



Protection of Women's Rights in Islamic Family Law: A Comparative Analysis of Judicial Activism in India and Bangladesh

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Abstract

Islamic family law in South Asia, particularly in India and Bangladesh, has long represented a complex battleground between traditional religious values and demands for women's rights. This legal framework plays a central role in regulating gender relations within the family institution but often conflicts with gender justice principles within patriarchal societies. This study aims to assess the extent to which courts have contributed to transforming Islamic family law towards greater gender equity. Employing a normative qualitative descriptive approach through literature review, it compares legal strategies and judicial activism roles in both countries. Findings indicate that courts in both settings seek to expand *ijtihad* to address legislative stagnation, especially in protecting women's post-divorce rights. Despite distinct socio-political challenges, Bangladesh demonstrates a more centralized and progressive judicial approach, whereas India faces constraints from legal pluralism and identity politics that hinder reform effectiveness. Judicial activism emerges as a critical mechanism bridging sharia interpretations with contemporary justice principles, although its success heavily depends on institutional contexts and civil society support. The study advocates for proactive legislative engagement, progressive legal education, and theological reinterpretation grounded in *maqasid al-shariah* as strategic measures towards inclusive and responsive Islamic family law reform.

Keywords

Islamic Family Law; Women's Rights Protection; Judicial Activism; India; Bangladesh

Introduction

Women still face various structural and cultural barriers in fighting for their rights, both in the public and private spheres, including in the context of family law. (Kahpi & Harahap, 2024). Islamic family law in South Asia has long been an arena of conflict between religious tradition and women's rights. (Ramadhani, 2023). Islamic family law in South Asia plays a central role in regulating gender relations within the family institution. In societies that still uphold traditional norms, this law often becomes an arena of contestation between gender-based principles of justice and conservative interpretations of Sharia. In regions such as India and Bangladesh, Islamic

family law not only reflects religious values, but also serves as a social instrument that has a direct impact on women's lives (Iryanti dkk., 2025).

India and Bangladesh have intertwined historical roots as part of a British colony called British India. Until 1947, these two regions were part of a single administrative and political entity. However, when Britain decided to grant independence, the region was divided along religious lines into India (majority Hindu) and Pakistan (majority Muslim). The province of Bengal, which at that time was a single cultural and geographical entity, was also divided: West Bengal became part of India, while East Bengal became part of Pakistan under the name East Pakistan (Pratama & Jupri, 2023).

This historical proximity explains why the Islamic family law systems in India and Bangladesh share the same foundation, namely colonial legal heritage and traditional Islamic fiqh. However, after separation, the two developed in different directions in line with the socio-political dynamics of each country. Based on the data collected, the family law systems in both countries show a degree of inequality in women's rights, even though both have similar historical roots as part of British India. According to data from Pew Research Center (2021), Approximately 74% of Muslim women in India support access to religious courts to resolve family law issues, such as divorce and inheritance. However, full access to legal facilities remains limited, with only 18% of Muslim women having complete information about their rights in divorce and alimony. (Sahgal dkk., 2021). In Bangladesh, cases of married women experiencing domestic violence are also a very pressing issue. (Ayuni, 2024), Such data indicates a significant gap in the understanding and implementation of women's rights within the family.

In recent decades, the concept of judicial activism has emerged as an important tool in reforming stagnant laws. Judicial activism refers to the courts' approach of interpreting laws in a progressive manner and responding to social change. (Firman, 2024). Through this approach, judges are not only passive interpreters of the law, but also active actors in responding to social and gender inequalities. In the context of Islamic law, judicial activism is often manifested through the mechanism of *ijtihad* by judges to adapt the law to contemporary values of justice. (Purwodadi, t.t.). This provides an opportunity to align Islamic values with human rights principles, including gender equality.

This paper will compare the dynamics of women's rights in Islamic family law in India and Bangladesh, focusing on how judicial activism plays a role in the legal reform process in each country. These two countries have

different histories, legal structures, and social configurations, but both face challenges in realizing equal legal protection for Muslim women.

Feminist legal theory views legal systems as often reflecting patriarchal values rooted in traditional social structures. (Putri & Idris, t.t.). In Islamic family law, this imbalance is evident in issues such as unilateral divorce, restrictions on women's inheritance rights, and limitations on child custody rights. However, this approach does not necessarily reject religious law, but rather calls for a reinterpretation of religious texts based on the principle of gender justice. Therefore, an intersectional approach between Islamic law and feminist theory is important for assessing the effectiveness of legal reforms based on substantive justice.

In India in particular, the approach of legal pluralism is an integral part of the analytical framework. The country recognizes the existence of personal laws based on religion, including Islamic family law, which coexist with state law

(Bajpai, 2022). This pluralism creates complex dynamics in the protection of women's rights. (Moore, 1993), because legal change depends not only on the state but also on communities and religious authorities. In contrast, in Bangladesh, although Islamic family law remains dominant, the judicial system is more centralized and has more scope for reform through the courts.(Gunawan, 2021).

Based on the above background, the purpose of this article is to evaluate the extent to which the courts can promote the transformation of Islamic family law in a direction that is more equitable for women. By analyzing the judicial role and policy changes in both countries, this paper is expected to contribute to the discourse on Islamic legal reform that is responsive to social realities and gender justice needs in South Asia.

Method

This study uses a normative descriptive-qualitative approach with a library research method. The main focus is to explore and compare the approaches of India and Bangladesh in addressing women's rights issues in family law. The data sources consist of scientific journal articles, law books, academic reports, and policy documents discussing Islamic family law reform, particularly those containing the role of judicial institutions, the concept of judicial activism, and the position of women in the Islamic legal system in each country. The analysis is conducted comparatively to identify similarities, differences, and distinctive features of the two countries' approaches to women's rights within the framework of Islamic family law. The evaluation focuses on normative and conceptual dimensions, particularly how the legal systems in each country open up or limit the role

of women, taking into account the underlying socio-political and religious contexts.

Literature Review

Previous studies show that judicial activism has been used in several Muslim countries to promote fairer family law reforms (Daud dkk., 2021; Garoupa & Spruk, 2024; Hayat Khan & Zubair, 2023; Podungge dkk., 2022; Prasetyaningsih, 2020, 2020; Saad Saleem dkk., 2023; Sarwar & Asrafuzzaman, 2022; Syafi'i Sj & Fikriawan, 2021; Whitehouse, 2022). However, literature also reveals that in countries with socio-political dynamics and legal pluralism, these reform efforts are complicated. (Abdoeh, 2024; Bidayati dkk., 2021; Kamila, 2021; Mu'in dkk., 2022; Nasir dkk., 2022; Rohman, 2021; Schenk & Hasbullah, 2022). Although there is already literature discussing the role of the courts in Islamic family law reform, there is a gap in research related to in-depth comparisons specifically between India and Bangladesh, especially in the context of the implementation and impact of these reforms on the actual protection of women's rights.

Result

The Status of Women's Rights in Indian and Bangladeshi Family Law

India has adopted a pluralistic family law system, in which religious personal laws continue to exist in parallel with state laws. (Fiteriana, 2022). Muslim family law in India is not comprehensively codified, so most practices still refer to traditional fiqh interpretations, particularly from the Hanafi school of thought. This provides flexibility but also opens up considerable room for inequality, especially against women. Islamic family law in India is governed by Muslim Personal Law, which relies on fatwas and school traditions, while general civil law applies to non-Muslim communities. (Nurhuda, 2024).

Muslim women in India face significant challenges in obtaining protection from domestic violence and discrimination within the existing legal system. Although India has a pluralistic legal framework, which should accommodate various religions and groups, in practice, Muslim women are often marginalized by more patriarchal social norms that still exert a strong influence on society. Muslim women in India, as reflected in cases such as Bulli Bai (2022), often become victims of religious and gender-based abuse. This case, in which Muslim women were treated in a highly degrading manner and treated as objects in an online auction, is a clear example of a misogynistic culture that degrades women's dignity, both in social life and in the legal structure. This case highlights the lack of legal protection for Muslim women, where such actions are not explicitly regulated in existing laws, even though they clearly violate human rights. (Sri, 2022).

In addition, domestic violence is a major problem faced by Muslim women in India. (Agusti, 2022). A national survey by Bharatiya Muslim Mahila Andolan (BMMA), A Muslim women's organization in India revealed that most Muslim women face limitations in accessing legal justice. For example, the survey found that more than 92% of the 4,710 Muslim women surveyed opposed the practice of verbal divorce (triple talaq), and nearly 96% wanted their ex-husbands to pay child support. (Urvarsi, 2020).

A distinctive feature of the Indian system is the existence of various non-state institutions such as darul qaza, jamaat, and community courts that play a role in resolving family disputes. These institutions are often considered to represent community values, but in many cases they reinforce patriarchal norms and limit women's rights. Because this system operates alongside state courts, many Muslim women face a dilemma between choosing the formal state route or community mechanisms that are considered more accessible but less fair. (Ghosh & Chakrabarti, 2022).

In the context of judicial activism, the role of the Supreme Court of India is noteworthy, especially since the 1970s. Cases such as *Mohammed Ahmed Khan v. Shah Bano Begum* (1985) dan *Danial Latifi v. Union of India* (2001) This marked a significant effort by the court to expand the rights of Muslim women, particularly with regard to post-divorce alimony. However, the political and social reaction to the *Shah Bano* ruling demonstrated the limitations of the court's influence when faced with political pressure based on religious identity. The Indian government responded to this ruling by passing the Muslim Women (Protection of Rights on Divorce) Act 1986, which implicitly limits women's rights to obtain long-term alimony. (Sabu, 2018).

However, Subramanian (2008) notes that legal changes are still taking place, albeit gradually. Reform efforts are driven by a combination of civil society pressure, progressive litigation strategies, and the pragmatic stance of policymakers who seek to balance gender justice and cultural accommodation. These reforms are not rooted in the Islamic legal system itself, but rather in narratives of constitutional rights and international human rights discourse adapted to group norms. (Dutta, 2021).

Thus, India's approach to women's rights in Islamic family law reflects a constant tension between legal pluralism, religious identity, and constitutional principles of equality. Judicial activism in India has a significant influence, but it is always limited by strong communal political dynamics.

Islamic family law in Bangladesh is part of a colonial legacy that has been adapted into a modern form, primarily through the Muslim Family Laws Ordinance (MFLO) of 1961.

Although the MFLO does not fully regulate all aspects of family life, it establishes a formal legal framework for issues such as marriage, divorce, polygamy, and alimony rights. This law applies to all Muslims in Bangladesh and is centralised, with the formal court system as the sole authority for interpreting and enforcing the law. However, despite the country's more centralized legal integration efforts, women still face significant challenges in terms of access to justice, particularly in cases of divorce and protection from domestic violence. (Oyo dkk., 2024).

In Bangladesh, it is evident that despite the existence of laws regulating women's rights, their implementation remains very limited. (Alfirdaus, 2019). In addition, data from BRAC, a leading NGO in Bangladesh, shows that more than 50% of women outside urban areas do not have direct access to courts or do not understand their rights regarding divorce and alimony. (Surya, 2023).

The main characteristic of Bangladesh's approach to Islamic family law is the active role of the judiciary in reconstructing law based on progressive *ijtihad*. (Mahmudulhassan & Abuzar, 2024). The concept of judicial activism in Bangladesh is interpreted as a form of modern *ijtihad* carried out by judges with a focus on social justice. This judicial activism emerged as a response to legislative sluggishness in reforming Islamic family law, and was driven by the urgent need to improve legal protection for women. (Hasanah, 2017).

One important contribution of judicial activism in Bangladesh is the reinterpretation of post-*iddah* alimony rights for divorced women, which were previously very limited. In several cases, judges have asserted that principles of justice and public welfare (*maslahah*) can serve as a valid legal basis for expanding women's rights, even if they conflict with traditional *fiqh* views. This approach is supported by plurality in Islamic legal schools and refers to the spirit of the Qur'an to uphold justice in family relations. (Bibi dkk., 2024).

Another unique feature is that although Bangladesh is a Muslim-majority country with predominantly Islamic family law, its approach is more inclusive of reinterpretations of the law based on social justice. This makes the courts the primary instrument of legal change, in contrast to the community-based or fatwa-based approaches that are dominant in other countries. This model reflects a more centralised and reformist approach to addressing women's rights in family law. (Rahmawati, 2020).

**The Protection of Women's Rights in Indian and Bangladeshi Family Law:
A Judicial Activism Perspective**

Generally speaking, both India and Bangladesh have embraced judicial activism as a response to legislative stagnation in Islamic family law reform. In both countries, the courts play an important role in expanding the scope of *ijtihad* to respond to demands for social justice, particularly in the context of women's rights after divorce. Both legal systems recognize that classical *fiqh* principles need to be reinterpreted in order to accommodate the values of equality that are developing in modern society.

Although India and Bangladesh share a common history, they have taken different approaches to reforming Islamic family law, particularly with regard to women's access to justice. In Bangladesh, the Muslim Family Laws Ordinance (MFLO), despite its shortcomings in implementation, has created a more centralized legal system and provided scope for progressive interpretation by the courts. (Mudzhar, 2014). In India, although judicial activism has successfully decided important cases such as Shah Bano and Danial Latifi, the role of religious communities and customary courts still dominates in many areas, exacerbating unequal access to justice for women.

However, the approaches and socio-political contexts surrounding the two countries reveal fundamental differences. In Bangladesh, the legal system is more centralized and relies on state structures to produce and implement legal reforms.(Hasibuan dkk., 2023). India's progressive judiciary often clashes with conservative Muslim groups and political pressures that are reluctant to disrupt the status quo in order to maintain inter-community stability. In contrast, in India, legal pluralism and the dominance of identity-based politics create a complex arena. (Thoha, 2005). Peradilan progresif India kerap berbenturan dengan kelompok konservatif Muslim dan tekanan politik yang enggan mengganggu status *quo* demi menjaga stabilitas antar komunitas (Rusydi, 2022). Although Indian courts have handed down important rulings that expand women's rights, such as in the cases of Shah Bano and Danial Latifi, the reform process is often reversed by political pressure and ideological compromises. This shows that judicial activism in India is highly dependent on the broader political context and not solely on legal considerations. Another characteristic that distinguishes the two is the position of non-state institutions. In India, the existence of community courts (*darul qaza*) and religious actors strengthens the role of informal authorities in shaping Muslim family law. (Valentine, 2021). In Bangladesh, such institutions have much less influence in the formal legal structure. (Hasibuan dkk., 2023), enabling the state to play a more assertive role in the legal reform agenda.The following table compares how the two countries deal with family law issues and the role of judicial activism in promoting Islamic family law reform for the protection of women's rights:

Tabel 1. The role of judicial activism on family law issues in India and Bangladesh

Law Aspect	India	Bangladesh	Comparative
Polygamy	Permitted for Muslims with limited financial means and fair treatment of their wives. No consent from the first wife is required.	Permitted under strict conditions: (1) written consent of the first wife, (2) permission from the Arbitration Council, and (3) proof of financial capability (Muslim Family Law Act 1961).	Bangladesh has stricter regulations with institutional oversight mechanisms through the Arbitration Board.
Divorce	Triple divorce (talaq-e-biddat) was declared invalid (2017) and criminalized (2019). Divorce must be carried out in stages with an iddah period.	Must go through formal procedures: notification to the Arbitration Board, a 90-day waiting period, and official registration.	Both countries restrict unilateral divorce, but Bangladesh has a more structured administrative procedure.
Alimony Rights	Guaranteed by Article 125 of the Criminal Procedure Code (secular law) for post-divorce alimony. Implementation is often weak.	Guaranteed during the waiting period (3 months). Can be extended through the family court.	India has broader secular legal guarantees, while Bangladesh's are limited but easier to enforce.
Custody of Children	The mother has custody of boys until the age of 7 and girls until puberty (hizanat principle).	The mother has custody of the son until he is 7 years old and the daughter until she is 15 years old (Law of 1961).	Bangladesh provides longer protection, especially for girls, through age requirements.
Inheritance Rights	Women receive ½ of what men receive according to classical Islamic law. Some court rulings grant them more rights.	Women receive ½ the share of men. Some exceptions are made through court interpretations.	Both countries still adhere to the traditional Islamic inheritance system, but there are efforts toward judicial reform..
Judicial Activism	The Supreme Court actively protects women's rights (e.g., prohibition of talaq-e-biddat), despite being hampered by legal pluralism.	The courts have been more progressive in applying the 1961 law, including expanding child support and custody rights.	Bangladesh has been more consistent in family law reform due to its integrated legal framework.
Dispute Resolution Mechanism	Through civil courts and Muslim community arbitration bodies	through the Arbitration Council before going to formal court.	Bangladesh has a more institutionalized dispute resolution system for Muslim family cases..

Although polygamy is permitted in both countries, the implementation of laws governing polygamy in India and Bangladesh also shows similarities in terms of the requirements for the first wife's permission and court approval. (Ambarayadi & Patodongi, 2024; Daud dkk., 2021) However, the main difference lies in the degree to which the law is enforced. In India, although the law allows polygamy only for Muslim men, social norms,

economic factors, and cultural changes have made this practice limited and uncommon. (A. Ahmed, 2001). In Bangladesh, the courts play a more assertive role in ensuring that polygamy is only practiced with official consent and supervision. (R. Ahmed, 1987). Divorce is one of the controversial issues that distinguishes the two countries. In India, following a 2019 Supreme Court ruling, triple talaq (talaq-e-biddat) pronounced unilaterally has been banned and criminalized as a form of protection for women, making it a progressive step in addressing gender inequality in divorce (Rasheed and Sharma 2016). However, in Bangladesh, although divorce remains valid, strict regulations and formal processes requiring notification and a waiting period provide greater protection for women, even though implementation is still influenced by social and religious norms. Both countries recognize women's right to alimony after divorce, but the difference lies in the process of granting alimony. In India, alimony rights are often decided through court proceedings, which can sometimes be lengthy and hampered by bureaucracy. (Sidqi, 2022).

Meanwhile, in Bangladesh, alimony rights are more clearly regulated by Islamic family law, and women are entitled to alimony during the iddah period, which provides them with clearer financial protection after divorce. The most striking difference between the two countries can be found in the issue of child custody. In India, although Muslim women are entitled to custody of boys until the age of seven and girls until puberty, court decisions are often influenced by religious and cultural considerations, which sometimes do not favor women. In Bangladesh, although there is a tendency to be more supportive of mothers in terms of child custody, decisions still depend on the welfare of the child and other objective factors, giving women more open and clear custody rights. (Prasetyo & Abdulwahhab Mohammed B, 2023).

Thus, although judicial activism exists in both countries, its effectiveness differs. Bangladesh has been more successful in integrating the principle of social justice into Islamic family law through the active role of the national judiciary. Meanwhile, India faces structural and socio-political limitations that often hinder the results of judicial activism, despite its high transformative potential. For example, in India, even though the Supreme Court has banned triple talaq, the influence of conservatism in legal practice is still felt, especially in rural areas.. In Bangladesh, a more centralized judiciary allows for more progressive reforms through broader interpretations of the law, although challenges to enforcing these decisions at the community level remain. Available data suggests that judicial activism and legal reform in Bangladesh are more acceptable due to the stronger influence of the state in unifying the legal system, while in India, legal pluralism and the influence of religious communities often slow down progressive change.

A comparison between India and Bangladesh shows that judicial activism has great potential to promote gender justice in Islamic family law, but its effectiveness is highly dependent on the legal, political, and social structures in each country. In Bangladesh, reform is easier to achieve

because the courts have greater autonomy and are less constrained by legal pluralism or pressure from non-state religious authorities. This creates space for judicial *ijtihad* that can progressively change traditional interpretations that are detrimental to women.

However, this success still faces implementation challenges. One of them is cultural resistance from communities that still adhere to patriarchal norms. Although the courts have expanded women's rights, it is not certain that the entire community, especially in rural areas, is willing to comply with these changes. Another challenge is the limited mechanisms for monitoring and enforcing progressive court decisions. In India, judicial activism faces not only cultural resistance, but also structural challenges from a pluralistic legal system. The presence of community courts and the strong influence of conservative clerics often render attempts at reform through the state courts ineffective. In addition, identity-based political considerations often cause legal reforms to stall, as seen in the state's reaction to the Shah Bano case. This indicates that strengthening women's rights in Islamic family law is not enough through court decisions alone, but also requires public policy support and social change.

The role of civil society organizations and academics is crucial in promoting a more egalitarian interpretation of religion. In both countries, these groups have facilitated legal awareness and built moral pressure on the state to promote reform. In a broader context, the cases of India and Bangladesh provide important lessons for other Muslim-majority countries on how a combination of judicial activism, a dynamic textual approach, and social support can result in a more equitable Islamic family law system that is responsive to women's rights.

Conclusion

A comparative study of Islamic family law systems in Bangladesh and India shows that judicial activism has become an important instrument in fighting for women's rights, albeit in different socio-political contexts. In Bangladesh, a more centralized and progressive judicial approach has enabled a reinterpretation of Islamic family law that is more responsive to the principles of justice and equality. Meanwhile, in India, legal pluralism and the dynamics of identity politics limit the courts' room for maneuver, despite a number of important rulings that expand women's rights. Judicial activism, particularly in the form of judicial *ijtihad*, has proven capable of bridging the gap between Sharia values and modern human rights demands. However, the success of this approach is highly dependent on the institutional context, the political stance of the state, and the extent to which civil society can play an active role in promoting legal reform. Based on these findings, it is recommended that future efforts to reform Islamic family law should not only rely on the courts, but also involve proactive legislation, progressive legal education, and theological reinterpretation that prioritizes *maqasid al-shariah* (the objectives of Islamic legal justice).

Further research could also be directed toward exploring the experiences of other Muslim-majority countries to broaden the comparative basis and formulate contextual and inclusive legal reform strategies.

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