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## **Analysis of Triple Talaq: Issues and Challenges**

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### **Abstract**

Triple Talaq, also known as *Talaq-e-Biddat*, refers to the practice in which a Muslim husband could instantaneously and irrevocably divorce his wife by pronouncing the word “talaq” three times in one sitting. For decades, this practice remained a subject of intense legal, social, and constitutional debate in India. Critics argued that the practice was arbitrary, discriminatory, and inconsistent with the principles of gender equality and justice guaranteed under the Constitution of India. Supporters, however, often viewed it as a matter of personal law protected under religious freedom.

The issue gained national prominence following the landmark decision of the *Shayara Bano v. Union of India* (2017), where the Supreme Court of India declared the practice of instant Triple Talaq unconstitutional by a majority judgment. The Court held that the practice was arbitrary and violated fundamental rights, particularly the right to equality and dignity under Articles 14 and 21 of the Constitution. Subsequently, the Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the pronouncement of instant Triple Talaq and aimed to protect Muslim women from unilateral and instant divorce.

Despite this legislative intervention, several legal and social challenges continue to persist, including concerns about criminalization of a marital dispute, misuse of the law, implementation issues, and the broader question of reform in Muslim personal law. The debate surrounding Triple Talaq also raises important questions regarding the balance between religious freedom and constitutional morality.

This research paper aims to critically analyze the historical background, legal framework, judicial interpretation, and socio-legal implications of Triple Talaq in India. It further examines the effectiveness of recent legal reforms and highlights the challenges that remain in ensuring gender justice and equality within personal laws.

**Keywords:** Triple Talaq, Muslim, Divorce, Marital Dispute, Protection.

## Introduction

Triple Talaq, also known as *Talaq-e-Biddat*, refers to a form of instant divorce practiced within certain sections of the Muslim community whereby a husband could unilaterally dissolve a marriage by pronouncing the word “talaq” three times in one sitting, either orally, in writing, or through electronic communication. Traditionally, this form of divorce was considered valid by some schools of Sunni Islamic jurisprudence, particularly the Hanafi school, although it has long been regarded as an irregular and undesirable practice within Islamic legal traditions. Unlike other forms of divorce recognized in Muslim personal law, such as *Talaq-e-Ahsan* and *Talaq-e-Hasan*, which incorporate a waiting period and opportunities for reconciliation, *Talaq-e-Biddat* allows the dissolution of marriage instantly and irrevocably without the need for mediation, arbitration, or judicial intervention. Because of its unilateral nature and absence of procedural safeguards, the practice has generated significant legal, social, and constitutional debates, particularly in countries with large Muslim populations. In India, the issue of Triple Talaq has been closely linked with broader questions concerning gender justice, religious freedom, constitutional morality, and the relationship between personal laws and fundamental rights.

The institution of divorce within Muslim personal law has a long historical background rooted in classical Islamic jurisprudence. Islamic law historically recognized marriage as a civil contract and therefore allowed its dissolution under specific circumstances. The Quranic framework for divorce emphasizes deliberation, fairness, and attempts at reconciliation before the final termination of the marital relationship. The forms of divorce that align more closely with Quranic guidance include *Talaq-e-Ahsan*, which involves a single pronouncement followed by a waiting period known as *iddat*, and *Talaq-e-Hasan*, which requires three separate pronouncements made over a defined period with opportunities for reconciliation in between. These methods were designed to prevent hasty decisions and protect the dignity and rights of both spouses. However, over time, certain juristic interpretations within some Sunni traditions recognized *Talaq-e-Biddat*, a form of divorce considered legally effective despite being viewed as sinful or irregular. The acceptance of this practice was historically justified on the grounds of administrative convenience and social custom rather than strict adherence to Quranic principles. As Islamic societies evolved, many Muslim-majority countries gradually introduced reforms that either restricted or completely abolished the practice of instant triple talaq.

In the Indian context, Muslim personal law has historically been governed by religious principles recognized through legislation such as the Muslim Personal Law (Shariat) Application Act, 1937<sup>1</sup>. The continuation of religious personal laws within a secular constitutional framework has often created tensions between the protection of religious practices and the enforcement of fundamental rights, particularly those relating to equality and dignity. The controversy surrounding Triple Talaq

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<sup>1</sup> The Muslim Women (Protection of Rights on Marriage) Act, Bill no.247 of 2019

gained significant attention in India during the early twenty-first century when several cases emerged in which Muslim women were divorced through instantaneous pronouncements made via letters, telephone calls, text messages, or online communication. These incidents raised serious concerns regarding the vulnerability of women and the absence of procedural safeguards in marital dissolution. The debate reached its peak when multiple petitions were filed before the Supreme Court challenging the constitutional validity of *Talaq-e-Biddat*. In the landmark case of *Shayara Bano v. Union of India*, the Supreme Court examined whether the practice was compatible with constitutional guarantees of equality, dignity, and non-discrimination<sup>2</sup>. The Court ultimately declared the practice unconstitutional by a majority decision, marking a turning point in the legal treatment of Muslim divorce practices in India. Subsequently, the Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the pronouncement of instant triple talaq and provided legal protection and remedies for affected women.

Despite the judicial and legislative interventions, the issue of Triple Talaq continues to generate debate among scholars, legal experts, and religious authorities. Critics of the practice argue that it violates the principles of gender equality and undermines the dignity and security of Muslim women by allowing arbitrary dissolution of marriage without due process. Supporters of reform maintain that Islamic law itself discourages instant divorce and encourages reconciliation and fairness. At the same time, some scholars have raised concerns about the criminalization of the practice, arguing that it may lead to unintended social consequences such as the imprisonment of husbands and the economic vulnerability of families. These competing perspectives highlight the complex intersection between religious autonomy, constitutional principles, and gender justice within the Indian legal system.

### **Research Problem**

The central problem addressed in this study lies in the conflict between traditional interpretations of Muslim personal law and the constitutional commitment to equality, dignity, and justice. While personal laws are protected under the broader framework of religious freedom, they must also operate within the limits of constitutional values. The persistence of practices perceived as discriminatory has raised questions regarding the role of the judiciary and the legislature in reforming personal laws. Therefore, a critical analysis of the legal, social, and constitutional aspects of Triple Talaq is necessary to understand its implications for women's rights and the development of personal law in India.

### **Research Objective**

The primary objective of this research is to analyze the concept and practice of Triple Talaq within the framework of Islamic jurisprudence and Indian constitutional law. It also aims to examine the

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<sup>2</sup> An Analytical Study with Emphasis on Socio- Legal Aspects (triple-talaq-analytical-study- By Furqan-Ahmad

historical development of divorce practices in Muslim personal law and to evaluate the judicial and legislative responses to the Triple Talaq controversy in India. Another objective is to assess the impact of the prohibition of Triple Talaq on the protection of Muslim women's rights and to identify the challenges that continue to exist in the implementation of legal reforms.

In order to achieve these objectives, the research seeks to answer several important questions. It examines what Triple Talaq or *Talaq-e-Biddat* signifies within Islamic legal traditions and how it differs from other forms of divorce recognized in Muslim personal law. It also explores how the practice evolved historically and why it became controversial in the Indian socio-legal context. Further, the study investigates the constitutional validity of the practice and evaluates the significance of the Supreme Court's decision and the subsequent legislative intervention. Another important question addressed in this study concerns whether the current legal framework adequately safeguards the rights and dignity of Muslim women.

### **Research Methodology**

The research methodology adopted in this study is primarily doctrinal and analytical. The doctrinal method involves an examination of constitutional provisions, statutory laws, judicial decisions, and classical legal texts related to Muslim personal law and divorce practices. Judicial pronouncements, particularly those delivered by the Supreme Court and High Courts, form an important part of the legal analysis. In addition, the analytical approach is used to critically evaluate the legal reasoning adopted by courts, the effectiveness of legislative reforms, and the broader social implications of regulating religious personal laws. Secondary sources such as academic writings, legal commentaries, journal articles, and reports of law commissions have also been consulted to develop a comprehensive understanding of the subject.

### **Scope of Study**

The scope of this study is primarily limited to the legal and constitutional analysis of Triple Talaq in the Indian context. It focuses on the historical development of the practice, the judicial interpretation of its validity, and the legislative measures introduced to regulate it. While the study examines relevant international perspectives and reforms in other Muslim-majority countries, its primary emphasis remains on the Indian legal framework. At the same time, the research has certain limitations. It relies largely on doctrinal sources and secondary data rather than empirical field studies, which may limit the ability to capture the lived experiences of affected individuals. Nevertheless, the study attempts to provide a balanced and comprehensive understanding of the legal issues surrounding Triple Talaq and its broader implications for gender justice and constitutional governance in India.

### **Concept and Forms of Divorce in Muslim Law**

Divorce under Muslim law represents the legal dissolution of a marriage in accordance with principles derived from the Quran, Hadith, and classical Islamic jurisprudence. In Islamic legal tradition, marriage (nikah) is regarded as a civil contract with religious significance, and while it is encouraged to preserve the marital relationship, Islam recognizes that circumstances may arise where continuation of the marriage becomes difficult or unjust for either party. In such cases, the law provides mechanisms for dissolution<sup>3</sup>. Talaq, which literally means “release” or “repudiation,” refers to the unilateral right of a Muslim husband to terminate the marriage. However, Islamic teachings emphasize that divorce is a last resort and should only be exercised when reconciliation becomes impossible. The Quran encourages spouses to attempt settlement through patience, dialogue, and mediation before resorting to divorce. The underlying philosophy is to balance the stability of the family institution with the need to provide an exit from marital relationships that have irretrievably broken down. Thus, talaq in Islamic law is not intended to be arbitrary or impulsive, but rather a structured process that ideally incorporates reflection and opportunities for reconciliation.

Classical Islamic jurisprudence recognizes several forms of talaq, each differing in procedure and conformity with Quranic principles. The most approved form is Talaq-e-Ahsan, which is considered the most proper and consistent with Islamic teachings. Under this method, the husband pronounces a single talaq during a period of tuhr, which refers to the interval between two menstrual cycles of the wife, provided that no sexual relations have taken place during that period. After the pronouncement, the wife observes a waiting period known as iddat, typically lasting three menstrual cycles. During this period, the husband has the opportunity to revoke the divorce and resume marital relations without the need for a new marriage contract. If the husband does not revoke the pronouncement during the iddat period, the divorce becomes final. The significance of Talaq-e-Ahsan lies in the fact that it allows time for reflection and reconciliation, thereby minimizing the possibility of impulsive decisions that could permanently dissolve the marital relationship.

Another recognized form is Talaq-e-Hasan, which is also regarded as a proper and approved method of divorce. In this procedure, the husband pronounces talaq once during three successive periods of tuhr, again ensuring that no sexual relations take place during those intervals. If the third pronouncement is made without revocation after the first two, the divorce becomes irrevocable. Like Talaq-e-Ahsan, this method provides a structured framework that incorporates time for reconsideration and attempts at reconciliation. The staged nature of the pronouncements is intended to prevent rash decisions and ensure that divorce occurs only after repeated confirmation of the husband’s intention to dissolve the marriage. Both Talaq-e-Ahsan and Talaq-e-Hasan are therefore considered consistent with Quranic injunctions, as they emphasize patience, reflection, and the possibility of reconciliation before the final dissolution of marriage.

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<sup>3</sup> Furqan Ahmad, “Triple Talaq: An Analytical Study with emphasis on socio-legal aspects”

In contrast, Talaq-e-Biddat, commonly known as Triple Talaq, represents a controversial and historically debated form of divorce in Muslim law. Under this practice, the husband pronounces the word “talaq” three times in one sitting or in a single communication, thereby immediately and irrevocably dissolving the marriage. Unlike the other two forms, Talaq-e-Biddat does not provide a waiting period for reflection or an opportunity for reconciliation once the pronouncement is made. The term “biddat” itself means innovation or deviation, indicating that this form of divorce was not part of the original Quranic framework but developed later in Islamic legal history. Many scholars have argued that it contradicts the spirit of the Quran, which emphasizes gradual procedures and reconciliation efforts before divorce becomes final.

Religious and jurisprudential interpretations of Triple Talaq have varied among different schools of Islamic thought. Some classical jurists, particularly within the Hanafi school, considered the practice legally effective though morally undesirable. According to this view, even though pronouncing talaq three times in one sitting was regarded as sinful or improper, it nonetheless resulted in an immediate and binding divorce. Other schools of thought, including certain interpretations within the Shia tradition, rejected the validity of such instantaneous divorce, insisting that the pronouncements must occur in separate intervals to be legally effective. The divergence in scholarly opinion illustrates the complex nature of Islamic jurisprudence, where different interpretations developed based on varying readings of religious texts and historical practices.

In classical Islamic jurisprudence, the position of Triple Talaq was therefore marked by both acceptance and criticism. While some jurists validated the practice as legally binding, many acknowledged that it deviated from the ideal procedures prescribed in the Quran. Over time, the controversial nature of Talaq-e-Biddat led to extensive debates within the Muslim world regarding its compatibility with the principles of justice, fairness, and gender equity emphasized in Islamic teachings. These debates have continued in modern legal systems, particularly in countries with significant Muslim populations, where courts and legislatures have examined the legitimacy and consequences of instantaneous divorce. Consequently, the concept and forms of divorce in Muslim law illustrate the dynamic interaction between religious doctrine, juristic interpretation, and evolving social and legal standards.

### **Constitutional and Legal Framework**

The constitutional and legal framework governing issues related to personal laws, including practices such as divorce within religious communities, is shaped by the broader principles of equality, liberty, and religious freedom enshrined in the Constitution of India. The Constitution seeks to strike a delicate balance between protecting the fundamental rights of individuals and respecting the autonomy of religious communities to practice and manage their own personal laws. This balance becomes particularly significant when certain religious practices appear to conflict with constitutional guarantees of gender equality and human dignity. The Indian constitutional

framework recognizes that while religious freedom is an essential aspect of a pluralistic society, it cannot override the fundamental rights guaranteed to citizens, especially when such practices adversely affect the rights of vulnerable groups such as women.

The principle of equality forms the cornerstone of the Indian constitutional system. Article 14 of the Constitution of India guarantees equality before the law and equal protection of laws to all persons within the territory of India. This provision requires that the State treat individuals equally and prohibits arbitrary or discriminatory practices. In the context of personal laws, the principle of equality has been invoked to examine whether certain religious practices discriminate on the basis of gender. Closely related to this is Article 15 of the Constitution of India, which prohibits the State from discriminating against citizens on grounds such as religion, race, caste, sex, or place of birth. Article 15 also empowers the State to make special provisions for women and children in order to promote substantive equality. These constitutional provisions collectively establish that gender-based discrimination in any form, whether within secular laws or personal laws, must be carefully scrutinized to ensure compatibility with constitutional values.

Another crucial dimension of the constitutional framework is the protection of life and personal liberty guaranteed under Article 21 of the Constitution of India. Over time, judicial interpretation has expanded the scope of Article 21 to include the right to live with dignity, personal autonomy, and the protection of individual rights within family and marital relationships. Courts have increasingly recognized that practices which undermine the dignity, security, and equality of individuals, particularly women, may fall within the ambit of constitutional scrutiny under Article 21. Thus, personal laws are not entirely immune from constitutional review when they conflict with the basic principles of justice, fairness, and dignity.

At the same time, the Constitution guarantees religious freedom to all citizens through Article 25 of the Constitution of India. This provision allows individuals to freely profess, practice, and propagate their religion, subject to public order, morality, and health. The protection of religious freedom acknowledges the diverse cultural and religious traditions that exist within Indian society. However, Article 25 is not absolute and can be restricted when religious practices violate fundamental rights or broader constitutional principles. The judiciary has often been required to determine whether a particular religious practice constitutes an essential religious practice deserving constitutional protection or whether it can be regulated in the interest of social reform and equality.

The concepts of constitutional morality and secularism have gained increasing prominence in constitutional interpretation. Constitutional morality refers to adherence to the core values of the Constitution, including justice, liberty, equality, and dignity. It emphasizes that social practices and customs must evolve in accordance with constitutional ideals rather than perpetuate discrimination or inequality. Similarly, secularism, which forms part of the basic structure of the Constitution, requires the State to maintain neutrality among religions while ensuring that

fundamental rights are protected. The interaction between equality, dignity, and religious freedom therefore lies at the heart of constitutional debates surrounding personal laws. Courts in India have increasingly relied on these principles to ensure that religious practices are harmonized with the constitutional commitment to gender justice and the protection of fundamental rights.

### **Judicial Interpretation of Triple Talaq**

The judicial interpretation of Triple Talaq in India represents a significant development in the relationship between personal laws and constitutional principles. The issue gained national prominence with the landmark judgment in *Shayara Bano v. Union of India* (2017), where the Supreme Court of India examined the constitutional validity of the practice of Talaq-e-Biddat, commonly referred to as Triple Talaq. Triple Talaq was a form of divorce under Muslim personal law in which a husband could unilaterally and instantaneously dissolve the marriage by pronouncing the word “talaq” three times in one sitting<sup>4</sup>. The case was brought before the Court after Shayara Bano challenged the practice, arguing that it violated her fundamental rights guaranteed under the Constitution of India, particularly the principles of equality, non-discrimination, and personal liberty. The judgment delivered in August 2017 marked a turning point in Indian personal law jurisprudence, as the Court declared the practice unconstitutional and invalid by a majority of 3:2.

In the decision, the Supreme Court analyzed the constitutional validity of Triple Talaq from multiple perspectives, including fundamental rights, the nature of personal laws, and the scope of judicial review. The majority opinions held that the practice of Talaq-e-Biddat was arbitrary and inconsistent with the constitutional values of equality and dignity. The Court observed that the practice allowed a Muslim husband to dissolve a marriage instantaneously and without any reasonable cause, procedure, or opportunity for reconciliation, thereby placing the wife in a position of extreme vulnerability. Such unilateral and irreversible power was considered manifestly arbitrary and therefore incompatible with the principle of equality under Article 14 of the Constitution. The judges emphasized that laws or practices that grant absolute and uncontrolled power to one party without procedural safeguards cannot be justified within a constitutional framework that prioritizes fairness and justice.

Another important aspect of the judgment was the examination of whether Triple Talaq constituted an essential religious practice protected under Article 25 of the Constitution. The Court analyzed Islamic jurisprudence and the interpretations of various schools of Islamic law to determine whether Talaq-e-Biddat was integral to the practice of Islam. The majority concluded that Triple Talaq did not form an essential part of the Islamic faith and was, in fact, considered sinful or undesirable in many interpretations of Islamic law. The Court relied on scholarly writings and the practices followed in several Muslim-majority countries, many of which had already reformed or

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<sup>4</sup> Spandna Reddy Bommu, “<https://www.nujssacj.com/post/criminalisation-of-tripletalaq-dissecting-the-constitutional-and-socio-legal-aspects>”

abolished the practice. This analysis allowed the Court to conclude that invalidating Triple Talaq would not infringe upon the fundamental right to freedom of religion.

Prior to the Shayara Bano judgment, Indian courts had already expressed reservations about the validity and fairness of arbitrary divorce practices within Muslim personal law. One of the significant earlier decisions was *Shamim Ara v. State of Uttar Pradesh (2002)*<sup>5</sup>, where the Supreme Court held that a mere pronouncement of talaq without a reasonable cause and without attempts at reconciliation could not be considered a valid divorce under Muslim law. The Court emphasized that the principles of justice and fairness inherent in Islamic law required the husband to follow a structured process before dissolving the marriage. This judgment played a crucial role in shaping the legal understanding of talaq by clarifying that the arbitrary or instantaneous termination of marriage was inconsistent with both Islamic principles and the requirements of procedural fairness.

Another important case that contributed to the judicial discourse on Muslim divorce practices was *Dania Latifi v. Union of India (2001)*<sup>6</sup>. Although the case primarily dealt with the interpretation of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Court adopted a progressive approach by interpreting the statute in a manner that ensured financial protection and dignity for divorced Muslim women. The judgment demonstrated the judiciary's willingness to harmonize personal laws with constitutional values and gender justice. Similarly, in *Sarla Mudgal v. Union of India (1995)*<sup>7</sup>, the Court addressed issues arising from the misuse of personal laws in matters of marriage and divorce, thereby highlighting the need for greater uniformity and fairness in matrimonial laws.

The judicial reasoning in the Shayara Bano case was heavily influenced by the constitutional doctrine of arbitrariness. The Court held that any legal practice that allows one party to exercise unilateral power without accountability is inherently arbitrary and incompatible with the constitutional commitment to equality. The concept of "manifest arbitrariness" was central to the majority opinion, which emphasized that arbitrary practices cannot be sustained merely because they originate from personal law traditions. The judgment also reflected the growing importance of gender justice in constitutional interpretation. By invalidating Triple Talaq, the Court recognized the unequal position of Muslim women within the framework of this practice and affirmed their right to dignity and equality under Articles 14 and 21 of the Constitution. The decision thus reinforced the broader constitutional objective of eliminating discriminatory practices that undermine the rights of women.

The impact of the Shayara Bano judgment on personal law jurisprudence in India has been profound. The decision demonstrated that personal laws, although rooted in religious traditions, are not entirely immune from constitutional scrutiny when they violate fundamental rights. This

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<sup>5</sup> AIR 2002 SUPREME COURT 3551, 2002 AIR SCW 4162

<sup>6</sup> AIR 2001 SUPREME COURT 3958, 2001 AIR SCW 3932

<sup>7</sup> 1995 AIR 1531, 1995 SCC (3) 635, AIR 1995 SUPREME COURT 1531

approach marked a shift from earlier judicial hesitancy to intervene in matters relating to religious personal laws. The judgment also stimulated legislative action, leading to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019, which formally prohibited the practice of instant Triple Talaq and made its pronouncement a punishable offense. This legislation was intended to provide legal protection to Muslim women and to ensure the effective implementation of the Supreme Court's ruling.

Furthermore, the judgment has influenced broader debates about the reform of personal laws and the role of constitutional morality in shaping family law in India. It reaffirmed that religious freedom must be balanced with the principles of equality, dignity, and justice enshrined in the Constitution. By striking down a discriminatory practice, the Court signaled that personal law traditions must evolve in accordance with contemporary constitutional values. At the same time, the decision has generated discussions about the appropriate limits of judicial intervention in religious matters and the need for legislative reforms that address gender inequalities across different personal law systems.

The judicial interpretation of Triple Talaq in India reflects the dynamic interaction between religious personal laws and constitutional principles. Through its analysis in the *Shayara Bano* case and earlier decisions such as *Shamim Ara* and *Danial Latifi*, the Supreme Court played a crucial role in redefining the legal status of Muslim divorce practices. The recognition that arbitrary and discriminatory practices cannot be justified under the Constitution marked an important step toward strengthening gender justice and ensuring that personal law systems operate within the framework of fundamental rights. The judgment has therefore become a significant milestone in the evolution of Indian personal law jurisprudence and continues to influence legal discourse on the balance between religious freedom and constitutional equality.

### **Legislative Response and Legal Reforms**

The declaration of instantaneous triple talaq as unconstitutional by the Supreme Court in *Shayara Bano v. Union of India*<sup>8</sup> created a significant shift in the legal discourse surrounding Muslim personal law in India and prompted the legislature to take steps to address the issue through statutory reform. Prior to the enactment of a comprehensive law, the practice of talaq-e-biddat continued to generate uncertainty because, although it had been invalidated judicially, there was no specific legislation prescribing penalties or remedies in cases where the practice was still invoked. To address this gap and to provide legal protection to Muslim women affected by the arbitrary pronouncement of instant divorce, the Parliament enacted the *Muslim Women (Protection of Rights on Marriage) Act, 2019*. The enactment of this law represented the culmination of a prolonged debate involving questions of gender justice, religious freedom, and the role of the state in reforming personal laws. The legislative process involved the introduction of earlier ordinances and bills following the Supreme Court judgment, reflecting the government's position that a

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<sup>8</sup> AIR 2017 SUPREME COURT 4609, AIR 2018 SC (CIVIL) 1169

statutory mechanism was necessary to deter the continued use of instant triple talaq and to ensure effective protection of the rights of Muslim women.

The Muslim Women (Protection of Rights on Marriage) Act, 2019 seeks to declare the practice of talaq-e-biddat, or instantaneous triple talaq, void and illegal. The Act provides that any pronouncement of talaq by a Muslim husband upon his wife, either spoken, written, or communicated through electronic means, which purports to effect an immediate and irrevocable divorce, shall be considered invalid and shall have no legal effect. By explicitly declaring the practice void, the legislation reinforces the constitutional principles of equality and dignity and ensures that a Muslim marriage cannot be unilaterally dissolved through an arbitrary verbal declaration. The Act also introduces penal provisions aimed at deterring the continuation of this practice. It makes the pronouncement of instant triple talaq a cognizable offence punishable with imprisonment for a term which may extend up to three years and with a fine. This provision represents a significant legislative step because it transforms what was traditionally treated as a matter of personal law into a criminal offence under the statutory legal framework.

Another important feature of the Act is the procedural safeguards and remedies provided to Muslim women. The legislation allows the affected woman or her blood relatives to file a complaint regarding the pronouncement of triple talaq, thereby ensuring that the legal process cannot be misused by unrelated parties. At the same time, the Act provides that the offence may be compounded at the instance of the woman upon such terms and conditions as may be determined by the Magistrate. The law also incorporates provisions relating to bail, specifying that bail may only be granted by a Magistrate after hearing the woman and upon being satisfied that there are reasonable grounds for granting such relief. These provisions attempt to balance the objectives of deterrence and fairness while ensuring that the rights and interests of the affected woman remain central to the legal process.

In addition to criminalizing the practice, the Act introduces protective measures intended to secure the welfare of Muslim women and their children. It grants the woman the right to seek a subsistence allowance from her husband for herself and for dependent children, as determined by the Magistrate. This provision recognizes the economic vulnerability that may arise when a marriage breaks down and seeks to ensure financial support for the woman during the legal proceedings. Furthermore, the Act provides that the woman shall be entitled to custody of her minor children in such manner as may be determined by the Magistrate, thereby acknowledging the need to protect the interests of children affected by marital disputes. These provisions collectively aim to provide not only punitive consequences for the unlawful pronouncement of instant triple talaq but also a framework of legal protection and support for Muslim women.

The enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019 therefore represents a significant legislative response to the long-standing controversy surrounding triple talaq in India. It reflects the state's effort to reconcile constitutional values of gender equality and

dignity with the pluralistic nature of personal law systems. By declaring instant triple talaq void, criminalizing its pronouncement, and providing remedies such as maintenance and custody rights, the legislation seeks to strengthen the legal position of Muslim women within marriage. At the same time, the Act has generated debate among scholars and legal experts regarding the criminalization of a marital practice and the broader implications for personal law reform. Nevertheless, the legislation marks an important development in the evolution of family law in India and highlights the increasing role of constitutional principles in shaping the regulation of personal law practices.

## **Issues and Challenges**

The criminalization of triple talaq through legislative intervention has generated significant debate in legal, social, and political spheres. One of the most prominent concerns revolves around whether a matrimonial dispute should be addressed through criminal law. Traditionally, matters relating to marriage, divorce, and family relationships have been governed by civil law mechanisms aimed at reconciliation and settlement rather than punishment. Critics argue that by making the pronouncement of instant triple talaq a criminal offence punishable with imprisonment, the law introduces a punitive dimension into a private marital dispute. This raises questions about whether criminal sanctions are the most appropriate method to address issues arising from marital breakdown. Some legal scholars believe that the use of criminal law in such situations may aggravate tensions between spouses and make reconciliation more difficult, while supporters of the law argue that strict penalties are necessary to deter arbitrary divorce practices and to safeguard the dignity and security of Muslim women.

Another significant challenge relates to the practical implementation of the law and concerns regarding its possible misuse. As with many criminal provisions related to family matters, there are apprehensions that the law could sometimes be used as a tool for harassment or personal vendetta. Since the offence is cognizable and involves the possibility of arrest, critics fear that false or exaggerated complaints may lead to unnecessary criminal proceedings against husbands and their families<sup>9</sup>. At the same time, enforcement agencies and courts may face difficulties in determining whether the pronouncement of triple talaq actually occurred, particularly in cases where it is communicated verbally or through informal means such as electronic messages. The evidentiary challenges in proving such acts can complicate legal proceedings and create uncertainties in the administration of justice. Balancing the need to protect genuine victims with the need to prevent misuse therefore remains a delicate task for the legal system.

The social and economic consequences of criminalizing triple talaq also raise important concerns. When a husband is imprisoned as a result of a criminal complaint, the economic stability of the family may be adversely affected, particularly in cases where the husband is the primary

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<sup>9</sup> <https://www.vaidhalegal.com/post/critical-analysis-of-the-muslim-women-protection-of-rights-on-marriage-act-2019>

breadwinner. This situation may place additional financial burdens on the wife and children, thereby complicating the objective of protecting women's welfare. Although the law provides for subsistence allowance and custody rights for affected women, the practical realization of these benefits often depends on effective judicial enforcement and administrative support. In many cases, women may still face social stigma, community pressure, or lack of financial independence, which can limit their ability to pursue legal remedies or sustain themselves after initiating criminal proceedings.

A broader and more complex issue arises from the tension between the autonomy of personal laws and the constitutional commitment to gender justice. Personal laws in India have historically been protected as part of religious freedom and cultural identity. However, practices within personal laws that appear to violate principles of equality and dignity have increasingly been subjected to constitutional scrutiny. The debate surrounding triple talaq reflects this larger conflict between respecting religious traditions and ensuring the protection of fundamental rights, particularly those of women. While the prohibition of instant triple talaq is widely viewed as a step toward gender equality, it has also raised concerns among some groups about excessive state interference in religious practices. Achieving a balance between these competing considerations remains a continuing challenge for lawmakers, courts, and society as a whole, highlighting the complexity of reforming personal laws within a pluralistic constitutional framework.

### **Comparative Perspective**

A comparative analysis of the regulation of triple talaq in various Muslim-majority countries provides significant insight into how Islamic personal law has evolved through legislative reforms and judicial interpretation. Contrary to the perception that instant triple talaq is an essential or universally accepted component of Islamic law, several Muslim-majority countries have either abolished or strictly regulated the practice through statutory measures. These reforms demonstrate that Islamic family law can be harmonized with modern principles of gender justice, procedural fairness, and state regulation. The experiences of these jurisdictions offer useful lessons for understanding the development of legal reforms relating to triple talaq in India.

Many Muslim-majority countries have recognized that the practice of instant triple talaq, also known as *talaq-e-biddat*, is inconsistent with the principles of justice and reconciliation emphasized in Islamic jurisprudence. As a result, legislative reforms have been undertaken to regulate divorce procedures and prevent unilateral and instantaneous dissolution of marriage. Several countries in the Middle East, North Africa, and South Asia have adopted legal frameworks that either invalidate triple talaq or treat it as a single revocable pronouncement rather than an immediate and final divorce. The objective of these reforms has generally been to protect women's rights, encourage reconciliation between spouses, and introduce judicial or administrative oversight in marital dissolution.

Pakistan represents one of the earliest examples of legislative intervention in Muslim personal law regarding divorce practices. The Muslim Family Laws Ordinance of 1961 introduced significant reforms aimed at regulating the process of talaq. Under this law, a husband who wishes to divorce his wife must provide written notice to the Chairman of the local Union Council and also supply a copy of the notice to the wife. After receiving the notice, the Chairman is required to constitute an Arbitration Council to attempt reconciliation between the spouses. The divorce does not become effective until the expiration of a ninety-day waiting period, during which reconciliation efforts may be undertaken. This procedural requirement effectively prevents the immediate validity of triple talaq and ensures that divorce is not granted impulsively. The ordinance thus transformed divorce from a purely unilateral act into a regulated legal process subject to administrative oversight and reconciliation mechanisms.

Bangladesh follows a legal framework similar to Pakistan because it adopted the same Muslim Family Laws Ordinance after independence. Under Bangladeshi law, a husband who pronounces talaq must send written notice to the local authority and provide a copy to his wife. The authorities then initiate reconciliation proceedings through an arbitration council, and the divorce becomes effective only after the completion of the statutory waiting period. Failure to comply with the procedural requirements may result in penalties, including fines or imprisonment. This system discourages the misuse of instant divorce and ensures that both parties are given an opportunity for mediation and reconciliation before the marriage is legally dissolved. The Bangladeshi model demonstrates how administrative supervision can prevent arbitrary divorce practices while still allowing dissolution of marriage in accordance with Islamic principles.

Egypt also provides an important example of early reform in Islamic family law. In 1929, Egypt enacted legislation regulating divorce and modifying traditional interpretations of talaq. The Egyptian law provides that if a husband pronounces divorce multiple times in a single statement, it will be treated as a single revocable divorce rather than three separate pronouncements. The legislation also addresses issues such as conditional talaq and divorce pronounced under coercion or intoxication, declaring such pronouncements ineffective. By redefining the legal consequences of multiple pronouncements, Egyptian law effectively neutralized the impact of instant triple talaq while preserving the broader framework of Islamic divorce. This reform reflects an attempt to interpret Islamic law in a manner consistent with fairness and rational legal procedure.

Similar reforms have been adopted in several other Muslim-majority countries, including Tunisia, Morocco, Algeria, and Indonesia, where divorce is subject to judicial supervision or formal legal procedures. In many of these jurisdictions, divorce can only be finalized through court proceedings, and efforts at reconciliation are required before the marriage is legally terminated. Such legal frameworks emphasize that marriage is a social institution protected by the state and that its dissolution should occur only after due consideration and procedural safeguards. These reforms highlight the growing recognition that family law must balance religious principles with the protection of fundamental rights and social justice.

The comparative experience of these countries offers important lessons for India's legal reforms concerning triple talaq. First, it demonstrates that regulation of divorce practices within Muslim personal law is not unprecedented and has been successfully implemented in many Muslim-majority jurisdictions<sup>10</sup>. Second, these reforms illustrate that Islamic legal principles can be interpreted in a manner consistent with gender equality and procedural fairness without undermining religious identity. Third, the emphasis on reconciliation, written notice, and administrative oversight shows that divorce can be structured as a responsible legal process rather than an arbitrary unilateral act.

For India, the comparative perspective reinforces the argument that reforming triple talaq was neither an interference with religion nor an unprecedented legal innovation. Instead, it aligns with broader global trends in Muslim family law reform aimed at protecting women's rights and ensuring fairness in marital relationships. The experiences of Pakistan, Bangladesh, Egypt, and other countries demonstrate that the abolition or regulation of instant triple talaq is compatible with both Islamic jurisprudence and modern legal standards. Consequently, these international examples provide valuable guidance for shaping a balanced legal framework that respects religious freedom while promoting constitutional values such as equality, dignity, and justice.

### **Critical Analysis**

The judicial and legislative responses to the practice of Triple Talaq represent a significant shift in the approach of the Indian legal system toward reconciling personal laws with constitutional principles. The decision of the Supreme Court in *Shayara Bano v. Union of India* marked a historic moment in which the judiciary acknowledged that certain practices within personal laws cannot remain immune from constitutional scrutiny. By declaring the practice of instant Triple Talaq unconstitutional and arbitrary, the Court emphasized that personal laws must conform to the fundamental rights guaranteed under the Constitution. This judgment reflected a broader commitment to gender justice and equality, particularly under Articles 14 and 21 of the Constitution, which guarantee equality before law and protection of life and personal liberty. However, the judicial approach has also been subject to criticism. Some scholars argue that the Court's reasoning did not fully resolve the tension between religious autonomy and constitutional mandates, leaving certain doctrinal ambiguities regarding the extent to which personal laws fall within the ambit of constitutional review.

Following the judicial intervention, the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019 represented the legislative attempt to provide a concrete remedy to Muslim women affected by the practice of instant divorce. The law declared the pronouncement of Triple Talaq void and illegal and introduced criminal penalties for husbands who engage in such

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<sup>10</sup> <https://www.thehindu.com/news/national/triple-talaq-law-need-for-state-action-wasfelt-as-sc-verdict-didnt-act-as-deterrent-centre-tellscourt/article66781995.ece#:~:text=Therefore%2C%20a%20need%20for%20State,brought%2C%E2%80%9D%20the%20Centre%20said>

practices. While the legislation aimed to strengthen the protection of Muslim women, its criminalization aspect has generated significant debate. Critics argue that treating the act as a criminal offense may lead to unintended consequences, such as the imprisonment of the husband, which could adversely affect the economic stability of the family. Supporters, on the other hand, contend that the provision acts as a deterrent against arbitrary divorce and reinforces the state's commitment to safeguarding women's dignity and rights. This divergence of views highlights the complexities involved in addressing issues that lie at the intersection of religion, law, and social justice.

The challenge of balancing religious freedom with constitutional rights remains central to the debate on Triple Talaq. Article 25 of the Constitution guarantees the freedom to practice and propagate religion, but this freedom is not absolute and is subject to public order, morality, and health, as well as other fundamental rights. The controversy surrounding Triple Talaq illustrates the delicate task faced by courts and lawmakers in determining whether a particular religious practice constitutes an essential part of the religion or whether it can be subject to reform. In the case of instant Triple Talaq, the judiciary concluded that the practice lacked a strong foundation in Islamic jurisprudence and therefore could not claim constitutional protection as an essential religious practice. This reasoning allowed the Court to prioritize gender equality and human dignity without directly undermining the broader framework of religious freedom.

Despite the abolition of Triple Talaq, the debate has also highlighted the need for broader reforms in Muslim personal law. Several aspects of marriage, divorce, maintenance, and inheritance continue to be governed by traditional interpretations that may not always align with contemporary standards of gender justice. Legal scholars and reform advocates have suggested that a comprehensive review of personal laws, with greater involvement of community stakeholders and scholars of Islamic jurisprudence, could lead to more balanced and culturally sensitive reforms. Such reforms would aim not only to protect the rights of women but also to ensure that legal changes are socially acceptable and sustainable within the community.

The socio-legal implications of abolishing Triple Talaq are significant and multifaceted. On one hand, the prohibition of instant divorce has strengthened the position of Muslim women by recognizing their right to security and dignity within marriage. It has also contributed to a broader discourse on women's rights and legal empowerment in India. On the other hand, the issue has sometimes been politicized, leading to concerns about the selective focus on particular religious practices while ignoring similar gender-based inequalities in other communities. Therefore, while the abolition of Triple Talaq represents a progressive step toward gender equality, it also underscores the continuing need for inclusive legal reforms that address the rights and welfare of women across all sections of society.

## **Recommendations and Way Forward**

The abolition of Triple Talaq through judicial and legislative intervention represents a significant step toward protecting the dignity and rights of Muslim women in India. However, the mere declaration of the practice as unconstitutional or illegal does not automatically ensure substantive justice unless it is supported by strong institutional mechanisms, social awareness, and broader reforms within personal laws. Strengthening legal safeguards for Muslim women is therefore an essential component of the way forward. While the Muslim Women (Protection of Rights on Marriage) Act, 2019 criminalizes the practice of instant Triple Talaq, effective enforcement requires accessible legal remedies, prompt police action, and sensitive judicial processes. Women affected by unlawful divorce must have access to legal aid, protection orders, and financial support mechanisms to ensure that they are not left vulnerable after marital breakdown. The legal system must ensure that complaints are handled with sensitivity and that procedural delays do not discourage women from seeking justice. In addition, the state should establish support structures such as counseling services, shelters, and economic assistance programs that can help affected women rebuild their lives. Without such institutional support, legal prohibition alone may not fully address the social and economic hardships faced by victims.

Another crucial aspect of reform lies in enhancing awareness and legal literacy among Muslim women and the wider community. Many women remain unaware of their legal rights or the remedies available under existing laws. Social conditioning, economic dependence, and fear of stigma often prevent them from challenging discriminatory practices. Therefore, awareness campaigns must be conducted at both the governmental and community levels to educate women about their constitutional rights, legal protections, and avenues for redress. Legal literacy programs, particularly in rural and semi-urban areas, can empower women to assert their rights and challenge unjust practices within the family and community. Non-governmental organizations, women's groups, and civil society institutions can play a vital role in spreading awareness, providing legal assistance, and facilitating dialogue within communities. Educational initiatives in schools, universities, and religious institutions may also contribute to developing a broader understanding of gender equality and constitutional values.

In addition to awareness initiatives, there is a pressing need for comprehensive reform of personal laws to ensure gender justice. Personal laws governing marriage, divorce, maintenance, and inheritance have historically been shaped by religious traditions and social practices, many of which evolved in contexts very different from contemporary democratic societies. While respecting religious diversity is an important constitutional principle, personal laws must also be consistent with the fundamental rights guaranteed under the Constitution. Reform within Muslim personal law should therefore focus on eliminating practices that undermine the equality and dignity of women. Several Muslim-majority countries have already undertaken reforms to regulate or abolish instant divorce and introduce procedures that ensure fairness and reconciliation before the dissolution of marriage. Similar reforms in India could include codification of Muslim family law, clearer procedural requirements for divorce, and mechanisms that ensure the consent and

welfare of both spouses. Codification would not only reduce ambiguity in the interpretation of personal laws but also promote greater consistency in judicial decisions.

Furthermore, the broader challenge lies in harmonizing religious practices with constitutional values. India's constitutional framework guarantees both the freedom of religion and the right to equality, and the relationship between these principles has often been a subject of legal debate. The judiciary has increasingly emphasized the concept of constitutional morality, which requires that all laws and practices—whether secular or religious—must conform to the principles of equality, dignity, and justice. In this context, reform of personal laws should be guided by a balanced approach that respects religious identity while ensuring that fundamental rights are not compromised. Dialogue between religious scholars, legal experts, policymakers, and community leaders can help develop interpretations of religious principles that align with contemporary notions of justice and gender equality. Such dialogue is essential for fostering social acceptance of legal reforms and preventing the perception that state intervention is an attack on religious freedom.

Ultimately, achieving meaningful reform requires a combination of legal, social, and institutional efforts. The prohibition of Triple Talaq has opened an important path toward greater gender justice, but sustained progress will depend on the effective implementation of laws, the empowerment of women through education and awareness, and the willingness of society to embrace progressive interpretations of personal law. By strengthening legal safeguards, promoting legal literacy, reforming discriminatory aspects of personal laws, and harmonizing religious traditions with constitutional ideals, India can move toward a more equitable and inclusive legal framework that protects the rights and dignity of all individuals regardless of gender.

## **Conclusion**

The issue of Triple Talaq has been one of the most significant socio-legal debates in India, reflecting the complex interaction between religious personal laws, constitutional principles, and gender justice. The practice of *Talaq-e-Biddat*, which allowed a Muslim husband to dissolve a marriage instantly by pronouncing “talaq” three times, had long been criticized for being arbitrary and discriminatory towards women. Over time, the controversy surrounding this practice highlighted the broader challenge of reconciling religious customs with the constitutional commitment to equality, dignity, and justice. A critical examination of the historical background, legal framework, and judicial developments demonstrates that the practice lacked strong support even within classical Islamic jurisprudence and had been widely debated among scholars and reformists. The landmark judgment of *Shayara Bano v. Union of India* by the Supreme Court of India marked a turning point by declaring instant Triple Talaq unconstitutional, primarily on the ground that it was manifestly arbitrary and violated the fundamental rights guaranteed under Articles 14 and 21 of the Constitution. This decision reaffirmed the judiciary's role in safeguarding

individual rights while also setting an important precedent in the relationship between personal laws and constitutional values.

Following the judgment, the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019 represented the legislative response aimed at eliminating the practice and protecting Muslim women from unilateral divorce. The law criminalizes the pronouncement of instant Triple Talaq and provides certain legal remedies, including the right to subsistence allowance and custody of minor children for the affected woman. In many ways, this reform reflects the state's commitment to promoting gender equality and addressing the longstanding vulnerabilities faced by Muslim women within the framework of personal law. However, the effectiveness of this legislative intervention remains a matter of debate. While the prohibition of instant Triple Talaq has symbolically strengthened the rights of women and discouraged the arbitrary dissolution of marriage, concerns have been raised regarding the criminalization of what is essentially a marital dispute. Critics argue that imposing criminal penalties may have unintended consequences, such as destabilizing families or being misused in certain situations. Furthermore, the success of the law depends largely on proper implementation, awareness among affected communities, and the accessibility of legal remedies for women who face such practices.

Despite these challenges, the abolition of Triple Talaq represents a significant step toward gender justice within personal law systems in India. The reform has sparked broader discussions about the need to revisit and modernize personal laws to ensure that they align with constitutional principles of equality and human dignity. It has also highlighted the importance of balancing religious freedom with the protection of fundamental rights. In the future, the prospects for gender justice in personal laws will depend on a combination of judicial vigilance, legislative reform, and social awareness. Courts must continue to interpret personal laws in a manner consistent with constitutional morality, while policymakers should consider comprehensive reforms that address other areas of gender inequality within family laws. Equally important is the role of education, community dialogue, and legal awareness in empowering women to assert their rights. Ultimately, the Triple Talaq debate illustrates that meaningful legal reform requires not only statutory changes but also a broader transformation in societal attitudes toward gender equality and justice.

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