible.

Section 2 of the Act lays down grounds such as disappearance of the husband for four years, failure to provide maintenance for two years, imprisonment for seven years or more, impotence, cruelty, and other circumstances that make continuation of the marriage injurious to the woman. Courts have frequently dealt with cases involving cruelty and non-maintenance because these are among the most common grounds invoked by wives. In *Itwari v. Asghari*, [47] although the case did not arise under the Dissolution of Muslim Marriages Act, 1939 but in a suit for restitution of conjugal rights, the Allahabad High Court held that a Muslim husband's act of taking a second wife, in contemporary social conditions, constituted cruelty sufficient to justify the first wife's refusal to resume cohabitation.

Later, in *Zubaida v. Sardar Shah*,[48] the Punjab and Haryana High Court broadened the understanding of cruelty to include mental anguish. Courts have also examined whether non-maintenance for two years must be wilful or whether mere failure is sufficient. In *Mst. Ayesha Bibi v. Ahsanullah Khan*,[49] the court held that the requirement is objective and does not demand proof of intention.

Judicial interpretation of the 1939 Act has undergone gradual transformation influenced by constitutional methods and comparative jurisprudence. Courts often say that personal law statutes must be interpreted in harmony with the ideals of justice and fairness. Yet doctrinal consistency has been difficult because judges come from diverse interpretive traditions. Some judges rely heavily on classical *fiqh* books, while others emphasise constitutional morality. This mixture sometimes produced judgments that looked doctrinally thin but constitutionally sound or the opposite,

[47] AIR 1960 All 684.
[48] AIR 1977 P&H 135.
[49] AIR 1962 MP 127.

leading to scholarly criticism. Post *Shah Bano* and later *Danial Latifi*, courts adopted a more rights-oriented approach to personal law disputes. While these cases did not directly address *faskh*, their reasoning influenced how judges analyse maintenance, desertion and cruelty. Courts increasingly recognised that matrimonial dissolution cannot be denied because of minor procedural problems or incomplete records, especially when evidence suggests real harm. Many judges accepted the idea that Section 2 represents minimum rights and must be applied generously rather than narrowly.[50]

Judicial discretion forms a major element of dissolution matters under the 1939 Act. Statutory language intentionally allows wide room for judges to weigh facts, context and human realities. Courts often intervene to protect welfare interests of women and children, relying not only on statutory text but also on Articles 14 and 21. Judges sometimes state that relief cannot be refused simply because procedural steps appear incomplete, especially when the material facts show clear harm. In custody matters arising from dissolution, courts apply the welfare doctrine without strict regard to doctrinal rules.[51]

E. Post Independence

The promulgation of the Constitution of India in 1950 ushered a new constitutional regime based on equality, non-discrimination and protection of fundamental rights. These assurances brought out a significant and complex issue - the relationship of personal laws to constitutional order. If all laws are subjected to basic rights, is it also possible to see if personal laws do not infringe the basic structure, or would personal laws be in a different category because they have religious backing. This was the question that presented itself to the Bombay High Court in *State of Bombay* v. *Narasu Appa Mali*[52], a case which subsequently proved to be one of the most controversial judgments on personal law jurisprudence.

[50]Sabiha Hussain, "A Socio-historical and Political Discourse on the Rights of Muslim Women: Concerns for Women's Rights or Community Identity (Special reference to 1937 and 1939 Acts)", 16(2) *Journal of International Women's Studies* 1-14 (2015).
[51] *Supra note* 35.
[52] *State of Bombay* v. *Narasu Appa Mali*, AIR 1952 Bom 84.

Background The case originated from constitutional validity of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946. Under these Acts, Hindu bigamy was made an offence but there was no statute on the issue for Muslims under their personal law at that time. The petitioners contended that the statute contravened Article 14 's assurance of equality as it was applicable to Hindus alone, and not to other religious communities.

Bombay High Court rejected the challenge and upheld the statute. But in the process of its reasoning, the Court inadvertently touched on a more general constitutional question not relevant to the specific facts of this case. The Court noted that personal laws did not fall within the meaning of the term "laws in force" in Article 13 of the Constitution. Thus, it held that personal laws were not subject to the fundamental rights to the same extent as statutory law. This comment, while not essential to the determination of the statute 's validity, formed one of its most influential features. The Court's logic was based, in part, on the text of Article 13 and, in part, on the historical treatment of personal laws.

The judges pointed out in this context that personal laws had, even during the colonial era, been treated separately and could not be regarded as legislative enactments in the ordinary sense. Article 13 was understood to apply primarily to written law, both statutory and prescriptive, having the force of law. On this basis, the Division Bench of the Bombay High Court held that uncodified personal laws, that is, norms not enacted through legislation, fell outside the scope of Article 13.

Legal academics have scrutinized this line of reasoning in terms of various possible legal points. Tahir Mahmood notes that the ruling de facto made a difference between 'statutory personal law' and 'uncodified personal law'.[53] Although personal laws could be scrutinised and challenged for constitutionality, uncoded norms rooted in religious considerations seemed beyond the scope of judicial scrutiny. This was not merely a theoretical distinction, for many aspects of personal law as practiced by the

[53] Tahir Mahmood, *Muslim Law in India and Abroad* (Universal Law Publishing, New Delhi, 2nd edn., 2012).

courts persisted without having been subjected to any testing against fundamental rights.

1. Shah Bano Begum's case

Chief Justice Chandrachud's opinion further criticized Islamic teachings, claiming that "*Woman was made from a crooked rib, and if you try to bend it straight, it will break; therefore treat your wives kindly*", a statement attributed to the Prophet, which he suggested was likely misinterpreted.[54] The high-profile nature of this opinion led to a backlash. Until then, there had been broad support within the Muslim community for gender equality and the idea of a Uniform Civil Code. Women had been successfully receiving maintenance without interference from religious leaders. However, the backlash caused by the judgment led many in the Muslim community, feeling their honour was insulted and their position threatened, to oppose the maintenance grants. Women were largely excluded from discussions about Muslim opinions on the matter, and the impression was given that all Muslims rejected the ruling.[55]

The Shah Bano case highlights three key issues shaped or exacerbated by British colonial rule. First, it underscores the divisiveness of communal politics in India, a legacy of British "divide and rule" strategies. Second, the public and political reactions to the case reflect an oversimplified view of Hindu and Muslim communities, disregarding the internal diversity and dissent within each. Third, the Parliamentary intervention reveals the deep-rooted paternalism[56] in India's political system, a mindset shaped by the interplay between the independence movement and British imperialism.[57]

2. The Muslim Women (Protection of Rights on Divorce) Act, 1986

[54] *Mohd. Ahmad Khan* v. *Shah Bano Begum,* 1985 (2) SCC 556.
[55] Siobhan Mullally, "Feminism and Multicultural Dilemmas in India: Revisiting the Shah Bano Case," 24(4) *Oxford Journal of Legal Studies* 671-92 (2004).
[56] *Ibid.*
[57] Neil Datar, "The Legacy of Imperialism on Gender Law in India," Historical Perspectives 22(2) *Santa Clara University Undergraduate Journal of History* 9 (2017). *available at*: https://scholarcommons.scu.edu/historical-perspectives/vol22/iss1/9

The Act[58] of 1986, which reversed the Court's decision, was partly a response to political circumstances. Following Indira Gandhi's assassination, Congress, fearing electoral losses, aimed to appease vocal Muslim constituents, though these voices did not represent the entire Muslim community. Had the BJP held a majority in Parliament, the Act likely would not have passed. Shah Bano was eventually pressured to retract her demands for maintenance, stating (in a statement signed with her thumbprint) that she now understood her salvation depended on forgoing the claim. Meanwhile, Muslim leaders influenced Rajiv Gandhi's government to enact the Muslim Women (Protection of Rights on Divorce) Act, 1986, which was widely understood as limiting Muslim women's ability to seek maintenance under the general criminal procedure framework.

The government, failing to consult other community groups, treated the *Ulema* as the sole representative of the entire Muslim community. Muslim women, angered by this, voiced their outrage. Hindu men, in turn, argued that the new law unfairly favours Muslims, granting "special privileges" to Muslim men. Following the enactment of the Muslim Women's Bill, many divorced Muslim women now live in poverty, and the financial strain has also affected their children's education, forcing them to work instead of attending school.

Efforts by women to challenge the law on grounds of religious non-discrimination through Supreme Court petitions have been unsuccessful, with the Court seeming to retreat from the controversy sparked by its role in the Shah Bano case. The system of personal laws presents significant issues, not only for gender equality but also for freedom of religion and non-discrimination, as Muslim women, for example, lose out on benefits available to others.

Additionally, the *Danial Latifi* case[59]is one of the most ingeniously reasoned[60] constitutional judgments in the history of Indian family law. Decided by a five-judge Constitutional Bench of the Supreme Court in 2001, the case presented the Court with

[58] The Muslim Women (Protection of Rights on Divorce) Act, 1986.
[59] *Danial Latifi v. Union of India*, 2001 AIR SCW 3932.
[60] Akhila Kolisetty, Commentary: The Danial Latifi Case and the Indian Supreme Court's Balancing Act (Jan13, 2017) *available at*: https://islamiclaw.blog/2017/01/23/the-danial-latifi-case-and-the-indian-supreme-courts-balancing-act/

a stark choice either strike down the Muslim Women (Protection of Rights on Divorce) Act, 1986 as unconstitutional, or uphold it in a manner that preserved its constitutional validity while restoring the substantive protections for Muslim divorced women that the Act had been specifically designed to destroy. The Court chose the second path, and in doing so produced a judgment of extraordinary constitutional creativity that simultaneously upheld the Act, nullified its regressive intent, and restored the spirit of Shah Bano through the instrument of constitutional interpretation rather than constitutional invalidation.

The judgment is a masterclass in the use of interpretive technique as a tool of gender justice, and its implications extend far beyond the specific question of Muslim women's maintenance rights.[61] Significantly, the Supreme Court's recent pronouncement in *Mohd. Abdul Samad* v. *State of Telangana*[62] has brought authoritative clarity to this debate. The Court held that a Muslim woman's right to seek maintenance under Section 144 BNSS formerly Section 125 CrPC. exists independently of the remedies available under the Muslim Women (Protection of Rights on Divorce) Act, 1986, and that she may exercise her choice between the two frameworks. This ruling not only reinforces the Danial Latifi principle but also substantially supports the argument advanced in this paper that Muslim women's maintenance entitlements must be anchored in accessible, secular statutory provisions immune from personal law variability

3. Shayara Bano Case

In 2017, the Supreme Court's ruling in *Shayara Bano* v. *Union of India*[63] initiated the process of ending triple *talaq*, which allowed husbands to divorce their wives instantly by pronouncing "*talaq*" three times. *Shayara Bano* is one of the rare Supreme Court cases where the result was achieved by a 3:2 majority but through three separate opinions, none of which commanded a majority on all questions of law. The fractured nature of the bench makes the judgment doctrinally complex and its precise ratio debated

[61] *Supra note* 52.
[62] Mohd. Abdul Samad v. State of Telangana, 2024 INSC 506: 2024 SCC OnLine SC 1686.
[63] AIR 2017 SC 4609.

among legal scholars.[64] Consistent with the direction of the Chief Justice's dissent and responding to the continued practice of triple talaq despite the judgment Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the pronouncement of triple talaq with imprisonment up to three years.

4. Muslim Women (Protection of Rights on Marriage) Act 2019

In recent years, discussions around Muslim Personal Law in India have increasingly revolved round issues of gender justice, constitutional equality and the limits to state intervention in religious practices. Leading the charge has been legislation addressing the controversial practice of instant triple *talaq* or *talaq-e-biddat*. The proximate context of the Act is the judgment of the Supreme Court in *Shayara Bano* v. *Union of India*. In that case, the constitutional validity of instantaneous triple talaq was sought to be struck down due to infringement of fundamental rights like equality and dignity. Court by majority held the practice as unconstitutional, since it was not an integral part of religion and was violative of constitutional principles. The verdict was a significant step in the court's involvement with personal laws and its willingness to scrutinize religious practices in light of constitutional values. As a statute the law is symptomatic of larger debates around state intervention in personal laws and gender justice intersecting with political economies and social dimensions.[65]

The Muslim Women (Protection of Rights on Marriage) Act, 2019, while responding to a genuine and long-standing patriarchal injustice, has been subjected to rigorous feminist critique on grounds of both its legislative process and its underlying conceptual framework. Feminist legal scholars, most prominently Flavia Agnes, have argued that the Act was enacted with striking haste and without any meaningful consultation with Muslim women's organizations, community legal experts, or the women most directly affected by triple talaq.[66]

[64] Kalindi Kokal, "Living by Religion, Playing by Law: Early Glimpses of The Ban on Triple Talaq 18(1) *Socio-Legal Review* 1 (2022).
[65] *Supra note* 11.
[66] Flavia Agnes, "Triple Talaq Judgment: Do Women Really Benefit?" *Economic and Political Weekly* 52 (36) 14–17 (2017).

This procedural failure is not merely a technical shortcoming it reflects a deeper paternalistic logic in which the state positions itself as the savior of Muslim women while simultaneously denying those women any agency in defining the terms of their own protection.[67] By treating Muslim women as passive victims requiring rescue rather than as autonomous legal subjects capable of shaping reform, the Act reproduces a colonial-era civilizational discourse that feminist jurisprudence has long critiqued.

Scholars like Zoya Hasan and Nivedita Menon have further argued that the reform cannot be understood in isolation from the broader politics of religious majoritarianism when a state directs its legislative energy exclusively at the gender practices of a religious minority while remaining indifferent to comparable patriarchal structures within the majority community's personal laws, the claim that the motivation is purely feminist becomes analytically unsustainable.[68] True feminist law reform, these scholars insist, must be even-handed across all religious communities and must emerge from within those communities through sustained dialogue rather than being imposed from above.[69]

The specific legal mechanism chosen by the Act criminalization has attracted the most sustained feminist criticism, because it is precisely the mechanism least likely to protect the women it purports to serve. Flavia Agnes has argued with considerable analytical force that once a husband is arrested, prosecuted, and imprisoned, the prospect of marital reconciliation is effectively destroyed, and the woman is left suspended in a marriage that is legally subsisting but practically and emotionally irretrievable.[70] The imprisoned husband is far more likely, upon release, to resort to

[67] Flavia Agnes "Aggressive Hindu Nationalism: Contextualizing the Triple Talaq Controversy." In *Majoritarian State: How Hindu Nationalism is Changing India*, edited by Angana P. Chatterji, Christopher Jaffrelot, and Thomas Blom Hansen, 335–352. Oxford University Press, 2019.
[68] Nivedita Menon, "A Uniform Civil Code in India: The State of the Debate."40 (2) *Feminist Studies* 480–486 (2014).
[69] Zoya Hasan, "'Triple Talaq' Abolition and the Question of Muslim Women's Rights." 53(33) *Economic and Political Weekly* 10–13 (2018).
[70] Nazima Parveen, "Criminalization of Divorce and Muslim Women: A Reality Check of Triple *Talaq* Law,
2019 in India", *South Asia Multidisciplinary Academic Journal* 32 (2024). *available at*: http://journals.openedition.org/samaj/9501 ; DOI: https://doi.org/10.4000/136kf

the legally recognized Quranic form of *talaq-ul-hasan* a process spread over three months to dissolve the marriage, leaving the woman with no better outcome than before the Act. Furthermore, the offence under the Act is non-bailable and cognizable, meaning the police can arrest the husband without a warrant on the basis of a complaint by the wife or any person related to her by blood or marriage.[71] While this low evidentiary threshold was intended to make justice accessible, feminist criminologists have warned that it simultaneously creates conditions for misuse in acrimonious matrimonial disputes, potentially weaponizing the law in ways that escalate domestic conflict rather than resolving it.

Economically, the Act compounds this problem by replacing the Muslim Women (Protection of Rights on Divorce) Act, 1986's entitlement to a "fair and reasonable settlement" with a far narrower "subsistence allowance" a regressive shift in language that weakens rather than strengthens Muslim women's financial claims after divorce, and does virtually nothing to address the well-documented failures of enforcement of mehr, maintenance, and property rights that constitute the real material suffering of women affected by marital breakdown.[72]

At the level of feminist jurisprudential theory, the Act exemplifies what scholars have termed "rescue feminism" a model of state intervention that uses the symbolic vocabulary of women's rights to justify coercive action without delivering the structural conditions necessary for genuine gender justice. Feminist legal theorists including Ratna Kapur and Carol Smart have long cautioned that the expansion of criminal law into the domain of gender relations frequently produces outcomes that harm rather than empower vulnerable women, because criminalization addresses individual acts of patriarchal behavior without dismantling the social, economic, and institutional structures that produce women's subordination in the first place.[73] The 2019 Act does not strengthen Muslim women's property rights, does not reform the

[71] Esita Sur, "Triple Talaq Bill in India: Muslim Women as Political Subjects or Victims?"5(3) *Space and Culture, India* 6 (2018).
[72] Shraddha Chaudhary, "Criminalisation Without an Object: Critical Reflections on the Muslim Women (Protection of rights on Marriage) Act, 2019" 17(2) *Socio-Legal Review* 109 (2021).
[73] Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-colonial Feminist Legal Politics."15 *Harvard Human Rights Journal* 1–37 (2002).

unequal divorce entitlements that allow Muslim men but not women to initiate unilateral divorce, does not address polygamy, and does not empower women within the marriage contract itself.

Feminist scholars like Flavia Agnes have proposed a more constructive alternative rooted in the Islamic legal tradition itself the reform and mandatory comprehensive drafting of the *nikahnama*, the Muslim marriage contract, which could incorporate conditions prohibiting triple talaq, restricting polygamy, and guaranteeing the wife's financial security, thereby protecting women's rights through civil empowerment rather than criminal punishment. This approach would preserve religious autonomy, honor community agency, and deliver material rather than merely symbolic protection to Muslim women. The 2019 Act's failure to explore such alternatives, and its insistence on the blunt instrument of criminalization, ultimately reveals the distance between the Act's stated feminist ambitions and its actual jurisprudential commitments a distance that feminist scholarship has a responsibility to name, analyze, and critique.[74]

V. SUGGESTIONS AND RECOMMENDATIONS

Based on the analysis above, this paper makes the following legislative, judicial, and policy recommendations for genuine, gender-just reform of Muslim personal law in India:

1. The foundational recommendation is that the Indian legislature enact a comprehensive Muslim Family Law, drawing on the BMMA's draft[75] and on comparative models from Pakistan, Morocco, and Tunisia, that codifies the applicable rules in accessible statutory language. Such a code should: (a) be prepared through a consultative process that centres the voices of Muslim women and draws on the diversity of Islamic jurisprudential schools; (b) address marriage, mehr, maintenance, divorce (for both spouses), custody, guardianship, succession, and matrimonial property in an integrated fashion;

[74] Flavia Agnes, "Triple Talaq – Gender Concerns and Minority Safeguards within a Communalised Polity: Can Conditional *Nikahnama* offer a Solution?" 10 *NUJS LAW REVIEW* 1-17 (2017).

and (c) be administered through accessible family courts with legally aided representation.

2. The pronouncement of *talaq-ul-biddat* should be declared void and without legal effect as *Shayara Bano* effectively held without criminalisation. The husband's attempt to exercise instant triple talaq should trigger enforceable civil consequences: the wife's right to immediate maintenance, the right to seek dissolution of marriage through an expedited judicial process, and automatic protection orders. This approach follows the Pakistani and Moroccan models and avoids the perverse consequences of the 2019 Act.
3. A reformed Muslim family law should recognise Muslim women's right to unilateral divorce (*khul'*) exercisable without court proceedings, subject only to registration requirements. Additionally, the delegated right to divorce (*talaq-e-tafwid*), which classical Islamic jurisprudence recognises, should be codified as a standard term of every Muslim marriage contract unless expressly waived with the wife's informed consent. These reforms, rooted in Islamic jurisprudence itself, would substantially equalise the parties' rights without requiring departure from an Islamic framework.
4. All Muslim marriages should be compulsorily registered, with the mehr amount, terms of *talaq-e-tafwid*, and any polygamy-related conditions recorded at the time of marriage. The minimum age for marriage currently 18 for women and 21 for men should be made strictly enforceable and the option of puberty under the 1939 Act should be read in conjunction with the Prohibition of Child Marriage Act rather than as an alternative to it.
5. Post-divorce maintenance for Muslim women should be governed by a statutory formula based on the duration of the marriage and the wife's economic vulnerability, rather than being limited to the *iddat period*. The *Danial Latifi* interpretation should be codified into statute, making clear that the husband's obligation extends to reasonable provision for the wife's future. The role of the Wakf Board as a residual maintenance provider should be abolished or restructured with adequate funding and enforcement mechanisms.

6. The most carefully designed legislative code will be of limited use to Muslim women who lack access to courts and legal representation. The government should establish dedicated family courts in every district with specially trained judges, legal aid clinics specifically serving Muslim women litigants, and community-based legal literacy programmes designed in consultation with Muslim women's organisations.
7. The Muslim Women (Protection of Rights on Marriage) Act, 2019 should be amended to:
    - remove the cognisable and non-bailable character of the offence;
    - make the offence compoundable at the woman's sole initiative without requiring Magistrate approval;
    - strengthen the maintenance and custody provisions; and
    - create a fast-track civil procedure for the woman to seek dissolution of marriage and interim protection orders in cases of attempted triple talaq.

    In the longer term, the criminal offence itself should be replaced by comprehensive civil remedies once a reformed Muslim family law code is enacted. The *Muslim Women Act, 2019* has been criticized for criminalizing husbands, which may remove any space for marital reconciliation. Recommendations should suggest procedural laws that mandate institutional mechanisms for reconciliation before any divorce is recognized
8. The strategy of "assemblage of reforms," where women's groups pursue changes in religiously neutral civil and criminal laws (like maintenance or domestic violence acts) as a more practical path than a singular, controversial UCC.
9. 9.The current law focuses on criminalizing the act of *Triple Talaq* but does not sufficiently elaborate on maintenance rules. Future legislation should ensure women can effectively access maintenance under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), formerly Section 125 CrPC., as state Waqf boards are often underfunded or unable to provide adequate assistance.

VI. CONCLUSION

This paper has argued, through a feminist legal analysis structured across four legislative phases, that the dominant narrative on triple talaq in India is analytically reductive and politically convenient in colonial and post-colonial era. Triple talaq is not the essence of Muslim women's legal disadvantage it is a symptom of the structural failure, rooted in colonial policy and sustained by post-colonial political calculation, to codify Muslim personal law in a manner that gives Muslim women accessible, enforceable, statutory rights.

The four Acts examined the Shariat Act of 1937, the Dissolution of Muslim Marriages Act of 1939, the Muslim Women Act of 1986, and the Muslim Women Act of 2019 reveal a consistent pattern. Each legislative moment represents either a deliberate preservation of patriarchal structures (1937), a partial and structurally limited reform (1939), a legislative retreat in response to communal pressure (1986), or a politically motivated criminal intervention that punishes Muslim men without rehabilitating Muslim women (2019). Throughout this history, the judiciary has repeatedly compensated for legislative failure from *Shah Bano* through *Danial Latifi* to *Shayara Bano,* but judicial activism is an inherently inadequate substitute for comprehensive, accessible, democratically enacted legislation. The focus on triple talaq has served as symbolic politics rather than structural reform. Non-codification is the primary cause, not triple talaq. The 2019 Act produces adverse outcomes for Muslim women and comprehensive codification drawing on the diversity of Islamic jurisprudence is both constitutionally permissible and practically superior to the approach adopted.

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