

Notes on Muslim law
Sources of Muslim Law

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Secondary sources of law

Now, as aforementioned, the legislatures and judiciary ought to be the primary source of any law. Nevertheless, since Muslim personal law is a law based on religious ethics and principles, the legislature takes a back stand. The following are the secondary sources that have led to the development of Muslim personal law:

Custom

Custom is never recognized as a source of Muslim law although it given importance some time as a supplementary source. The important thing of Custom is that it should be territorial. In India Muslim personal law (shariyat) application act 1937 section 2 has reject that custom which displaced the rule of Muslim law.

The custom which is recognized as law should be enforce in the country although it is not necessary that its origin come at the time of Prophete Mohammad. The Muslim personal law application act 1937 is now applicable on the matter like succession, women estate, marriage, divorce, mehar, maintenance, guardianship, gift, Waqf, and Trust in these matter custom can not be apply.

In the case of **Mohammad Aslam khan V/s Khallilul rahman** It was held that scope and purpose section 2 of Muslim personal law 1937 it to reject the custom which displace the rule of Muslim law. The custom can not be protect by given the reorganization by the court.

Legislations

Legislations mean statutes enacted by the Parliament or the State legislature for the regulation of human actions in a particular aspect.

There have been several legislations enacted by the Parliament to lay the foundation of Muslim law in India. The first law that was passed was the Shariat Act, 1937. In Islam, the entire body of law that governs their day to day personal laws, marriage, divorce, etc. is collectively called the Sharia.

Thus, based on Sharia and with the object to make it a complete body of Muslim laws, the Act was titled as the Shariat Act. It contained only six provisions dealing mainly with:

1. Law relating to the succession of a Muslim person dying intestate. i.e. without a will or a testament.
2. Law relating to vesting of properties and gifts on females of the Sect.
3. Law relating to marriage, divorce, grounds of divorce, Mehar, guardianship and maintenance.
4. Law relating to wakfs i.e. any trust created for the Muslim religion.

the issue of divorce has been a major drawback in the Muslim personal law because the Holy Quran gives the right to divorce a woman to her husband but is silent on divorce by a woman. This has led to struggle by a woman in an unhappy marriage and affected by domestic violence and cruelty.

In 1939, an attempt was made to allow the woman to divorce their husbands through the Dissolution of Muslim Marriage Act, 1939. The woman could divorce their husband on three main grounds, viz.

- a. refusal from maintaining the wife, financially and emotionally,
- b. ill-treatment in the matrimonial house and
- c. desertion by the husband.

Another issue that came after the divorce was the maintenance of the divorced wife. Since women in India are still fighting for their right to work and equal opportunity in employment, women needed certain financial security for their livelihood and their children's well-being.

Hence, the Muslim Women (Protection of Rights on Divorce) Act, 1986 was enacted that gave them the right to maintenance from their husband.

The most recent development in legislations has been the **Triple Talaq Bill (The Muslim Women (Protection of Rights on Marriage) Bill, 2019)** that prohibited any form of an oral or written declaration of divorce to be illegal unless it is executed with the due procedure of law.

Judicial Pronouncements

It is said that the law protects only the vigilant. This is very much right in the case of Muslims in India. the development of Muslim law by the judiciary came to its full development in the 1980s because till then, the Muslim men and women have been sleeping on their rights or were ignorant about their rights.

The first landmark judgment that deals with Muslim personal law was the 1986 judgment in **Shah Bano Begum v. Md. Ahmed**. In this case, the apex court held that Muslim women have a right to maintenance under Section 125 of the Cr.P.C even if the Quran or their personal laws have provided for an alternate remedy. The same ratio was upheld by the apex court in **Daniel Latifi v. Union of India**.

Recently, in the leading case of **Shayara Bano v. Union of India**, the apex court held the system of instantaneous divorce by the utterance of the word '*talaq*' thrice orally unconstitutional because the right to instantaneous divorce is only with the men and not women. Further, the system is arbitrary and hence, violative of Article 14. Therefore, the judiciary has assisted in the development of Muslim personal law.