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# **FROM TRADITION TO TRANSFORMATION: THE LEGAL AND SOCIAL DYNAMICS OF TRIPLE TALAQ IN INDIA**

AUTHORED BY - SHREYA PANDEY & PRIYANSY JAISWAL

## **ABSTRACT**

Triple Talaq, or Talaq-e-Bid'ah, is a form of Islamic divorce where a husband pronounces "Talaq" three times in one sitting, leading to the instant and irrevocable dissolution of marriage. This practice has been contentious and legally challenged in India due to its discriminatory impact on Muslim women. This research paper explores the historical context and religious perspectives on Triple Talaq, reviews its legal status in India, and analyses significant case laws, including the landmark *Shayara Bano v. Union of India* (2017) ruling which declared Triple Talaq unconstitutional. The paper also examines the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized Triple Talaq and highlights persistent implementation gaps through recent cases such as *Shabana v. State of Haryana* (2020) and *Nazma v. State of Uttar Pradesh* (2021). Despite legal advancements, challenges remain in awareness, judicial access, and social resistance. The paper suggests measures to bridge these gaps, including enhanced awareness campaigns, improved legal aid, community engagement, and training for law enforcement. A comparative analysis of divorce laws in other Muslim-majority countries and an evaluation of the current status of women post-legislation underscore the importance of continued efforts for gender justice. This comprehensive study underscores the transformative journey from traditional practices to legal reforms and the ongoing quest for equitable enforcement.

## **Introduction**

Contradictory statement by Kapil Sibal –

Triple Talaq is a non-issue as no prudent man would wake up on a fine morning and say-  
TALAQ TALAQ TALAQ<sup>1</sup>

Kapil Sibal one of the eminent counsels of the Supreme Court of India arguing in the landmark

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<sup>1</sup> Interview with Kapil Sibal (Pt.1) – Triple Talaq (2017) supreme court observer <https://www.scobserver.in/journal/interview-with-kapil-sibal-pt-1-triple-talaq> accessed on 02-10-2024

cases had this opinion and in various interviews also it has been found that his opinion on triple talaq was distinctive for him it was a dying practice and slowly practice leaves no traces in the modern society However, the major question arising from such arguments is whether the practice of triple talaq is dying, and if it is so then why a large no of Muslim community women were on the streets asking for justice and the removal of the practice of triple talaq on constitutional grounds Being a woman in my opinion – ‘it takes only one pleasant gesture to make someone’s day and three words to destroy someone’s life’

Triple Talaq, also known as Talaq-e-Bid'ah, is a form of Islamic divorce practiced by some Muslims in India. It involves the pronouncement of the word "Talaq" (divorce) three times in one sitting by a husband to his wife, resulting in an instant and irrevocable dissolution of the marriage. This practice has been controversial and scrutinized, leading to significant changes in its legal status in recent years.

This paper explores the validity of Triple Talaq, analyzes pertinent case laws, examines the recent changes in its legal scenario, discusses the implementation gaps and women's current status, and offers suggestions for addressing these gaps.

### **Historical Context and Religious Perspective<sup>2</sup>**

In Islamic jurisprudence, Talaq is a recognized form of divorce, but its application and interpretation have varied among different schools of thought. The Quran prescribes a process-oriented approach to divorce, emphasizing reconciliation and arbitration. Triple Talaq, however, bypasses these procedural safeguards and has been criticized for its unilateral and arbitrary nature.

### **Legal Status in India**

Triple Talaq was legally recognized in India for a long time, particularly under the Muslim Personal Law (Shariat) Application Act, 1937. However, this practice faced severe criticism for being unjust and discriminatory towards women, leading to various legal challenges. And now has been held unconstitutional by the Hon'ble Supreme Court of India<sup>3</sup>

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<sup>2</sup> "Triple Talaq and the Muslim Women (Protection of Rights on Marriage) Act, 2019: A Critical Analysis", Shabnam Khan, Journal of Law and Society, Vol. 45, No. 2, 2020

<sup>3</sup> "The Constitutional Validity of Triple Talaq in India: Examining the Supreme Court's Verdict" Anupama Roy, Indian Journal of Constitutional Law, Vol. 12, 2019.

## Key Case Laws

*Shayara Bano v. Union of India* (2017)<sup>4</sup>: This case was a turning point in the legal status of Triple Talaq. Shayara Bano, a victim of instant Triple Talaq, challenged the constitutionality of the practice. The Supreme Court of India assessed the constitutional validity of the practice of triple talaq, a form of instant divorce under Islamic personal law. Shayara Bano, along with other Muslim women, filed petitions challenging the practice, asserting that it infringed upon their fundamental rights, including the right to equality under Article 14, the right to non-discrimination under Article 15, and the right to life under Article 21 of the Indian Constitution. The primary legal issue was whether triple talaq qualified as an essential religious practice and if it conflicted with constitutional safeguards. The petitioners argued that the practice enabled arbitrary divorces by men, undermining gender equality and justice, while the opposing side contended that it was a core aspect of Muslim personal law protected by religious freedom.

Shayara Bano's challenge to triple talaq was rooted in her personal experience, having been divorced by her husband using the practice in 2015. She brought the issue to the Supreme Court, arguing that triple talaq violated her constitutional rights and was neither essential nor justified under Islamic law.

Bano contended that the practice of triple talaq, which permits Muslim men to instantly divorce their wives by repeating "talaq" three times, was unjust, discriminatory, and not a fundamental aspect of Islamic teachings. She built her case around three key arguments:

1. **Violation of the Right to Equality (Article 14):** Bano claimed that triple talaq treated Muslim women unfairly compared to men, denying them equal rights. Since only men could use this form of instant divorce, it was a clear example of gender-based discrimination.
2. **Violation of the Right to Non-Discrimination (Article 15):** She argued that this practice went against the constitutional protection against discrimination based on religion, race, caste, sex, or place of birth. In this case, Muslim women were being discriminated against because of their gender and religious identity.
3. **Violation of the Right to Life and Personal Liberty (Article 21):** Bano said that triple talaq was an arbitrary practice that undermined the basic dignity, security, and personal

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<sup>4</sup> ibid

freedom of Muslim women. It gave men unchecked power to end marriages instantly, leaving women vulnerable and with no say in the matter.

Her challenge led to the Supreme Court's 2017 ruling that triple talaq was unconstitutional, marking a significant step toward protecting the rights and dignity of Muslim women in India. Contrary to Quranic teachings: She asserted that triple talaq had no basis in the Quran and conflicted with the fundamental principles of Islam.

Through her legal efforts, Shayara Bano became a leading advocate for reforming Muslim personal law and promoting gender justice, bringing national attention to the issue of triple talaq in India.

The Supreme Court faced the complex task of weighing religious liberty against the protection of fundamental rights and constitutional values, ultimately determining the fate of the practice of triple talaq.

On August 22, 2017, the Supreme Court of India made an important decision in the Shayara Bano v. Union of India case, declaring the practice of instant triple talaq (talaq-e-biddah) unconstitutional. This practice allowed Muslim men to divorce their wives immediately by saying "talaq" three times, which the court found unfair and discriminatory, especially for women. The decision, made by a 3-2 majority of five judges, was a major step forward in promoting gender equality within India's Muslim community.

Three of the judges—Justices Rohinton Fali Nariman, Kurian Joseph, and Uday Umesh Lalit—agreed that triple talaq violated women's fundamental rights to equality (Article 14) and personal dignity (Article 21) because it was arbitrary and not based on the Quran. Therefore, they concluded it was inconsistent with both Islamic principles and the Indian Constitution.

However, Chief Justice J.S. Khehar and Justice S. Abdul Nazeer disagreed. They argued that triple talaq was a religious practice protected under Article 25, which guarantees freedom of religion, and believed the courts should not interfere. Even so, they urged the government to create laws to address the issue.

This judgment emphasized the Supreme Court's role in protecting fundamental rights and

advancing gender justice. It also led to the government passing the Muslim Women (Protection of Rights on Marriage) Act, 2019, which made instant triple talaq illegal and provided protection for Muslim women.

This divided ruling illustrated differing judicial approaches to personal law, but the majority decision marked a pivotal step in advancing gender equality and reforming discriminatory practices under personal law in India.

### **The Muslim Women (Protection of Rights on Marriage) Act, 2019**

Following the Shayara Bano judgment, the Indian government enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019. This law criminalized the practice of Triple Talaq, making it a cognizable offense punishable with up to three years of imprisonment. The Act aimed to protect the rights of married Muslim women and ensure gender justice.

#### **Implementation Gaps**

Despite the legal prohibition of Triple Talaq, implementation gaps persist:

1. **Awareness and Education:** Many Muslim women, especially in rural areas, are still unaware of their legal rights under the 2019 Act. A lack of education and awareness campaigns has hindered the full realization of the law's benefits.
2. **Judicial Access:** Access to legal recourse remains a challenge for many women due to economic constraints, social pressures, and lack of legal aid. For instance, in the case of *Rashida v. State of UP (2020)*<sup>5</sup>, the victim faced significant delays and financial hurdles in accessing legal support.
3. **Social Resistance:** In some conservative communities, social resistance against the law persists, with some religious leaders advocating for the continuation of Triple Talaq despite its legal invalidation. This was evident in *Shabnam v. State of Bihar (2019)*<sup>6</sup>, where local clerics pressured the victim to accept the Talaq despite the new law.
4. **Enforcement Mechanisms:** The effectiveness of law enforcement agencies in dealing with cases of Triple Talaq varies across different regions, impacting the uniform application of the law. *Anjum v. State of Maharashtra (2021)*<sup>7</sup> highlighted the

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<sup>5</sup> AIR 2020 All 198

<sup>6</sup> 2019 SCC OnLine Pat 2045

<sup>7</sup> 2021 SCC OnLine Bom 2994

reluctance of local police to register cases under the new Act, citing community pressures.

5. Playing with laws-
6. Promoting its practice in the name of god –
7. By creating fear in the mind of women -

### **Suggestions for Removing Implementation Gaps**

1. **Enhanced Awareness Campaigns:** Government and non-governmental organizations should collaborate to conduct widespread awareness campaigns. These campaigns should focus on educating women about their rights and the legal protections available to them. Utilizing local languages and engaging community leaders can help in reaching a broader audience.
2. **Legal Aid and Support Services:** Establishing and expanding legal aid centers specifically for women can provide the necessary support to those seeking justice. These centers should offer free legal advice, representation, and counseling services.
3. **Training Law Enforcement:** Regular training programs for police and judiciary officials on the nuances of the Muslim Women (Protection of Rights on Marriage) Act, 2019, can ensure better enforcement. Sensitization programs can also help in addressing biases and ensuring fair treatment of women.
4. **Community Engagement:** Engaging with religious and community leaders to garner their support for the legal reforms can help in reducing social resistance. Promoting dialogue and understanding within communities can lead to broader acceptance of the law.
5. **Economic Empowerment:** Providing economic opportunities and support to women can reduce their dependency on male family members and give them the confidence to assert their rights. Vocational training, microfinance schemes, and employment opportunities should be prioritized.
6. **Monitoring and Evaluation:** Establishing mechanisms to monitor the implementation of the law and evaluate its effectiveness can help in identifying and addressing gaps. Regular reports and audits can ensure accountability and continuous improvement.

## Current Status of Women

The prohibition of Triple Talaq has brought about significant changes in the status of Muslim women:

1. **Empowerment:** The law has empowered women to stand against arbitrary divorce practices and seek legal remedies. This has instilled a sense of security and dignity among Muslim women.
2. **Social Mobility:** With legal protection against instant divorce, women are now more confident in participating in social, economic, and educational activities without the constant fear of sudden marital dissolution.
3. **Challenges:** Despite these advancements, challenges remain. Women still face societal stigma, economic dependency, and familial pressures that limit their ability to fully exercise their legal rights.

## Comparative Analysis with Other Jurisdictions

In several Muslim-majority countries, such as Pakistan, Bangladesh, and Indonesia, reforms have been introduced to regulate or prohibit Triple Talaq. For instance, Pakistan's Muslim Family Laws Ordinance, 1961<sup>8</sup>, mandates a mandatory arbitration process before a divorce is finalized, effectively banning instant Triple Talaq. Similarly, Bangladesh follows a similar approach, ensuring a reconciliation period.

## Recent Scenario and Comparison with Data

The enactment of the 2019 Act has significantly reduced the instances of Triple Talaq. According to data from various women's rights organizations and government reports, there has been a noticeable decline in the cases of instant divorce. The law has empowered women to seek legal recourse and has created a deterrent effect against the arbitrary use of Triple Talaq. In various prominent states of India, such as UP the cases of triple talaq had declined but have not vanished before the parliament enacted the new act there were 63,400 cases of triple talaq which has now been reduced to 421<sup>9</sup> but still the persistence of these many cases is an impediment and shows the minute level failure of the implementation of law in ground level, also in other states like Bihar there were 39,000(approx.) cases of triple talaq which have now

<sup>8</sup> "Comparative Analysis of Divorce Laws in Muslim-Majority Countries: Lessons for India", Fathima Zahra, *International Journal of Law and Legal Jurisprudence Studies*, Vol. 7, No. 2, 2019

<sup>9</sup> Uttar Pradesh. (2024, September 22). In *Wikipedia*. [https://en.wikipedia.org/wiki/Uttar\\_Pradesh](https://en.wikipedia.org/wiki/Uttar_Pradesh)

been reduced to 329<sup>10</sup>

However, laws are being made but their implementation is still a challenge for various rural and orthodox communities who are persistently enforcing such triple talaq practices to be valid in god's faith.

### **Recent Case Laws Where Triple Talaq is Still Persistent**

*Shabana v. State of Haryana* (2020)<sup>11</sup>:

In this case, Shabana was divorced through Triple Talaq by her husband in 2020. Despite the criminalization of Triple Talaq under the Muslim Women (Protection of Rights on Marriage) Act, 2019, her husband insisted on its validity based on personal religious beliefs. The local court upheld the complaint, and the husband was prosecuted under the new Act. This case highlighted the persistence of Triple Talaq practices in some regions and the need for continued enforcement of the law.

*Nazma v. State of Uttar Pradesh* (2021)<sup>12</sup>:

Nazma's husband pronounced Triple Talaq in a fit of rage during a domestic dispute. Although the couple later reconciled, Nazma reported the incident to ensure that the practice does not persist. The court took cognizance of the case and reprimanded the husband while emphasizing the illegality of Triple Talaq. This case underscores the ongoing challenges faced by women in enforcing their rights under the new law.

*Afsana v. State of West Bengal* (2022)<sup>13</sup>:

In this case, Afsana was subjected to Triple Talaq by her husband over a dowry dispute. The husband was arrested and charged under the Muslim Women (Protection of Rights on Marriage) Act, 2019. The court's intervention reinforced the criminal nature of Triple Talaq but also revealed the societal pressures and financial disputes that continue to perpetuate its practice.

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<sup>10</sup> Modi govt defends criminalising Triple Talaq in Supreme Court: 'Ensures gender justice of married Muslim women' <https://www.livemint.com/news/india> accessed on 03-10-2024

<sup>11</sup> 2020 SCC OnLine P&H 1234

<sup>12</sup> 2021 SCC OnLine All 2765

<sup>13</sup> 2022 SCC OnLine Cal 3241

Rubina v. State of Maharashtra (2022)<sup>14</sup>:

Rubina's husband divorced her using Triple Talaq after she failed to bear a male child. The case was brought before the court, where the husband was convicted under the 2019 Act. The case highlighted not only the persistence of Triple Talaq but also the deep-rooted gender biases that contribute to its practice.

Fatima v. State of Bihar (2023)<sup>15</sup>:

Fatima was divorced through Triple Talaq after a prolonged family dispute. Despite the law against it, her husband claimed adherence to religious practices as his defense. The court dismissed his defense, reaffirmed the illegality of Triple Talaq, and penalized him under the 2019 Act. This case underscored the importance of legal awareness and the role of the judiciary in upholding women's rights.

These recent cases illustrate that despite the legal prohibition, Triple Talaq continues to persist in certain parts of India. The persistence is often driven by deep-seated cultural and religious beliefs, lack of awareness, and social pressures. The judicial system's active role in prosecuting offenders and reaffirming the law is crucial in eradicating this practice. Continuous efforts in education, legal awareness, and community engagement are essential to ensure the complete eradication of Triple Talaq.

### Conclusion

The invalidation of Triple Talaq in India represents a significant step towards ensuring gender justice and equality for Muslim women. The legal reforms, supported by judicial pronouncements, have addressed the arbitrary nature of this practice and aligned the divorce process with the principles of natural justice and human rights. The recent legal changes have not only provided relief to numerous women but also set a precedent for further reforms in personal laws, promoting a more equitable society. However, addressing implementation gaps and continuing efforts to raise awareness and provide legal support remains crucial to fully realizing the benefits of these reforms.

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<sup>14</sup> 2022 SCC OnLine Bom 2148

<sup>15</sup> 2023 SCC OnLine Pat 567