

# CANONSHERE LAW REVIEW

Volume 1 Issue 3

July to September, 2025



@ 2025 CANONSHERE LAW REVIEW.  
All rights reserved.

## TABLE OF CONTENTS

| S.No | Contents  | Page No |
|------|---|---------|
| 1.   | Abstract  | 3       |
| 2.   | Introduction  | 4       |
| 3.   | Impact of islamic law on women's rights in india          | 6       |
| 4.   | Problematic practices in marriages                        | 8       |
| 5.   | discrimination faced by women in marriage                 | 9       |
| 6.   | Indian constitution and gender justice                    | 11      |
| 7.   | Justice for women and fundamental obligations             | 14      |
| 8.   | Suggestions for reforming islamic laws for gender justice | 15      |
| 9.   | Key Judicial rulings on maintenance and property rights   | 18      |
| 10.  | Conclusion  | 18      |

## Gender Equality under Islamic Law: A Constitutional and Judicial Outlook

This long article is written by Mukesh Shukla, LL.M. (Law), Department of Law, M.A., (Criminology and Criminal Justice Administration), Department of Social Work, Faculty of (MSW), Lucknow University of Lucknow, Lucknow, Uttar Pradesh, India.

### Abstract

Gender equality under Islamic law in India represents a complex intersection of religion, personal law, and constitutional principles. Muslim personal law, primarily governed by the Shariat Act of 1937 and the Dissolution of Muslim Marriages Act of 1939, regulates matters such as marriage, divorce, maintenance, inheritance, and guardianship. While rooted in religious traditions, these laws have often been criticized for perpetuating patriarchal practices that restrict women's rights. Practices such as polygamy, unilateral divorce (talaq), unequal inheritance, and child marriage have raised serious questions about justice and equality for Muslim women.

At the same time, Islamic teachings, in their essence, emphasize fairness, dignity, and respect for both men and women. The challenge arises when cultural traditions and narrow interpretations overshadow these principles, creating inequalities that contradict the spirit of Islam itself. Indian courts have played a pivotal role in addressing this imbalance, delivering landmark judgments on maintenance, custody, divorce, and women's autonomy. These judicial interventions attempt to harmonize personal law with constitutional guarantees under Articles 14, 15, and 21, which ensure equality, non-discrimination, and dignity for all citizens.

The broader debate also includes the contentious issue of the Uniform Civil Code, which seeks to unify personal laws across religions while balancing community rights with individual freedoms. In this context, gender justice under Islamic law is not only a legal question but also a social, cultural, and constitutional challenge. It calls for sensitive reforms that protect religious identity while ensuring women's rights and equality remain at the forefront of justice.

**Key words:** Gender Justice, Islamic Law, Muslim Personal Law, Women's Rights, Equality under Constitution, Judicial Interpretation

## Introduction

The question of gender equality under Islamic law has been a subject of deep debate in India, where personal laws intersect with constitutional guarantees of equality and justice. Muslim personal law, largely shaped by the Shariat Act of 1937 and the Dissolution of Muslim Marriages Act of 1939, governs crucial aspects such as marriage, divorce, maintenance, inheritance, and guardianship. While these laws were intended to preserve community identity, their impact on women's rights has often been contested. Practices like polygamy, child marriage, unequal inheritance, and unilateral divorce have drawn criticism for undermining women's dignity and autonomy.

At the same time, Islamic principles, when viewed in their true spirit, emphasize fairness, compassion, and the equal worth of men and women. The challenge arises from patriarchal interpretations and social customs that dilute these ideals. The Indian judiciary has frequently stepped in to expand protections for Muslim women, particularly in cases concerning maintenance, custody, and divorce, harmonizing personal law with constitutional values. The continuing debate around reforms, including the demand for a Uniform Civil Code, reflects the tension between respecting religious freedom and ensuring gender justice.

Thus, exploring gender equality under Islamic law in the Indian context is not just a matter of legal analysis but also of balancing constitutional mandates with cultural diversity, while ensuring that women's rights remain central to both law and society.

## Historical Background

The issue of Muslim personal law in India has a unique set of challenges when analysed in light of the nation's varied sociopolitical context and legal system. Generally speaking, the Indian legal system bases its laws either on religious affiliation or on territorial jurisdiction. Things like marriage and divorce, guardianship of minors, adoption, wills and succession, or joint family and partition difficulties are mostly governed by the personal laws that apply in each community.

Under Entry 5 of the Concurrent List in the Seventh Schedule of the Constitution, legislative authority on subjects connected with personal laws is vested in both the Union Parliament and the State Legislatures. The codification of personal laws in India began under colonial administration, initially with the Parsi Marriage and Divorce Act and later with codified provisions relating to Christian marriage and divorce. This was followed by

piecemeal reforms addressing Hindu women's rights to property. The broader attempt at systematizing Hindu law gathered momentum in the 1930s and eventually culminated in the Hindu Code Bill of 1956, which gave rise to four separate statutes comprehensively governing Hindu personal law.

For Muslims, however, codification prior to independence was limited to two major statutes: the Muslim Personal Law (Shariat) Application Act, 1937, and the Dissolution of Muslim Marriages Act, 1939. The Shariat Act affirmed the application of Islamic law to Muslims in matters of marriage, divorce, maintenance, adoption, and succession, while the latter legislation specifically addressed the rights of Muslim women seeking dissolution of marriage.

In the contemporary Indian context, the continuing discourse on the Uniform Civil Code (UCC)-often justified on the grounds of protecting Muslim women from perceived inequalities under Shariat-makes it essential to closely examine what the application of Shariat truly entails for Muslim women in India.

## **Objectives and Purpose**

The primary objective of this study is to examine gender justice within Islamic law in the light of constitutional provisions and judicial interpretations. It aims to analyse how Islamic principles originally emphasized equality and dignity for both men and women, but later practices and interpretations sometimes created gender disparities. The purpose of the research is to highlight areas where reform is necessary, to ensure women's rights are protected in line with both the true spirit of Islam and the guarantees of the Indian Constitution.

## **Research Hypothesis**

Islamic law, when interpreted in its true spirit, upholds equality and justice for women, but misinterpretations and patriarchal practices have led to gender injustice. Aligning Islamic principles with constitutional safeguards can ensure genuine gender justice in modern society.

## **Research questions**

1. How does Islamic law address the principle of gender equality?
2. What role has the Indian Constitution played in ensuring justice for Muslim women?

3. How have judicial interpretations influenced gender justice under Muslim personal law?
4. To what extent do practices like triple talaq and polygamy affect women's rights?
5. Can reforms within Islamic law align with constitutional principles to strengthen women's empowerment?

## **Impact of Islamic Law on Women's Rights in India**

The influence of Islamic law on the rights of women in India is not uniform but varies depending on the area of concern and how the law is interpreted or applied.

### **Marriage:**

Under Islamic law, men are permitted to enter into polygamous marriages, allowing a Muslim man to have up to four wives at the same time, provided he treats them fairly and secures their consent. In practice, however, this provision often raises challenges for women, as it can compromise their sense of dignity and emotional security, while also exposing them to unequal treatment or domestic conflicts.<sup>1</sup>

Another concern is the recognition of child marriage. Although Indian law sets 18 as the minimum age of marriage for women, under Muslim personal law a girl may be married before reaching this age. Early marriage can severely limit a young girl's access to education, threaten her health, and reduce her ability to make independent choices about her life. In many instances, this places young women in situations where they lack both agency and protection.<sup>2</sup>

### **Divorce:**

Within Islamic personal law, the right to initiate divorce has traditionally been tilted in favor of men. A Muslim husband has the authority to dissolve his marriage unilaterally by pronouncing talaq-a declaration of repudiation-without the need for judicial scrutiny or formal justification. In its most rigid form, this practice has often left women vulnerable, as they could be divorced abruptly, sometimes without notice or an opportunity to contest the decision.

---

<sup>1</sup> <https://www.drishtijudiciary.com/to-the-point/ttp-muslim-law/polygamy-under-muslim-law>. (last visited on Agu. 18, 2025 at 06:08 PM).

<sup>2</sup>[https://www.girlsnotbrides.org/documents/1783/Child marriage in India law guide and directory.pdf](https://www.girlsnotbrides.org/documents/1783/Child%20marriage%20in%20India%20law%20guide%20and%20directory.pdf). (last visited on Agu. 18, 2025 at 07:09 PM).

Financial support after divorce is another area of concern. Under the law, a woman is entitled to maintenance only during the iddat period—a waiting phase of roughly three months following the separation. Beyond this limited duration, she cannot legally demand sustenance from her former husband. For many divorced Muslim women, this creates serious hardships, as they may be left without a steady means of income, forced to rely on their natal families or charitable support for survival. Such circumstances often erode women's economic independence and expose them to insecurity in both social and financial terms.<sup>3</sup>

### **Inheritance and Guardianship:**

In matters of inheritance, Islamic personal law accords women a smaller share than men in the same line of succession. For instance, a daughter generally receives only half of what is allotted to a son. This disparity often weakens the financial standing of Muslim women, as they end up with a reduced portion of family property compared to their male relatives. Such unequal distribution not only limits their economic independence but can also reinforce patterns of social exclusion within families.

Guardianship rights further highlight this imbalance. Traditionally, the father is recognized as the primary guardian of children, with greater authority over decisions regarding their welfare, education, and marriage. Mothers, while deeply involved in their children's lives, are granted less legal power in these matters, which can diminish their role and influence in shaping their children's future.

These examples illustrate some of the ways in which Islamic law affects women's rights in India. At the same time, it is crucial to recognize that Islamic law is neither uniform nor unchanging. Diverse schools of jurisprudence within Islam interpret these provisions differently, and reformist voices within the Muslim community continue to challenge discriminatory practices. Many contemporary movements seek to reinterpret the law in ways that affirm gender justice and safeguard the dignity and rights of Muslim women.<sup>4</sup>

### **Inequality in Islamic Law**

---

<sup>3</sup> Akhila Kolisetty, Unilateral Talaq and the Indian Supreme Court's Responsiveness to Perceptions within India's Muslim Community, LAW & OTHER THINGS (June 2, 2025), <https://lawandotherthings.com/2015/06/unilateral-talaq-and-indian-supreme-courts-responsiveness-to-perceptions-within-indias-muslim-community/>. (Last visited on Agu. 17, 2025 at 05:03 AM).

<sup>4</sup> Vaishali N., Muslim Law of Inheritance, iPleaders (July 5, 2023), <https://blog.ipleaders.in/muslim-law-of-inheritance/> (last visited Aug. 17, 2025 at 06:03 AM).

The question of inequality within Islamic personal law remains a pressing concern for Muslim women in India. While Islamic teachings at their core emphasize fairness and recognize equal spiritual worth of men and women, certain interpretations by different schools of thought have often departed from these principles. Over time, cultural practices and patriarchal traditions have shaped the way the law is applied, leading to discrimination and the denial of women's rightful entitlements.

- **Property Rights:**

Although Islamic teachings grant women the right to inherit, own, and manage property, in practice their share is often smaller than that of men, and their control over assets may be restricted. For instance, daughters generally receive only half the portion of sons, and wives or mothers inherit limited fractions depending on the presence of other heirs. In many cases, women are further constrained by the authority of male guardians when dealing with property matters.<sup>5</sup>

- **Marriage Rights:**

In principle, Islam views marriage as a contract built on mutual consent and respect, granting women the right to choose their partner, set conditions, seek divorce, and remarry. In practice, however, certain provisions-such as polygamy, instant triple talaq, nikah halala, and child marriage-often weaken these rights and restrict women

### **Problematic Practices in Marriage:**

Certain interpretations of Islamic law have led to practices that undermine women's rights. Polygamy is sometimes permitted without genuine justification, equal treatment, or even the consent of existing wives. The custom of triple talaq-instant divorce by repeating the word "talaq" three times-has been used to dissolve marriages abruptly, depriving women of reconciliation, support, or custody rights. Another practice, nikah halala, forces a divorced woman to marry and consummate a new marriage before returning to her former husband, a requirement that degrades women's dignity. Child marriage also persists in some contexts, allowing girls to be married off before attaining maturity, which denies them autonomy and exposes them to health, educational, and emotional risks.<sup>6</sup>

- **Legal and Socio-Economic Rights:**

---

<sup>5</sup> Divyani Swamy, Property Division Under Sharia Law of Women, 4 J. Legal Rsch. & Jurid. Sci. 327 (2023).

<sup>6</sup> *Ibid.*

Islamic teachings affirm women's right to education, employment, and participation in public life, as well as the duty of men to treat them with fairness. Yet, in practice, these rights are often limited. Women may face obstacles in accessing justice, as their testimony is sometimes given less weight than that of men, and conditions set in marriage contracts are not always upheld. Social traditions further restrict opportunities, with many girls denied proper education and women frequently confined to low-paid work. Employment is often permitted only when it does not conflict with domestic responsibilities, excluding women from jobs that demand longer hours or greater commitment. These factors collectively reinforce inequality and diminish women's status in both family and society.<sup>7</sup>

## **Discrimination Faced by Women in Marriage**

- **Child Marriage**

One of the most serious forms of discrimination in marriage is child marriage, where girls are married off before reaching the legal age of 18. This practice denies them the right to education, health, and personal autonomy, while exposing them to early pregnancy, domestic abuse, and lifelong dependence. In India, despite legal restrictions, child marriage continues in some regions under customary practices, placing young girls at particular risk.<sup>8</sup>

- **Dowry Deaths**

Dowry-related deaths occur when women are harassed or killed by their husbands or in-laws for not meeting dowry demands. This form of violence reflects deep-rooted gender inequality and the devaluation of women. Despite laws in India banning dowry and punishing cruelty in marriage, weak enforcement has allowed such cases to remain alarmingly frequent, with thousands reported each year.

- **Marital Rape**

Marital rape occurs when a husband engages in sexual relations with his wife without her consent. It is a grave violation of a woman's dignity and bodily autonomy, yet in many countries it is not legally recognized as a crime. Legal loopholes-such as lower ages of consent for married girls or exemptions for husbands-continue to deny protection to women within marriage.<sup>9</sup>

---

<sup>7</sup> Iyad Achrafieh, University of New England, 4 Glob. J. Arts, Human. & Soc. Sci. 43 (2016).

<sup>8</sup> <https://www.unicef.org/india/what-we-do/gender-equality> (last visited Aug. 17, 2025 at 07:03 AM).

<sup>9</sup> <https://hindrise.org/resources/discrimination-and-oppression-of-women/> (last visited Aug. 17, 2025 at 08:03 AM).

- **Societal Violence Against Women**

In many parts of India, patriarchal norms dominate social and religious communities, leaving women with limited access to justice or equality. Such structures often impose conservative practices that restrict women's freedoms and worsen their social position rather than protecting their rights.<sup>10</sup>

- **Sexual Harassment at the Workplace**

India first addressed workplace harassment through the Supreme Court's Vishaka guidelines (1997), later reinforced by the Sexual Harassment of Women at Workplace Act. While the law provides a framework for protection, deep-rooted social stigma prevents many women from using these safeguards effectively. Alongside this, women continue to face discrimination in wages, with pay gaps visible across both rural and urban sectors. Women entrepreneurs also encounter barriers in accessing credit and support, making economic independence harder to achieve.

- **Forced Evictions and Divorce**

Widows in India are often forced out of their matrimonial homes after their husband's death, leaving them to struggle alone in providing for themselves and their children. Divorced or separated women without family support or land frequently end up in urban slums, where housing insecurity adds to their vulnerability. Studies also suggest that women in poor households tend to prioritize family needs with their limited income, unlike men, who are more likely to spend on personal consumption.

- **Girls' Education**

Education is vital for women's empowerment, yet achieving universal education for girls in India remains a challenge. Despite constitutional guarantees and initiatives like Sarva Shiksha Abhiyan, dropout rates among girls remain higher than boys. Social and economic pressures often force girls to take on household duties, care for siblings, or work as labourers, while families prioritize sons' education, seeing daughters mainly in terms of marriage responsibilities. As a result, access to and completion of basic education for girls continues to lag behind.

- **Female Foeticide**

Sex-selective abortion and female foeticide remain harsh realities in India, driven by social preference for sons and enabled by misuse of medical technology.

---

<sup>10</sup> <https://hindrise.org/resources/discrimination-and-oppression-of-women>. (last visited Aug. 17, 2025 at 09:05 AM).

Despite laws banning prenatal sex determination, illegal practices continue, particularly in northern states, often carried out by untrained staff. This widespread discrimination has not only reduced the female child ratio but has also contributed to higher maternal health risks and mortality.<sup>11</sup>

- **Lesser Number of Girl Children**

India continues to face a distorted sex ratio, with fewer girls being born or surviving compared to boys. This imbalance is more visible in northern states, where it fuels trafficking and exploitation of young girls, especially from poor families. In addition, many cases of women going missing from their marital homes highlight the deep-rooted oppression and insecurity faced by women in society.

## **The Indian Constitution and Gender Justice**

The Indian Constitution lays down a vision of equality and dignity for all citizens, regardless of gender, caste, faith, or background. The Preamble itself emphasizes equality of status and opportunity, along with the dignity of every individual, which has guided Parliament in enacting laws to protect women's rights in areas such as workplace safety, domestic violence, dowry prohibition, succession, and guardianship. Inspired by the Universal Declaration of Human Rights, the framers sought to embed principles of justice, liberty, and equality within the constitutional framework.

Fundamental rights under Articles 14 to 17 safeguard individuals from discrimination on the basis of caste, sex, religion, or class, and aim to promote equality in every sphere of life. The Constitution also mandates the abolition of untouchability, prohibits job discrimination, and restricts titles that hinder equal opportunity. By ensuring access to legal remedies, the Constitution empowers citizens, especially women, to claim their rights and challenge gender inequality in courts and society.

- **Equality under Article 14 of the Indian Constitution**

Article 14 guarantees that every person within India enjoys equality before the law and equal protection of the laws. Borrowed from English common law and the U.S. Constitution's 14th Amendment, this principle ensures that laws are applied fairly to all—whether citizens, non-citizens, individuals, or legal entities.

---

<sup>11</sup> Kamlesh Madan & Martijn H. Breuning, Impact of Prenatal Technologies on the Sex Ratio in India: An Overview, 5 Community Genetics 131 (2002).

However, absolute uniformity is not possible, as people differ in status, circumstances, and responsibilities. Thus, while Article 14 prohibits arbitrary discrimination or class legislation, it allows reasonable classifications to ensure justice. Certain exemptions also exist, such as constitutional immunity granted to the President and Governors under Article 361 for actions performed in their official capacity.

- **Article 15<sup>12</sup>**

Article 15 prohibits the State from discriminating against individuals on the basis of religion, race, caste, sex, or place of birth. At the same time, it empowers the State to take positive measures for promoting equality. Special provisions can be made for women, children, socially and educationally backward classes, as well as Scheduled Castes and Scheduled Tribes. Over time, additional clauses were inserted through constitutional amendments, further strengthening the scope of affirmative action in education and welfare.

- **Article 16<sup>13</sup>**

Article 16 guarantees equal opportunity in matters of public employment. It ensures that no citizen is denied government jobs on grounds such as caste, religion, sex, or class, while allowing the State to prescribe qualifications for recruitment. Importantly, clause (4) empowers the State to provide reservations in public services for socially and economically disadvantaged groups, thereby promoting fair representation and stable employment for them.

***State of Madras v. Champakam Dorairajan<sup>14</sup>***

In this landmark case, the Supreme Court struck down caste-based reservations in educational institutions, holding that they violated Article 16(2), which prohibits discrimination in public employment and opportunities. The State of Madras had issued an order reserving seats in engineering and medical colleges for certain communities, but the Court ruled this unconstitutional. This judgment eventually led to the First Constitutional Amendment, which empowered the State to make special provisions for socially and educationally backward classes.<sup>15</sup>

---

<sup>12</sup> India Const. art. 15.

<sup>13</sup> *Ibid* art. 16.

<sup>14</sup> AIR 1951 SC 226, 1951 SCR 525

<sup>15</sup> Charu Khurana v. Union of India, (2015) 1 SCC 192 (India 2014).

Later, in *N.M. Thomas v. State of Kerala*,<sup>16</sup> the Court clarified that preferential treatment for disadvantaged groups is valid if it has a reasonable nexus with the objective of promoting equality.

- **Article 17<sup>17</sup>**

Article 17 reflects the reformist vision of the Constitution's framers, as it categorically abolishes untouchability and declares its practice a punishable offense. To give effect to this, Parliament enacted the Untouchability (Offences) Act, 1955, later renamed the Protection of Civil Rights Act, 1955, prescribing penalties for such discriminatory practices. Although neither the Article nor the Act explicitly defines "untouchability," the term broadly refers to the deep-rooted social stigma and exclusion historically imposed on certain communities.

- **Article 29<sup>18</sup>**

Article 29 protects the cultural and educational rights of citizens. It ensures that any section of people residing in India has the right to conserve their distinct language, script, or culture. At the same time, it prohibits denial of admission to state-funded or aided educational institutions on grounds such as religion, race, caste, or language. While the provision allows minority and socially disadvantaged groups to preserve their identity through education, it also guarantees equal access for all citizens to such institutions without discrimination.<sup>19</sup>

- **Article 30<sup>20</sup>**

Article 30 grants minorities the right to establish and manage educational institutions of their choice and ensures they are not discriminated against in receiving state funding on the basis of language or religion. While Article 15 broadly prohibits discrimination, and Article 29(2) protects citizens from being denied admission in state-supported institutions, Article 30 provides a specific safeguard for minority-run institutions, ensuring their equal treatment and autonomy in the field of education.

---

<sup>16</sup> AIR 1976 SC 490 (India).

<sup>17</sup> India Const. art. 17.

<sup>18</sup> *Ibid* art. 29.

<sup>19</sup> Marco Evola, The Fight Against Discrimination on the Grounds of Sex, Sexual Orientation and Gender Identity in the External Relations of the European Union, in Legal Issues of International Law from a Gender Perspective 1 (2023), [https://doi.org/10.1007/978-3-031-13459-3\\_1](https://doi.org/10.1007/978-3-031-13459-3_1). (last visited Aug. 19, 2025 at 03:08 AM).

<sup>20</sup> India Const. art. 30.

- **Article 39<sup>21</sup>**

Article 39, under the Directive Principles of State Policy, directs the State to frame policies that secure a dignified standard of living for all citizens, irrespective of gender. It emphasizes equal pay for equal work, protection of workers' health and strength, and safeguards against exploitation or forced employment due to poverty or age. These protections extend equally to women, including those from the Muslim community, reflecting the Constitution's commitment to social and economic justice.

## **Justice for Women and Fundamental Obligations**

Gender justice in Islamic law remains a debated subject, shaped by how religious principles are interpreted in present times. At its core, gender justice means equal respect, rights, and dignity for both men and women, free from discrimination, violence, or oppression, while ensuring their full participation in society.

The essence of Islam, as reflected in the Quran and the Sunnah, recognizes women's equal status with men, granting them rights such as inheritance, marriage choice, divorce, education, work, and involvement in public life. It also obliges men to treat women with fairness, kindness, and protection.

Yet, these rights are often undermined when patriarchal customs or restrictive interpretations replace the true spirit of Islam, leading to practices that deny women the freedoms originally assured to them.

## **Examples of Gender Injustice in Islamic Practices**

Certain practices, though widely followed in some Muslim communities, deviate from the original spirit of Islam and result in injustice to women.

- The first is **triple talaq**, where a man ends his marriage instantly by repeating "talaq" three times. This denies women their Quranic rights to reconciliation, mutual consultation, and the waiting period meant to safeguard dignity and stability.
- Another is **polygamy**, which, while conditionally permitted in Islam, is often misused. The Quran requires equal treatment of wives, but this is rarely achievable in practice. When pursued without fairness or genuine reason, it undermines women's dignity and creates conflict and insecurity.

---

<sup>21</sup> India Const. art. 39.

- Similarly, **nikah halala**, which forces a divorced woman to marry and consummate another marriage before returning to her former husband, lacks Quranic sanction. It demeans women, turning marriage into a mere ritual rather than a bond of respect and mutual choice.

Such practices, rooted in misinterpretation rather than true Islamic principles, perpetuate discrimination. Reform aligned with the Quran and Sunnah, coupled with greater awareness of Islam's emphasis on equality and justice, is essential to ensure genuine gender justice in Muslim societies.

## Suggestions for Reforming Islamic Laws for Gender Justice

Reforms in Islamic personal law are essential to safeguard women's dignity and rights while staying true to the spirit of Islam.

- **Raising the minimum age of marriage** to 18 for both men and women would ensure maturity before entering marital responsibilities. Divorce should follow a structured process of dialogue, mediation, or separation, instead of instant triple talaq.
- **Polygamy**, if at all permitted, should be restricted to exceptional circumstances and only with fairness, equal treatment, and genuine consent of all parties. The practice of nikah halala should be abolished, allowing divorced couples to remarry each other without humiliating conditions.
- **Custody and guardianship of children** must recognize the mother's primary role unless proven otherwise, while fathers should retain rights of access and responsibility for upbringing. Women should also enjoy their rightful inheritance, property ownership, and control without interference.
- **Equally important is ensuring women's access** to education, work, and public participation, along with freedom of choice in personal matters within Islamic values of modesty and morality.

Such reforms can only succeed if they come from within the Muslim community, led by scholars, leaders, and activists, and grounded in a holistic understanding of Islam's principles of justice, equity, and compassion. Only then can Islamic law serve as a true source of fairness and harmony in the modern world.

## Talaq

Talaq in Islam refers to the dissolution of marriage, with its rules varying across different schools of law and regions. In India, it has historically been governed by the Shariat Act, 1937, particularly under the Hanafi school. The most debated form, triple talaq or talaq-e-biddat, allowed a man to instantly divorce his wife by saying “talaq” thrice in one sitting. This practice was widely criticized as arbitrary, unjust, and contrary to Quranic principles, as it left women without rights or recourse. Recognizing its discriminatory nature, the Supreme Court in 2017 struck it down as unconstitutional, leading to the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized instant triple talaq.

The debate around talaq also highlights larger issues-balancing personal law with constitutional values, religious freedom with gender justice, and the ongoing question of a Uniform Civil Code. Ultimately, reforms in talaq must be approached sensitively, ensuring protection of women’s rights while respecting India’s plural social fabric.

## Maintenance and Financial Support for Muslim Women

The issue of maintenance for Muslim women lies at the intersection of personal law, secular provisions, and judicial interpretation. In Islamic law, a husband is bound to provide nafaqah-covering essentials like food, clothing, and shelter—both during marriage and for a limited period after divorce.

Under Section 125 of the Code of Criminal Procedure (CrPC), however, all women, regardless of religion, may claim maintenance if they are unable to support themselves and the husband has sufficient means.

The Muslim Women (Protection of Rights on Divorce) Act, 1986 requires a husband to provide a fair provision, including mahr and maintenance, during the iddat period. Post-iddat, responsibility may shift to relatives or the Wakf Board.<sup>22</sup>

Judicial pronouncements have clarified and expanded these rights. In the Shah Bano case, the Supreme Court held that Muslim women are entitled to claim maintenance under Section 125 CrPC even beyond iddat. Later, in Danial Latifi<sup>23</sup>, the Court upheld the 1986 Act but ruled that the husband’s obligation must extend to a reasonable provision for the divorced

---

<sup>22</sup> The Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, § 4 (India).

<sup>23</sup> A.I.R. (2001) 7 SCC 740 (India)

wife's future. The Shamim Bano<sup>24</sup> ruling reaffirmed that Section 125 applies before and after divorce, even when separation occurs through khula.

## Custody and Guardianship Rights for Muslim Women

In Muslim law, custody (hizanat) refers to the mother's right to the physical care of the child, while guardianship (wilayat) rests primarily with the father, giving him authority over decisions concerning the child's upbringing, property, and education. Mothers, however, enjoy preferential custody for young children, though the exact age varies across sects—for instance, under Hanafi law, sons remain with the mother until seven and daughters until puberty, while Shia law allows custody of sons until weaning and daughters until seven.<sup>25</sup>

The mother may lose custody if found unfit due to reasons like remarriage, neglect, or misconduct. In all cases, the welfare of the child remains the foremost principle in custody disputes. Beyond personal laws, the Guardians and Wards Act, 1890 empowers courts to appoint guardians by prioritizing the child's best interests.<sup>26</sup>

Thus, custody and guardianship for Muslim women involve a balance between religious norms and secular laws, with the courts stepping in to ensure the child's overall welfare.

## Role of Judiciary

Indian courts have played a crucial role in shaping custody and maintenance rights for Muslim women.

In **Shah Bano's**<sup>27</sup> case, the Supreme Court confirmed that Muslim women can seek maintenance under Section 125 CrPC even after the iddat period, highlighting the need for a uniform civil code. Later, in **Danial Latifi**<sup>28</sup>, the Court upheld the 1986 Act but clarified that a husband's obligation to provide a fair and reasonable settlement extends beyond iddat, covering the woman's lifetime unless she remarries. Further strengthening these rights, in **Shamim Bano**, the Supreme Court ruled that Section 125 applies regardless of whether

<sup>24</sup> A.I.R. 1985 S.C. 945 (India).

<sup>25</sup> Understanding the Right of Mother Under Muslim Law: Hizanat in India, LawCrust, <https://lawcrust.com/right-of-mother-muslim-law/> (visited Sept. 20, 2025 at 08:07 PM)

<sup>26</sup> Joginder Singh Rohilla, How Can I Prove in Court That the Mother Is Unfit for Child Custody?, LinkedIn (Sept. 4, 2025), <https://www.linkedin.com/pulse/how-can-i-prove-court-mother-unfit-child-custody-rohilla-dnevf/>. (visited Sept. 15, 2025 at 08:012 PM)

<sup>27</sup> A.I.R. 1985 S.C. 945 (India).

<sup>28</sup> A.I.R. (2001) 7 SCC 740 (India).

divorce was obtained through khula. Similarly, in **Razia v. State of U.P.**<sup>29</sup> The High Court allowed a divorced woman to claim maintenance as long as she remained unmarried.

On custody, the Kerala High Court in **Suharabi v. D. Muhammed**<sup>30</sup> emphasized that while the mother has the first right to a child's care, the father carries the duty to maintain both mother and child until her remarriage.

## Key Judicial Rulings on Maintenance and Property Rights

The Supreme Court in **Shabana Bano's**<sup>31</sup> case clarified that a divorced Muslim woman can claim maintenance from her former husband under Section 125 CrPC until she remarries, and this entitlement remains unaffected by the 1986 Muslim Women Act.

In **Noor Saba Khatoon**<sup>32</sup> The Court extended protection to children, holding that minors are entitled to maintenance from their father until they reach majority or become self-sufficient, regardless of the parents' divorce.

On inheritance, the Supreme Court in **Phulavati**<sup>33</sup>'s case ruled that daughters have an equal right to ancestral property under the 2005 amendment to the Hindu Succession Act, provided the father was alive when the law came into effect. This right exists independently of a daughter's marital status, ensuring her equal claim as a coparcener.

## Conclusion

Gender justice under Islamic law and the Indian Constitution reflects both challenges and possibilities. While Islamic teachings, in their true essence, uphold fairness and dignity for women, cultural practices and misinterpretations have often restricted these rights. Constitutional guarantees and judicial interventions in India have played a significant role in correcting such injustices, particularly through landmark rulings on practices like triple talaq and maintenance rights. However, the journey towards genuine equality requires continuous reform, awareness, and a balance between respecting religious principles and ensuring fundamental rights. True gender justice can only be achieved when women are empowered not just legally, but also socially and economically.

<sup>29</sup> 2023: AHC:175195 (All. H.C. 2023).

<sup>30</sup> A.I.R. 1988 Ker. 30.

<sup>31</sup> AIR 2010 SC 305

<sup>32</sup> A.I.R. 1997 S.C. 3280 (India).

<sup>33</sup> A.I.R. 2016 S.C. 769 (India).