

## INDIA<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 28 June 2022)

#### Background Note:

The four main schools of Sunni jurisprudence are the Shafi'i, Maliki, Hanafi, and Hanbali schools. The Hanafi school applies to the majority of Indian Sunnis, among whom smaller numbers are governed by the Shafi'i school and the more recent Ahl-i-Hadith school, which claims to be guided solely by Islam's founding texts, the Quran and the Hadith. The main Shia school of jurisprudence is the Ithna Ashari, which governs the majority of Indian Shias. The Musta'lian Isma'ili school governs some Indian Shias. Three kinds of community courts play important roles in Muslim matrimonial cases: local mosque *jama'ats* (councils); popularly recognized *qazis* (judges), a few of whom are appointed by the executive branch; and the more formally organized *dar'ul quzats* (courts) that are part of prominent Muslim religious institutions (e.g., the Darul Uloom Deoband and the Darul Uloom Manzar-e-Islam of Bareilly, both in Uttar Pradesh). The judges in the *dar'ul quzats* are formally trained in Islamic jurisprudence, especially the school of Islamic law upheld by the institution; most litigants recognize the same legal school. The largest *dar'ul quzat* network is part of the Imarat-e-Shariah, an institution formed in 1917 that also provides religious education and medical services. It is based in Phulwari Sharif in Bihar and has many branches in the eastern Indian states of Bihar, Jharkhand, Bengal, and Orissa.<sup>2</sup>

Among Muslims, the Ithna Ashari (also called Jaf'ri) school of law governs the majority of Shias, the Musta'lian Isma'ili school governs a minority of Shias, the Shafi'i school governs a significant minority of Sunnis while the Ahl-e-Hadith school governs a smaller minority of Sunnis. Shia women are allowed to retain their *mehar* (dower) after divorces they initiate, contrary to the recognized practice of foregoing dower under the same circumstances among Sunnis, who are the majority of Indian Muslims. Courts do not often allow women governed by Shafi'i law to retrospectively repudiate marital alliances to which they did not consent, while allowing those governed by Hanafi law to do so until the consummation of their marriages or until they turn eighteen.<sup>3</sup>

When it signed the CEDAW in 1980, as well as when it ratified it again in 1993, the Indian government added the reservation that it would continue its policy of "non-interference in the personal affairs of any community without its initiative and consent."<sup>4</sup>

Muslim community courts (especially the *dar'ul quzats*) rely more often on precolonial legal texts. The Hanafi courts mainly consult the *Hidayah* (Guidance, the classic Hanafi juridical text of the twelfth century authored by Burhan-ud-din Ali ben Abu Bakr al-Marghilani) and the *Fatawa-e-Alamgiri* (the Compendium

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<sup>1</sup> This table was originally formulated as part of a 2016-2017 Musawah project to map Muslim Family Laws globally led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this India country table, we would also like to thank Kierra Jones and Divya Srinivasan from Harvard Law School, and Walaa Kadhem for their inputs in its original preparation. This table was last updated in June 2022 as part of the Campaign for Justice in Muslim Family Laws, we would like to thank Dr. Noorjehan Safia Niaz of Bharatiya Muslim Mahila Andolan for the recent update. She was assisted by Adv. Rukhsar Memon.

<sup>2</sup> Subramanian, N. (2008). Legal Change and Gender Inequality: Changes in Muslim Family Law in India. *Law & Social Inquiry*, 33(3), 631-672

<sup>3</sup> Subramanian, N. (2008). Legal Change and Gender Inequality: Changes in Muslim Family Law in India. *Law & Social Inquiry*, 33(3), 631-672

<sup>4</sup> Merry, Sally Engle. 2006. *Human Rights & Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press.

of Alamgir, composed in the seventeenth century from the texts of various Islamic jurisprudential schools at the request of the Mughal emperor Aurangzeb to guide the courts of the Mughal empire).<sup>5</sup>

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and the family codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified, or if codified laws do</i></p>	<p>Most of Muslim Personal Law in India continues to remain uncodified. <i>Mulla's Principles of Mohameddan Law</i><sup>6</sup>, a treatise compiled by Sir Dinshaw F. Mulla in the mid 1900s continues to serve as an important source of reference in matters of interpretation of Muslim personal laws across all legal disputes and personal law matters in India. According to Clause 193 of <i>Principles of Mohameddan Law</i><sup>7</sup> by Mulla regarding <i>Talak by delegated authority</i>: "An agreement entered into before marriage, by which it is provided that the wife should be at liberty to</p>	<p>It was so held by the Judicial Committee of the Privy Council in <i>Deedar Hossein v. Zuhoor-oon Nissa</i><sup>14</sup> that the Mohameddan law applicable to each sect is to prevail in matters brought forth by litigants belonging to that sect. The Sunni law will therefore apply to the Sunnis and the</p>	<p>Constitution of India<sup>16</sup> <b>Article 14</b> – Equality before the law <b>Article 15</b> –Prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth</p> <p>15(1) 10 prohibits state discrimination based on the grounds of religion, race, caste, sex or place of birth, and subsection 15(2) adds that no one is to be denied access to public and state-funded services and facilities.</p>	<p>If Muslim women need to be equal in a relationship then legally she would be better off if she marries under the Special Marriage Act, 1954. Provided the man also agrees to be governed by a non-religious law.</p> <p>If the couple choose to remain within the bounds of shariah then</p>	<p>The lived reality in India does not live up the egalitarian dimensions of a Muslim marriage nor the upto the constitutional values.</p> <p>A study<sup>17</sup> done by BMMA surveying 4710 Muslim women showed that: 15.5% women were married below the age of 15 years</p>

<sup>5</sup> Fyze, Asaf A. A. 1964. Muhammadan Law in India and the Impact of English Law on the Shariat in India. *Bombay Law Reporter (Journal)* 56:1–11, 107–16, 121–29

<sup>6</sup> Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

<sup>7</sup> Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

<sup>14</sup> (1841) 2 M.I.A. 441, 477.

<sup>16</sup> Constitution of India, <https://www.refworld.org/docid/3ae6a8394.html>

<sup>17</sup> 'Seeking Justice Within Family-Muslim Women's Views on Muslim Family Law.

<p><i>not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(a) General Recommendation 21</p>	<p>divorce herself from her husband under certain conditions, is valid, if the conditions are of a reasonable nature, and are not opposed to the policy of the Mahomedan Law. When such an agreement is made, the wife may, on the happening of the contingencies, repudiate herself in the exercise of the power, and a divorce will then take effect to the same extent as if the talaak had been pronounced by the husband.<sup>8</sup></p> <p>The 4 codified Muslim family laws are: The Muslim Personal Law [Shariat] Application Act, 1937 The Dissolution of Muslim Marriage Act, 1939 The Muslim Women (Protection of Rights on Divorce) Act, 1986. Muslim Women (Protection of Rights on Marriage) Act, 2019</p> <p>These laws are applicable to all Muslims irrespective of their sect although majority of Muslims belong to the Hanafi sect.</p>	<p>Shia law will apply to the Shias and the laws peculiar to each school or sub-sect will apply to that school or sub-sect.<sup>15</sup></p>	<p>15(3) states that the government may make special provision for women and children Article 19 -Guarantees to all the citizens the six freedoms and they are:</p> <p>Freedom of speech and expression, Freedom to assemble peaceably and without arms</p> <p>Freedom to form associations or unions</p> <p>Freedom to move freely throughout the territory of India</p> <p>Freedom to reside and settle in any part of the territory of India</p> <p>Freedom to practice any profession, or to carry on any occupation, trade or business</p>	<p>nikahnama is a document which can ensure her safety. She can put conditions to equalise the marriage.</p> <p>If a Muslim woman or man decides to access the formal court system for any codified law, either the above mentioned 4 codified Muslim family law or the general laws of the country, they need to register a case with the police in case of a crime or take the services of a lawyer and file a case in the court. For people who cannot afford the services of a private lawyer can approach the free legal aid services. A public</p>	<p>39.8% of women were married between the ages of 15-18 years. 2063 girls are thus married before the age of 18.</p> <p>47% of Muslim women do not have a nikahnama.</p> <p>Out of the 2219 respondents who say that they don't have their <i>nikahnama</i>, a big number of 1185 women, more than 50% respondents, say that they don't know the whereabouts of their <i>nikahnama</i> or whether it was made at all.</p> <p>835 respondents out of 2219 say that the <i>nikahnama</i> was made but they don't have a copy as it was not given to</p>
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<sup>8</sup> *Hamidoolla v. Faizunnisa* (1882) 8 Cal. 327.

<sup>15</sup> Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

	<p>There is nothing in these statutory laws which gives the specifics of equality within marriage. In fact the Acts of 1939, 1986 and 2021 are all linked to divorce and not marriage. The 1939 Act gives right to Muslim women to go to court to terminate her marriage, the 1986 Act gives her the right to post-divorce maintenance and the 2019 Act prohibits the husband from unilateral divorce. The 1939 Act equalises in some way her right to terminate her marriage, albeit by going to the court.</p> <p>The 2019 legislation too in some way restores the balance within marriage when it prohibits and criminalizes unilateral divorce by husband.</p> <p>Since most Indian Muslims are Hanafis, this school of jurisprudence provides legal recourse for women to marry without the permission of a wali.<sup>9</sup> In the Hanbali, Shafi, and Malliki Sunni schools, a <i>wali</i> is required in order for a virginal woman to marry.<sup>10</sup></p>		<p><b>Article 21</b> – Protection of life and personal liberty.</p> <p><b>Article 29</b> – Protection of interest of minorities.</p> <p>The Constitution guarantees six fundamental rights to Indian citizens as follows: right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, and right to constitutional remedies.</p> <p>In January 1992, the National Commission for Women was established to investigate cases of abuse and report to the government on measures to improve the situation of women in India</p> <p>In December 1993 National Commission on Human Rights was</p>	<p>prosecutor would fight her case.</p> <p>Alternatively a Muslim woman can also approach the local NGO, darul qaza, jamaat, village panchayat with her complaint.</p> <p>She can also reach out to the state/national women's commission which runs legal aid services for women.</p>	<p>them.</p> <p>205 women say that the <i>nikahnama</i> was not made at all.</p> <p>More than 40% of the respondents say that they have received less than Rs. 1000 as <i>mehr</i>. Of which a big chunk have received Rs. 786 as <i>mehr</i>! 44% of respondents say that they have not received the <i>mehr</i> at all. A miniscule 2.3% respondents have had a say in deciding the amount of <i>mehr</i>. It is either her parents for 29.4% or the groom's parents for 21.1% who decide the amount. Whereas 7.6% don't even know who decided the amount. 30.1% women were asked to write off the</p>
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<sup>9</sup> Hanafi school and wali <https://themaydan.com/2019/12/female-agency-in-marriage-in-the-hanafi-school-of-law-between-damascus-and-transoxiana/>

<sup>10</sup> Requirement of wali [Marriage in Islam - Wikipedia](#)

	<p>In the Hanafi School the legal limits<sup>11</sup> are that the wife must obey the husband in anything lawful, related to their marriage, as long as there is no harm or contravention of the Shariah in it, or the taking of others' rights In terms of providing, in the Hanafi school, the husband has to provide for the wife based on the social and economic standing of both husband and wife.</p> <p>In the Hanafi school, the wife has a right to live (and demand to live) separately<sup>12</sup>. It is the duty and responsibility of the husband to provide her with shelter (suknah). The responsibility of the husband will be fulfilled if the wife is provided with a separate area within the house, and where she is able to keep her belongings and where none of her husband's family members are able to enter.</p> <p>Indian criminal law<sup>13</sup> is set out in the Indian Penal Code which addresses crimes against women:</p>		<p>established to investigate and report on allegations of human rights violations</p> <p>India also releases its National Policy for Women [2001, 2016] from time to time, reflecting its commitment to protecting and promoting women's rights. All statutory laws of the country cannot violate the constitutional values as embedded in the Preamble of the Constitution as well as in the various Articles espousing equality, justice and freedom.</p>		<p><i>mehr</i></p>
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<sup>11</sup> Legal limits [Marriage: Husband and Wife Rights - IslamQA](#)

<sup>12</sup> Right to separate home, [A Wife's Right to Housing Separate From Her In-Laws - SeekersGuidance](#)

<sup>13</sup> Indian Criminal Law, [Human Rights Briefs: Women in India](#)

	<p>Voluntarily causing a miscarriage for reasons other than health of the woman (s. 312)</p> <p>Assaulting a woman with the intent of outraging her modesty" (s. 354)</p> <p>Abducting a woman and compelling her to marry/illicit intercourse (s. 366)</p> <p>The penal code has a section on offences relating to marriage.</p> <p>Deceiving a woman to believe she is married and then cohabiting with her (s. 493)</p> <p>Committing bigamy (s. 494)</p> <p>Committing adultery with a married woman (s. 497)</p> <p>An adulterous married woman is not punished as an abettor (s. 497).</p> <p>Section 498(a) of the penal code makes it a crime for a husband or his relatives to cause any harm to his wife. The crime carries a punishment of up to three years imprisonment and a fine.</p>				
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	<p>The penal code also addresses rape (s. 375) albeit not within marriage.</p> <p>Protection of Women from Domestic Violence Act, 2005</p>				
<p><b>Minimum and equal age of marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) General Recommendation 21</p>	<p>The Prohibition of Child Marriage Act of 2006 deals with the issue of child marriages. Child marriage under the Act is defined as a marriage in which either of the contracting parties is a child. A child is defined as a person who has not yet completed 21 years of age, in case of a male, and a person who has not completed 18 years of age in case of a woman. However, Section 2 of <i>The Muslim Personal Law (Shariat) Application Act, 1937</i> states that in cases where the parties are Muslims, in all questions of marriage, the applicable rule of decision shall be the Muslim Personal Law (<i>Shariat</i>). Therefore it is presumed that every Muslim, who is of sound mind and has</p>	<p>It was held in the recent case of <i>Independent Thought v. Union of India</i><sup>18</sup> as follows: “Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939 entitles a woman married under Muslim Law to obtain a decree of dissolution of marriage if she is given in marriage by her father or other guardian before she</p>	<p>Constitution of India conveys a powerful mandate for equality and rights of women<sup>22</sup> in its Preamble, Fundamental Rights and Duties and also provides for specific provisions for affirmative actions. India is also a signatory to a number of UN Conventions, mainly CEDAW, Beijing Platform for Action and Convention on Rights of Child. India has also endorsed 2030 SDGs by addressing key challenges like poverty, inequality and VAW. National Policy for Empowerment of women [NPEW] was first passed</p>	<p>Under the PCMA, 2006<sup>25</sup>, Child Marriage Prohibition Officers (CMPO) are to be appointed in every state to prohibit child marriages, ensure the protection of the victims as well as prosecution of the offenders. The Officer has been empowered to provide necessary and legal aid to victims of child marriage and to produce children</p>	<p>According to this study<sup>26</sup> 75.5% of the 4710 respondents wanted girls to be above the age of 18 88.3% wanted boys to be above the age of 21 years. In the same study 55% were married before the age of 18. Out of which 15% were below the age of 15 and 40% between 15-18 years. 73% had annual income below 50,000.</p>

<sup>18</sup> (2017) 10 SCC 800

<sup>22</sup> Equality of women, [National Policy for Women 2016](#)

<sup>25</sup> PCMA, 2006, [The Prohibition of Child Marriage Act - IndiaFilings](#)

<sup>26</sup> BMMA published a national study ‘Seeking Justice Within Family – Views of Muslim Women on Muslim Family Law’.

	<p>attained puberty is capable of contracting a marriage. Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years. However, over the course of the years, in multiple cases, the Supreme Court and various High Courts have held that the Prohibition of Child Marriage Act, 2006 is applicable also in the case of Muslims.</p> <p><b>“Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939</b> entitles a woman married under Muslim Law to obtain a decree of dissolution of marriage if she is given in marriage by her father or other guardian before she attained the age of 15 years and she repudiates the marriage before attaining the age of 18 years provided that the marriage has not been consummated.</p> <p>According to <b>The Protection of Children from Sexual Offences (POCSO) Act, 2012</b> whoever has sexual relationship with a child is to be punished. If the girl is below the age of 18, it does not matter if her consent was taken or not, the person having physical</p>	<p>attained the age of 15 years and she repudiates the marriage before attaining the age of 18 years provided that the marriage has not been consummated. This provision deals with girls below the age of 15 years who have been married. Such a girl is required to repudiate her marriage before she attains majority and she can only repudiate the marriage if the marriage has not been consummated. This virtually makes a mockery of the Prevention of Child Marriage Act. Therefore, even in a marriage which</p>	<p>in 2001 which laid down a comprehensive policy with appropriate strategies for empowerment of women.</p> <p><b>Draft National Policy for Women 2016</b> The policy envisions a society in which women attain their full potential and are able to participate as equal partners in all spheres of life. It also emphasises the role of an effective framework to enable the process of developing policies, programmes and practices which will ensure equal rights and opportunities for women.</p> <p>The broad objective of the policy is to create a conducive socio-cultural, economic and political environment to enable women to enjoy de jure and de facto fundamental rights and realize their full potential.</p> <p>Section 5 of the Policy states: Efforts to address all forms of violence</p>	<p>in need of care and protection before the Child Welfare Committee or a First Class Judicial Magistrate, where there is no Child Welfare Committee. The CMPO who is a public servant, is responsible for ensuring no child marriage, takes place in their jurisdiction by approaching the courts for prevention of child marriages, collecting the proof for prosecution, creating strong awareness about the issue and the Act, counselling and advising individuals against early marriage, sensitising the community, maintaining and</p>	<p>If the age of marriage figures are compared to the mehr amount received, then 40% received mehr which was less than Rs. 1000/ and 44% did not even receive any.</p> <p>Nikahnama was not even available with 47% of respondents. Those who had, 75% of which did not read it.</p> <p>In another study done by BMMA in the state of Maharashtra. Out of 505 women, 333 were married on or before 18 years. Out of the 505 women respondents, 261 women said the girl should be above the age of 18 years and 160 women said it should be over 21 years. Put together 421 women say that the</p>
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	<p>relationship with her is to be punished.</p>	<p>is void under the Prevention of Child Marriage Act, the girl will have to obtain a decree for dissolution of her marriage, that too before she attains the age of majority and only if the marriage has not been consummated. Another anomalous situation is that if the husband has forcible sex with such a girl, the marriage is consummated and the girl child is deprived of her right to get the marriage annulled...It is obvious that while making amendments to various laws, some laws are</p>	<p>against women will be continued with a holistic perspective through a life cycle approach in a continuum from foetus to the elderly starting from sex selective termination of pregnancy, denial of education, CHILD MARRIAGE, violence face in the private sphere of home, public spaces and at workplace. It will address the issues through laws, programmes and services.</p> <p><b>National Policy for Children 2013<sup>23</sup></b></p> <p>In India, the National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament (December 2005). The Commission's Mandate is to ensure that</p>	<p>distributing statistics.</p> <p>Any person can report an incidence of child marriage before or after it has been solemnised. A complaint can be filed at the nearby Police station, at the Metropolitan Magistrate or a Judicial Magistrate of First Class, at ChildLine/ District Magistrate or at the Child Welfare Committee</p> <p>Every child marriage shall be voidable whether solemnised before or after the commencement of this Act, at the option of the contracting party</p>	<p>age of marriage for girls should definitely not be below 18.</p> <p>220 women say that the boy should be above the age of 21 years and 274 women said it should be over 25 years.</p> <p>Put together 494 want the boy to be mature enough to get into the relationship of marriage.</p> <p>Since there is no codified Muslim family there is no express legislation within the Muslim legal tradition of India defining the age of marriage. The PCMA 2006 is also not uniformly applicable. Muslim women through BMMA have been demanding that the PCMA 2006 be</p>
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<sup>23</sup> Situation of Children and Child Rights in India A Desk Review/Butterflies, Dr. Prateep Roy, [Situation of Children and Child Rights in India](#)

		<p>forgotten and consequential amendments are not made in those laws.</p> <p>Because the Muslim community does not have a codified family law which specifies the age of marriage, the community swings between the national civil laws on child marriage which are technically applicable but are not applied and High Courts and Supreme Court judgments which do not tally with each other.</p> <p>In a significant judgement, the Madras High Court has ruled</p>	<p>all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group.</p> <p>The National Policy for Children<sup>24</sup>, 2013, does not address the issue of child marriage specific ally. The Policy talks about tracking, rescuing and rehabilitating out of school children, including married children. Registration of Marriages is still not compulsory in all states.</p>	<p>who was a child at the time of the marriage.</p> <p>The annulment of child marriage can be sought within two years after the child who was a party to the marriage had attained majority.</p> <p>Only the children in the marriage themselves can file a petition for voidability or annulment of marriage. And if the petitioner is a minor as per PCMA, the petition can be filed through a guardian or the next best friend of the married child (who must be an adult of 18 years or more), along with the Child Marriage</p>	<p>made unequivocally and unambiguously applicable to the Muslim community so that Muslim women come under the legislative protection of the law of the land.</p>
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<sup>24</sup> National Policy of Children, [CHILD RIGHTS IN INDIA](#)

		<p>that Muslims cannot rely upon their personal law to claim a right to give minor girls <sup>19</sup>in marriage immediately after they attain puberty. The Karnataka High Court and the Gujarat High Court have held that in cases of minor Muslim girls, the 2006 law will prevail over personal laws.<sup>20</sup></p> <p>However, the Punjab and Haryana High Court had ruled the reverse in 2018, saying Muslim personal</p>		<p>Prohibition Officer (CMPO).</p> <p>The District Court can grant nullity of marriage. The District Court includes the Family Court and Principal Civil Court of Original Jurisdiction, and any other civil court specified by the State Government.</p>	
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<sup>19</sup> Muslim minor girls, [Marriage of minor girls: Muslims can't rely on personal law, says HC - The Hindu](#)

<sup>20</sup> Personal Laws

<https://theprint.in/judiciary/can-an-under-18-muslim-girl-be-married-hc-verdict-puts-focus-back-on-child-marriage-law/604032/#:~:text=The%20Karnataka%20High%20Court%20and,would%20override%20the%202006%20Act>

		<p>law would override the 2006 Act. It ruled that puberty and majority in Muslim law are the same, and that “a boy or girl who has attained puberty is at liberty to marry anyone he or she likes and the guardian has no right to interfere”.</p> <p>In 2017, the Supreme court<sup>21</sup> acknowledged the 2006 PCM Act as a “secular act applicable to all”.</p>			
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<sup>21</sup> Supreme Court, <https://www.casemine.com/judgement/in/5ac5e3814a93261a7625fe>

<p><b>Consent to marriage/Forced marriage</b></p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is it mandatory to register a marriage? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) General Recommendation 21</p>	<p>Marriage, as defined by Mulla<sup>27</sup> is "a contract which has for its object the procreation and legalising of children." A Muslim marriage consists of an offer or proposal and the acceptance of that offer, both made in the presence of witnesses. Thus, the consent of the parties to the marriage is vital. Consent is expressed by declaration (<i>ijab</i> or <i>ejab</i>) and acceptance (<i>qabul/kabool</i>). Marriage under the Mohameddan law being merely a contract, it is necessary that there should be 'freedom of contract.' Hence a marriage brought about under coercion or fraud may be set aside at the instance of the party whose consent was so caused.<sup>28</sup> Further, Section 19 of the Indian Contract Act, 1872 specifies that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.</p>	<p>Every Sunni Mahomedan, who has attained the age of puberty, can renounce the doctrines of the sub- sect to which he belongs, and adopt the tenets of any of the other three sub-sects. In a judgment of the Bombay High Court <i>Muhammad Ibrahim v. Gulam Ahmed</i><sup>29</sup>, a Muslim female of the Shafei sect, after attaining puberty adopted the tenets of the Hanafi school, and married without her father's consent.</p>	<p>Indian state has provided for a non-religious marriage through the Special Marriage Act, 1954. This law is optional civil law for inter religious marriage or for those who want to opt out of their personal laws even though they may be belonging to the same religion. The vision is of a secular society where religion also co-exist. If a marriage, inter or intra religious, is registered under this Act, the couple is out of the ambit of the personal law. The vision of the policy makers envisaged a society which has a place for people who are ok not to be governed by religion.  Though in principle Islamic law<sup>30</sup> does not require a ritual</p>	<p>The qazi is usually associated with the local mosque. Mostly a he, the qazi is informed of the date of nikaah and his services are booked. He usually brings a nikahnama with him. He is associated with a local masjid or an idaara in whose offices too the copy of the nikahnama is kept as a record. Depending on different customs of the community, the nikaah is either solemnised in the masjid for the groom and in the house for the bride. Sometimes the bride and groom are in the</p>	<p>The Bharatiya Muslim Mahila Andolan (BMMA), a network representing several thousand Muslim women activists all across India in 2016 formulated a nikah naama (marriage contract) incorporating equitable rights for the wife. Printed as a booklet in three languages—Hindi, Urdu and English—it is meant for mass circulation, and is freely distributed. So far, several dozen marriages have been solemnised on the basis of this document. The document consists of two sections: the nikah namah or marriage</p>
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<sup>27</sup> Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

<sup>28</sup> Baillie, Neil B.E. (1875). *A Digest of Moohummudan Law*, 2nd Edition; Smith, Elder and Co.; London at p. 4.

<sup>29</sup> (1864) 1 B.H.C. 236.

<sup>30</sup> Islamic Law, [How to register your marriage under various laws in India? - LawLex.Org](http://www.lawlex.org)

	<p><b>Registration of Muslim Marriage in India</b></p> <p>The registration of muslim marriage is done under Muslim marriage act which is guided by The Muslim Personal Law (Shariat) Application Act, 1937 . This law deals with marriage, succession, inheritance in Muslims . This act is based on Islamic law(Sharia) . However to issue Muslim marriage certificate different states have different guide lines. There are some states for which marriage registration is compulsory and for some it is not. These laws are not applicable in Goa state, where the Goa Civil Code is applicable for all persons irrespective of their religion. These laws are also not applicable to Muslims who have married under the Special Marriage Act, 1954. While other religious communities in India have codified laws, Muslim personal law is not codified in India.</p> <p>A system of private registration of marriages with the kazis has</p>	<p>The marriage was valid according to the Hanafi law which did not require the father's consent, she having arrived at the age of puberty. However, it was not valid according to the Shafeite law which required such consent, though she had attained puberty. The above facts gave rise to the broad question of whether after puberty a Sunni Mahomedan female of any one sect could elect to belong to whichever of the other three sects she pleased, and it was held that she was at liberty to do so, and that the marriage in question was</p>	<p>solemnization of marriage, among the Muslims of India marriages are invariably solemnized by religious officials known as the "kazi". The Kazi who has performed the marriage can issue a "Nikahnama" which is a marriage certificate. For legal reasons, such as passport, bank account opening, inheritance, consent in case of emergency, etc it is advisable that the Muslim marriage should be registered with the marriage registrar.</p> <p>Muslim Marriage Registration can be registered under the State Marriage Registration Act of the State where it was solemnized and parties reside or under the Special Marriage Act, 1954 anywhere in India where the parties to marry reside for not less than 30 days. The Notice</p>	<p>house and the qazi visits the house for solemnisation. The nikahnama is filled in by the qazi and signed by the bride, groom and the witnesses. The presence of wali or the guardian of the bride is not a legal requirement in Hanafi school but it is so in the shafei, hambali and maliki. In the case of a minor, the wali gives the consent to the nikah on behalf of the bride. This is an important procedure for consent as it is here that the bride and even the groom can refuse their consent for marriage. Under the SMA, the bride and the groom have to give a month's notice to the local</p>	<p>contract proper, and the iqrar namah wherein the spouses express their consent or agreement to certain clauses. The nikah namah clearly specifies that it is a legal document and that it is subject to the 'exclusive jurisdiction' of the secular courts. In this way, it rules out any adjudicative role for the private shariah courts or dar ul-qazas run by the patriarchal clerics, where women are more likely than not to be denied justice. In a clause that clearly intends to obviate any unnecessary hardship to the wife at the hands of a husband who might wish to harass her, it specifies that the court whose exclusive jurisdiction the contract is</p>
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	<p>always prevailed among the Indian Muslims.</p> <p><b>Documents require for the registration of Muslim Marriage in India.</b></p> <p>Marriage registration application form duly signed by both husband and wife</p> <p>Documentary evidence of date of birth of parties</p> <p>Address proof of husband or wife</p> <p>Affidavit by both the parties stating place and date of marriage, date of birth, marital status at the time of marriage and nationality</p> <p>3 passport size photographs of both the parties and two marriage photographs</p> <p>Marriage invitation card</p> <p>3 witness having ID proof (2 passport size photograph each)</p> <p>Nikahnama or the certificate from Religious place</p>	<p>under the circumstances valid.</p>	<p>period of 30 days required only for marriage registration under the SMA, 1954 and not for other State Marriage Registration Acts.</p> <p>You should first find if the State in India where you stay and are getting married has any such State Marriage Registration Act or not if that State has the mentioned Act then get the Nikah registered under that Act only and get Marriage Certificate from the Registrar of Marriages under the Act.</p>	<p>marriage registration office along with proof of age, residence, photographs etc. The office puts up a notice outside its premises for anyone to register their objection to the said marriage. After a month, the couple can either visit the registrar's office for marriage or in some cases the registrar visits the venue of marriage. The registrar simply asks each person if she or he is consenting for marrying the other person. No ritual, no exchange of garlands or rings are required by the law. No guardian or parents are required, except witnesses, one from either side.</p>	<p>subject to must be located in or near the place where the bride ordinarily resides.</p> <p>In a study done by BMMA<sup>31</sup>, the following data came to the fore: Out of 4710 women interviewed, consent before marriage was sought from 62.3% women. A significant 36.8%, i.e., 1733 women did not have any say in choosing their life partner.</p> <p>15.5% were married below the age of 15 years</p> <p>39.8% of the women were married between the age of 15-18 years. 32.9% were married between the age of 18-21 years and</p>
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<sup>31</sup> Seeking Justice Within Family – Muslim Women's Views on Muslim Family Law

	<p><b>Nikahnama</b> The Muslim law in India is not codified and hence there are no rules by which an express consent can be taken from the bride. There is no standardized nikahnama for the Muslims. The All Indian Muslim Personal Law Board took upon itself the job of releasing a standardized nikahnama but that nikahnama is not followed across the country. Each sect and sub-sect follow their own versions. The qazi most times bring their own version of the nikahnama. This document has basic information like the names and addresses of the bride, groom and witnesses. It contains the mehr amount either paid or to be paid, date of the nikah. It is signed by the couple as well as the witnesses. An important ingredient of this ritual is the acceptance of the proposal by the bride. She must agree to the marriage in clear and unambiguous terms. This is also the time to express her consent or her refusal for the said marriage. The Special Marriage Act, 1954 is an optional civil law for those couple who want to marry without conversion to each other's religion. Marriage under the law is</p>			<p>The registrar's office issues a certificate declaring them wife and husband.</p>	<p>Only 10.6% women got married over the age of 21 years. BMMA has trained 20 women as qazis. It has registered organisation called Darul Uloom-e-Niswan through which women are trained. The women qazi trained by BMMA are expected to take express consent of the bride and groom not just at the time of nikaah but also before that. The qazi should be given a month's notice by the parties to marriage. In this month, the woman qazi must speak separately and jointly with the bride and groom to take their consent to the marriage. The conditions to be entered in the nikahnama [Iqarnama] are also</p>
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	civil in nature with no religious rituals. Under this law, intra religious marriages can also be registered. A nikaah can also be registered under this Act provided the girl is 18 and boy is 21 years of age. At the time of registration of nikaah, the couple need to be present along with the witnesses.				discussed during this one month. The qazi also ensures that the girl is 18 and the boy is 21 years of age.
<p><b>Women's capacity to enter into marriage</b></p> <p><i>Is consent of a guardian (wali) required? Can the woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marriage rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) General Recommendation 21</p>	<p>Clause 168 of Mulla's <i>Principles of Mohameddan Law</i><sup>32</sup> states: "A boy or girl who has not attained puberty is not competent to enter into a contract of marriage, but he or she may be contracted in marriage by his or her guardian." Clause 169 of Mulla's <i>Principles of Mohameddan Law</i><sup>33</sup> with respect to Guardians for Marriage states: "The right to dispose of a minor in marriage belongs successively to the (1) father, (2) paternal grandfather how highsoever, and (3) brothers' and other male relations on the father's side in the order of inheritance enumerated in the Table of Residuaries. In default of paternal relations, the right devolves upon</p>	<p>In the case of <i>Mohamed Idris v. State of Bihar</i>, before a Division Bench of the Patna High Court, a complaint was filed by a Mahomedan alleging that his minor daughter had been enticed away by another man, with a view to marry her forcibly. The girl, on being produced before the Magistrate stated that she</p>	<p>Across sects these 4 activities are followed by the families which have become like a standard practice. These are: Consent of the bride Mehr payment Signing of the nikahnama Presence of witnesses Puberty is the age of capacity of entering a marriage contract. If minor, that is below 18, then the wali has the capacity to make the girl enter the marriage contract.</p> <p>If the nikah is registered under the Special Marriage Act, 1954, then</p>	<p>Legally the marriage cannot happen without her consent. If she says 'no' when asked by the qazi or whoever is solemnising the marriage, the marriage cannot happen. After having said yes, she has to sign the nikahnama or the marriage document which is also her marriage certificate in the absence of registration of the said marriage</p>	<p>BMMA Study, Seeking Justice Within Family</p> <p>Of the total 4710 women surveyed 47.1% or 2219 women do not have their <i>nikahnama</i>. 52%, i.e., 2447 women have their <i>nikahnama</i>.</p> <p>Of the total 2219 women who do not have the <i>nikahnama</i> 25.2%, i.e., 1185 do not know where the</p>

<sup>32</sup> Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

<sup>33</sup> Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

	<p>the mother, maternal uncle or aunt, and other maternal relations within the prohibited degrees. And in default of maternal kindred, it devolves upon the Government.</p> <p>Clause 170 of Mulla's <i>Principles of Mohameddan Law</i> with respect to Marriage Brought About by Father or Grandfather states that "When a minor has been disposed off in marriage by the father or father's father, the contract of marriage is valid and binding, and it cannot be annulled by the minor on attaining puberty."</p> <p>Clause 251 of Mulla's <i>Principles of Mohameddan Law</i><sup>34</sup> while mentioning capacity for marriage explains that "every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage."</p> <p>The fundamental essentials required to be met for a valid Muslim marriage<sup>35</sup> are:</p>	<p>had gone to the accused's house of her own accord and had married him of her own volition. The Magistrate ordered the custody of the minor girl to the husband. On writ petition by the father, the judges held that the custody was rightly given to the husband.</p>	<p>the laws and policies of the country become directly applicable to the couple. Even if the marriage is registered under the Muslim law, then too as citizens all other protections are available to a Muslim women, except those which are in contradiction to Muslim law. For eg. IPC 494 against polygamy is not applicable to Muslims so also the PCMA, 2006, law against child marriage. Or at least there is legal confusion and contradiction as to their application.</p>	<p>under the laws of the land.</p> <p>A Nikah or marriage under muslim law<sup>36</sup>, must be conducted as per the set out procedure.</p> <p>Marriage in Muslim law, like any other contract, has to be completed by offer and acceptance or as per Muslim law Ijab-o-Qubool. One party has to make an offer to another party for a job. And there needs to be acceptance by another with free consent that is Cabool. According to the Muslim personal law, that prior to the marriage the</p>	<p><i>nikahnama</i> is followed by 17.7% of the women who did not receive a copy of the <i>nikahnama</i> and yet another 4.4% of the women who said that the <i>nikahnama</i> was not made at all.</p> <p>Of the 4710 women surveyed 75.5% i.e. 3554 said that they did not read the <i>nikahnama</i> before signing it whereas only 23.5%, i.e., 1112 women claimed that they read the <i>nikahnama</i> before signing it. 1.0% or 44 women are single women hence fall in the not applicable group.</p> <p>Muslim women [BMMA] have</p>
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<sup>34</sup>Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

<sup>35</sup> Valid Muslim Marriage [Marriage under Muslim Law : All you need to know.](#)

<sup>36</sup> Muslim law, [Marriage under Muslim Law | B&B Associates LLP](#)

	<p>Existence of capacity to marry individuals.</p> <p>The necessary presence of a proposal (<i>ijab</i>) and the subsequent acceptance (<i>qubool</i>) as it is a contractual relationship.</p> <p>Presence of free consent of both the parties involved in the agreement.</p> <p>A consideration (<i>Mehr</i>) for the completion of the contract.</p> <p>There should not be any necessary legal obstructions for the culmination of the marriage.</p> <p>It is important for witnesses to be present to look over the contractual affair. The number of witnesses differs according to the accepted belief system of both the Sunni and Shia Muslims.</p> <p>Nikahnama is an important document where the bride can set her conditions before or at the time of marriage. It is a document to protect her rights within and after marriage. In the absence of a codified law, a nikahnama</p>			<p>man or someone on his behalf and women or someone on her behalf should agree in a meeting to marriage and should be witnessed by two Muslim adults. The words about proposal and acceptance should be conveyed in each other's presence or under a presence of their agents i.e. is Vakils. Another major condition is that the transaction or the offer and acceptance should be consequent and in one meeting. An offer at one meeting and acceptance at another does not constitute a valid marriage. The acceptance should not be a conditional one, it</p>	<p>evolved their own nikahnama according to which marriage cannot happen before the age of 18 and 21, the groom cannot marry another woman while he is in this nikaah. In short, no polygamy. The mehr according to this nikaahnama is groom's annual income which must be paid at the time of the marriage. Divorce procedures must include documented arbitration processes. All rights of women are to be secured at the time of divorce. Qazis trained by BMMA are expected to hold counseling sessions with the bride and groom to get their express consent and work out other terms and conditions. BMMA qazi are also expected to take the</p>
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	<p>remains the only document, which can protect her Islamic rights. The Nikahnama is considered a legal document in the courts of the country. It is a marriage certificate. Conditions arrived at mutually between the bride and the groom can be entered in the nikahnama and those acquire the force of law once signed by the two.</p> <p>Under the Special Marriage Act, 1954, a girl on attaining the age of 18 is an adult and acquires the capacity to enter the marriage. She does not need her parents nor guardians. Only witnesses are required legally for the said marriage. There is also no legal need for any religious rituals of either party.</p>			<p>should be pure. In accordance with the Sunni Law, the proposal and the acceptance should be witnessed by two males or one male and two females, the witnesses should be of sound mind and should be adults.</p> <p>Thereafter a Qazi in front of whom the proposal and acceptance have been made will hence declare the marriage complete and Nikahnama will be generated.</p> <p>Under the Special Marriage Act, 1954, a girl finishing the age of 18 has the capacity to enter the marriage and the same holds for the boy at the age of 21. The law requires them to furnish the proof of</p>	<p>consent of the bride separately to take her full consent.</p>
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				age through a valid document.	
<p><b>Polygamous marriage</b></p> <p><i>Does the law or marriage contract prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Are temporary marriages recognised? Is it necessary to register a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 5(a) General Recommendation 21</p>	<p><b>According to the Section 494<sup>37</sup> Indian Penal Code, 1860 (IPC S. 494)</b>, whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.</p> <p><i>Exception.—</i> This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person whose husband or wife at the time of his her second marriage has been absent for 7 years and has not been heard of as alive. Provided the person contracting the marriage informs the second party.</p>	<p>In <i>State of Bombay v. Narasu Appa Mali</i><sup>38</sup> the constitutional validity of the Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946) was challenged on the ground of violation of Articles 14, 15 and 25 of the Constitution. The Supreme Court held that: “[A] sharp distinction must be drawn between religious faith and belief and religious practices. What</p>	<p>The practice of polygamy goes against the various Articles of the Indian Constitution, namely, Article 14 – Right to Equality. Muslim women are on par with all citizens of the country. She should not be exempted from any legislative protection available to other women. Article 15 – Forbids discrimination on grounds of religion, race, caste, sex or place of birth. Muslim women are discriminated and not given protection of Indian laws just because she is a Muslim. This violates the provisions of this article.</p> <p>The law against polygamy if made applicable to the Muslim community does not</p>	<p>The provisions of IPC 494<sup>44</sup> are applicable to the Muslim couple only if their nikah is registered under the Special Marriage Act of 1954. By virtue of opting for a non-religious law, a Muslim couple choose to be governed by it and not by their personal law which allows polygamy. In which case, the following procedure applies: Only a person aggrieved by his or her spouse contracting the</p>	<p>BMMA released a study on polygamy. It interviewed 250 women across the country.</p> <p>49% of the cases where the woman happens to be in a polygamous union, the parents have selected the spouse.</p> <p>An overwhelming number of women said they felt a sense of betrayal, loss of dignity and loss of self-respect when the husband remarried despite her being the wife.</p> <p>Lack of adequate sleep (43%),</p>

<sup>37</sup> IPC 494 [Bigamy \[S. 494 IPC, S. 17 Hindu Marriage Act\] | SCC Blog](#)

<sup>38</sup> AIR (1952) Bom 84

<sup>44</sup> IPC 494 [Bigamy \[S. 494 IPC, S. 17 Hindu Marriage Act\] | SCC Blog](#)

	<p>The offence of bigamy is non-cognizable and bailable and compoundable.</p> <p>For an offence of bigamy to have been committed the following ingredients are required Accused must have contracted first marriage He/she must have married again First marriage must be subsisting (that is no divorce has taken place) First spouse must be living</p> <p><b>If a person hides in the first marriage and contacts the second marriage</b>, a complaint for cheating can be filed under section 415 of IPC in case the person hides the fact of first marriage. He shall be punished with imprisonment of up to 10 years or fine or both. Such offence under section is not compoundable.</p> <p>In order to stop second marriages and child marriages the registration of marriages is made</p>	<p>the State protects religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole.” This decision reiterates the principle that uncodified personal laws (including Muslim personal laws) may not be scrutinised for alleged fundamental rights violations</p>	<p>violate Article 25 of the Constitution which guarantees freedom of religion. It provides that all persons subject to public order, morality and health are equally entitled to freedom of conscience and have the right to freely profess, practice and propagate religion. Polygamy is a social and not religious practice. It existed before Islam. It was a practice in other religious groups as well and over a period of time have been barred through law. Islam actually sought to limit it to widows keeping their well-being in mind. It is not a right integral to Islam. Although their personal law permits men to have four wives, the Supreme Court (2015)<sup>43</sup> ruled that a Muslim’s fundamental right to profess Islam did not include practicing polygamy. “What was protected under Article 25</p>	<p>second marriage can file the complaint. In the case of the wife, she herself or her father, mother, brother, sister, son or daughter or her father’s or mother’s brother or sister, or with the leave of the Court any other person related to her by blood, marriage or adoption. To prove the offence of bigamy, the prosecution must prove that the second marriage was valid The offence is compoundable with the consent of the wife and permission of the court There is no limitation period</p>	<p>frequent aches and pains (33%), not feeling good about themselves (33%), and even a tendency to self-harm (43%). (84%) felt that polygamy should be outlawed.  (73%) even said that the husband who takes a second wife should be punished.  Only 23% husbands informed the wife about their second marriage  72% of women learnt about their husband's second marriage through family or external sources like neighbours or friends.</p>
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<sup>43</sup> Supreme Court [Polygamy not integral part of Islam: SC | India News](#)

	<p>compulsory as directions of Supreme Court</p> <p>The law of bigamy is not applicable to live-in relationship as there is no legally contracted marriage. In order to prove offence of bigamy, there should be ample evidence to prove they have contracted second marriage without nullifying the first marriage.</p> <p>494 IPC is applicable to all communities in India except the Muslims. The religious minorities like the Sikhs, Jains and Buddhists fall under the Hindu law. Hindu law as well as the IPC prohibit polygamy. Even Christians and Parsis are governed by 494 IPC.</p> <p>Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 states that notwithstanding any custom or usage to the contrary, in questions of marriage where the parties are Muslims, the rule of the decision shall be the Muslim Personal Law. Since it is claimed that the Holy Quran permits a Muslim man to keep</p>	<p>of the the Constitution. In <i>Badruddin v. Aisha Begum</i><sup>39</sup> the Allahabad High Court ruled that though the personal law of Muslims permitted having as many as four wives but it could not be said that having more than one wife is a part of religion. Neither is it made obligatory by religion nor is it a matter of freedom of conscience. Any law in favour of monogamy does not interfere with the right to profess, practise and propagate religion and does not involve any violation of Article 25 of the</p>	<p>(right to practice and propagate any religion) was the religious faith and not a practice which may run counter to public order, health or morality. Polygamy was not integral part of religion and monogamy was a reform within the power of the State under Article 25," said a bench of Justices T S Thakur and A K Goel.</p>	<p>for taking cognizance of the offence of bigamy. [That is, it does not matter how long ago the second marriage was contracted, the criminal process can be started].</p> <p>The person aggrieved can file a case of bigamy either in court or at the police station. The father of an aggrieved wife can also make a complaint under section 494/495 of the Indian Penal Code. A petition for declaring the second marriage as void can be filed by the parties of the second marriage and not the first spouse.</p>	<p>90% wives' said their permission was not sought by the husband</p> <p>45% of the husbands threatened their first wife with divorce if she resented his second marriage</p> <p>35% of the husbands gave the reason that they fell in love with someone else</p> <p>11% gave the reason of no children</p> <p>6% said they remarried to support a widow or divorcee</p> <p>12% said their parents asked them to</p> <p>4% said their wives were bed-ridden</p> <p>10% blamed their first wives</p>
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<sup>39</sup> [(1957) All LJ 300

	<p>four wives at a time, polygamy is allowed for Muslim men under this section.</p> <p>Since the law is not codified there is nothing in law in the form of conditions if polygamy is to happen. Legally/statutorily he is not expected to inform her, take her permission before marrying another woman. Even the conditions leading to polygamy, i.e. first wife being infertile or bedridden with illness is also not statutorily mentioned.</p>	<p>Constitution. In <i>R.A. Pathan v. Director of Technical Education</i><sup>40</sup> having analysed in depth the tenets of Muslim personal law and their base in religion, a Division Bench of the Gujarat High Court held that a religious practice ordinarily connotes a mandate which a faithful must carry out. What is permissive under the scripture cannot be equated with a mandate which may amount to a religious practice. Therefore, there is nothing in the extract of the Quranic text (cited before the</p>		<p>The Supreme Court has held that while lodging a criminal complaint it is not necessary for the aggrieved party to prove that marriage ceremonies were performed as it is for the trial court to decide the veracity of the allegations.</p>	<p>6% remarried because they wanted sons 11% were not happy with her body (skin colour, too fat/thin) 45% women said they are tolerating the second marriage because they have no other option and they are concerned about their children 29% of the women approached a Qazi for redress after their husband's second marriage 42% of the women were told to adjust because it is allowed in Shariat 10% said it was his right in Islam 22% were asked to take Khula 26% were asked to file a case against the husband if they were unhappy</p>
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<sup>40</sup> (1981) 22 Guj LR 289



		<p>Court) that contracting plural marriages is a matter of religious practice amongst Muslims. A bigamous marriage amongst Muslims is neither a religious practice nor a religious belief and certainly not a religious injunction or mandate.</p> <p>In the case of <i>Javed v. State of Haryana</i><sup>41</sup> the Supreme Court bench, while approving and upholding the validity of the judgments in the cases of <i>State of Bombay v. Narasu Appa Mali</i>, <i>Badruddin</i></p>			
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<sup>41</sup> (2003) 8 SCC 369

		<p><i>v. Aisha Begum and R.A. Pathan v. Director of Technical Education</i> held that:</p> <p>“It may be permissible for Muslims to enter into four marriages with four women and for anyone whether a Muslim or belonging to any other community or religion to procreate as many children as he likes but no religion in India dictates or mandates as an obligation to enter into bigamy or polygamy or to have children more than one. This judgment was most recently reiterated by the Supreme Court in 2015, in the</p>			
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		case of <i>Khursheed Ahmad Khan v. State of U.P. and Others.</i> <sup>42</sup>			
<p><b>Divorce</b></p> <p><i>Is there equal right to divorce? Can the husband divorce at will and without grounds? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce prohibited? If unilateral divorce is not prohibited, what is the procedure e.g. are witnesses required or does the spouse need to go to court? Is the right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c)</p>	<p>Section 2. of the Dissolution of Muslim Marriages Act, 1939 that specifies the grounds for decree for dissolution of marriage reads as follows: “A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely: —</p> <p>(i) that the whereabouts of the husband have not been known for a period of four years;</p> <p>(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;</p> <p>(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;</p> <p>(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;</p>	<p>The judiciary initially recognized unilateral male repudiation unconditionally and later introduced some conditions for its validity. Adjudication on this issue was based on uncodified Muslim legal traditions, the Qur'an, and colonial precedent, not on legislation or the constitution. Indeed, there was no legislation about male repudiation. Judges</p>	<p>Special Marriage Act, 1954</p> <p>In India, all marriages can be registered either under their respective personal laws (Hindu Marriage Act, 1955/Muslim Marriage Act, 1954) or under the Special Marriage Act, 1954. A marriage under the Special Marriage Act, 1954 enables people from two distinct religious backgrounds to unite in the marriage bond. Unlike personal laws, the Special Marriage Act's applicability extends to all Indian citizens regardless of their religion. Although marriage laws allow only the registration of an already solemnized</p>	<p>Although different religions have a different process<sup>50</sup> of getting a divorce in India, the two main processes which are common are, divorce by mutual consent and contested divorce. if the Muslim marriage has been registered under the Special Marriage Act then the divorce proceedings will also happen as per the provisions of Special Marriage Act.</p> <p><b>Divorce by Mutual Consent:</b></p>	<p>BMMA's Seeking Justice Within Family. Data shows: 92.1% want a total ban on oral/unilateral divorce</p> <p>88.3% want talaq-e-Ahsan to be the method of divorce 93% want arbitration process to be mandatory before divorce 72.3% want the arbitration process to be between 3 to 6 months 88.5% want the qazi to be punished who sends notice of oral divorce</p> <p>Of the 525 women divorced 65.9%, i.e., 346 women were</p>

<sup>42</sup> Supreme Court <https://indiankanoon.org>

<sup>50</sup> Different Process [Process of filing divorce in India - Law Circa](#)

	<p>(v) that the husband was impotent at the time of the marriage and continues to be so;</p> <p>(vi) that the husband has been insane for a period of two years or is suffering from a virulent venereal disease;</p> <p>(vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years. Provided that the marriage has not been consummated;</p> <p>(viii) that the husband treats her with cruelty, that is to say, —</p> <p>(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or</p> <p>(b) associates with women of evil repute or leads an infamous life, or</p> <p>(c) attempts to force her to lead an immoral life, or</p> <p>(d) disposes of her property or prevents her exercising her legal rights over it, or</p> <p>(e) obstructs her in the observance of her religious profession or practice, or</p>	<p>recognized unilateral male repudiation to be irrevocable in colonial times, although this neither concurred with their normative vision of durable marital bonds nor with the practices valued in the early Islamic community and by all schools of Islamic law.<sup>47</sup> In 1905, in the case of <i>Sarabai v. Rabiabai</i>, the Court held that the irrevocability of the triple <i>talaq</i> was “good in law, though bad in theology”. This precedent was upheld by courts until 1978, varying only on whether the divorce may be</p>	<p>marriage under personal laws, the Special Marriage Act provides for both solemnizations and legal registration. The Special Marriage Act has designed a simple means of legally registering a marriage between two people of different religions, but even if both the concerned parties belong to the same religion, they may choose to register the marriage under this Act. This law is an optional civil code for people who wish to opt out of their personal laws. Legally religion ceases to play any role if marriage is solemnised under this law. Once married under this law, even the divorce laws are according to the law of the land.</p> <p>Policy behind the DMMA: An Act was passed to consolidate and clarify the provisions of Muslim law relating to dissolution of marriage by women</p>	<p>The parties have to show that the spouses are living separately for 1 year or more than one year. The parties have to show that they have not been able to live together as husband and wife.</p> <p>The petition has to be filed in the family court of the city or the district court where both the parties lived for the last time.</p> <p>The petition in Mutual Consent divorce is filed in the form of an affidavit which should be submitted in the family court. The court generally gives the time period of 6 months to the parties and adjourns the</p>	<p>divorced orally, 7.6% ,i.e. 40 women were sent letter of divorce by their husbands, 3.4%, i.e., 18 women were divorced on phone, 0.2%, i.e., 1 via SMS, 0.6%, i.e., 3 on email and 22.3%, i.e., 117 through other methods. In all 78% or 408 out of 525 women were divorced unilaterally.</p> <p>Out of the 525 respondents who were divorced, 59% divorces were demanded by the husband. Out of the 525 divorced women only 116 received compensation from the husband at the time of divorce. A big chunk of women (78%) were left high and dry without any</p>
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<sup>47</sup> Subramanian, N. (2008). Legal Change and Gender Inequality: Changes in Muslim Family Law in India. *Law & Social Inquiry*, 33(3), 631-672

	<p>(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;</p> <p>(ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law :</p> <p>Provided that —</p> <p>(a) no decree shall be passed on ground (iii) until the sentence has become final;</p> <p>(b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and</p> <p>(c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.</p>	<p>pronounced in the wife's absence and the standards of proof (from none to oral or written evidence). In the 1970s, some judges that the <i>talaq-ul biddat</i> went against Islamic traditions and is revocable. This view was held by Justice Krishna lyer in an <i>obiter dictum</i> in <i>A. Yousof Rawther v. Sowramma</i> (1971), and later also by Justice Baharul Islam in <i>Jiauddin Ahmed v. Anwar Begum</i> (1978). The latter judgment quoted relevant verses from the Qur'an, and some commentators, to conclude that: The correct law of <i>talaq</i> as</p>	<p>married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie. Muslim women had the right to divorce according to the Islamic legal tradition but early 20<sup>th</sup> century Muslim women were deprived of this right and continued to remain in marriages without any recourse to divorce. The right to divorce only resided with men and women could at best only seek divorce, completely dependent on his consent. Many women around the 1930s started to convert out of Islam in order to escape their marriage. Alarmed at this, the jurists, Muslim women's organisations and religious groups demanded the passage of the Dissolution of Muslim Marriage Act whereby a Muslim woman could seek divorce from the court and terminate her</p>	<p>matter for this period.</p> <p>After 6 months the parties have to again present themselves on the court. After the second motion, the only decree of divorce can be granted by the court.</p> <p><b>The contested divorce procedure in India:</b></p> <p>This type of divorce is said when one of the spouses without the consent of the other spouse decides to divorce his/her spouse. The petition in the divorce case can be filed with the help of a lawyer. After the petition filed by one of the spouses, the court sends the notice to another spouse.</p>	<p>compensation.</p> <p>Of the 525 women 41.9% women were divorced in the family home, 21%, were divorced in the court which corresponds with the 117 who were not orally and unilaterally divorced. 8.8% were divorced in the darul qaza, 13.0% women received divorce through the Jamaat, for 7.2%, women divorce procedure was settled by the Panchayat, 3.6%, through NGO's and in 4.6%, cases the divorce was given in other places.</p> <p>Most divorces, 41.9% have been settled within the family. Collectively 8.8%, 13%, 7.2%, 3.6% or 32.6% divorces in all, have</p>
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	<p>Only a small minority of Muslim women enjoy the right to unilaterally terminate their marriages: those whose husbands gave them the <i>talaq-e tafwid</i> (delegated divorce right) in their <i>nikahnama</i> (marital contracts).<sup>45</sup></p> <p>The Muslim Women [Protection on Marriage Act, 2019]<sup>46</sup> criminalizes triple unilateral divorce. Any pronouncement of talaq by a Muslim husband by words, either spoken or written or in electronic form or in any other manner shall be void and illegal. Husband shall be punished with imprisonment for a term which may extend to 3 years and also a fine. The offense is cognizable and compoundable.</p>	<p>ordained by the Holy Qur'an is that <i>talaq</i> must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters—one from the wife's family and the other from the husband's. If the attempts fail, <i>talaq</i> may be effected.</p> <p>In 2002, the <i>Shamim Ara</i> judgment established a definitive precedent by reiterating the conditions specified in <i>Jiauddin Ahmed v. Anwar</i></p>	<p>marriage. While a large part of Muslims in India were even at times Hanafi and were governed by Hanafi law, this law was passed on the basis of Malliki school of jurisprudence.</p> <p>Policy behind MWPRM, 2019 This Act is to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands and to provide for matters connected with it.</p>	<p>The court, after sending a notice to other spouses, asks the party to come before the court and answer the divorce petition filed by other spouses.</p> <p>The other areas which court considers relating to divorce are as follows:</p> <p>Maintenance which can be filed under <b>Section 125 of Crpc</b> and under specific personal laws. Child custody Division of jointly owned party The procedure for divorce: Drafting and filing of divorce petition, Service of summons, Response, Trial,</p>	<p>been settled in forums like jamaat, darul qaza, panchayat and NGOs.</p> <p>92.1% respondents have called for a legal ban on the practice of oral unilateral triple divorce. 51.4% want the man to be put behind bars for unilaterally divorcing his wife. 36.2% want the husband to pay compensation to the wife. A small percentage 12.5% wants him to be fined.</p> <p>88.5% women want <i>qazi</i> who sends the notice of unilateral divorce to be punished.</p> <p>93% want to make arbitration</p>
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<sup>45</sup> Carrol, Lucy. 1997. Talaq-i-Tafwid and Stipulations in Muslim Marriage-Contracts: Legal Theory, Legislative Provisions, Judicial Rulings. *Religion and Law Review* 6 (1): 53–102.

<sup>46</sup> 2019 [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_3\\_20\\_00069\\_201920\\_1565334896444&orderno=7](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00069_201920_1565334896444&orderno=7)

		<p><i>Begum</i> (1978) for the validity of male repudiation. Building upon this judgment, in 2017, the Supreme Court in the case of <i>Shayara Bano vs. Union of India and Others</i><sup>48</sup> held that “Triple talaq is against the basic tenets of the Holy Quran and consequently, it violates Shariat.” The Court held that triple talaq was not an essential religious practice of the Muslims and therefore, it was not protected by Article 25<sup>49</sup> of the Indian Constitution that deals with the</p>		<p>Interim orders, Argument and Final order Procedure under the MWPRM, 2019 if the wife has been subjected to triple divorce.</p> <p>The wife filing a complaint against the husband who has pronounced oral unilateral divorce, has to file an First Information Report with the local police station. The police must bring the matter up before the Magistrate in the next 24 hours from the filing of the complaint by the wife.</p> <p>The offence punishable under this Act shall be</p>	<p>compulsory before a divorce is granted. They want the arbitration to last up to 6 months.</p> <p>76 women had to do <i>halala</i>.</p> <p>75.1%, women do not think that the woman should forego her <i>mehr</i> if she is demanding <i>khula</i>.</p> <p>88.3% women agree that the legal method of divorce should be Talaq-e-Ahsan</p>
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<sup>48</sup> (2017) 9 SCC 1

<sup>49</sup> Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

		<p>freedom to          profess and          practice any          religion.</p>		<p>cognizable. if a          complaint is filed          by the woman          herself or her          relatives.          Offence          punishable under          this Act shall be          compoundable, at          the instance of the          married Muslim          woman.          No person          accused of an          offence punishable          under this Act          shall be released          on bail unless the          Magistrate is          satisfied that there          are reasonable          grounds for          granting bail to          such person.          In case of          Faskh-e-Nikah,          only the Mufti can          annul the marriage          after making three          attempts to call the          husband by          sending out three          notices. If the          husband does not          respond to those</p>	
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				<p>notices, then the Mufti declares in the newspaper that he is being called by the said Mufti to come for arbitration. When the husband does not respond to that as well, then the Mufti has the right to annul the marriage. He provides a certificate for the same.</p>	
<p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property during marriage and at its dissolution? Is the woman's role as wife and mother recognised as contribution to acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting</i></p>	<p>Section 5 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 that deals with the matter of Subsistence allowance for divorced women reads as follows: "Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children,</p>	<p>In the case of <i>Mohammad Ahmed Khan v. Shah Bano Begum</i> (1985)<sup>52</sup>, the Supreme Court was faced with the question of whether Section 125 of the Code Of Criminal Procedure, 1973 regarding</p>	<p>According to the Statement of Objects and Reasons of 1986 Act, when a Muslim divorced woman is unable to support herself after the iddah period that she must observe after the death of her spouse or after a divorce, during which she may not marry another man, the magistrate is empowered to make an order for the</p>	<p>According to Section 125<sup>58</sup> If any person neglects or refuses to maintain his wife, children or parents, then a Magistrate of the First Class can order such person to make a monthly allowance for the maintenance of his</p>	<p>As per BMMA's national study<sup>60</sup>, with divorce the dependence on parents increases further. 246 out of 525 i.e. 46.9% divorced women reported that they had to start supporting themselves and an equal number, 250 (47.6%) reported</p>

<sup>52</sup> 1985 AIR 945

<sup>58</sup>Section 125 [Proceedings for maintenance of wives, children and parents under CrPC - iPleaders](#)

<sup>60</sup> Study, Seeking Justice Within Family, Muslim Women's Views on Muslim Personal Law

<p><i>period after the divorce (iddah)? Is she entitled to a 'gift' upon divorce (muta'a)?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h), 15(2) General Recommendations 21, 29</p>	<p>as may be determined by the Magistrate.”</p> <p>Section 5. of the Dissolution of Muslim Marriages Act, 1939 that deals with the rights to dower for women reads as follows: “Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.”</p> <p>Section 125(1) in The Code Of Criminal Procedure, 1973 states that:</p> <p>(1) If any person having sufficient means neglects or refuses to maintain-</p> <p>(a) his wife, unable to maintain herself, or</p> <p>(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or</p> <p>(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or</p>	<p>maintenance accruing to a wife, in case of a divorce applies to Muslims.</p> <p>The Supreme Court upheld their previous verdicts in two prior cases (<i>Bai Tahira A. vs Ali Hussain Fissalli Chothia</i><sup>53</sup> and <i>Fazlunbi vs K. Khader Valli</i><sup>54</sup>) on the matter and adjudicated that a divorced Muslim wife is indeed entitled to apply for maintenance under Section 125 of the Code Of Criminal Procedure, 1973, claiming that, “Clause (b) of the Explanation to section 125 (1) of</p>	<p>payment of maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim Law. But when a divorced woman has no such relatives, and does not have enough means to pay the maintenance, the magistrate would order the State <u>Waqf</u> Board to pay the maintenance. The 'liability' of the husband to pay the maintenance was thus restricted to the period of the iddah only.</p> <p>The object of all provisions in Cr. PC<sup>57</sup> is to compel a man to perform the moral obligations, which he owes to the society in respect of his wife, children and parents. By provisions a simple and speedy but limited relief, These provisions seek to ensure that the neglected</p>	<p>wife, children or parents, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the direction of magistrate.</p> <p>An application for the monthly allowance for the interim maintenance and expenses of proceeding should be disposed within sixty days from the date of the notice of the application to such person.</p> <p>Section 126 of Cr.PC deals with “Procedure for maintenance”.</p> <p>This section says the following:</p> <p>Proceeding under Section 125 may</p>	<p>that they began to get dependent on their parents. Very miniscule received support from their ex-husbands or their in-laws. These figures also coincide with the figures for maintenance of children. 244 out of 525 (47%) women support their children and 242 (46%) parents of the women support their children. In a slightly significant change one sees 32 ex-husbands providing maintenance for their children.</p> <p>Collectively, close to 95% of divorced women do not get any financial support from their former husband. Neither for themselves nor for</p>
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<sup>53</sup> 1979 AIR 362

<sup>54</sup> 1980 AIR 1730,

<sup>57</sup> Cr. P. C [WORKSHOP - IV Paper Presentation on MAINTENANCE UNDER VARIOUS LAWS By Smt. R. Shanthi Sree, Principal Junior Civil Judge, Sriakak](#)

	<p>(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation.- For the purposes of this Chapter,- (a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875 ); is deemed not to have attained his majority; (b) " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.</p>	<p>the Code, which defines "wife" as including a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope. Wife, means a wife as defined, irrespective of the religion professed by her or by her husband.” Further, on the question of the extent of a wife’s right to maintenance after divorce extending beyond the <i>iddat</i> period held as follows: “One must have regard to the entire conspectus of the Muslim Personal Law in order to</p>	<p>wife and children are not left beggared and destitute on the scrapheap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. The inability of the wife, child and father or mother to maintain themselves could lead to social problems and therefore, it became the concern of the state not to allow such inability to grow in to social problems of great magnitude unless the consequences of such inability were checked by providing appropriate measure, large scale vagrancy could be the probable off-shoot there from. Therefore, the parliament in its desire to find a solution to this problem evolved a procedure which has found expression in chapter IX of3 Criminal Procedure Code.1973.  This enactment is fully consistent with ARTICLE</p>	<p>be taken in the following district:  Where he is, or Where he or his wife resides, or  Where he last resided with his wife or mother of an illegitimate child.  Evidence to be taken in the presence of a person against whom maintenance is to be ordered.  If a person is wilfully avoiding summons, then ex-parte evidence is taken in that case.  <b>Under MWPRD, 1986</b>  Where a reasonable and fair provision and</p>	<p>their children. If we see these figures along with the figures of age of divorce it indicates that a big chunk (44%) are divorced within 3 years of marriage, saddled with 1-2 children (55.3%), probably are around the age of 18-21 years (43.5%) with no hopes of maintenance 95%.</p>
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	<p>Section 127 in The Code Of Criminal Procedure, 1973 regarding alteration in allowance states that:</p> <p>(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as case may be, the Magistrate may make such alteration in the allowance he thinks fit: Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.</p> <p>(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.</p> <p>(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-</p>	<p>determine the extent, both in quantum and in duration, of the husband's liability to provide for the maintenance of an indigent wife who has been divorced by him. Under that law, the husband is bound to pay Mahr to the wife as a mark of respect to her. But one must have regard to the realities of life. Mahr is a mark of respect to the wife. The sum settled by way of Mahr is generally expected to take care of the ordinary requirements of the wife, during the marriage</p>	<p>15{3} of the constitution of India which states that the prohibition contained in the article shall not prevent the state from making any special provision for women and children.</p> <p>ARTICLE 39 of the constitution also says that the state shall, in particular, direct its policies towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood, that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.</p> <p>The right to maintenance is circumscribed by certain factors {e.g.} {a} the relationship of</p>	<p>maintenance<sup>59</sup> or the amount of mahr or dower due has not been made or paid or the properties have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to the Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.</p> <p>If any person against whom an order has been made fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount</p>	
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<sup>59</sup> Maintenance [Muslim Women \(Protection of Rights on Divorce\) Act: Maintenance For Wife & Children | Hello Counsel](#)

	<p>(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;</p> <p>(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-</p> <p>(i) in the case where, such sum was paid before such order, from the date on Which such order was made,</p> <p>(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;</p> <p>(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.</p> <p>Muslim Women Protection on Divorce Act, 1986 Act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands</p>	<p>and after. But these provisions of the Muslim Personal Law do not countenance cases in which the wife is unable to maintain herself after the divorce. The application of those statements of law to the contrary in text-books on Muslim Law must be restricted to that class of cases, in which there is no possibility of vagrancy or destitution arising out of the indigence of the divorced wife. The true position is that, if the divorced wife is able to maintain herself, the husband's liability to provide</p>	<p>husband is and wife should be proved, {b} she must be unable to maintain herself, {c} the husband must be having sufficient means and {d} it should be proved that the husband has neglected or has refused to maintain wife.</p> <p><b>Under Muslim Women Protection on Marriage Act 2019</b> One sided instant divorce given by the husband is criminalised. And while the case moves before the Magistrate, the woman is entitled to subsistence maintenance for herself and the children. In either way, whether the marriage sustains or not, the husband is liable to pay maintenance.</p>	<p>of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.</p> <p><b>Under MWPRM, 2019</b> The woman who has been orally divorced by her husband has to file</p>	
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	<p>A divorced woman shall be entitled to</p> <p>(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;</p> <p>(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;</p> <p>(c) Mehr agreed to be paid</p> <p>(d) all the properties given to her before or at the time of or after her marriage</p> <p>If not her husband then her relatives, her children and finally the wakf board must ensure that the divorced wife gets maintenance.</p> <p>Uncodified Hanafi Law The right to post-divorce maintenance<sup>51</sup> (maa'ta) beyond the iddat period is an important and a positively helpful provision,</p>	<p>maintenance for her ceases with the expiration of the period of iddat. If she is unable to maintain herself, she is entitled to take recourse to Section 125 of the Code of Criminal Procedure, 1973. Thus there is no conflict between the provisions of Section 125 and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself. Aiyat No. 241 and 242 of the</p>	<p>a complaint under this law at the local police station. The First Information Report filed requires the police to bring the case before the magistrate in the next 24 hours. The Magistrate then has the right to decide the subsistence allowance and can provide an interim relief to the wife.</p>	
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<sup>51</sup> Rahman, Md & Mohammad, Hossain & Sirazi, H. M.. (2018). Post-Divorce Maintenance (MAA'TA) For Muslim Women in Bangladesh, Pakistan and India. 10.9790/0837-2302030110.

[https://www.researchgate.net/publication/328365279\\_Post-Divorce\\_Maintenance\\_MAA'TA\\_For\\_Muslim\\_Women\\_in\\_Bangladesh\\_Pakistan\\_and\\_India](https://www.researchgate.net/publication/328365279_Post-Divorce_Maintenance_MAA'TA_For_Muslim_Women_in_Bangladesh_Pakistan_and_India)

	<p>which provides security to a divorced woman. But Hedaya and Fatawa-i-Alamgiri, the two authoritative texts based on the Hanafi School of law, allow the payment of maintenance only up to iddat period. Which was the case uptill the Danial Latifi judgment on the 1986 Act which extends the maintenance beyond iddat but payable within the iddat period.</p> <p>If she has sought divorce, which is khula, then she loses her right to receive her mehr if she has not received it at the time of marriage. If she has received mehr then she is expected to give something to her husband to be divorced from him. She has to pay a price for the divorce.</p>	<p>Holy <i>Koran</i> fortify that the Holy <i>Koran</i> imposed an obligation on the Muslim husband to make provision for or to Provide maintenance to the divorced wife. The contrary argument does less than justice to the teachings of <i>Koran</i>.”</p> <p>The responses of various High Courts to permanent alimony plaints was varied, much as they had before the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWPRDA) was passed.</p> <p>Some courts interpreted the</p>			
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		<p>MWPRDA to require nothing of the ex-husband but maintenance during <i>iddat</i> and the payment of dower, resisted interpreting the Qur'an otherwise, and left it to legislators to resolve tensions between such alimony guidelines and the Constitution.<sup>55</sup> Further, other High Courts also drew more from uncodified Muslim law than the MWPRDA to restrict alimony rights (<i>Usman Khan Bahamani v. Fathimunnisa Begum</i> 1990). In the few cases in which the courts required the</p>			
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<sup>55</sup> *Shaikh Dada Saheb v. Shaikh Mastan Bee* (1995) and *Aziza Khan v. Dr. Amir Hussain* (1999).



		<p>divorcee's heirs or waqf boards to support the woman, they did not ensure that this responsibility was fulfilled (Syed Fazal Pookaya Thangal v. Union of India 1993). In 2001, a definitive judgment from the Supreme Court came in the the case of <i>Daniel Latifi vs. Union of India</i><sup>56</sup> where there was a question of whether the MWA, 1986 overruled the Supreme Court's judgment in the <i>Shah Bano</i> case. The Supreme Court upheld the constitutionality of the MWA while also</p>			
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<sup>56</sup> (2001) 7 SCC 740

		<p>upholding the validity of the <i>Shah Bano</i> judgment and claiming that the Muslim husband is liable to make reasonable and fair provision for the future of his divorced wife extending beyond the <i>iddat</i> period. The Court held that “at the time of divorce the Muslim husband is required to contemplate the future needs (of his wife) and make preparatory arrangements in advance for meeting those needs.”</p>			
<b>Custody and Guardianship of Children</b>	Section 6 of the Muslim Women (Protection of Rights on Marriage)	The Privy Council in the	Today the woman is considered as the joint	A petition for child custody <sup>68</sup> or	In a National Study <sup>70</sup> by BMMA, the

<sup>68</sup> Child Custody [How to file for Custody of Children in India? By Rashmi Jain](#)

<sup>70</sup> Seeking Justice Within Family, Muslim Women’s Views on Muslim Family Law

<p>Combined it since we have a law which covers both in a single Act. <i>Do parents have equal rights over the custody of their children? If no, who has priority rights over the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) General Recommendation 21</p> <p><b>Guardianship of Children</b></p> <p><i>Is there equal right to guardianship? If no who has priority rights over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) General Recommendation 21</p>	<p>Act, 2019 that deals with the Custody of minor children says, “Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of talaq by her husband, in such manner as may be determined by the Magistrate.”</p> <p>The Guardianship and Wards Act, 1890 deals with the matter of guardianship and custody of minors (persons who are below the age of eighteen). Section 7 of the Guardianship and Wards Act, 1890 states that where the court is satisfied that it is for the welfare of a minor that an order should be made- (a) appointing a guardian of his person or property, or both, or (b) declaring a person to be such a guardian, the court may make an order accordingly.</p> <p>Section 17. of the Guardianship and Wards Act, 1890 that enumerates Matters to be considered by the court in</p>	<p>case of <i>Imbandi v. Mutsaddi</i><sup>64</sup> held that: “It is perfectly clear that under Mahomedan law the mother is entitled only to the custody of the person of her minor child up to a certain age according to the sex of the child. But she is not the natural guardian; the father alone or, if he is dead, his executor (under the Sunni law) is the legal guardian. The mother has no greater powers to deal with her minor child's property than any outsider or non-relative who happens to have</p>	<p>natural guardian<sup>67</sup> of her children and also considered as the primary caretaker of her children. The courts also consider that she will be the best suited person to take care of her children. A wife, along with her husband, has the right of custody and guardianship over her children. As the primary caretaker of her children, she is responsible for their care and protection. Hence she is entitled to their custody and guardianship. Now our law considers both father and mother as equal partners in marriage and also considers them as equal guardians of their children. The father's rights over the child are not superior to that of the mother.</p> <p>These Articles of the Indian Constitution apply</p>	<p>declaration regarding appointment of natural or legal guardian of a minor starts with the filing of the petition by the spouse seeking child custody. Notably, in child custody cases non-custodial parent seeks the custody/guardianship of the minor child. Such a petition usually takes longer time and thus application for Interim or Temporary custody as well as Visitation Rights can also be filed by the Non-custodial parent.</p> <p><b>Visitation rights</b> implies</p>	<p>following facts come to the fore:</p> <p>The study reinforces the known fact that after divorce, the woman retains the custody of children. Out of the total 525 women who are divorced, 324 women have retained the custody of their children.</p> <p>For future too, respondents have very clearly indicated that they would want to retain the custody of the children. Almost 89% of women want their children to remain with them. The Study clearly brings forth the view that 95.6% women think that if the custody of the child/children is with the mother then she</p>
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<sup>64</sup> (1918) 45 IA 73.

<sup>67</sup> Guardianship [A Comprehensive Guide to Women's Legal Rights For Indian Institute of Technology, Kanpur](#)

	<p>appointing guardian reads as follows:</p> <p>(1) In appointing or declaring the guardian of a minor, <i>the court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.</i></p> <p>(2) In considering what will be for the welfare of the minor, the court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.</p> <p>(3) If a minor is old enough to form an intelligent preference, the court may consider that preference.</p> <p>(5) The court shall not appoint or declare any person to be a guardian against his will.</p> <p>The aforementioned legislation provides that subject to the provisions of the law on Guardianship and Wards, in the</p>	<p>charge for the time being of the infant. The term "de facto guardian" that has been applied to these persons is misleading: it connotes the idea that people in charge of a child are by virtue of that fact invested with certain powers over the infant's property. This idea is quite erroneous."</p> <p>Division Bench of this Court in Mt. Sakina Begum Vs Malka Ara Begum, AIR, 1948<sup>65</sup> All 198 had thus to say</p> <p>As per this judgment the mother got the custody of her</p>	<p>to all citizens including the Muslim women and ensures her equality in all matters</p> <p>Article 14 of the Indian Constitution ensures right to equality before law.</p> <p>Article 15 ensures prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.</p> <p>Article 19 ensures protection of certain rights regarding freedom of speech, etc.</p> <p>Article 21 ensures protection of life and personal liberty.</p>	<p>regular meeting of the minor child with the non-custodial parent. General duration of visitation rights varies from 1-4 meetings per month.</p> <p><b>Interim custody</b> implies generally overnight custody or long hours of custody for a defined period to the non-custodial parent with undertaking to restore the custody of the child upon completing the defined time by handing it to the Custodial parent.</p> <p>A Custodial parent must give response to the petition which is</p>	<p>should claim maintenance from their ex-husband.</p> <p>The Study clearly brings out the fact that 92.7%, i.e., 4368 women agree that while deciding the custody of the child, the consent and well-being of the child be taken into consideration.</p>
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<sup>65</sup> AIR 1948 [Mt. Sakina Begum vs Malka Ara Begum on 20 October, 1947](#)

	<p>case of the appointment of a guardian for a Muslim minor, the principles of Mohameddan law must be adhered to.</p> <p>Clause 216 of Mulla's <i>Principles of Mohameddan Law</i><sup>61</sup> states that with respect to the right of a mother to the custody of children, the mother is entitled the custody of her male child until he has completed the age of seven years, and of her female child until she has attained puberty.</p> <p>Clause 216 of Mulla's <i>Principles of Mohameddan Law</i><sup>62</sup> states that the father is entitled to the custody of a boy when he has completed the age of seven years, and of a girl when she has attained puberty.</p> <p>The Hanafi school entrusts the mother to have custody of her daughter until she attains puberty and of her son till he is 7 years of age, while the Shafi and Maliki school entitle the mother to have custody of a female child until her marriage.<sup>63</sup></p>	<p>two minor girl children.</p> <p>In the case of Mohammed Khalid Vs Smt Zeenat Parveen and others, AIR 1988 All 252 a similar view was taken.</p> <p>It is well established that in a proceeding under the Act for the custody of a minor it is the welfare in the widest sense of the term that is to be considered, though the father as natural guardian may have a prima-facie right to a minor's custody. It can</p>		<p>followed by the evidence of both the parents. After closure of evidence by both the parents and their respective witnesses, if any, follows with final arguments and consequent judgment.</p> <p>In some extra – ordinary situations a writ petition under Article 32<sup>69</sup> of the Constitution of India can be filed in the Supreme Court or a write petition under Article 226 of the Constitution of India can be filed. Such exceptional situation would include but not</p>	
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<sup>61</sup> Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

<sup>62</sup> Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

<sup>63</sup> Tyabji, Faiz Badruddin: *Muslim Law*. 216 (4th Edn. 1968)

<sup>69</sup> Article 32 Indian Constitution [Procedure under Article 32 and 226 of the Constitution of India](#)

	<p>Clause 221 of Mulla's <i>Principles of Mohameddan Law</i> states that the custody of illegitimate children rests with the mother and her relatives.</p>	<p>be negated only if a minor's welfare lies in keeping him in the custody of his mother. Merely because the father is the natural guardian under the personal law applicable to him, the custody of the minor cannot be entrusted to him having in mind overall consideration of his physical and material well-being, education, up-bringing, happiness etc., the dominant consideration shall be the interest of the minor than the claims of the rival parties. In the instant case, one of the grounds of the</p>		<p>limited to one parent unlawfully take the child from the custody of other parent or unlawful retention of the custody of the child by the other parent or custody granted by a foreign court but the father or the mother as the case may be has taken the child out of the jurisdiction of that foreign court or the country. Such a petition is filed in the nature of Writ of Habeas corpus for child custody. It is filed for the expeditious determination of the issue. It is not a full-fledged child custody petition but has limited jurisdiction. However, Supreme Court or High Courts are vested with</p>	
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		<p>appellant is that being the natural father is entitled for custody.</p> <p>Supreme Court<sup>66</sup> in <b>ABC vs. The State (NCT of Delhi)</b> gave a path breaking judgment on gender equality and ruled that even an unwed mother must be recognized as legal guardian of her child without forcing her to disclose the name of the child's biological father.</p>		<p>extraordinary powers/jurisdiction to determine the issue. Timing of filing such a petition is of utter importance.</p> <p><b>Section 8 of the Guardians and Wards Act 1890</b> enumerates persons entitled to apply for an order as to guardianship. Section 9 empowers the Court having jurisdiction to entertain application for guardianship.</p>	
<p><b>Family Planning</b> <i>Do women require the consent of</i></p>	<p>Medical Termination of Pregnancy [MTP] Act,<sup>71</sup> 1971.</p>	<p>The Supreme Court on Friday upheld a</p>	<p>India was the first country in the world to have launched a National</p>	<p>Medical Boards - The amendments mandate</p>	<p>The religious composition of India's population</p>

<sup>66</sup> Supreme Court [How to file for Custody of Children in India? By Rashmi Jain](#).

<sup>71</sup> MTP Act [Abortion in India - Wikipedia](#)

<p><i>the husband to practise family planning, including abortions and sterilization in the law, procedure or practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 General Recommendation 21</p>	<p>Abortion in India has been legal under various circumstances for the last 50 years with the introduction of MTP Act of 1971. The Act was amended in 2003 to enable women's accessibility to safe and legal abortion services.</p> <p>In 2021, MTP Amendment Act was passed with certain amendments in the MTP Act</p> <p>The <u>new rules</u> as per the amendments were announced by the government on October 12. Following are the revised rules as per the amendment act:</p> <p>The gestation period upper limit for terminating a pregnancy with 1 doctor's opinion has been extended from 12 weeks to 20 weeks, with the rule being expanded to include unmarried women as well.</p> <p>The gestation period upper limit for termination of pregnancy with 2 doctors' opinion has been extended from 20 weeks to 24</p>	<p>woman's right to give birth or undergo an abortion, and dismissed a man's petition seeking damages from his wife because she terminated her pregnancy<sup>74</sup> without his consent. reported.</p> <p>In 2011, the Punjab and Haryana High Court had dismissed the man's original civil suit against his wife, her parents, brother and two doctors. He had demanded Rs 30 lakh towards damages due to mental pain,</p>	<p>Programme for Family Planning<sup>77</sup> in 1952. Over the decades, the programme has undergone transformation in terms of policy and actual programme implementation and currently being repositioned to not only achieve population stabilization goals but also promote reproductive health and reduce maternal, infant &amp; child mortality and morbidity.</p> <p>The objectives, strategies and activities of the Family Planning division are designed and operated towards achieving the family welfare goals and objectives stated in various policy documents (NPP: National Population Policy 2000, NHP: National Health</p>	<p>constitution of Medical Boards in all the states and union territories for diagnosing substantial foetal anomalies. The Board will decide if a pregnancy may be terminated after 24 weeks and each board will have a gynaecologist, radiologist/sonologist, paediatrician and other members notified by the government.</p> <p><b>Role of the medical board:</b></p> <p>To examine the woman and her reports</p> <p>To approve or deny the request for termination</p>	<p>has remained stable since independence as fertility rates<sup>79</sup> declined across all religious groups. Muslims recorded the highest drop. The population growth rate of Muslims dropped from 32.7% in 1951-61 to 24.7% in 2001-2011. In 1992, a Muslim woman gave birth to an average of 1.1 more children than a Hindu. However, in 2015, this difference reduced to 0.5.</p> <p>Background: Muslims are the second largest minority group in India. Research has shown that Muslim population have higher fertility rate which favor larger family size. Various sociodemographic</p>
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<sup>74</sup> Termination of pregnancy [Abortion: Husband's consent not needed to terminate pregnancy, it is woman's right, rules SC](#)

<sup>77</sup> Family Planning [Family Planning :: National Health Mission](#)

<sup>79</sup> Fertility rate [Data | Fertility rates decline across religions in India, sharpest drop recorded among Muslims - The Hindu](#)



	<p>weeks, for the following special categories:</p> <p>survivors of sexual assault or rape or incest</p> <p>minors</p> <p>change of marital status during the pregnancy (widowhood and divorce)</p> <p>women with physical disabilities</p> <p>mentally ill women</p> <p>the foetal anomalies that have substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped</p> <p>women with pregnancy in humanitarian settings or disaster or emergency</p> <p>Abortion is covered 100% by the government's public national health insurance</p>	<p>agony and harassment because, he said, terminating a pregnancy without any medical need or the husband's consent "was illegal" under the Medical Termination of Pregnancy Act.</p> <p>Supreme Court bench of Chief Justice Dipak Misra, and Justices AM Khanwilkar and DY Chandrachud said, "Keeping in view the strained relations between the husband and wife, the wife's decision to terminate the unwanted foetus was right." It added that the</p>	<p>Policy 2017, and NHM: National Rural Health Mission) and to honour the commitments of the Government of India (including ICPD: International Conference on Population and Development, MDG: Millennium Development Goals, SDG: Sustainable Development Goals, and others).</p> <p>'Vision FP 2020' for India is not just about providing contraceptive services to an additional 48 million users but aversion of 23.9 million births, 1 million infants deaths and over 42000 maternal deaths by 2020. This vision statement was a result of the efforts made by the country at the 2012 London Summit on Family Planning.</p> <p>Family planning in India<sup>78</sup> is based on efforts largely sponsored by the Indian Government.</p>	<p>within 3 days of receiving it. To ensure that the termination procedure, when advised by the Medical Board, is carried out with all safety precautions along with appropriate counselling within 5 days of the receipt of the request for medical termination of pregnancy</p> <p><b>The Medical Board shall consist of the following:</b></p> <p>a Gynaecologist; a Paediatrician; a Radiologist or Sonologist; and other members notified by the State Government or Union territory</p>	<p>factors play important role in choosing any kind of family planning method. Objectives: To study the knowledge and beliefs of Muslim women in North India regarding family planning and to examine their contraceptive practices. Materials and Methods: A cross-sectional study was done by multistage and snowball technique among Muslim women aged 15-49 years living in Delhi. Results: A majority of women (87%) had knowledge about family planning, but only 47% of the ever-married women are currently using any kind of family planning method.</p>
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<sup>78</sup> Family Planning in India [Ministry of Health and Family Welfare - Wikipedia](#)

	<p>funds, Ayushman Bharat and Employees State Insurance.</p> <p>When can abortion happen:</p> <ul style="list-style-type: none"> <li>• continuation of pregnancy is a risk to the life of a pregnant woman or could cause grave injury to her physical or mental health;</li> <li>• there is substantial risk that the child, if born or dead would be seriously handicapped due to physical or mental abnormalities;</li> <li>• pregnancy is caused due to rape (presumed to cause grave injury to the mental health of the woman);</li> <li>• pregnancy is caused due to failure of contraceptives used by a married woman or her husband (presumed to constitute grave injury to mental health of the woman).</li> </ul> <p>Who can do it? As per the MTP Act, pregnancy can be terminated only by a registered medical practitioner (RMP)</p> <p>Where can it be done?</p>	<p>husband's consent was not required.</p> <p>"She is a mother and an adult who says she did not want the pregnancy. How can she or others be made liable for it," the Supreme Court bench of justices asked. "Even a mentally challenged woman has a right to terminate her pregnancy. How can parents and doctors be made liable?"</p> <p>The couple were married in 1994, and had a son in 1995. They were separated between 1999 and 2002. After they began living together in November 2002,</p>	<p>Ministry of Health and Family Welfare is the government unit responsible for formulating and executing family planning in India. In 2017, Ministry of Health and Family Welfare launched Mission Pariwar Vikas, a central family planning initiative. The key strategic focus of this initiative is on improving access to contraceptives through delivering assured services, ensuring commodity security and accelerating access to high quality family planning services.</p> <p>Multiple Indian states have adopted a 2-child policy. The policies are implemented by prohibiting persons with more than two children from serving in government. A criticism of these policies is that it decreases the number of women in government positions, and</p>		<p>Age of marriage, education level, socioeconomic status, parity, and sex of the first child are significantly associated with the current use of family planning methods. Most of the women are not using family planning methods because of religious constraints (34.5%) followed by lack of knowledge (27.7%) and fear of side effects (19.2%). Conclusion: Muslim women despite having adequate knowledge about family planning methods tend to avoid using it. Higher age of marriage, improved education level and better standard of living will help the Muslim women to have sound reproductive health</p>
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	<p>All government hospitals are by default permitted to provide CAC services. Facilities in the private sector however require approval of the government.</p> <p>Consent</p> <p>Form C [Rule 9] Consent Form: This form is used to document consent of the woman seeking termination. Pregnancy of a woman who is above 18 years of age can be terminated with only her consent. If she is below 18 years of age or mentally ill, written consent of the guardian is required.</p> <p><b>ISLAMIC LAW</b> Deoband fatwa<sup>72</sup> on family planning states that it is unlawful and <i>haram</i> to adopt a way that permanently removes the reproductive system. However, if a woman is ill, unable to bear the pregnancy or there is fear of unbearable pains in case of pregnancy or it is prescribed by any expert Muslim physician or she fears severely about the health of her already born infant,</p>	<p>the woman discovered she was pregnant in January 2003. Since their relationship was sour, she terminated the pregnancy in Chandigarh despite his refusal to sign the hospital papers.</p> <p>In 2011, while dismissing the civil suit, the High Court had said, "If the wife has consented to matrimonial sex...it does not mean that she has consented to conceive a child."</p> <p>It had added: "The woman is not a machine in which raw</p>	<p>encourages sex-selective abortion.</p> <p>In 2005, the government of India established the National Rural Health Mission (NRHM) in effort to address some of these issues amongst others. The objective of the NRHM includes the provision of effective healthcare to rural areas, especially to poor and vulnerable populations. Through the NRHM, special provisions have been made to address concerns for reproductive health, especially for adolescents who are more likely to participate in risky sexual behaviours and less likely to visit health facilities than adults. Ultimately, the NRHM aims to push India towards the Millennium Development Goal targets for reproductive health.</p>		<p>Background: Muslims are the second largest minority group in India. Research has shown that Muslim population have higher fertility rate which favor larger family size. Various sociodemographic factors play important role in choosing any kind of family planning method. Objectives: To study the knowledge and beliefs of Muslim women in North India regarding family planning and to examine their contraceptive practices. Materials and Methods: A cross-sectional study was done by multistage and snowball technique among Muslim women aged 15-49 years living in Delhi.</p>
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<sup>72</sup> Deoband Fatwa <https://darulifta-deoband.com/home/en/halal-haram/6866>

	<p>then in these cases she can temporarily use condom and contraceptives.</p> <p>Another Deoband fatwa allows the use of contraceptives<sup>73</sup> by Muslims to keep a gap between two children. It says contraceptives are permissible so that 'the children are properly nourished.' However, the Islamic body does not say anything about the permanent methods of contraception like vasectomy or tubectomy. Supporting the Deoband's fatwa, prominent Muslim body Jamia-Ulema-e-Hind's spokesman Abdul Hameed Nomani, also an Islamic scholar, says: "Such a method can be adopted. It is permissible." However, Nomani termed permanent contraception as 'unlawful' (<i>haram</i>) and against Islamic law.</p>	<p>material is put and a finished product comes out. She should be mentally prepared to give birth to a child." Unwanted pregnancy would affect the woman's mental health, the High Court had ruled.</p> <p>Javed and Ors v. State Of Haryana and Ors<sup>75</sup>AIR 2003 SC 3057, 2003 (4) AWC 2920 SC, 2003 (3) CTC 620</p> <p>A writ petition was filed by disqualified candidates in the Supreme Court challenging the constitutionality of an election law</p>	<p>In the early 1970s, Indira Gandhi, Prime Minister of India, had implemented a forced sterilization programme, but failed. Officially, men with two children or more had to submit to sterilisation, but many unmarried young men, political opponents and ignorant, poor men were also believed to have been sterilised. After emergency the focus of family planning program shifted to women as sterilising men proved to be politically expensive.</p>	<p>Results: A majority of women (87%) had knowledge about family planning, but only 47% of the ever-married women are currently using any kind of family planning method. Age of marriage, education level, socioeconomic status, parity, and sex of the first child are significantly associated with the current use of family planning methods. Most of the women are not using family planning methods because of religious constraints (34.5%) followed by lack of knowledge (27.7%) and fear of side effects (19.2%). Conclusion: Muslim women despite</p>
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<sup>73</sup> Use of Contraceptives [Muslims can use contraceptives: Deoband fatwa](#)

<sup>75</sup> Javed v. State of Haryana [Javed and Others v. State of Haryana \(2003\) - Unite for Reproductive Rights](#)

		<p>that disqualified persons having more than two living children after a certain date from holding certain public offices in the Panchayat, a local government system, of the state of Haryana (Sections 175(1)(q) and 177(1) of the Haryana Panchayati Raj Act, 1994). The challenge alleged that these disqualification provisions violated the right to equality before the law guaranteed by the Indian Constitution under Article 14 (as persons with two or less than two children</p>		<p>having adequate knowledge about family planning methods tend to avoid using it. Higher age of marriage, improved education level and better standard of living will help the Muslim women to have sound reproductive health</p> <p>In a study done to understand the knowledge and beliefs of Muslim women in North India regarding family planning<sup>80</sup> and to examine their contraceptive practices. The results showed that 87% of Muslim women had knowledge about family planning but only 47% of the women were using any kind of family</p>
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<sup>80</sup> Family Planning (PDF) [Knowledge, attitude, and practice of family planning among Muslim women of North India](#)

		<p>qualified for public offices); the right to life and personal liberty under Article 21 of the Indian Constitution (as it prevented individuals from exercising liberty in their personal life as it relates to the number of children one chooses to have); and the right to religious freedoms under Article 25 of the Indian Constitution (as the practice of polygamy in Muslims often leads to more than two children). The petition was struck down by the Supreme Court.</p> <p>The Court held that the law does</p>			<p>planning method. Most of the women were not using any method was because of religious constraints [34.5%] followed by lack of knowledge [27.7%] and the fear of side-effects [19.2%]. Age of marriage, education, socio-economic status, parity, sex of the first child are significantly associated with the use of family planning method.</p>
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		<p>not violate Article 25<sup>76</sup> freedom of conscience or of religion, particularly for Muslims whose law allows for marriage of up to four women. The Court rejected the argument finding that the law falls within the exception clause in Article 25 for “public order, morality and health.” Furthermore, the Court noted that freedom protects a religious practice or a positive tenet, not just something that is permitted by a religion. The Court also noted a long line of precedent showing that an action allowed</p>			
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<sup>76</sup> Article 25 [Javed and Ors v. State Of Haryana and Ors | Global Health & Human Rights Database](#)

		under the Personal law can be overruled by statute.			
<p><b>Personal rights of spouses</b></p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her own behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) General Recommendation 21</p>	<p>Since the Muslim family law is not codified in India there is no shariah provision which is legal and binding. What floats around are the fatwas by religious groups which people take as authentic shariah provisions. Given below are such fatwas which govern the personal rights of spouses</p> <p>The Darul Uloom Deoband issued a fatwa that decreed that it is haram and illegal according to shariah for a family to accept a women's earnings<sup>81</sup>. The decree flowed from the fact that the shariah prohibited proximity of men and women in the workplace. It is unlawful under the shariah law for Muslim women to work in the government or private sector</p>	<p>The Supreme Court has ruled that Dar-ul-Qazas<sup>89</sup> or anybody or institution shall issue Fatwa touching upon the rights, status and obligation, of an individual unless such an individual has asked for it. The Fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is not</p>	<p>Here is a quick preface of the rights<sup>90</sup></p> <ul style="list-style-type: none"> <li>• Right to maintenance</li> <li>• Right to equal pay</li> <li>• Right to dignity and decency</li> <li>• Right against domestic violence</li> <li>• Rights at workplace</li> <li>• Right against dowry</li> <li>• Right to free legal aid</li> <li>• Right of private defence</li> </ul>	<p>DV applicable to all women even unmarried women, daughter against mother, also for live in</p> <p>Only for women Daughter mother wife, female</p> <p>Fill up a form at police station, police will file the case and she will get a government lawyer under she can file directly in the court through magistrate</p> <p>She can file a complaint petition directly in the magistrate court.</p>	<p>80% Indian women need permission to visit health centre, 5% have sole control over choice of husband according to the Indian Human Development Survey<sup>91</sup>, conducted by the University of Maryland and the National Council of Applied Economic Research in 2004-2005 and 2011-2012.</p> <p>Generally, the hierarchy commonly is that men decide<sup>92</sup> when and where</p>

<sup>81</sup> Women's Earnings [Can muslim women in india do Govt. or Pvt. Jobs? Shall their salary be Halal or Haram or Prohibited?](#)

<sup>89</sup> Darul Qaza <https://www.outlookindia.com/website/story/the-fatwa-has-no-legal-status-in-our-constitutional-scheme/291328>

<sup>90</sup> Rights [Eight most important rights every Indian woman should know about - iPleaders](#)

<sup>91</sup> Indian Human Development Survey [80% Indian women need permission to visit health centre, 5% have sole control over choice of husband](#)

<sup>92</sup> Men Decide [Women's freedom of movement and participation in psychosocial support groups: qualitative study in northern India | BMC Public Health | Full Text](#)



	<p>where men and women work together and women have to talk to men frankly and without veil, said the fatwa issued by a bench of three clerics.</p> <p>The Prophet<sup>82</sup> said: "It is now allowed for a woman who has belief in Allah and His messenger that she travels to a destination of more than 78 kms alone. Yes, she can travel this distance or more with a mehram (immediate relatives like father, son, husband, nephew).</p> <p>Nushooz<sup>83</sup> means to leave the house of husband unduly without the consent of the husband. Muslim doctor<sup>84</sup> is a gynaecologist he may see the satr of a woman if required only as per needed and may have their check-up as well. However if any woman gynaecologist doctor is available, a woman should go to her and avoid going to male doctor for check-up.</p> <p>There is no such ruling that a woman should write the name of</p>	<p>binding on anyone including the person, who had asked for it. Further, such an adjudication or Fatwa does not have a force of law and, therefore, cannot be enforced by any process using coercive methods. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law.</p>	<p>Article 14 has established right to equality and equality before law Article 15 forbids discrimination on grounds of religion, race, caste, sex or place of birth Article 21 ensures that no person shall be deprived of life and personal liberty</p> <p>ALSO SEE EQUALITY OF SPOUSES ABOVE FOR CONSTITUTIONAL PROTECTIONS</p>	<p>Under DV which is a civil act where no arrests happen. She will get a protection order, residence order, maintenance order, compensation order or custody order.</p> <p>Under DV the first hearing must be held within 7 days. Time to decide all applications stated above is within 60 days.</p> <p>At any stage interim order for maintenance can be filed</p> <p>498A is an Indian Penal Code law. This is against dowry harassment and cruelty.</p>	<p>women are allowed to go. Women stated that they are questioned if they leave home. When women joined the support group, some believed that they were going against the community's role for women.</p>
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<sup>82</sup> The Prophet <https://darulifta-deoband.com/home/en/Womens-Issues/3729>

<sup>83</sup> Nushuz <https://darulifta-deoband.com/home/en/talaq-divorce/48643>

<sup>84</sup> Muslim Doctor <https://darulifta-deoband.com/home/en/qa/32227>

	<p>her husband<sup>85</sup> instead of her father as her last name after marriage. You have right whether to keep your name</p> <p>(1) She can go in nearby places without a <i>mahram</i><sup>86</sup> observing hijab provided there is no fear of <i>fitnah</i> (evil/mischief). But for a journey, she should be accompanied by any <i>mahram</i>.</p> <p>(2) It is not allowed that she drives a car</p> <p>Jeans pant is means for men<sup>87</sup> a woman is not permitted to wear the same. The Prophet condemned women adopting the resemblance of men.</p> <p>(2) Women should wear clothing not specially worn by irreligious and debauched women, and which is not characteristic to men, not tightly fit exposing the body structure and it covers the entire body.</p> <p>Laws<sup>88</sup> Protecting Rights of Women</p>			<p>Under 498A too she can go to the police or she can go to the magistrate who will then take suo moto action and direct the police.</p> <p>If anybody's fundamental rights are infringed then she can file a writ petition under Article 226 of Constitution and Article 32 before the Supreme Court.</p> <p>If the larger interest of the society is being infringed then a Public Interest Litigation can be filed.</p>	
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<sup>85</sup> Name of Husband [Name after marriage](#)

<sup>86</sup> Mahram <https://darulifta-deoband.com/home/en/Womens-Issues/8668>

<sup>87</sup> Men <https://darulifta-deoband.com/home/en/Clothing--Lifestyle/15594>

<sup>88</sup> Laws [Laws Related to Women](#)

	<p>Domestic Violence Act, 2005 498 A Special Marriage Act, 1954 Dowry Prohibition Act, 1961 Indian Divorce Act, 1969 Maternity Benefit Act, 1861 Medical Termination of Pregnancy Act, 1971 National Commission for Women Act, 1990 Maternity Benefit Act, 1861. Medical Termination of Pregnancy Act, 1971. Protection of Women from</p> <p>The Indian Penal Code, 1860</p> <p>The Indian Evidence Act, 1872</p>				
<p><b>Inheritance</b></p> <p><i>Are men and women in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(h), 15(2) General Recommendation 21</p>	<p>Clause 32 of <i>Mulla's Principles of Mohameddan Law</i><sup>93</sup> mentions that there is "no distinction between different kinds of properties: There is no distinction, in the Mohamedan law of inheritance, between moveable and immoveable property, or between ancestral and self-acquired property."</p>	<p>Supreme Court considered inequality in religious personal law, emphatically asserting the connection between constitutional rights to equality</p>	<p><b>Marriage under the Special Marriage Act</b><sup>98</sup>, <b>1954</b>: Where a Muslim contract his marriage under the Special Marriage Act, 1954, he ceases to be a Muslim for purposes of inheritance. Accordingly, after the death of such a Muslim his (or her) properties do</p>	<p>No police complaint is expected to be filed at the police station if an inheritance case needs to be filed.</p> <p>She can directly go to the Magistrate Court</p>	<p>BMMA's Study<sup>99</sup>, Though not surprising, 82% of the respondents do not have any property in their name.</p> <p>It is also interesting to note that out of the rest 850 of</p>

<sup>93</sup> Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

<sup>98</sup> Special Marriage Act <https://districts.ecourts.gov.in/sites/default/files/jcj%20palakondawrkshp1.pdf>

<sup>99</sup> BMMA's Study-Seeking Justice Within Family, Muslim Women's Views on Muslim Personal Law

	<p>Clause 33 of Mulla's <i>Principles of Mohameddan Law</i><sup>94</sup> regarding the "Expectant right of an heir apparent.—The right of an heir apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor."</p> <p>Muslim law recognizes two types of heirs<sup>95</sup>, Sharers and Residuaries. Sharers are the ones who are entitled to a certain share in the deceased's property and Residuaries would take up the share in the property that is left over after the sharers have taken their part. Sharers: The Sharers are 12 in number and are as follows: (1) Husband, (2) Wife, (3) Daughter, (4) Daughter of a son (or son's son or son's son and so on), (5) Father, (6) Paternal Grandfather, (7) Mother, (8) Grandmother on the male line, (9) Full sister (10) Consanguine sister (11) Uterine sister, and (12)</p>	<p>and India's obligations under international law<sup>96</sup> to eliminate gender discrimination.</p> <p>In Madhu Kishwar State of Bihar, which concerned the validity of customs<sup>97</sup> and traditions that explicitly discriminate against women, the Court noted that customary laws of succession that deny women equality within the family raised the need for all national legislation to conform to both constitutional guarantees of</p>	<p>not devolve under Muslim law of inheritance. The inheritance of the properties of such Muslims is governed by the provisions of the Indian Succession Act, 1925 and Muslim law of inheritance is not applicable.</p> <p>The Muslim Personal Law (Shariat) Application Act, 1937 is applied when its non-testamentary, but where a person dies testate, it is also governed by The Indian Succession Act. Basically, laws of succession are legal principles of distribution of assets of a deceased individual. These include the order in which one person in preference of any or one person after another or any one person in particular shares with any other</p>	<p>If the marriage is registered under the Special Marriage Act then the Indian Succession Act [ISA] will apply. Under ISA if the person dies making a will then the will shall be probated. The matter will go to the District Judge. The legal heirs can challenge the will. It will be the discretion of the judge to decide.</p> <p>Two Procedures If a person dies without making a will then the division will happen according to the shariah law. And it will be decided within the</p>	<p>women who own property, a large number, 520 women, have got their share of the property from their husband and a miniscule 78 have been able to earn it by themselves.</p> <p>And out of the 850 women, 240 have received property from their parents. Close to 84% of the respondents do not have their current residence in their name.</p> <p>Out of the 850 who own property a significant 373 have property worth less than Rs. 5 lac. 2.9%, i.e., 136 women own property worth Rs 5 to 10 lac, 1.8%, i.e., 83 women possess</p>
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<sup>94</sup> Mulla, Dinshaw Fardunji. 1968. *Principles of Mahomedan Law*. 16th ed. Bombay, India: N. M. Tripathi Publishers

<sup>95</sup> Heirs [Inheritance under Muslim law](#)

<sup>96</sup> International Law [C. Masilamani Mudaliar & Ors vs The Idol Of Sri ... on 30 January, 1996](#)

<sup>97</sup> Validity of Customs <https://indiankanoon.org/doc/1216671/>

	<p>Uterine brother. The share taken by each sharer will vary in certain conditions. For instance, a wife takes 1/4th of share in a case where the couple is without lineal descendants, and a one-eighth share otherwise. A husband (in the case of succession to the wife's estate) takes a half share in a case where the couple is without lineal descendants, and a one-fourth share otherwise. A sole daughter takes a half share. Where the deceased has left behind more than one daughter, all daughters jointly take two-thirds. If the deceased had left behind son(s) and daughter(s), then, the daughters cease to be sharers and become residuaries instead, with the residue being so distributed as to ensure that each son gets double of what each daughter gets.</p> <p><b>According to Mulla and Mulla</b> The first step in the distribution of the estate of a deceased Mohammedan after payment of his funeral expenses, debt and legacies, is to allot their respective shares to such relations as belonging to the class of sharers and are entitled to a share. The next step is to divide the residue if</p>	<p>gender equality and international norms of gender equality</p>	<p>person succeeds to the property/estate of the deceased person.</p>	<p>family. They will call a lawyer/jamaat/qazi to finalise the decisions.</p> <p>If a person wants to make a will then he/she has to approach a lawyer/qazi/jamaat to finalise it.</p> <p>The will can be registered with the registry office of the city.</p>	<p>property worth Rs 10 to 20 lac, 1.5%, i.e., 70 women own property worth Rs 20 to 40 lac and 4%, i.e., 188 women own property whose worth is above Rs 40 lac. So out of the entire lot which owns property a large majority own property of a low value.</p>
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	<p>any, among residuaries as are entitled to the residue. If there are no sharers, the residuaries will succeed to the whole inheritance.</p> <p>If there are no sharers and residuaries the inheritance will be divided among such distant kindred as are entitled to succeed. The distant kindred are not entitled to succeed so long as there is any heir belonging to the class of sharers or residuaries. But there is one case in which the distant kindred will inherit a share and that is where the sharer is the wife or husband of the deceased. Thus if a Mahomedan dies leaving a wife and distant kindred, the wife as sharer will take her share which is 1/4<sup>th</sup> and the remaining 3/4<sup>th</sup> will go to the distant kindred. And if a Mohamadan female dies leaving a husband and distant kindred, the husband as sharer will take 1/2 his share and the other half will go to the distant kindred.</p> <p>The question as to which of the relations belong to class of sharers, residuaries or distant kindred are entitled to succeed to the inheritance depends on the circumstances of each case.</p>				
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<p><b>Violence against women in the family</b></p> <p><i>Are there laws and practices that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault, mental and other forms of violence that affects a women's mental health, which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 2, 5, 11, 12 and 16 General Recommendations 12, 19, 21</p>	<p>Section 3 of the Protection of Women from Domestic Violence Act, 2005 defines domestic violence as follows: "For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it - (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.</p>	<p>A Single Judge Bench comprising of Bharati H. Dangre, J., has held that the Muslim Personal Law can in no way curtail the protection granted under the Protection of Women from Domestic Violence Act 2005 from being available to a Muslim woman.<sup>100</sup> After extensively considering various provisions of the DV Act as well as Acts concerning the rights of women under Muslim Personal Law, Hon'ble Court held that</p>	<p>Constitution of India – Part III (Article 12 to 35) Fundamental Rights</p> <p>The constitution guarantees that all citizens of India (including women) have the fundamental right to live in peace and harmony, a right to equality, freedom, freedom of religion, right against exploitation, and a right to constitutional remedies.</p> <p>Constitution of India Part IV (Article 36 – 51) Directive Principles</p> <p>The provisions outlined in these principles relate to social justice, economic welfare, legal and administrative matters, and foreign policy.</p> <p>Indian Penal Code, 1860</p> <p>Has provisions to address and punish assault and</p>	<p>Some of the prominent provisions made in the Criminal Procedure Code (CrPc) regarding crimes against women were on First Information Reports (FIR) to be completed by women officers; recording of statements before magistrate; outline of duties and responsibilities of medical practitioners and the medical examination procedure.</p> <p>DV applicable to all women even unmarried women, daughter against mother, also for live in Only for women Daughter mother wife, female</p>	<p>Total of 6966 cases of dowry deaths with 7045 victims were reported in 2020. Section 375 of the Indian Penal Code defines rape as "non-consensual sexual intercourse with a woman". However, it exempts the husband from any penal consequences, if he forces intercourse on his wife sans her consent.</p> <p>Over one third (36.6 percent) of suicides by women in the world in 2016 were in India, up from 25.3 percent in 1990, according to a 2018 <i>Lancet</i> report.</p> <p>According to the Crime In India Report 2018, published by the National Crime</p>
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<sup>100</sup>Muslim Women [Women governed under Muslim Personal Law have right to recourse under the Protection of Women from Domestic Violence Act, 2005 | SCC Blog](#)

	<p>Explanation I.-For the purposes of this section,-</p> <p>(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;</p> <p>(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;</p> <p>(iii) "verbal and emotional abuse" includes-</p> <p>(a) insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child; and</p> <p>(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.</p> <p>(iv) "economic abuse" includes-</p> <p>(a) deprivation of all or any economic or financial resources to which the aggrieved person is</p>	<p>"perusal of the provisions of the Protection of Women from Domestic Violence Act, 2005 would reveal that it is an enactment to provide for more effective protection for rights of women, guaranteed under the Indian Constitution, who are the victims of the violence ... The definition and connotation of "Domestic Violence" of the enactment do not indicate any intention either express or implied to exclude Muslim women. Section 36 of the said enactment provides that the</p>	<p>criminal force, sexual harassment, voyeurism, stalking, human trafficking, dowry death, cruelty towards a married woman (domestic violence), rape and aggravated rape.</p> <p>Provisions in Code of Criminal Procedure, 1973</p> <p>Criminal Law (Amendment) Act, 2013</p> <p>The amendments in this Act include provisions that highlight violence against women and expand the Indian Penal Code to include offenses such as acid attacks, disrobing a woman, sexual harassment, and stalking. It also raised the age of consent to 18, increased penalty and sentences for gang rape, and added measures to hold hospitals run by the Government or State and</p>	<p>Fill up a form at police station, police will file the case and she will get a government lawyer under she can file directly in the court through magistrate</p> <p>She can file a complaint petition directly in the magistrate court.</p> <p>Under DV which is a civil act where no arrests happen. She will get a protection order, residence order, maintenance order, compensation order or custody order.</p> <p>Under DV the first hearing must be held within 7 days. Time to decide all applications stated</p>	<p>Research Bureau (NCRB)<sup>102</sup>, a crime is recorded against women in India every 1.7 minutes and a woman is subjected to domestic violence every 4.4 minutes.</p> <p>The National Family Health Survey<sup>103</sup> NFHS-4 2015-16 highlighted that 30 percent of women in India between the ages of 15 and 49 have experienced physical violence. 83 percent list their husbands as the main perpetrators, followed by abuse from their husbands' mothers (56 percent), fathers (33 percent), and siblings (27 percent). In a study done by BMMA, Seeking</p>
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<sup>102</sup> NCRB [It's good that women can now marry at 21, but whose marriage is it anyway?](#)

<sup>103</sup> National Family Health Survey, [National Family Health Survey \(NFHS-4\)](#)



	<p>entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;</p> <p>(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and</p> <p>(c) prohibition or restriction to continued access to resources or facilities which the aggrieved</p>	<p>provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”</p> <p>The Court held that the provisions of the Muslim Personal Law can in no way curtail the protection provided under Domestic Violence Act<sup>101</sup>. As a result, the impugned order of the Family Court whereby the petitioner was ordered to pay maintenance under the provisions of the DV Act was upheld and the petition dismissed.</p>	<p>private institutions accountable by law to give free medical treatment to victims of rape or acid attacks and hold public servants responsible for refusing First Information Report (FIR).</p> <p>National Population Policy (NPP), 2000 National Policy on the Empowerment of Women, 2001 Legal Services Authority Act, 1987 National/State And District Statutory Bodies For Implementation Ministry of Women and Child Development (WCD) National Commission for Protection of Child Rights National Commission for Women (NCW) Parliamentary Committee on Empowerment of Women (PCEW) – a special committee formed</p>	<p>above is within 60 days.</p> <p>At any stage interim order for maintenance can be filed</p> <p>498A is an Indian Penal Code law. This is against dowry harassment and cruelty.</p> <p>Under 498A too she can go to the police or she can go to the magistrate who will then take suo moto action and direct the police.</p> <p>If anybody's fundamental rights are infringed then she can file a writ petition under Article 226 of Constitution and Article 32 before</p>	<p>Justice Within Family, Muslim Women's Views on Muslim Family Law, 2015, 53.2% of the 4710 Muslim women have faced domestic violence.</p> <p>The survey also collected community-wise data of domestic violence<sup>104</sup>. In the age group of 15-49 years, 28.7% Hindu women have ever experienced physical violence as against 21.5% Muslim women closely followed by Christians (21.4%). Among religious communities, the Jain women are safest with just 9.3% of them experiencing physical violence.</p>
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<sup>101</sup> Domestic Violence Act <https://www.sconline.com/DocumentLink.aspx?q=JTXT-0002865521>

<sup>104</sup> Domestic Violence <https://clarionindia.net/more-hindu-women-experiencing-domestic-violence-than-muslim-women/mumtazalam/CaravanDaily>

	<p>a person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.</p> <p>Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."</p>		<p>to oversee the empowerment of women in India.</p> <p>National Legal Services Authority – legal literacy and legal awareness camps NHRC, Minorities Commission, SC/ST Commission, CSWB Central Social Welfare Board</p>	<p>the Supreme Court.</p> <p>If the larger interest of the society is being infringed then a Public Interest Litigation can be filed.</p>	<p>As for spousal violence, both Hindu and Muslim women face emotional violence in equal percentage. But when it comes to physical violence, while percentage of Hindu women victims is 28.8%, that of Muslim women is 23.5%. More Hindu women (6.6%) become victim of sexual violence than Muslim women (5.7%).</p>
<p><b>Nationality</b></p> <p><i>Does a wife have the right to confer citizenship on foreign born husbands and children? Can the nationality of the adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband</i></p>	<p><b>The Foreign Marriage Act, 1969<sup>105</sup></b></p> <p>Conditions relating to solemnization of foreign marriages.—A marriage between parties one of whom at least is a citizen of India may be solemnized under this Act by or before a Marriage Officer in a</p>	<p>On 12th October 2020, the Patna High Court has held that a foreign national<sup>108</sup> does not automatically become an Indian citizen</p>	<p><b>Indian nationality law<sup>109</sup></b> details the conditions by which a person holds Indian nationality. The two primary pieces of legislation governing these requirements are</p>	<p>Procedure under FMA<sup>110</sup></p> <p>The parties to the marriage shall give notice in writing to the Marriage Officer of the district in which at least one of the</p>	<p>The petition filed by NGO, Pravasi Legal Cell, represented by advocate Jose Abraham, highlighted three instances of</p>

<sup>105</sup> Foreign Marriage Act [The Foreign Marriage Act, 1969](#)

<sup>108</sup> Foreign National [Foreign National Doesn't Automatically Become An Indian Citizen After Marriage](#)

<sup>109</sup> Indian Nationality Law [https://en.wikipedia.org/wiki/Indian\\_nationality\\_law](https://en.wikipedia.org/wiki/Indian_nationality_law)

<sup>110</sup> Procedure under FMA [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_3\\_20\\_00029\\_196933\\_1517807324405&orderno=6](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00029_196933_1517807324405&orderno=6)

<p><i>or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9 General Recommendation 21</p>	<p>foreign country, if, at the time of the marriage, the following conditions are fulfilled, namely:— neither party has a spouse living, neither party is an idiot or a lunatic, bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage, and parties are not within the degrees of prohibited relationship: parties to the marriage shall give notice to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.</p> <p>Marriage not to be in contravention of local laws.— The Marriage Officer may refuse to solemnize a marriage under this Act if the intended marriage is prohibited by any law in force in the foreign country where it is to be solemnized.</p> <p>The Marriage Officer may refuse to solemnize a marriage under this Act on the ground that in his opinion, the solemnization of the marriage would be inconsistent</p>	<p>after marriage with a citizen. The two-judge bench comprising the Chief Justice Sanjay Karol and Justice S. Kumar observed that mere possession of a Pan Card; a Voter ID Card; or an Aadhar Card cannot be said to be proof of Indian Citizenship.</p>	<p>the Constitution of India and the Citizenship Act, 1955. All persons born in India between 26 January 1950 and 1 July 1987 automatically received citizenship by birth regardless of the nationalities of their parents. Between 1 July 1987 and 3 December 2004, citizenship by birth was granted if at least one parent was a citizen. Individuals born in the country since then receive Indian citizenship at birth only if both parents are Indian citizens, or if one parent is a citizen and the other is not considered an illegal migrant.</p> <p>Foreigners may become Indian citizens by naturalization after residing in the country for at least 12 years and renouncing any previous nationalities.</p> <p>Children born overseas</p>	<p>parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given, and the notice shall state that the party has so resided.</p> <p>The Marriage Officer shall keep all notices with the records of his office and shall also enter a true copy of every such notice in a book called the "Marriage Notice Book", and such book shall be open, for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.</p>	<p>suffering for women in NRI marriages<sup>111</sup></p> <p>These include women left behind in India by their husbands within days of the marriage. The woman hears no more from the man, and in some cases, she is pregnant by him. This would mean both the wife and child are abandoned with no recourse to trace the man or effectively begin legal proceedings against him.</p> <p>The second instance when the woman is taken abroad but only to be subject to harassment and abuse by her husband. In some cases, the petition said the man does not even come to</p>
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<sup>111</sup> NRI marriages [Supreme Court to hear pleas against NRI husbands in July - The Hindu](#)

	<p>with international law or the comity of nations. Where a Marriage Officer refuses to solemnize a marriage under this section, any party to the intended marriage may appeal to the Central Government. marriage by or before a Marriage Officer under this Act shall be solemnized at the official house of the Marriage Officer The marriage may be solemnized in any form which the parties may choose to adopt: Provided that it shall not be complete and binding on the parties unless each party declares to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,— "I, (A) take the (B), to be my lawful wife (or husband)": Subject to the other provisions contained in this Act, a marriage solemnized in the manner provided in this Act shall be good and valid in law. Registration of foreign marriages.— Marriage Officer is satisfied that a marriage has been duly solemnized in a foreign country in accordance with the law of that country between parties of whom</p>		<p>are eligible to become Indian citizens by descent if at least one parent is a citizen. The birth of eligible persons must be registered at an Indian Diplomatic Mission within a certain time frame for citizenship to be granted. Individuals born before 3 September 2004 were not required to have had their birth registered and received citizenship by descent automatically, unless either parent was an Indian citizen by descent, in which case registration of their birth was mandatory. Prior to 10 December 1992, only children of Indian fathers (not mothers) were eligible for citizenship by descent. Indian citizens by descent who hold another nationality automatically cease to be Indian citizens six months after reaching the age of 18, unless they renounce their foreign nationality.  Certain non-citizens qualify for citizenship by</p>	<p>Where a notice under section 5 is given to the Marriage Officer, he shall cause it to be published-- (a) in his own office, by affixing a copy thereof to a conspicuous place, and (b) in India and in the country or countries in which the parties are ordinarily resident, in the prescribed manner.  Any person may, before the expiration of thirty days from the date of publication of the notice under section 7, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.</p>	<p>pick her up at the airport on her arrival, leaving her stranded in an alien land. Finally, in some cases ex-parte divorce decrees have been passed by foreign courts.  The petition said such women experience technical and legal obstacles concerning jurisdiction of courts, serving of notices or orders, enforcement of orders or even find themselves tangled in "simultaneous retaliatory legal proceedings" in a foreign country.  "A woman abandoned by her NRI husband in India has to face obstacles at every point, starting with the lodging of an FIR. Police are reluctant to take the</p>
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	<p>one at least was a citizen of India; and Matrimonial reliefs to be under Special Marriage Act, 1954.— Subject to the other provisions contained in this section, the provisions of Chapters IV, V, VI and VII of the Special Marriage Act, 1954 (43 of 1954) shall apply in relation to marriages solemnized under this Act and to any other marriage solemnized in a foreign country between parties of whom one at least is a citizen of India</p> <p>The provisions governing citizenship of India are enshrined in the Citizenship Act, 1955<sup>106</sup> which has been amended from time to time, latest being 2019. There are 5 methods of acquiring citizenship of India: By birth By acquisition or incorporation of territory By descent By registration By naturalization The foreign national does not become an Indian citizen on marriage with a citizen under the Act. After marriage, the foreign</p>		<p>registration if they are married to an Indian citizen, are minor children of Indian citizens, or are of Indian origin and living either in the country or outside the area of pre-partition India. Persons whose parents are Indian citizens, who themselves or their parents had previously held Indian citizenship, or have held overseas citizenship for at least five years are also eligible to acquire citizenship by registration. Eligible individuals must be resident in the country for at least 12 months prior to an application for registration, and are subject to additional residence requirements depending on the criterion they qualify under.</p> <p>All other foreigners may become Indian citizens by <u>naturalisation</u> after residing in the country for</p>	<p>If no objection is made within the period specified in section 8 to an intended marriage, then, on the expiry of that period, the marriage may be solemnized.</p> <p>Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Second Schedule, and the declaration shall be countersigned by the Marriage Officer.</p> <p>On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the</p>	<p>crime seriously,” the petition said. The petition said the process of issuance of look-out circulars against errant NRI husbands takes months to clear the bureaucratic maze.</p> <p>The papers have to go through various offices like the Bureau of Immigration and the Foreign Regional Registration Office. At times, it is even difficult to trace the country to which the husband has gone.</p> <p>“India has the world’s largest diaspora, according to figures from the United Nations. It is imperative to frame guidelines to provide professional and speedy justice to women abandoned by their NRI</p>
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<sup>106</sup> Citizenship Act [Foreign National Doesn't Automatically Become An Indian Citizen After Marriage](#)

	<p>national has an option to get registered as an Indian citizen. Even then, the person must fulfil the requirement of residency before they can apply for Indian citizenship.</p> <p>Former Indian citizens and descendants of citizens have been eligible for overseas citizenship<sup>107</sup> since its creation in 2003. This status gives its holders a lifelong entitlement to live and work in the country but they cannot vote in elections, stand for public office, and are subject to restrictions on entry into protected and restricted areas. Overseas citizenship is a status created specifically to work around the constitutional prohibition on holding multiple nationalities; it is not considered a full form of Indian citizenship. All persons who (or whose parents or grandparents) have ever been citizens of Pakistan or Bangladesh are permanently ineligible for overseas citizenship.</p>		<p>at least 11 of the previous 14 years, with an additional 12 months of residence immediately preceding an application, a total of 12 years.</p> <p>Anyone acquiring Indian citizenship through either naturalisation or registration must renounce their previous nationalities. Between 2010 and 2019, about 21,000 people naturalised as Indian citizens.</p> <p>Any person deemed to be an illegal migrant is typically barred from obtaining citizenship through both naturalisation and registration. However, migrants from Afghanistan, Bangladesh, or Pakistan who belong to selected religious communities (Hindus, Sikhs, Buddhists, Jains, Parsis, or Christians) and arrived in India prior to 2015 are not considered illegal migrants.</p>	<p>certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized, and that all formalities respecting the residence of the party concerned previous to the marriage and the signatures of witnesses have been complied with.</p> <p>Procedure under Citizenship Amendment Act, 1955 A foreigner can apply online from the website <a href="http://indiancitizenshiponline.nic.in/ic_form_public.aspx">http://indiancitizenshiponline.nic.in/ic_form_public.aspx</a> in order to start the process of getting Indian citizenship.</p>	<p>husbands,” the petition said.</p>
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<sup>107</sup> Overseas Citizens [Indian nationality law - Wikipedia](#)

				<p>Applicants have to submit the duly signed/ self attested hard copy of the computer generated application form, and supporting documents to his/ her nearest Collector/ DC/DM office personally. Post submission of application form in the Collector/ District Magistrate/ Deputy the application will be forwarded by the concerned Collector/District Magistrate/Deputy Commissioner to the Ministry of Home Affairs (M.H.A.) through the State Government/ Union Territory concerned</p> <p>After acceptance of the application for grant of Indian Citizenship by the</p>	
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				<p>Central Government, the applicant is required to furnish through the State Government inter alia- 12 • Certificate of renunciation of his/ her foreign citizenship issued by the Mission of the concerned country. • Challan in original as proof of deposit of the prescribed fee as mentioned in the acceptance letter. • Three passport size photographs duly attested on the backside by a Gazetted Officer • Three specimen signature of the applicant • Personal particulars of the applicant in form X at the Citizenship Rules, 2009. iv. Thereafter citizenship certificates shall</p>	
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				be sent to the State Government who after completing all the formalities.	
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**ACCESS TO JUSTICE (please include sources to information as much as possible)**

SYSTEM	PROCEDURES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p><i>How are Muslim family law (i.e. marriage and family related) cases administered in your country? (E.g. Do you have a Quazi/Kadhi court system, family courts or civil courts?)</i></p> <p><i>How many courthouses/court rooms around the country that administer Muslim family law cases?</i></p> <p><i>If civil or Kadhi courts - what cases are handled by what courts?</i></p> <p><i>How many Muslim family</i></p>	<p><i>Are the procedures pertaining to family matters (e.g. divorce, maintenance etc) are defined in the family law and/or are there guidelines/policies available for judges/Kadhis?</i></p> <p><i>In general practice do judges/Kadhis follow procedures?</i></p> <p><i>How much judicial discretion do judges/Kadhis have over marriage and family matters?</i></p> <p><i>Are there appeal processes?</i></p>	<p><i>What are some key challenges that Muslim women face in accessing justice on family law matters?</i></p> <p><i>(E.g. lack of accessibility, costly, bad procedures, delayed processes, gender insensitive judges, etc?)</i></p> <p>The Family Court was specifically set up to address family matters in a non-intimidating environment for women. But with time it's quality has lapsed and now it functions like a regular court. Procedures of the courts are complicated and cumbersome. The processes are long</p>	<p><i>Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases?</i></p> <p><i>(E.g. prioritising certain types of cases, timely delivery of decisions, clear procedure, etc)</i></p> <p>ALTERNATIVE DISPUTE RESOLUTION [ADR]<sup>117</sup> To remedy the delay, formality, tediousness of the formal legal processes, the state itself introduced the alternative systems which were termed as ADRF (Alternative Dispute Resolution Forums). This</p>

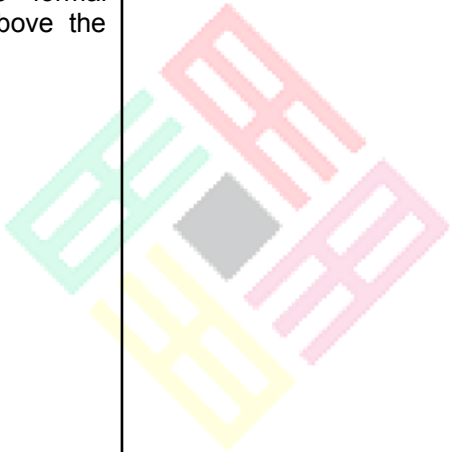
<sup>117</sup> Alternative Dispute Resolution [Women's Shariah Court-Muslim Women's Quest for Justice](#)

<p><i>law-related judges? Are there women working within the court system as judges/marriage registrars e.t.c?</i></p> <p><i>Do lawyers represent clients?</i></p> <p>The Indian judiciary<sup>112</sup> is divided into several levels in order to decentralize and address matters at the grassroots levels.</p> <p><b>Supreme Court, High Courts, District Courts.</b> Every district generally has two kinds of courts: <b>Civil Courts</b> and <b>Criminal Courts</b>.</p> <p><b>Lok Adalats/Village Courts</b> are subordinate courts at the village level which provide a system for alternate dispute resolution in villages.</p> <p><b>Tribunals are set up for</b> administration of specific matters such as tax cases, land cases, consumer cases etc.</p> <p>The <b>Code of Civil Procedure (CPC) 1908</b> governs the procedures to be followed by civil</p>	<p>Procedures pertaining to family matters are well defined in the family law. In addition there are guidelines and policies for the lawyers and judges. Rules are framed once a law is passed by the Parliament. These rules are to be followed by all those who access that particular law. But since qazis have no judicial position or authority in the formal legal system, they do not necessarily follow the rules laid down. The lawyers and judges who function as part of the judicial system are expected to follow the law, its rules as well as the case law precedents laid down by the other courts, especially the Supreme Court of India.</p> <p>The Qazis who are part of the various religious groups follow the uncodified shariah law. The Qazis are not part of a centralised training institute or association. The Phulwari shareef is considered to be the main training institute from which qazis educate themselves on all matters of shariah. But the Phulwari shareef also has no control over what their pass-outs do once they are out of the institute. Each qazi then functions on its own. Many qazis also double up as</p>	<p>winding with the women having to run from one office to the other. For any person it is a trying process. The case goes on for 2-3 years at best. Date after date and nothing moves forward.</p> <p>Counselling centre attached to the Family Court makes certain decisions with the participation of the parties but when it comes to the implementation of the decision, even the counsellors are helpless. If the woman does not have adequate documents necessary for her case, then the court is not the place for her. For poor women who at times are homeless or live in a precarious condition, having documents even to prove her identity is a problem for her.</p> <p>Women are expected to have supreme confidence and full support if she is thinking of accessing formal courts. without it she just might not be able to go through the support.</p> <p>The courts are perceived to be for those who have money to hire lawyers and who can spend on long drawn litigation processes. Women from poor backgrounds just do not stand a chance.</p> <p>Muslim women additionally have to face the challenge of not having a codified law to help her out. Most lawyers then depend on precedents or books written by antiquated jurists.</p>	<p>alternative to the formal legal structure is mandated by Article 39A of the Constitution where the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.</p> <p>some of the alternative methods are: The ADR procedures are divided into adjudicatory and non-adjudicatory processes.</p> <p>The non-adjudicatory mechanisms are negotiation, mediation and conciliation in which the dispute is resolved through agreement between the parties. In adjudicatory procedures like arbitration it is the binding ruling which decides the case.</p> <p>Salient Features of ADR Institutions in India Legal Services Authority Act of 1987 The Act was passed to facilitate legal services authorities to provide free legal aid and support to the weaker sections of the society. These services were set up at the national, state and district level. The Act also mandated the setting up of Lok Adalats to provide free legal aid to the poor. District Legal Aid and Advice Board</p>
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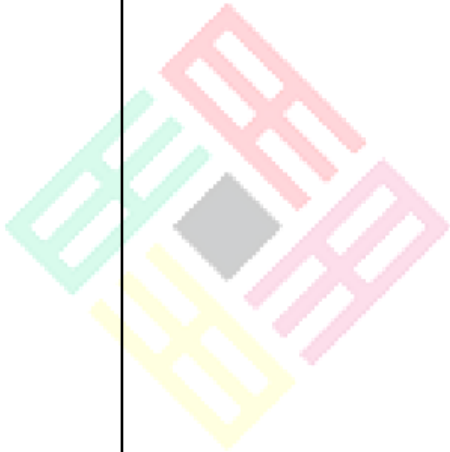
<sup>112</sup> *Indian Judiciary* [Introduction to the Indian Judicial System | Animal Legal & Historical Center](#).

<p>courts in administering civil cases in India.</p> <p>The Civil Court hierarchy in districts is as follows: District Court, Sub-judge Court, Additional Sub-judge Court, Munsif Court</p> <p>The power of the various criminal courts is mentioned under the <b>Code of Criminal Procedure (CrPC)</b>. Any offence mentioned under the Indian Penal Code may be tried by High Courts, Courts of Session or any other Court.</p> <p>Articles 141 and 144 of the Constitution uphold the authority and jurisdiction given to the Supreme Court to make decisions and uphold the law of the land.</p> <p>The Supreme Court has the power to hold any authority in contempt if they disregard or disobey the order of the court.</p> <p>The 'ulama, the 'traditional' class of learned Islamic scholars<sup>113</sup> and legal specialists function in india are mediators. Despite being formally divested of their roles as</p>	<p>lawyers who then have a better understanding of legal matters outside of what they have learnt in their religious training institutes. Some states in India have a more organised and centralised qaziat system. but most of them are not. The Qazi's Act of 1880 exists but the best of lawyers have no idea about it's applicability and efficacy in this day and age.</p> <p>The qazis function independently or are part of a darul qaza run by religious organisations. They follow their own procedures. If a particular person is not happy with the decision of a particular qazi, he or she can approach another qazi. The qazis can also belong to different sects or sub-sects in which case also their 'judgments' may not be applicable to a client who does not belong to that sect or sub-sect. the functioning of these qazi courts are most often not women-friendly. They look at matters at such times when it is difficult for a woman to access their services. Earlier in case of triple divorce, they would not even call the woman whose husband has given instant divorce. qazis in fact facilitated unilateral divorce without facilitating any</p>	<p>Muslim women who access shariat courts have to face a panel comprising of men. The courts function mostly in the evening when women are busy with their household chores. When men appear before these courts with their cases the court does not call the women to hear her side of the story. Even when she is called, the decisions taken are mostly in favour of men.</p> 	<p>[DLAAB] were set up to help the Lok Adalats.</p> <p>Nyaya Panchayats[NP] Based on the principle of separation of executive and judiciary mandated by the Constitution the Nyaya Panchayats [NP] were set up as separate from Gram Panchayats (GP). The idea of the NP is rooted in the 'fervour of democratic decentralization" and thus facilitating the millions to access justice. Parivarik Mahila Lok Adalat [PMLA]</p> <p>An innovative concept of PMLA was evolved by the National Commission for Women for the speedy disposal of cases. It was evolved based on the Legal Service Authority Act of 1987. The PMLA is arranged in collaboration with local NGOs in association with social activists, advocates and members of the District Legal Aid and Advisory Board [DLAAB]. The objective behind the formulation of the PMLA is to support and facilitate mutual agreeable settlement on familial matters so that women have access to justice through a mode which is quick and less intimidating.</p> <p>Formal courts are known for their long winding formal and tedious processes. In response to it, Muslim women's organisations have set up Women's Shariat</p>
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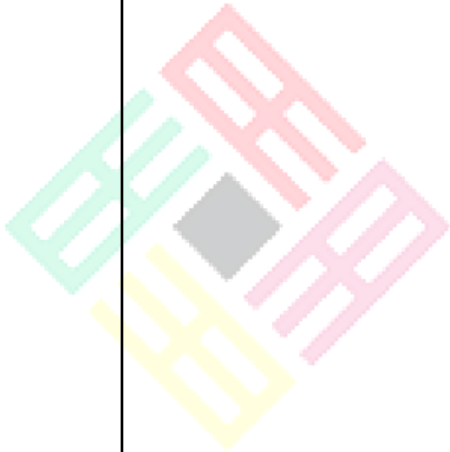
<sup>113</sup>Islamic Scholars [The enduring jurist: qazis, courts and living shari'a in modern India](#)

<p>jurists and judges, these religious professionals have continued to claim ongoing command over legal questions affecting Indian Muslims. Their efforts to assert their continued legal authority include expanding and formalising the release of fatwas (edicts), setting up a network of non-government shari'a courts across India, and imposing pressure upon the Indian government at various points on particular legal issues, whether divorce, adoption or alimony. This argument that Muslim religious leaders have preserved an enduring status as legal consultants and practitioners has profound implications for our understanding of legal practice and judicial authority within Islam, and also for our knowledge of the historical relationship between law and religion in the Indian subcontinent.</p> <p>All India Muslim Personal Law Board (AIMPLB) in a reply to a PIL Supreme Court seeking the abolition of so-called Sharia and qazi courts<sup>114</sup> in India said that</p>	<p>participation of the woman in question. The decisions taken by the qazis are admissible in the court of law as valid documents. And their decisions can also be challenged by the parties in the formal courts. Decisions taken by the formal courts stand over and above the decision given by the qazi.</p>		<p>Court [Aurton ki Shariat Adalat]. BMMA runs 4 such centres in India where Muslim women come with their family matters. These adalats work in conjunction with formal court lawyers, police and other state and non-state stakeholders to help women get access to justice. The processes in the women-led adalats are easy, informal, cheap and put women at the centre of the process. They act as family legal aid centres where even men file their cases. Though these centres have informal influence, the most poor families access these as decisions are taken quickly and matters are settled through mediation and reconciliation. Since 2013 these centres have provided much needed legal succour to thousands of Muslim families, especially Muslim women.</p>
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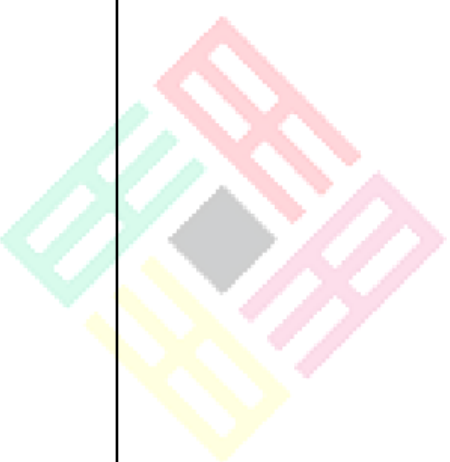
<sup>114</sup> Qazi Cour <https://www.outlookindia.com/magazine/story/qazi-courts-or-quasi-justice/229490>

<p>such courts fall under the Alternate Dispute Resolution (ADR) mechanism. Dr Tahir Mehmood, an expert on Islamic law, says they are not judicial or semi-judicial institutions. They are part of the ADR.</p> <p>Imarat-e-Sharia at Phulwari Sharif in Bihar, the country's oldest and largest Sharia court claims to provide speedy and cheap justice. In some cases, if the parties are not satisfied with our judgement and take the dispute to civil courts, our verdicts are referred to and followed." The Imarat-e-Sharia is an old institution that still trains most of the qazis who are then sent to other parts of India.</p> <p>The Central Government enacted the Family Courts Act in 1984<sup>115</sup> with an intention to encourage prompt settlement of disputes dealing with family affairs and matrimonial issues. As per the Family Courts Act, 1984, it is an Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage</p>			
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<sup>115</sup> Family Courts [Family Court/District Court in India | Official Website of District Court of India](#).

<p>and family affairs and for matters connected therewith. Family Courts have been set up across the country.</p> <p>Both formal courts and community courts adjudicate matrimonial disputes<sup>116</sup> in India. The changes the judiciary introduced are relevant to adjudication in the formal courts. Change was slower in Muslim community courts, which included prayer groups (<i>jamaats</i>), popularly recognized judges (<i>qazis</i>), and courts established by Muslim religious institutions (<i>dar-ul quzats</i>).</p> <p>The parties are free to challenge the decisions of these informal religious courts in the formal courts. Decisions taken by the formal court are binding on the parties as well as the religious judicial bodies.</p> <p>Non-Muslim lawyers and judges can adjudicate on Muslim family matters. The judgements are given based on the written law which is codified. In the case of Muslim community, the lawyers refer to the codified laws as well as books</p>			
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<sup>116</sup> Matrimonial Disputes [Muslim Law and Judicial Reform | Encyclopedia.com](#)

<p>known for their expertise on Muslim law. Lawyers and judges adjudicating on Muslim family law matters mostly refer to Principles of Mohammedan Law by D. F Mulla.</p> <p>Women lawyers and judges irrespective of their religious background are free to fight cases of the Muslim community pertaining to civil as well as criminal matters. It is not the case that only Muslim lawyers or judges will hear matters or fight matters related to the Muslim community. Muslim law is taught in all law schools and hence all lawyers are expected to know the various personal laws, including the Muslim family law. And it is also vice versa, Muslim lawyers and judges are free to adjudicate on non-Muslim law matters, both civil and criminal. To that extent, the secular principles can be seen in the Indian judiciary.</p>			
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