

Contemporary Socio-Legal Debates on *Shari'ah* Act and Muslim Family Law: A Critical Analysis in the Indian Context

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Abstract

In context with the recent trends and debates in family law jurisprudence, an exceptional attention is being given to the upcoming family law discourse in the Muslim societies. However, by comparison with the laws applying to other communities, Muslim Personal laws in India have never been systematically codified. Even the few direct legislative interventions into Muslim personal laws, before and since independence, have been more notable for what they omit rather than include. For instance, the Muslim Personal Law (*Shariat*) Application Act (SAA) of 1937, while confirming that Muslims were subject to *Shari'ah* laws in their personal and family matters, specified almost nothing about the content of these stipulations, nor about the legal bodies authorised to adjudicate them. For all but a few syncretic communities, the Act confirmed far more than it changed in the adjudication of Muslim family laws. Even the Dissolution of Muslim Marriages Act (DMMA) of 1939, frequently taken as the most explicit and important government intervention into Muslim personal laws, only codified the nine grounds on which a woman can file for divorce (for example, a husband's absence, neglect or cruelty). It said nothing about issues arising from divorce, like post-divorce maintenance, *mehr* (bridal dower), marital property or child custody; nor did it change anything about forms of male-initiated divorce. By contrast with India, the formation of full or partial Islamic family law codes has been the major legal trajectory elsewhere in the Muslim world over the last century. These codification initiatives aimed to promote a moderate view of the Muslim family conduct that could foster inclusiveness and stability. Ultimately, the transformative cum legislative involvements spread to South Asia, notably the 1961 Family Laws Ordinance of Pakistan, later also amended in Bangladesh and had a assertive impact in India as well. Consequently, this impact could be estimated in view of the contemporary feminist discourse on Muslim family law since 2014. In the given context, the present paper is an attempt to examine the socio-legal perspective of the Muslim family law, the issues and legislation post 2014, the current face of the Muslim society in India and a critical study of the proposals that broaden the possibility of further research in Muslim family law.

Keywords: Ordinance, *Shari'ah* Act, Family Law, Triple Talaq, Dissolution, AIMPLB, Codification

1.1 Introduction

The family law jurisprudence is a broad and much evolving discipline in the contemporary times. The provisions of the *Shari'ah* Act are often debated due to the circumstances, location and understanding of the provisions in the socio-legal context. India having a huge Muslim population is having good experience to deal with the family or personal law particularly since 1985. Before India's independence, the state has accepted that different sets of religious laws should be applied to different communities in their personal and family affairs, and the courts have always adjudicated family matters on this basis.¹ However, by comparison with the laws applying to other communities, Muslim personal laws in India have never been systematically codified.² While Muslim personal law (and its forerunner *Anglo-Muhammadan Law*) is sometimes talked about as a coherent body of law shaped by legal digests and case precedent, there is very little in Muslim personal law that parallels the statutory acts that already determine the family laws of Hindu, Christian and other citizens.³ Even the few direct legislative interventions into Muslim personal laws, before and since independence, have been