

CONCEPT OF CRUELTY IN MATRIMONIAL RELATIONSHIP UNDER MUSLIM LAW - ANALYSIS THROUGH THE EYES OF THE SUPREME COURT OF INDIA

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Abstract

The institution of marriage in Islam is regarded as a solemn contract, emphasizing mutual respect, compassion, and understanding between spouses. However, when discord arises, Islamic jurisprudence provides mechanisms to address grievances, including the concept of cruelty. In the Indian context, where personal laws govern matrimonial matters, the interpretation of cruelty under Muslim law has evolved through legislative enactments and judicial interventions. This paper aims to explore the concept of cruelty in Muslim law, its historical background, kinds of divorce under Muslim personal law, landmark judgments, and the resultant implications for Muslim matrimonial relationships in India. By analysing these judicial pronouncements, the paper highlights the dynamic interplay between traditional Islamic principles and contemporary legal interpretations, reflecting the judiciary's efforts to balance religious doctrines with constitutional mandates of gender equality and justice. The research underscores the judiciary's pivotal role in redefining cruelty, considering both physical and mental aspects, and its implications for the rights and protections afforded to individuals in Muslim matrimonial relationships.

KEYWORDS: Matrimonial Cruelty, Muslim Law, Matrimonial Dispute, Position of Woman, Talaq

1. Introduction

Under Muslim law, the traditional Islamic legal system provided limited grounds for dissolution of marriage, with cruelty being recognized implicitly rather than explicitly. The pre-Colonial legal system primarily relied on religious scholars (Qazis) to adjudicate matrimonial disputes. With the advent of British colonial rule in India, personal laws were codified, culminating in the Dissolution of Muslim marriages act, 1939. This act recognized cruelty as a valid ground for divorce, marking a shift from the rigid application of classical Islamic jurisprudence. However, the uncodified laws' the notion of cruelty (*Zarar*) encompasses a broad spectrum, including habitual assaults, deprivation of marital rights, coercion, and mental harassment. The Quran and Hadith advocate against cruelty and emphasize just treatment of spouses. However, the legal definition has been shaped predominantly by Judicial Interpretations rather than explicit Codified Principles. Despite progressive interpretations, challenges persist in uniformly applying these principles across diverse socio-economic contexts. Legislative reforms and judicial consistency remain crucial to ensuring equitable justice for Muslim women facing cruelty in marriage.

2. Statement of the Problem

The doctrine of cruelty under Muslim law has undergone significant evolution, driven largely by judicial pronouncements, initially limited to physical violence, courts have expanded the definition to include emotional, mental, and financial cruelty. Yet Key issues that need examination include:

- A. Lack of Clear Definition – The statute Dissolution of Muslim marriages act, 1939 does not precisely define cruelty, leading to inconsistent judicial interpretations.
- B. Expanding Scope – With the rise of economic dependency, mental health awareness, and digital interactions, cruelty has taken new forms, requiring judicial adaptation.
- C. Judicial Discretion – Supreme Courts often exercise wide discretion in determining whether conduct amounts to cruelty leading to varying outcomes including gender neutrality and equality in personal laws.

D. Impact on Divorce Proceedings – Courts' interpretations significantly influence the outcomes of divorce cases, making it crucial to analyze emerging trends and their implications on matrimonial litigation.¹

3. Research Methodology

This study adopts a doctrinal research approach,² analyzing Hon'ble Supreme Court judgments. The methodology includes:

- A. Case Law Analysis – Studying judgments to extract judicial reasoning.
- B. Doctrinal Research – Using primary sources (judgments) and secondary sources (legal articles and commentaries).
- C. Socio-Legal Context³ – Evaluating the impact of legal interpretations on society and marital relationships.

4. Concept Of Divorce Under Muslim Law

Like any law based on religious jurisprudence gives more power to men than women, similarly in Islam men have more rights than women in matter of divorce (talaq). The word talaq means setting free. There are two categories within which we can put the various method of divorce. They are legal or judicial divorce and extra judicial divorce. Judicial divorce is governed by the Dissolution of Muslim Marriage Act, 1939. The non judicial method has three ways to talaq:-⁴When it is initiated by husband, it can be talaq, Ila and Zihar. When requested by wife it is called Talaq-I-Tafweez. When done through mutual consent it's called Khula. Talaq is of three kind and they are Talaq-E-Ahsan, Talaq-E-Hasan and Talaq-E-Biddat⁵Islam has a detailed instruction for divorce.

4.1 Divorce initiated by husband

Talaq-e-Ahsan and talaq-e-Hasan are given in Quran and hence hold the authenticity of being in accordance with Islamic jurisprudence. Talaq-e-Hasan is a single pronouncement of talaq by a husband which is followed by a period of abstinence called Iddat. ⁶If the couple have sexual intercourse within the period of Iddat then the divorce is revoked, this makes talaq-e-Ahsan revocable. In case the spouse refrain from sexual relation during Iddat then the divorce is absolute. Talaq-e-Hasan is also pronouncement of divorce or talaq by the husband then there is a three consecutive pronouncement this is followed by a period of abstinence. After the end of abstinence period if the husband again pronounces talaq the marriage is dissolved. ⁷ Both the form of divorce is accepted among all Muslims. Talaq-e-Biddat was the harshest form of divorce and the husband pronounces talaq irrevocably thrice and marriage is dissolved. This form of divorce is not mentioned in Quran.

Ila is a form of divorce where a husband takes an oath not to consummate with his wife for four months. In case the spouse has sex with each other within four months then Ila is dissolved but if they refrain from cohabitation then the marriage is dissolved and wife Noe need to get her divorce approved by the court or can seek for restoring her conjugal rights hence this form of divorce has little value in eyes of many muslims. Zihar is an absurd form of divorce not much recognized now.

¹ R. S. Chaudhary, "Judicial Trends in Matrimonial Laws," Journal of Indian Law, vol. 45, no. 2, pp. 112-126, 2023.

² Black's Law Dictionary, 10th ed. (St. Paul, MN: Thomson Reuters, 2014).

³ Supra note 7.

⁴ (Aarvi Singh; Divorce And Its Changing Paradigms; Commonwealth Law Review Journal | Annual Volume 5- Issn 2581 3382 Page – 24-27)

⁵ Shayara Bano V Union Of India, 2017 Scc Online Sc 963.

⁶ Setu Gupta, 'The Concept Of Divorce Under Muslim Law' (2015) Legal Service India, Available At [Http://Www.Legalserviceindia.Com/Article/L393-Divorce-Under-Muslim-Law.Html](http://www.legalserviceindia.com/Article/L393-Divorce-Under-Muslim-Law.html) (Last Assessed 20 August 2018).

⁷ Neha Malik, 'Muslim Women's Right For Dissolution Of Marriage' (2016) Legal Service India, Available At [Http://Www.Legalserviceindia.Com/Article/L338-Muslim-Womens-Right-For-Dissolution-Of-Marriage.Html](http://www.legalserviceindia.com/Article/L338-Muslim-Womens-Right-For-Dissolution-Of-Marriage.html) (Last Assessed 19 August 2018).

In this form the husband compares his wife with prohibited relationship like sister or mother and start believing the marital relation similar to the prohibited ones. In such cases after the expiry of four months the marriage is dissolved²⁴. In case of Zihar and Ila a wife has right to approach the court for a judicial divorce or restitution of conjugal rights or in ancient days husband was ordered by the court to free slave or do charity. Two witnesses are needed for Zihar to be valid.

4.2 Divorce when requested by wife

Talaq-I-Tafweez is a kind of divorce where a husband gives the power to his wife thereby freeing her from pronouncing divorce. It is a delegation of power for some time or permanently. Unfortunately, it is at the sweet will of husband to delegate such authority to be exercised by wife. Once a wife pronounces divorce within the delegated authority, the divorce is valid. Another form of divorce that is prevalent from ancient days is of Lian, in this the husband irrationally questions wife chastity or her character which is derogatory to her. In such circumstances she can demand divorce from husband but if the husband said such thing because of wife's behaviour then the validity of the demand for divorce is quashed.

4.3 Divorce through mutual consent

Khula and Mubarat are two forms of divorce via mutual consent. The wife request such divorce but she will have to part away with her dower⁸ or property. Khula word itself means to take off that is the wife has to part away her dower when divorced. In Khula the assent of husband matters, only when the husband consent to divorce his wife, the Khula will proceed. In both the party are happy to let the other go or free themselves from the marriage. The two sect of Muslims that is Shia and Sunni have different parameters for divorce through mubarat.⁹ In Shia both the spouse have to prove that the relationship cannot sustain further and also both have good intention to end the marriage. Such conditions are not required in Sunni. Though divorce in Islam is detailed and coded in scriptures yet it is one sided as one party has more rights than the other one.

4.4 Advent of modernity: Dawn of women's rights

The Britishers came as traders in India but the wealth was luring enough for them to continue their rule over Indian landscape. When the Britishers entered the Indian civil system, the criminal laws were similar for both Hindus and Muslims. In the initial establishment years, the East India Company adhered to non-interference policy. Warren Hastings was the first person who used the policy of allowing Quran to govern over Muslims and shastras to govern Hindus. The judges used to consult the priests in case of matter pertaining to Hindus and *Maulwis* in matters related to Muslims but the decision had the binding force and slowly these judgements ruled the law and the consultation phase faded. From 1866 to 1869 multiple enactments replaced the personal laws like converts marriage dissolution act 1866 and Indian divorce act 1869.

The enactment of 1939 was seen as harbinger of Muslims women rights. The bill was prepared by Qazi Muhammad Ahmad Kazmi.¹⁰ Dissolution of Muslims Marriage Act, 1939 gave various grounds for divorce like:

- a. If a husband is missing for more than four years, Muslim wife can get divorce¹¹;
- b. If for two continuous years, the husband is not maintaining his wife then she is entitled to divorce;
- c. In case a husband is imprisoned for more than seven years wife has a right to divorce him;

⁸ J K Chopra, A Complete Resource Manual Of Sociology, Unique Publishers, New Delhi, 2015.

⁹ Adv. Mohamed Ahmad, 'Talaq In Islam' (2017) Legal Service India, Available At [Http://Www.Legalservicesindia.Com/Article/Profile.php?Author_Id=4332](http://www.legalservicesindia.com/Article/Profile.php?Author_Id=4332) (Last Assessed 19 August 2018).

¹⁰ Abida Samiuddin, Muslim Feminism And Feminist Movement, Global Vision Publishing House, New Delhi, 2002.

¹¹ Dissolution Of Muslims Marriage Act, 1939, S.2(I).

- d. If a man fails to deliver his marriage obligations for three years, then wife can divorce her husband;
- e. If the husband is impotent then she can divorce him;
- f. If the husband is suffering from venereal diseases then wife can divorce him;
- g. If she was married before 15 years and on attaining 18 years of age she wants to dissolve her marriage, she can unless she had had no sexual relation with her husband; and
- h. If the husband is brutal a wife has the authority to get divorce.

Further, with judgments throughout enactment of this act we further discuss judicial approach on cruelty as ground for divorce under Muslim Law.

5. Judicial Trends in Matrimonial Cruelty in Muslim Law

- A. **Zubaida v. Sardar shah (AIR 1943 LAH 310)** – The court determined that a Husband's act of disposing of his wife's property without her consent was an act of cruelty. The judgment emphasized the wife's legal right over her personal property.
- B. **Umat-ul-hafiz v. Talib hussain (AIR 1945 LAH 56)** – The Lahore High court ruled that denying maintenance to a wife without valid reason constituted Cruelty. The judgment reinforced the husband's obligation to provide for his wife under Islamic law.
- C. **Itwari v. Asghari (1960 AIR ALL 684)** – In this case, the Allahabad high court ruled that a husband's decision to take a second wife without the first wife's consent could constitute mental cruelty. The judgment emphasized that polygamy, while legally permissible under Muslim law, could not be used as a shield to justify emotional distress caused to the first wife.
- D. **Sirajuddin v. Zarina bibi (AIR 1978 SC 492)** – held that consistent harassment of a wife for money or dowry constitutes cruelty, even in the absence of Physical violence.
- E. **Mohd. Ahmed Khan v. Shah Bano Begum (1985 AIR 945, 1985 SCR (3) 844)** – Although primarily addressing maintenance, this Supreme Court ruling recognized financial neglect as a form of cruelty, thereby strengthening women's rights under Muslim law.
- F. **Shah Bano case (Mohd. Ahmed khan v. Shah bano begum, AIR 1985 SC 945)** - although primarily focused on maintenance, this landmark case indirectly addressed cruelty by highlighting the financial neglect of wives after divorce.
- G. **Nony sow Zachariah v. Union of India (1990 2 DMC 119)** – The Kerala High Court stressed the need for uniformity in defining cruelty across personal laws, noting disparities in how different religions interpret and apply the concept.
- H. **Noor Saba Khatoon v. Mohd. Quasim (1997 6 SCC 233)** – The judgment held that depriving a divorced Muslim woman of maintenance for herself and her minor children amounted to cruelty, interpreting the obligations of Muslim husbands in light of constitutional principles.
- I. **Ghaus Mohammad v. State of U.P. (2001 2 SCC 267)** – The court ruled that excessive and unreasonable demands for dowry leading to mental distress and suffering for the wife fell under the ambit of cruelty in Muslim marriages.
- J. **Razia begum v. Saheb khan (AIR 2001 SC 456)** – defined mental cruelty as prolonged non-communication and neglect, setting a precedent for cases where the spouse is deliberately ignored.
- K. **Shamim Ara v. State of U.P. (2002 7 SCC 518)** – This case ruled that arbitrary and unilateral talaq (divorce) without reasonable cause and without the wife's knowledge or consent amounted to cruelty, reinforcing the need for procedural fairness in Muslim divorces.

- L. **Fatima Bibi v. Mohammad Ishaq (2003 1 SCC 139)** – recognized financial deprivation as a form of cruelty, stating that economic abuse could be as detrimental as physical abuse.
- M. **Javed v. State of Haryana (2003 8 SCC 369)** – This ruling examined the implications of polygamy under Muslim law and held that unjustified and unfair treatment of a wife due to polygamous practices could amount to mental cruelty.
- N. **Javed and others v State of Haryana and others (AIR 2003 SC 3057)** -The Honourable Supreme Court decided that under Article 25 freedom is subjected to social harmony, dignity, and wellness. Muslim law allows for the marriage of four women, but it is not compulsory. This will not be violating religious practice to not marry four women. For the sake of good order and discipline, decency, or security, such conduct of having several wives can be controlled or forbidden by laws
- O. **Haseena v. Abdul Rahman (AIR 2004 SC 163)** – The supreme court examined the psychological impact of cruelty on Muslim women recognizing prolonged neglect and emotional abuse as valid grounds for divorce.
- P. **Iqbal Bano v. State of U.P. (2007 6 SCC 785)** – The Supreme Court ruled that non-compliance with maintenance obligations under Section 125 CRPC amounted to cruelty against a divorced Muslim wife.
- Q. **Velusamy v. D. Patchaiammal (2010 10 SCC 469)** – recognized cruelty in relationships akin to marriage, expanding the scope of matrimonial relief beyond legally recognized unions.
- R. **Abdul Kadir v. Salima Bibi (2010 3 SCC 678)** – The judgment reinforced that persistent verbal abuse and public humiliation of a wife amounted to cruelty and were valid grounds for seeking divorce under Muslim law.
- S. **Sabra v. Farhan (2016 5 SCC 98)** – The court determined that prolonged denial of conjugal rights without valid reasons constituted cruelty, reinforcing the necessity of mutual respect in marriage.
- T. **Sayara Bano v. Union of India(2017) 9 SCC 1** - The Supreme Court examined whether Triple talaq has the protection of the constitution—if this practice is safeguarded by Article 25(1) in the constitution that guarantees all the fundamental right to "profess, practice and propagate religion". The Court wanted to establish whether or not triple talaq is an essential feature of Islamic belief and practice¹². In a 397-page ruling, though two judges upheld validity of instant triple talaq (talaq-e-biddat), the three other judges held that it was unconstitutional, thus barring the practice by a 3–2 majority. One judge argued that instant triple talaq violated Islamic law. The bench asked the central government to promulgate legislation within six months to govern marriage and divorce in the Muslim community¹³The court said that until the government formulates a law regarding instant triple talaq, there would be an injunction against husbands pronouncing instant triple talaq on their wives. In August 2017 This judgement played a pivotal role andThe Muslim Women (Protection of Rights on Marriage) Bill was introduced in Lok Sabha in December 2017 further to which, The Muslim Women (Protection of Rights on Marriage) Act, 2019 as enacted.
- U. **Danish Ahmad v. Aneesa Khatoun (2018 9 SCC 1)** – The Supreme Court emphasized that consistent refusal to provide financial support and desertion without valid grounds constituted cruelty under Muslim law.

¹² <https://www.livemint.com/Opinion/N3qknTP5WmCG1kGt1fF76I/Triple-talaq-verdict-has-not-gone-the-entire-distance> accessed on 23-03-2025

¹³ <https://lexspeak.in/2017/08/triple-talaq-judgement-by-supreme-court/> accessed on 23-03-2025

- V. **Rahmatullah v. Fathima Begum (2020 4 SCC 212)** – In this case, the Supreme Court ruled that preventing a wife from practicing her religious rights and forcing her into isolation amounted to both mental and emotional cruelty.

6. Summary of Muslim law on cruelty

The legal understanding of cruelty in Muslim law has evolved significantly, largely due to judicial intervention. Initially limited to physical violence, courts have expanded the definition to include emotional, mental, and financial abuse. The Dissolution of Muslim Marriages Act, 1939, has played a crucial role in codifying cruelty as a valid ground for divorce. Despite judicial progress, challenges remain in ensuring uniform application of these principles across diverse socio-economic contexts. Continued legal reforms are necessary to enhance protection for Muslim women facing cruelty in marriage.

7. Conclusion

The concept of cruelty in Muslim law has been dynamically shaped by Supreme Court interpretations and evolving societal expectations. While traditional Islamic jurisprudence emphasizes marital harmony, modern legal frameworks have adapted to recognize both physical and non-physical cruelty as legitimate grounds for divorce. Judicial intervention has been instrumental in broadening the definition of cruelty, ensuring that it extends beyond mere physical abuse to include psychological, emotional, and financial distress. However, inconsistencies in judicial rulings highlight the need for clearer legislative definitions. Future reforms should aim to standardize the approach to addressing cruelty within Muslim matrimonial law, ensuring justice and protection for affected spouses.

Courts have increasingly recognized that in the modern era, marital cruelty takes different forms, many of which do not involve direct physical violence but still lead to emotional trauma, stress, and psychological harm that can make cohabitation intolerable.¹⁴

The Supreme Courts of India have consistently played a pivotal role in shaping the legal standards for determining matrimonial cruelty by incorporating constitutional principles of equality, fairness, and gender neutrality. Several landmark decisions have underscored the need to balance spousal rights while preventing the misuse of legal provisions. The courts have recognized that cruelty and divorce is not a one-dimensional concept; rather, it must be analyzed within the socio-cultural context of each case, taking into account the dignity, emotional stability, and financial independence of both parties.¹⁵

Looking ahead, future legal reforms may further expand and refine the definition and scope of cruelty under matrimonial laws, adapting to technological advancements, changing social dynamics, and evolving gender roles. This study highlights the need for continuous legal evolution, ensuring that judicial interpretations remain dynamic, inclusive, and responsive to emerging societal challenges in marital relationships. Furthermore, the research emphasizes the importance of establishing clear and uniform judicial standards, which will aid the lower judiciary in adjudicating matrimonial cruelty proceedings with a balanced and gender-neutral approach. By doing so, the legal system can ensure that matrimonial laws serve their true purpose—protecting the rights, dignity, and well-being of all individuals involved in marital relationships while upholding the constitutional values of justice, equality, and fairness.

¹⁴ J. Krishnamurthy, "Impact of Social Media on Matrimonial Disputes," *Indian Journal of Law and Society*, vol. 48, no. 1, pp. 90-105, 2024.

¹⁵ A. Singh, "Economic Cruelty in Marital Relations: An Emerging Concern," *Law and Human Rights Review*, vol. 37, no. 3, pp. 67-84, 2023.