

# Muslim feminists in India, Sri Lanka push for divorce rights

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## **Women have seen some progress in both countries, but discriminatory practices remain**

Laws on divorce vary in different countries, intimately bound with women's rights and access to justice. In many countries where Muslim communities are the minority, there is gaping inequality between men and women in their access to divorce and release from marriage.

"These discriminatory divorce laws don't come from the scripture, because we have three chapters [in the Koran] where *talaq* procedures are elaborately laid down," said Noorjehan Safia, founding member of a Muslim women's organization in India, Bharatiya Muslim Mahila Andolan (BMMA).

The Arabic term *talaq* literally means "to release." Under most Islamic laws, however, *talaq* is interpreted as repudiation of marriage by the husband.

Of the three chapters in the Koran Safia refers to, one is called *Surah at-Talaq* - the divorce. This chapter is important because it lays down elaborate instructions for divorce proceedings and makes no mention of *talaq-e-biddat* (instant divorce) in one sitting.

At Musawah, a global movement advocating for equality and justice in the Muslim family, we recently published a [policy brief](#) on divorce rights highlighting guidelines from the Koran that encourage reform when it comes to fundamental Islamic principles of justice, fairness, equity, kindness and graciousness.

Our [research](#) also demonstrates that family laws for Muslim communities around the world allow men unilaterally to divorce their wives without obtaining mutual consent and without repercussions. So why do laws sanction this invidious practice in so many countries today?

## **Patriarchal interpretations are rife**

India, home to some 200 million Muslims, is one the countries devoid of a comprehensive codified Muslim family law. But there are sharia courts that operate as voluntary arbitration centers for Muslims seeking advice from a *qazi* (judge) presiding over sharia courts, promulgated by an influential non-profit for the nation's Muslims, the All India Muslim Personal Law Board (AIMPLB).

Divorce issues come under the purview of the Muslim Personal Law (Shariat) Application Act, which has remained unchanged since it was first enacted in 1937, though the contents defined are unclear. This allowed religious authorities to interpret disputes dealing with personal law, which is to allow the husband to refuse to grant divorce if he wants to, while the woman has no say in when the husband wants to divorce her.

Such laws stem from interpretations of the Koran and prophetic traditions influenced by customs, traditions and colonial influences that are passed as sharia-based laws. In other words, Islamic laws

are not inherently sacred, but fraught with patriarchal interpretations and in turn, according to Safia, “men have used sharia injunctions to oppress women for decades in the subcontinent.”

A prolific body of scholarly research has found that abnegating mutual consent in a matrimonial relationship is anything but Islamic. According to the late Egyptian jurist Mohammad al-Ghazali, “If the wife refuses anything but divorce and gives back the property handed to her, then she must be released and her feelings must be respected, it is not up to us to ask the hidden reasons for this wish of hers, to accept or reject it.”

While men are free to refuse to grant divorce, it is mandatory for women to obtain consent to initiate the divorce process unless she included [a clause in her marriage contract](#).

In a resounding victory in August 2017, the Supreme Court of India struck down and declared the practice of triple *talaq* - whereby a Muslim man could legally divorce his wife simply by uttering the word *talaq* three times - unconstitutional.

That drew pushback from conservative groups accusing the ruling Bharatiya Janata Party (BJP) helmed by Prime Minister Narendra Modi of incriminating Muslim men. To that, Safia responded: “All other aspects of the Hindu family law are criminalized, so why should divorce that destroys the life of a Muslim woman in an instant not be criminalized?”

In a major win for the Muslim women’s movement in 2019, the Muslim Women (Protection of Rights on Marriage) Act was passed criminalizing triple *talaq*. The law provides for imprisonment of three years for the man who commits the crime and makes triple *talaq* a non-bailable offense.

### **The Muslim Marriage and Divorce Act**

Traversing a similar path to reform laws on divorce is a Muslim women’s advocacy group in neighboring Sri Lanka called the Muslim Personal Law Reform Action Group (MPLRAG).

Its sole mission is to push for comprehensive reform of Sri Lanka’s 1951 Muslim Marriage and Divorce Act (MMDA), which was drawn up by a group of Muslim men grounded in misogynistic practices prevalent at the time such as child marriage, excluding brides from signing their marriage contracts, polygamy and divorce limitations placed on women.

The MMDA lays out [different types, conditions and procedures](#) for divorce for men and women, and the provision to proclaim *talaq* is only reserved for men. Not to mention men don’t need a just cause to invoke *talaq* arbitrarily that they often use this male privilege to blackmail their wives with threats of divorce.

“When women would file for a divorce they would be subjected to appeal processes, which meant that they had really long hearings that never ended,” said Ermiza Tegal, a human-rights lawyer and co-founder of MPLRAG. “Whereas men would say *talaq* and be divorced in three months and move on to their next family.”

The divorce process in Sri Lanka is not like the now-criminalized practice of instantaneous triple *talaq* in India, but is meant to take place over a three-month period followed by a Muslim *qazi* initiating a 30-day reconciliation process. If reconciliation between the husband and wife fails, the divorce is granted.

The injustice sets in when women have no right to file an appeal. Men, on the other hand, can dispute the divorce process initiated by women known as *fasakh* to the Court of Appeal and even to the Supreme Court.

“Whether male or female, we want equality, but it is a big ask. It used to be difficult to conceive that there would be equality in divorce. But the movement has taken us today to a place where the equalizing of divorce is, in fact, possible,” Tegal said.

From 2016 onward, MPLRAG and activists rallying to reform the MMDA made headway in contributing to the constitutional reform conversation, and two of its members published a damning [report](#) exposing realities of child marriage, domestic and sexual abuse, and unequal divorce.

“Women had undergone so much that they were willing to take the risk to change things and from there added new dimensions to take up space to say that the law does not reflect our religion we are taught,” Tegal said.

In December 2020, the new minister of justice, Ali Sabry, appointed a 10-member Advisory Committee on Muslim Law Reforms, which Tegal is also a part of. Both legislative and social conversations led them to submit a report on reform of the MMDA to the Ministry of justice in June this year. To public knowledge, no action has been taken yet by the ministry.

### **Battle for reform continues**

While the un-Islamic practice of instant divorce has been outlawed in India, it is not translating well on the ground because of, among other things, [corruption in the police force](#), and neither does the Act explain how divorce should happen.

Rather than a divorce in one sitting, women will now be served with three notices over a three-month period from their husbands - with no attempt at arbitration, joint meetings or spaces for women to talk about their sides of the story. “It defeats the purpose of reform, and that’s not what the Koranic injunctions are,” Safia said.

Laws in both India and Sri Lanka fall short of actually giving equal rights to divorce for women. Arbitration is either cumbersome or nonexistent. Judges are almost always men. And questions about custody of children and rights to matrimonial property are by and large also nonexistent.

However, there’s a growing chorus of Muslim women advocating for reform in the context of constitutional rights and Islamic principles in tandem with the real experiences of victims of discriminatory laws. MPLRAG, for one, recently ran a significant [#LetHerSign](#) campaign, advocating for the right of Muslim women to possess full autonomy to enter marriage with agency and free will.

“We want all of the protection that the constitution provides which are fair, which are just, which are about freedoms and none of that is denied by our religion and our understanding of it. And none of that should be denied simply because we’re from the [Muslim] community,” Tegal said.

Drawing inspiration from India and Muslim women at home, Tegal said it is “chillingly strengthening” to see how each individual in this movement take up the issue, feel the sense that it is theirs and expressly show solidarity with those who have worked on the issue.

Women constitute about half of the population in most Muslim countries. The empowerment of Muslim women is critical not only to better their social and economic status and obtain social justice within society, but also to eliminate chronic economic inequalities in Muslim communities.

At this moment in time, the priority is to usher in and maintain substantive efforts in parliaments and the courts in favor of women’s rights so they can take control of their life choices and make informed decisions that lead to favorable outcomes for them, their families and society.

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**P.S.**

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