

SOME COMMENTS ON THE CURRENT (AND FUTURE) STATUS OF MUSLIM PERSONAL LAW IN SOUTH AFRICA

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Summary

The state law of South Africa consists of the common law and the customary law. However, in reality there exist various cultural and religious communities who lead their private lives outside of state law. For example, the Muslim community in South Africa is a close-knit community which lives according to their own customs and usages. Muslims are subject to informal religious tribunals whose decisions and orders are neither recognised nor reviewable by the South African courts.

The non-recognition of certain aspects of Muslim personal law causes unnecessary hardships, especially for women. A Muslim woman is often in a "catch two" situation. For example, on the one hand her attempts to divorce her husband in terms of Muslim law may be foiled by the relevant religious tribunal and, on the other hand, the South African courts may not provide the necessary relief, because they might not recognise the validity of her Muslim marriage.

Increasingly, South African courts are faced with complex issues regarding the Muslim community. The last few years there has been a definite change in the courts' attitude with regard to the recognition of certain aspects of Muslim personal law. Contrary to pre-1994 court cases, the recent court cases attempt to develop the common law to give recognition to certain aspects of Muslim personal law. This article attempts to give an overview of the recent case law that dealt with issues regarding the recognition of aspects of Muslim personal law.

Another issue, which eventuates from the current situation, is whether the South African legal order should continue to have a dualistic legal order or whether we should opt for a unified legal order or even a pluralistic legal order. In order to address this issue, some comments on the current status of Muslim personal law will be made and, finally, in order to contribute to the debate regarding the recognition of Muslim personal law, optional models for the recognition of Muslim personal law will briefly be evaluated.