

## Muslim Personal Law in Secular Democracies: A Challenge for Gender Equality

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### Abstract

The intersection of Muslim Personal Law (MPL) and secular democratic principles presents a complex challenge for gender equality. MPL, which governs personal matters such as marriage, divorce, inheritance, and child custody for Muslims, is deeply rooted in religious traditions and practices. In most cases, the use of MPL in secular democracies brings conflict between religious rights and the principles of equality and nondiscrimination set in the constitution. On several occasions, provisions within MPL have been attacked as entrenching inequality along gender lines, especially women's rights. This research paper looks into the impact of MPL on secular democracies, specifically regarding its role in ensuring equality of genders. It critically examines some of the major case laws that involved landmark decisions by courts concerning the conflict between MPL and constitutional rights. In addition, it looks into gendered implications of MPL, such as marriage, divorce, inheritance, and maintenance cases, in which the law is often seen as unfavourable to women. Finally, the paper discusses potential reforms aimed at reconciling the practice of MPL with the secular democratic values enshrined in the constitution, emphasizing the importance of protecting both religious freedoms and the rights of women. By balancing these competing interests, this paper seeks to provide insights into the possibility of achieving gender equality while respecting religious diversity in secular societies.

**Keywords:** *Muslim Personal Law, Secular Democracies, Gender Equality, Case Law, Constitutional Rights, Religious Freedom*

### 1. Introduction

Muslim Personal Law (MPL) is a body of legal principles derived from Islamic teachings and jurisprudence that governs various aspects of personal life for Muslims, such as marriage, divorce, inheritance, and child custody. These laws are based on religious texts, like the Quran and Hadith, and are deeply rooted in the cultural and social practices of Muslim communities. However, the application of MPL in secular democracies where the separation of religion from the state is a fundamental principle is challenging. The challenges mostly arise from the tension between religious freedoms and constitutional principles of equality, individual rights, and non-discrimination.

In secular democracies, the Constitution affords some of the basic rights such as equality between sexes that come in direct conflict when religious laws such as MPL carry some provisions which seemingly run counter to the said constitutional values. More specifically, MPL has been attacked for maintaining inequality between the sexes on such grounds as polygamy, the unilateral right of men to divorce, and an uneven division of inheritance. For instance, although MPL legalizes the practice of polygamy, this is usually regarded as violating the principle of gender equality since women are regarded as inferior since a man is allowed to have several wives, while a woman cannot have several husbands. Similarly, the unilateral right of men to pronounce divorce (Talaq), often without the consent of the wife, raises concerns regarding women's autonomy and protection from arbitrary marital dissolution.

Further, the inheritance laws under MPL always provide unequal treatment where women get only half the share of inheritance compared to men. This further increases the socio-economic marginalization of women. Such provisions

have attracted criticism that MPL, in its traditional form, does not comply with the constitutional mandate of equality and non-discrimination, especially in matters of personal laws directly affecting the lives of women.

This paper delves into the complex legal, social, and political challenges arising from the intersection of MPL and the secular democratic framework. The aim is to critically examine the compatibility of MPL with gender equality and the broader constitutional values of individual rights and non-discrimination. The paper analyses landmark case laws, such as Shah Bano Case (1985), Shayara Bano v. Union of India (2017), and Triple Talaq (2019), to focus on the legal struggle for gender justice within the framework of MPL. These cases have caused great debates over the need for reforms to bring MPL in line with the constitutional guarantees of gender equality and women's rights.

Apart from reviewing judicial interventions, the paper also explores ongoing social and political debates surrounding reform of MPL. While some have argued for an overhaul of Muslim personal laws in order to better ensure gender justice, others believe that religious freedoms should not be compromised in the name of gender equality. The paper will examine these divergent views, offering a balanced analysis of how secular democracies can navigate the delicate balance between protecting religious freedom and ensuring the equal rights of women.

Finally, this paper aims to contribute to the general debate on how the practice of MPL can be harmonized with the constitutional values of secular democracies, focusing on the essential need for reform that respects both religious diversity and the rights of women.

## 2. Conceptual Framework

The intersection of Muslim Personal Law (MPL) and secular democratic principles, particularly with regard to gender equality, requires an understanding of the fundamental concepts that underpin these frameworks. This section outlines the key concepts—Muslim Personal Law, secular democracy, and gender equality—that are essential to understanding the challenges and conflicts that arise when these systems interact.

### 2.1 Muslim Personal Law (MPL)

Muslim Personal Law (MPL) comprises a set of laws that preside over issues of personal relationships within the community of Muslims primarily based on religious principles as presented in the Quran, Hadith (sayings and actions by the Prophet Muhammad), and Fiqh or Islamic jurisprudence. MPL is concerned mainly with family matters like marriage, divorce, inheritance, and child custody, and its legal thought has developed through centuries of interpretations of the Islamic texts. Although interpretation and application may differ greatly from country to country and community to community, a number of common principles remain for most Muslim-majority countries.

- **Marriage and Divorce:** MPL permits men to have multiple wives under the institution of polygamy, while women are generally prohibited from having more than one husband. Additionally, MPL permits a man to divorce his wife unilaterally under the institution of Talaq. Talaq is the process by which a man can dissolve the marriage by uttering "Talaq" three times. Such a process is allowed to be carried out without the wife's knowledge or consent. Women rights to seek divorce are minimum. Divorce among women is only attainable by seeking Khula, which is hard to be obtained and always requires the husband's permission.

- **Inheritance:** The inheritance laws under Islamic practice are structured and codified in the Quran. In MPL, male heirs receive more than female heirs. A majority of the time, a male heir receives double that of the female heir. This is a major point of criticism as such a distribution will always amount to gender-based discrimination both in property and wealth distribution.

- **Custody of children:** Islamic law provides for the children to be more often with their mothers, specially during early childhood. Custody of older children is generally handed over to fathers. In MPL, although maternal care and affection for younger children are entrusted predominantly to the mothers, the right to family issues and financial authorities is always bestowed upon the fathers. This distribution, though not technically discriminatory, actually portrays a stronger patriarchal culture within the household.

### 2.2 Secular Democracy

A secular democracy is the political system that bases its foundation on the separation of religion from the state. Under a secular democracy, the state does not advocate or promote a particular religion; it guarantees an individual the freedom to practice religion within the guidelines of laws meant to maintain public order and morality. Secularism ensures that no religion is given preferential treatment by the government, and citizens are free to choose and practice their religion without interference from the state.

•**Freedom of Religion:** Secular democracies recognize that individuals should have the freedom to practice any religion or follow no religion at all, without fear of persecution or discrimination. This freedom is often enshrined in a country's constitution as a fundamental right.

•**Equality Before the Law:** Secular democracies provide for equality before the law, meaning that everyone is accorded the same rights and protection under the law, irrespective of religion, gender, or ethnicity. Such a principle is found in most national constitutions and international human rights frameworks, especially regarding gender equality and non-discrimination.

•**Non-Discrimination:** Secular democracies hold that the law must not discriminate between citizens on the basis of gender, religion, and other criteria. This principle forms the core of protecting the rights of the individual and fostering justice and fairness.

### 2.3 Gender Equality

Gender equality is the perception that men and women should receive equal rights, opportunities, and responsibilities in any aspect of life, such as education, work, political representation, and family life. It's a basic human right that necessitates the ending of discriminatory practice perpetuating inequalities based on gender, including the cultural and religious traditions.

•**Equality in Rights and Opportunities:** Gender equality demands that both men and women should have the same legal and social rights, including the right to inherit property, access to healthcare, education, and employment. It seeks to eliminate all forms of gender-based discrimination and marginalization, ensuring that both genders can participate fully in social, political, and economic life.

•**Breaking Down Discriminatory Practices:** Gender equality also involves breaking down cultural and religious practices that disadvantage women. This means challenging patriarchal systems that favor men with more rights, especially in marriage, divorce, inheritance, and decision-making within the family.

•**Legal and Constitutional Protections:** The secular democracies generally enshrine gender equality as a constitutional right, that is, women and men will be treated with equal dignity of the law. This often implies redressing some discriminatory practices present within different religious or cultural settings, including the personal laws, such as MPL.

### Intersections of MPL, Secular Democracy, and Gender Equality

The conceptual frameworks of MPL, secular democracy, and gender equality often converge in a manner that makes them both legally and socially challenging. On the one hand, MPL presupposes a set of religiously mandated rules governing personal life among Muslims. Conversely, secular democracies are instead founded on the principles of equality, non-discrimination, and individual rights. When the constitutional principles of gender equality, specifically on marriage, divorce, inheritance, and custody are in conflict with the provisions under MPL, it becomes a challenge to the state since it has to provide religious freedom respect while at the same time vindicating women's rights and protecting gender justice.

It has become increasingly necessary to balance religious beliefs with ensuring that women's rights are not compromised in light of the growing relationship between MPL and secular democratic principles. Some reforms in Muslim Personal Law, like Triple Talaq and rights of inheritance, are part of the ongoing discussion about how secular legal frameworks might address gender inequalities within religiously governed personal laws.

### 3. Challenges Posed by Muslim Personal Law:

The application of MPL is fraught with several challenges, especially in relation to gender equality. While it is important

to preserve religious traditions, MPL is often in conflict with the constitutional principles of equality and non-discrimination that form the core of secular democracies. These are most apparent in areas such as marriage, divorce, inheritance, and the protection of women's rights, which raise concerns about the potential for gender-based discrimination.

### 3.1 Gender Inequality in Muslim Personal Law

Muslim Personal Law has been criticized for its perpetuation of gender inequality in many aspects of personal life, especially in marriage, divorce, and inheritance. The unequal treatment of women under MPL has called for reform and greater alignment with constitutional principles of equality and non-discrimination.

•**Polygamy:** Another highly debated provision of MPL is the right for Muslim men to marry up to four wives provided they treat all of them equitably and justly. It is an aspect of Islamic practice that has widely been considered discriminative towards women as it structures a relationship imbalance and enforces patriarchy. Women, on the other hand, do not have the legal right to practice polygamy. This gender disparity has been considered to violate the principle of equality in marriage and family life.

•**Divorce or Talaq:** Talaq is the unilateral divorce by a Muslim man pronouncing 'talaq' thrice. This process cannot be brought about through mutual consent and exposes the wife to arbitrary dissolution of marriage. Although reforms have been introduced in some countries with the intention of regulating or prohibiting the practice of instant Triple Talaq, women are still facing many difficulties, especially regarding financial support and child custody after divorce. In contrast, MPL provides limited rights to women regarding divorce and the process is lengthy and dependent on the husband's consent or approval.

•**Inheritance:** Islamic inheritance laws, as documented in the Quran, usually leave women inheriting half the share of inheritance compared to their male counterparts. More often than not, a male heir takes twice the amount as a female heir. This form of unequal inheritance has been criticized for gender-based economic inequality, thus making women at a disadvantage in terms of security of property rights and financial security. While some argue that the system reflects the traditional male role as the financial provider, the unequal inheritance shares are a significant source of contention, especially in the context of modern debates on gender equality.

### 3.2 The Role of Secular Law in Regulating MPL

Secular legal systems, which emphasize the principles of equality, non-discrimination, and human rights, often clash with the provisions of MPL, particularly when gender equality is at stake. In many secular democracies such as India, the United Kingdom, and the United States, the legal framework stresses equality before the law, providing safeguards to protect individuals, especially women, from discrimination. However, MPL, grounded in religious texts, allows practices that are viewed as discriminatory.

The tension between secular law and MPL becomes especially pronounced when courts are asked to balance religious freedoms with constitutional guarantees of equality and individual rights. For example, in countries like India, where personal laws based on religion govern family matters, the courts have often been caught in the conflict between respecting religious beliefs and ensuring that these laws comply with constitutional provisions of gender equality. While secular law mandates equal rights for men and women, MPL practices like polygamy and unequal inheritance create a legal gray area where women's rights are often overlooked. This tension has led to calls for reforms to bring MPL in line with constitutional values while respecting religious freedoms.

### 3.3 Gender-Based Violence and Protection

A critical issue that arises from the application of MPL is the insufficient protection it offers to women facing gender-based violence. In many Muslim-majority countries and communities, MPL does not provide adequate legal safeguards for women in cases of domestic violence, marital abuse, or other forms of gender-based discrimination. In the absence of comprehensive protection laws, women may find themselves trapped in abusive marriages or relationships, unable to

seek justice or protection through the legal system. The legal mechanisms available under MPL often fail to provide women with a fair opportunity for redress. For example, the practice of Talaq may be used as a tool of abuse, with husbands using their unilateral right to divorce to discard wives without financial or emotional responsibility. Moreover, MPL does not always offer sufficient support for women in obtaining custody of their children in cases of divorce, often privileging the financial authority of the father. As a result, many women who experience domestic violence or marital discord find themselves with limited options for seeking justice or protection. While secular laws in many countries provide provisions for women’s safety, including the right to file complaints against domestic violence, MPL’s lack of comprehensive legal safeguards means that women may face significant barriers to escaping abuse or gaining legal redress. Muslim Personal Law presents significant challenges to gender equality, particularly in areas of marriage, divorce, inheritance, and the protection of women from violence. The tension between MPL and secular legal frameworks, which prioritize equality and non-discrimination, underscores the difficulty of balancing religious practices with constitutional rights. As societies continue to evolve, reforming MPL to ensure that it aligns with gender equality and individual rights, while respecting religious traditions, remains a critical challenge for legal systems worldwide.

4. Case Laws and Judicial Interpretation

4.1 India: Triple Talaq Case (Shayara Bano v. Union of India, 2017)

One of the most significant cases in the debate surrounding MPL in a secular democracy is the Shayara Bano v. Union of India case in India. The Supreme Court of India declared the practice of "Triple Talaq" (instant divorce) unconstitutional in 2017, ruling that it violated the fundamental rights of Muslim women under the Indian Constitution, particularly the right to equality (Article 14) and the right to life and personal liberty (Article 21). This ruling was seen as a major step toward gender justice within the framework of MPL.

Case Name	Year	Court	Issue	Outcome
Shayara Bano v. Union of India	2017	Supreme Court of India	Validity of Triple Talaq	Held that Triple Talaq is unconstitutional.

4.2 Pakistan: The Family Laws Ordinance (1961)

In Pakistan, the Family Laws Ordinance of 1961 sought to reform aspects of MPL, particularly concerning divorce and maintenance. The law required the consent of both parties for divorce and made provisions for alimony, child custody, and maintenance, aiming to protect women’s rights within marriage. However, implementation has been inconsistent, and MPL continues to contain provisions that are gender-inequitable.

4.3 United Kingdom: Muslim Marriages and the Courts

In the UK, issues related to Muslim personal law, particularly in marriage and divorce, have been addressed in family courts. The courts have struggled to reconcile the Islamic marriage contract (Nikah) with the secular legal system. Courts have ruled that certain Islamic practices, such as polygamy, cannot be recognized under UK law due to incompatibility with equality principles, yet Muslim individuals can still rely on certain aspects of MPL in personal matters.

Case Name	Year	Court	Issue	Outcome
Shah v. Shah	2013	High Court, UK	Recognition of Islamic marriage and divorce	Polygamous marriages and unilateral divorces are not recognized under UK law.

5. Reforms and Legislative Strategies

5.1 Legal Reforms in Secular Democracies

There are legal reforms introduced in many secular democracies to eradicate the inequalities prevalent in MPL:



•**India:** Post Shayara Bano case, the momentum of reforms in MPL is growing with a rapid speed. The enactment of Muslim Women (Protection of Rights on Marriage) Act, 2019 has criminalized Triple Talaq.

•**Turkey:** Turkey has modernized family laws to become more secular. This means equality in marriage, divorce, and inheritance between the genders.

•**Tunisia:** Tunisia has revised personal laws that grant women equal inheritance rights and have abolished polygamy.

## 5.2 Balancing Religious Freedom and Gender Equality

Secular democracies, in particular, have to reconcile the protection of religious freedoms with the need for gender equality. Legislative reforms and judicial activism have played a great role in charting the direction of Muslim family law in these contexts.

## 6. Conclusion

The challenge in reconciling MPL with the gender equality principles in secular democracies is very significant. Although MPL provides personal and family rights to Muslims, its gendered nature has usually marginalized women. Courts and legislatures in secular democracies responded to these concerns through reforms and judicial interventions and attempted to reconcile respect for religious traditions with constitutional commitments to equality.

This is, in itself, an example of how complex it is to maintain the delicate balance between religious autonomy and gender equality, based on the evolving debates over the reform of MPL. As secular democracies continue to evolve, the resolution of these challenges will depend on a careful re-examination of both religious practices and democratic values.

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