



# Comparative Analysis of Muslim Talaq Laws

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**Abstract:** Muslim divorce (Talaq) has been debated and reformed worldwide. The purpose of this article is to examine the historical, cultural, & legal foundations of Muslim talaq laws from various nations and to draw comparisons between them. It delves into the various types of talaq, whether or not they are recognised legally, and the modern difficulties that Muslim women encounter. The husband might face up to three years in prison for issuing an instant triple talaq (talaq-e-biddat) through any means of communication, including verbal, written, or electronic means such as email or text message. The new law makes it easier for a victimised mother to seek financial assistance for her dependent children. This article focuses on the development and consequences of Talaq laws in a globalised society by examining the legal frameworks in countries like Sri Lanka, Iran, Afghanistan, Pakistan, India, and Pakistan. Even while talaq is a legitimate divorce option in the majority of these countries, several have been making strides towards more equal legal systems that give women more freedom to choose whether or not to have a divorce.

**Keywords:** Talaq, Divorce, Muslim Law, Comparative Analysis, Women's Rights, Islamic Law

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## INTRODUCTION

Muslims in India can't help but notice the profound shifts that have taken place throughout the years. No one can dispute the fact that personal law has come a long way in recent decades. This body of legislation has been modernised, codified, and streamlined in countries where Muslims constitute the majority. Among the many features of Islamic personal law is talaq, or divorce, which, under some circumstances, permits a husband to end a marriage immediately. Many nations' legal systems have undergone reforms to adapt to modern society, especially those with Islamic origins. Contrary to popular belief, Muslim law is not theocratic. Based on the principles of ijtiḥad, marriage law has been drastically or entirely changed in several nations' legal systems. During the years 1915 and 1916, the Muslim world began to codify its legal system. Legal codes governing marriage, divorce, bequests, waqf, and other family-related matters have been established in these nations. Different cultural and legal contexts have a significant impact on the practice of Talaq, leading to varying interpretations and uses. This research aims to examine and contrast Muslim talaq laws from various nations, looking at their origins, legal frameworks, and societal effects.

## EXISTING LAWS

There are three distinct forms of talaq recognised by Islamic law:

1. **Talaq-e-Ahsan:** This particular type of talaq is regarded as the most appropriate and desirable one. When a wife is in her tuhr, or period between menstrual cycles, when she is not bleeding, the husband says the word talaq only once. The husband has the option to withdraw the talaq by reconciling with his wife or by renouncing it vocally or in writing during the iddah, a mandated

waiting time of three menstrual cycles that follows the pronouncement of talaq. Finality of the divorce is determined by the absence of talaq revocation after the iddah period has passed.

2. **Talaq-e-Hasan:** In this variant of the talaq, the husband must wait a certain amount of time between each of his three pronouncements. The couple is encouraged to try to work things out through mediation or reconciliation during the waiting period. A divorce is finalised with the third pronouncement of talaq if the couple is unable to reconcile throughout the waiting period.
3. **Talaq-e-Biddat or Triple Talaq:** There is no waiting period or chance for reconciliation or mediation in this immediate and irreversible type of talaq, which requires the husband to pronounce talaq three times in one sitting. Some Islamic academics and feminists have argued that this type of talaq violates the rights of women and is therefore unfair to them. The triple talaq has been outlawed in multiple nations, India included.

The three forms of talaq are distinct from one another with respect to the legitimacy and permissibility they have in Islamic law. Several Islamic scholars hold the view that Talaq-e-biddat is invalid and forbidden, while others hold that Talaq-e-Ahsan & Talaq-e-Hasan are legitimate and allowed.

### **The UCC debate on Triple Talaq**

In India, there is a proposal for a single rule that would apply to all citizens, independent of their faith, called the Uniform Civil Code (UCC). This code would supersede the personal laws of various communities of religion. A Muslim husband can immediately divorce his wife by using the word "talaq" three times; this practice is at the heart of the UCC dispute surrounding triple talaq.

Triple talaq, according to the UCC's backers, is an affront to Muslim women's rights and a violation of the constitution. They claim it's unfair and goes against the Indian Constitution's guarantees of equality between the sexes and justice.

Some who are against the UCC say it would violate religious freedom by interfering with the personal laws of many faith communities. Triple talaq, they say, is an issue of private law best decided by the Muslim community itself.

The Indian Supreme Court ruled in 2017 that the practice of triple talaq violated the rights of Muslim women and so was unconstitutional. The idea that individual statutes cannot supersede the rights conferred by the Indian Constitution formed the basis of the Court's ruling. The Supreme Court ruled that the practice of triple talaq was discriminatory, unjust, and arbitrary.

Although discussions on the UCC are ongoing, the Muslim Women (Protection of Rights on Marriage) Act, 2019, which makes triple talaq a crime & specifies punishment for perpetrators, has been passed by the Indian Parliament.

### **Significant talaq cases decided by India's highest court**

Triple talaq, often known as instant divorce, was deemed unlawful & breach of women's rights in the 2017 case Shayara Bano v. Union of India by the Indian Supreme Court. The Court ruled that the practice does not constitute an essential component of Islam and, as a result, does not qualify for religious freedom

protection.

According to the Indian Supreme Court's ruling in *Daniel Latifi v. Union of India* (2001), a husband is required to provide reasons for seeking a divorce under Muslim Personal Law, and the decree must adhere to the principles of natural justice. Additionally, the court emphasised that the talaq had to be acknowledged legally and reported to the wife. Also, the court ruled that a husband's responsibility to support his wife beyond the normal term continues even after Iddat has passed if she is homeless or otherwise unable to do so on her own.

The petitioner, Shamim Ara, sued her husband, Abrar Ahmad, in 1979; the case is *Shamim Ara v. State of U.P.* (2002). Ahmad, she said, had abandoned her and was not providing for her financially. After Shamim Ara's 1987 triple talaq, Ahmad claimed to have divorced her in 1990. The validity of Ahmad's talaq was the central question before the court. The specific issue was whether the divorce became effective when Ahmad initially announced it in the presence of witnesses but without his wife present, or when he formally informed Shamim Ara of the divorce in writing in 1990. There was also the possibility that the divorce had no legal standing. In the end, the Supreme Court sided with the third choice. Talaqs that are given to Muslim spouses in secret and then conveyed to them in writing are so unfair that the court decided they should not be recognised legally. According to the Court's logic, this private activity likewise needed the court's blessing to be legitimate.

In protecting Muslim women's rights, these cases have significantly influenced India's legal framework on talaq.

Finally, India's Uniform Civil Code advocates have long maintained that triple talaq is an unfair discrimination against Muslim women, while opponents have maintained that the practice is a question of personal law best left to Muslim communities to determine. Nevertheless, the necessity to safeguard Muslim women's rights is becoming increasingly apparent, what with the Indian Supreme Court's ruling that triple talaq is unconstitutional & 2019 Muslim Women (Protection of Rights on Marriage) Act, which makes it a crime.

## **COMPARATIVE STUDY WITH TALAQ LAWS OF OTHER COUNTRIES**

### **Kuwait**

The majority of Kuwaitis adhere to Sunni Islam, and the country is theocratic. The Code of Personal Status was passed by Kuwait in order to govern Talaq-related concerns. The following are the requirements for a lawful divorce as stated in the Code:

- A. Husbands must meet the age & mental health necessities to obtain a formal declaration of divorce.
- B. Proclamations must be voluntary. According to Article 102 of the Code, a talaq cannot be enforced unless the husband has reached the age of majority and is mentally competent to do so. Additionally, talaq will not be valid if it is proclaimed under the influence of wrath, fear, error, coercion, or intoxication. According to Kuwait's Code of Personal Status, a husband's Talaq, in whatever form, followed by two or three is considered one. Any type of Talaq followed by two or three is to be interpreted as one, according to Article

109.

### **Afghanistan**

Officially, Islam is recognised as the official religion of Afghanistan, and the great majority of Afghans are Muslims. The majority of Muslims adhere to the Sunni school of thought. For the purpose of resolving issues related to divorce, the Republic of Afghanistan's Civil Code was established. A woman in Afghanistan can't get a divorce unless her husband is over the age of majority and he's mentally capable. If his out-of-control spending or physical disability is preventing him from contributing financially to his marriage, he can file for a divorce. Divorce is illegal in all of the situations listed above, hence the spouse cannot initiate the process. Drowsiness, Madness, Lack of discernment, While under pressure, rest, Individual whose mental faculties deteriorate with the passage of time or as a result of illness; a person whose judgement has been clouded by wrath or some other emotion, rendering them unable to comprehend their own speech.

According to the Republic of Afghanistan's Civil Code, a divorce can be granted verbally or in writing; however, if none of these options are available, the divorce can also be signified by ordinary signals. You cannot get a divorce from a wife who is under the age of 18. A husband can file for a third divorce from his wife. The husband's proclamation of divorce followed by a numerical value will be treated as a single entity. With the following exceptions, as stated in the Republic of Afghanistan's Civil Code: the third divorce, a divorce decreed prior to the consummation of the marriage, and Getting a divorce in return for money and According to this statute, a divorce cannot be reversed. If a woman gets a divorce three times, she must undergo Halala before her husband can remarry her.

### **Iraq**

Iraq is a theocratic democracy where the majority of the population is Shia Muslim. To get a divorce, one must follow the rules laid out in the Code of Personal Status, which was passed in 1989. A husband must initiate legal actions before the Court of Personal Status in order to obtain a divorce from his wife, as stated in Article 39 of the Code. According to the Code, the husband is obligated to register the divorce if, for whatever reason, it is not possible to file a lawsuit. Until the Court cancels it, the marriage certificate shall remain valid, according to the Code. The spouse has announced divorce, but he has not registered it of his own free will. This means that the marriage will continue. If a woman is divorced three times in a row, the divorce is considered final and the parties cannot remarry, according to the Code of Personal Status, 1959. If a number follows a talaq, it is treated as one. However, a husband cannot impose a talaq until he has received a ruling from the Court of Personal Status. Even if he is unable to secure a decree, the divorce registration that he makes during Iddat will be legally binding. Finally, according to the Code, a marriage certificate is valid until it is revoked. Additionally, "No divorce shall be effective when pronounced by the persons mentioned below:" as stated in Article 35 of the Code of Personal Status, 1959.

1. someone who is drunk, mentally unstable, or confused, under pressure, or who isn't on top of his game because of things like rage, an unexpected disaster, old age, or illness;
2. someone who is terminally ill and dies, bereaved only by his wife.

## **Saudi Arabia**

Sharia, the Islamic code of law based on the Qur'an & traditions of the Islamic prophet Muhammad (the Sunnah), is the foundation of Saudi Arabia's legal system. Islamic scholarly agreement that emerged following Muhammad's death is another source of Sharia. Saudi Arabian judges base their interpretations on Wahhabism, which emerged in the 18th century. Saudi Arabia is one of the few Muslim countries that has accepted Sharia law in its uncodified form. There is a lot of grey area regarding the breadth and substance of the laws of the nation because of this and the absence of court precedent. Therefore, in 2010, the government declared its intention to codify Sharia, and since then, a sourcebook of legal principles & precedents has been published, marking a crucial milestone in the process, which was completed on January 3, 2018. Sharia has also been supplemented with rules (Arabic: "anāima," which the Saudi Official Bureau of Translation translates as "Laws") issued by royal decree to deal with modern issues like as intellectual property and business law. When it comes to matters of law, family, economics, and contracts, however, Sharia remains paramount, with the Qur'an & Sunnah seen as the constitution of the country. Notable in Saudi land and energy law are the extensive proprietary rights of the Saudi state—or more accurately, the Saudi royal family. Saudi Arabia is one of the Muslim countries that does not practise triple talaq. You must be aware that the Islamic triple talaq procedure is different from the Indian one. In addition, India's chosen course of action has exacerbated the problem rather than alleviating it. To combat injustice in this field, many countries have used alternative, successful techniques. Some countries have arbitration councils that can resolve issues faster than courts, but they are never identical to India's. The majority of countries follow the three-month rule. It is our sincere wish that this most recent verdict would bring about a positive change.

The constitutional bench of the Supreme Court completed its examination of the validity of triple talaq in just one sitting. As far as anyone can tell, this was the first time the Supreme Court has considered a case involving personal laws. The federal government and its allies put a lot of faith in the practice in Muslim countries like Pakistan and Saudi Arabia where triple talaq is illegal. They went on to say that it violated the equality principle or constitutional morality. The BJP-led federal government argued in 2001 before the Supreme Court to uphold a maintenance law from 1986, stating that "personal law is legitimate basis for discrimination, if at all, and therefore, does not offend Article 14 of the Constitution" in a related case involving Muslim personal law. On the other hand, its situation is different now. The pro-prohibition camp failed to convince the judge that many Muslim practices in India are very different from those in other Islamic countries. The majority of Saudis follow the Sunni school of thought known as Ahl-e-Hadith, which was founded by Abdul Wahab, who also followed the teachings of Imam Hambal & Ibn Taimiya. Notifications will be sent to women in Saudi Arabia by text message.

It said that women could verify their marital status on the ministry's website or go to the relevant court to get a copy of their divorce papers. Women in Saudi Arabia now have more rights than ever before, including the ability to vote in local elections, go to sporting events, and work more than ever before, all in an effort to wean the country off its reliance on oil. But many Saudi women are speaking out online for more independence. They are also critical of the country's strict clothing regulations, which require women to wear the headscarf known as an abaya whenever they are in public. The Saudi Arabian guardianship policy, which states that women must seek permission from a male relative before engaging in certain

activities such as working, travelling, getting married, or even receiving certain medical treatments. Saudi Arabia, which is home to more than three crores of Muslims, frowns upon numerous practices that Muslims in India consider to be Islamic. Indian customs should not be shaped by Saudi Arabian ones. The monarchy has forbidden the preservation of the houses of the Prophet and several of his followers. Similarly, the graves of the Prophet's other close associates have also been neglected.

It is strictly forbidden by Saudi legislation to be outside of the mosque during Namaz. It is customary for women to wear the headscarf whenever they leave the house. Polygamy is much more prevalent there than among Muslims in India, where it is becoming less widespread. Among Saudi Arabia's Muslim women, 81% are literate. Nevertheless, the majority of India's 17 crore Muslims follow Sunni ideology and are Abu Hanifa adherents. Many Muslims in India hold Sufism and Dargah in high regard as acceptable religious practices, even if these traditions are not acknowledged in other Islamic nations. In comparison to countries like Saudi Arabia, they have different standards for social safety, a longer divorce court process, and higher levels of education and money. Muslim women in India are shielded from certain religious rites by the country's constitution; instead, they have the option to utilise the Special Marriage Act. Pakistan, which is bordering India, is also very different from India. Triple talaq was also a hotly debated topic there. The ulemas of the country were quite critical of the ban. The first talaq becomes final if not reversed by arbitration within 90 days, even though it is against the law in Pakistan to perform three talaqs at once.

### **Sri Lanka**

Sri Lanka has been shaped by the centuries of colonisation by numerous European powers. A complex hybrid of English common law, Sinhalese law, Muslim law, Roman-Dutch law, and customs has developed in Sri Lanka's legal system since the country gained independence in 1948. Colonial officials under Dutch rule formalised the laws pertaining to marriage, inheritance, & divorce in the late eighteenth century so that Muslim family law could be more easily applied. The provisions of the Mohammedan Code and conventional knowledge were held in higher regard than more conventional legal treatises. After the Dutch were defeated by the British in 1799, these special regulations were maintained and even changed. Muslims across the entire island were subject to the Code by the late 1800s, albeit it had originally only pertained to the Province of Colombo. The Registration of Muslim Marriages Ordinance of 1896, enacted during the British rule, removed portions of the earlier Code. The Muslim Marriage and Divorce Registration Ordinance, which replaced the Anglo-Dutch Mohammedan Code in 1929, further revised and changed the laws that had been in effect since 1896. The Muslim Intestate Succession Ordinance of 1931 is the second statute that Sri Lanka has up to this day. It was the 1951 Muslim Marriage and Divorce Act, not the 1929 Ordinance, that took precedence. The essential principle established by the 1951 Act is that the parties' respective legal schools should decide on the rights and responsibilities pertaining to personal status concerns.

### **Bangladesh**

Islam predominates in the theocratic state of Bangladesh. The majority of Muslims in both countries are Sunni Muslims. In 1961, Pakistan passed a law that Bangladesh followed stating: "Any man who wishes to divorce his wife shall, as soon as may be after the declaration of Talaq in any form whatsoever, give the

Chairman a notice written of his having done so, and shall supply a copy thereof to the wife. Anyone who contravenes the provision shall be punished with simple imprisonment for a term which may extend to one year, with fine which may extend to 5,000 rupees, or with both." In a 2004 study, the C.R.R. looked into the marriage and divorce laws of Bangladesh. "The Sharia recognises multiple divorce variations," the statement reads. Some examples of these are khula, in which the wife takes the initiative and agrees to give up her economic rights (like her dower), mubarat, in which the husband and wife both give their agreement, and talaq, in which the husband takes unilateral action. The study states that the Muslim Family Laws Ordinance in Bangladesh "controls the process of requesting a dissolution of marriage." Under the ordinance, a man can get a divorce by announcing talaq and giving notice to the union parishad chairman or another official, along with a copy for his wife. Without a doubt, the chairman will appoint an arbitration council to attempt to arbitrate a settlement between the disputing parties. Following these failed attempts, the divorce is typically finalised after iddat, a waiting period of three months; or, if the woman is pregnant when talaq is executed, at the conclusion of her pregnancy, whichever occurs first. Based on its analysis of various provisions in the Indian Constitution, the Supreme Court of India ruled 3:2 that the practice of instant triple talaq is illegal among Muslims. This decision raises the question of Bangladesh's official position on triple talaq.

The pre-Islamic practice of immediate triple talaq, or talaq-e-bidaat, was declared unlawful by the Supreme Court of India in 2017 for being arbitrary and violative of constitutionally guaranteed fundamental rights. The most prevalent and illegitimate divorce method, triple talaq, has been deemed illegal by multiple Indian High Courts. The triple talaq was legitimate in India because of the traditional understanding of Muslim personal law and ethics, which is not the case in Pakistan and Bangladesh. But the legal systems of Bangladesh and Pakistan are quite different. Muslim men could unilaterally pronounce the word "talaq" three times in one sitting to dissolve a marriage before the Muslim Family Laws Ordinance (MFLO1961) was passed. This power did not depend on whether the woman was in her tuhr (purity period), as Bangladesh had not yet achieved independence from Pakistan. Section 7 of this Ordinance, passed in 1961 by the Pakistani government, adds tight procedural procedures to limit the husband's unfettered right to issue triple talaq. The laws in question have stayed on the books ever since Bangladesh gained its independence from Pakistan in 1971. Despite the lack of official legislation controlling the practice, the Indian Supreme Court declared triple talaq unconstitutional and made it illegal. According to these subsections of section 7, the term "any form whatsoever" seems to indicate that the legislature originally recognised talaq-al-bidda, often known as triple talaq, as a valid form of talaq. Second, how do we know that triple talaq is forbidden by section 7? Since talaq-al-bidda (triple talaq) takes effect immediately, scholars have concluded that this section forbids it. This is due to the fact that under this clause, triple talaq gets effective 90 days after notice is sent to the chairman or reconciliation is tried between the parties. According to the Supreme Court of Pakistan's ruling in the case of Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf 15 DLR (SC) 9, also known as Ali Newaz Gardezi's case, "talaq-i-biddat is not outside the purview of section 7 as the words "talaq in any form whatsoever" clearly indicate." Since sub-section (3) declares that talaq-i-biddat has lost its validity totally and irrevocably, it becomes very difficult for us to determine otherwise, with all due respect. Subsection (3)'s requirements obviously do not mesh with the talaq-i-biddat divorce process. We also practise talaq-al-bida, the issuing of a single, irreversible proclamation, even though the Hanafi School holds that this is a terrible deed. Up until the Muslim Family

Laws Ordinance of 1961, triple talaq may be practiced as one pleased. The talaq law in Section 7 has been significantly altered by this ordinance. To begin, promptly following the declaration of a talaq in any manner, the husband is required under section 7(1) to notify the local government unit chairman in writing of his decision to announce a talaq. If a talaq is not cancelled after ninety days of being handed to the chairman, who will then establish an arbitration council, the talaq will not take effect, as stated in section 7(3).

To conclude that the triple talaq was unlawful, the court relied on the provision that delayed the talaq's effectiveness for ninety days after the date of notice to the chairman was served. Uncertainty, however, stems from competing interpretations of the notice that our highest court sent to the chairman. Cases where the court found that non-service of notice under section include *Ali Newaz Gardezi's, Serajul Islam and others v. State* 46 DLR 700, *Abdul Aziz v. Rezia Khatoon* 21 DLR 733, and *AHM Mohsin* 55 DLR (2003) 568. This talaq is null and void because of 7(1). A valid talaq cannot be declared null and void just because notice was not served in compliance with section 7(1), as the court has already established in several cases (e.g., *Md. Nurul Islam v. Nur Ayesha Begum* 16 BLC (2007) 10, *Serajul Islam v. Helena Begum and others* 48 DLR 48, and *Md. Nurul Islam v. Helena Begum and others* 48 DLR 48). Thus, it could be best to outlaw talaq-al-bida (triple talaq) entirely, either through a change to the current law or by a ruling that mirrors our highest court's ruling on Indian jurisdiction (in the event that this practice is ever challenged as unconstitutional). All of these instances were determined by looking at the specific factors at play, and except from *Ali Newaz Gardezi's* case, none of them had anything to do with triple talaq. If the chairman's notice has no bearing on the talaq's validity, how can we rely on the section that states that a triple talaq cannot be permissible if ninety days have elapsed since the notification was served? Again, there might be some real-world problems if the idea of nullifying a legal talaq due to non-service of notice is fully adhered to.

A significant cause of hardship for Muslim women in South Asia has been the Muslim husband's unilateral right to announce the arbitrary triple talaq. Following much public debate, the Indian Supreme Court ruled that the practice violated the country's constitution. On the other hand, a change in legislation has rendered instantaneous triple talaq essentially "abolished" in Pakistan and Bangladesh because it is no longer effective. In spite of the reforms in the law and the progressive stance of Bangladesh's higher judiciary to nullify any extrajudicial interpretation of section 7, the majority of rural residents still believe that the MFLO's provisions regarding talaq-e-bidaat and hilla are un-Islamic and should be ignored. To make the progressive reforms brought about by the MFLO more effective in ending the arbitrary practice of triple talaq, it is crucial for Bangladesh to prioritise improvements to its policies.

## **India**

Personal law in India is designed to accommodate persons from varied religious origins and is applicable according to an individual's religion. For a long time, Muslim women have fought for parity under Islamic law, which regulates marriage, divorce, or property rights. We are all Indian. One of the most influential groups in Muslim society is the Muslim Personal Law Board. There has been a lot of both acclaim and criticism for this board. Because of concerns that such reforms would run counter to core Islamic principles, this group has consistently opposed efforts to amend Muslim personal law. Furthermore, men



make up the majority of that board. But a patriarchal administration is something that the Quran strongly condemns.

Several Muslim women have taken up activism to fight for Muslim women's rights, including the rights to marry, divorce, and inherit property. Quick triple talaq, also known as Talaq-e-Biddat, is a controversial Islamic divorce practice that has been deemed arbitrary and contrary to Islamic teachings. Article 14, which guarantees equality, was deemed breached by the Supreme Court as the practice in question. An overwhelming majority of Muslims (approximately 50,000 men and women) have signed a petition calling for the outlawing of polygamy and triple talaq, a practice that permits a husband to dissolve a marriage by pronouncing the word three times in front of two witnesses (not necessarily the wife), on the grounds that it violates the sanctity of marriage. In addition, it had the backing of NISA, a Kozhikode-based women's group that sought to invalidate specific aspects of Muslim personal law, such as polygamy, triple talaq, nikah halala (the prohibition of remarriage to a divorced husband in the absence of a previous marriage to another man), and inequality in intestate succession. In addition, the petition said that Muslim men should not be permitted to have more than four wives. It went on to say that the succession provisions of Muslim personal law were an egregious violation of equality since they force Muslim women who survive a father to divide up his estate among his brothers, even though this isn't the case when a father dies leaving behind an only son. Bharatiya Muslim Mahila Andolan (BMMA), an advocacy group for Muslim women, also launched a campaign against triple talaq.

Most people believe that our country does not have any universal civil laws. Except for personal law, which varies according to one's religion, all civil laws are actually common. Adoption, child custody, maintenance, inheritance, succession, divorce, and other personal law issues are the purview of this branch of law. Despite its secular nature, the personal law is traditionally considered religious. Throughout history, personal laws have been skewed in favour of men in order to perpetuate discriminatory practices and gender-biased understandings of important religious traditions. Consequently, marriage and divorce, two aspects of family life that disproportionately affect women, are codified into personal law according to male-centric interpretations of religious scriptures and practices in every major religion. These violate both the gender equality standards outlined in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and the Indian Constitution, which prevents the state from discriminating against women in any way. When it comes to the Triple Talaq, neither the Constitution nor the Quran officially recognise this kind of divorce. Islam upholds principles such as moral conscience, gender equality, and the dignity of women, all of which are violated by such actions. But the court had held off on judgement on the triple talaq issue because it thought it was more of a fundamental rights dispute than a legislative one.

Their desire to remain married is secondary to their fight against extreme inequality and for basic human decency. All personal laws must unquestionably be equitable and reasonable with regard to men and women. Consequently, it is imperative that the positive features of all personal laws be preserved while the detrimental features are ignored. Thus, the private laws of each religious organisation must be different from the universal code (should it be approved) in this regard. Its structure must be universally accepted by all religious groups, and it must support the values of modern humanism, liberty, equality, reason, and justice. viii In June 2016, the Government of India delegated the responsibility of tackling the issues related

to a standard civil code to the Law Commission through a reference. Seizing the opportunity, the Law Commission sought to dispel the long-standing ambiguity that existed between personal law and India's universal civil code. In view of the continuing legal disputes surrounding immediate triple talaq (divorce), polygamy, and Nikah Halala, the opinions expressed in the consultation document are noteworthy, even if the Law Commission has not proposed any substantial changes. In 1937, India established the Muslim Personal Law (Shariat) Application Act with the aim of establishing a Muslim legal system that was exclusive to Muslims in the country. The British, who were ruling India at the time, went to such lengths to ensure that the Indian people were ruled in line with their cultural standards. Since 1937, the Sharia Application Act has controlled Muslim social life, despite the fact that many Muslims think it is far from ideal. Family ties, marriage, divorce, and inheritance are all governed by its norms. The Act expressly forbids the state from intervening in matters between private individuals or entities. According to the 2011 census, the divorce rate was 0.56 percent for Muslims, lower than the 0.76 percent rate for Hindus.

Notably, the Law Commission has spoken out against the Uniform Civil Code (UCC), arguing that a national standard of law is not necessary nor desirable. Instead, it has advocated for gender-neutral civil legislation and the elimination of prejudice against women by suggesting revisions to religious scriptures in Hindu, Muslim, and Christian societies. It is of the utmost importance to add adultery as a grounds for divorce to the Dissolution of Muslim Marriage Act, 1939. While adultery is not a grounds for khula (divorce) in current Muslim law, other grounds such as a husband's impotence, long absence, incapacity to pay maintenance, failure to execute marital duties, more than seven years in jail, etc., are. It's really essential that women and men have equal rights and reasons to get a divorce. The Act of 1939 should make "adultery" a valid grounds for divorce for both men and women. Every community in India will be bound by section 494 of the Indian Penal Code (IPC), and the Nikahnama (marriage contract) should make that fact very clear. This isn't recommended because it's morally opposed to bigamy or promotes monogamy in particular; rather, it's based on the unfairness of limiting men to having multiple spouses. The Commission has decided not to provide a recommendation because the case is now being considered by the Supreme Court.

Reform the Law of Inheritance: A universal code that can be used by both Sunnis and Shias, like the Muslim Code of Inheritance and Succession, might be created to ensure clarity. This means that the Muslim Personal Law (Shariat) Application Act, 1937, needs to be removed from government records. This has the potential to be a challenging issue for politics and society in the real world. You may remember that the Nehruvian era saw an attempt to establish a Muslim Law Committee and codify two acts: the Dissolution of Muslim Marriages Act, 1939 and the Muslim Personal Law (Shariat) Application Act, 1937. The community's reaction led to the abandonment of the plan. A more nuanced interpretation of the Quran's verses was subsequently permitted by the judiciary. The Law Commission has pointed out that personal law can conflict with other fundamental rights, such as equality and freedom of religion.

Honestly, it's in every code of personal law. As the Shamim Ara case demonstrated in regard to triple talaq, for example, there is a conflict between the actual origins of personal law and the formalisation of Anglo-religious law. A large number of court orders had already expressed their displeasure of the fraudulent practice of quick triple talaq, as noted in the Law Commission study, which was published just before the practice was officially abolished in 2017. Triple talaq was thoroughly discussed in the Supreme Court's

decision *Shamim Ara v. State of Uttar Pradesh*. The Supreme Court went on to say that instant triple talaq, also known as *Talaq e-Biddat*, has always been seen as an abnormal practice that goes against Sharia law, the spirit of the Quran, and the sayings of the Prophet (the Hadees). What is evil in religion cannot be good in law, according to Supreme Court Justice Nariman. Any man who seeks a divorce without consulting his wife should face penalties under the Indian Penal Code, 1860, section 498 (which forbids luring, abducting, or detaining a married woman with the purpose to commit a crime), as well as the Protection of Women from Domestic Violence Act, 2005 (PWDVA). According to the commission, this will instantly lower the number of *Nikah Halala* cases.

In 2017, the Supreme Court struck down the practice of immediate triple talaq, which involves pronouncing three talaqs at the same time. The ideal approach for Muslims to end a marriage is through "*talaq-ul-sunnat*," the standard Islamic divorce procedure. The husband is allowed to arbitrate and try to reconcile with his wife once he has issued the triple talaq, which is spread out over three lunar months. If the couple resides together for these three months, the talaq will be lifted. However, after this three-month period if the husband does not remove it explicitly or by consummation, the talaq becomes final and irreversible. Even though it is a common practice, triple talaq considered deeply offensive and unpleasant in Islam. If a husband's wife is divorced twice, he is required by the Quran to treat her with honour and either keep her or release her gently. His third divorce will be considered invalid until she marries again and he willingly files for a second divorce. Despite polygamy's legitimacy in Islam, the report by the Law Commission notes that Muslims in India do not often engage in it. A prevalent kind of religious abuse occurs when non-Muslims convert to Islam solely for the purpose of marrying a Muslim. Based on comparative law, the right to polygamy has been upheld, albeit by a small number of Muslim states, although with strict regulations. As an example, Pakistan has been successful in preventing bigamous marriages due to the stringent restrictions that control them. A second marriage performed without the consent of the current wife is considered "*breaking the law*," according to the 2017 progressive interpretation of the bigamy provision of the 2015 family law bill by the Lahore lower court.

The man was fined 200,000 Pakistani rupees and sentenced to six months in prison by a court in Lahore. Despite polygamy's legitimacy in Islam, the report by the Law Commission notes that Muslims in India do not often engage in it. A prevalent kind of religious abuse occurs when non-Muslims convert to Islam solely for the purpose of marrying a Muslim. Based on comparative law, the right to polygamy has been upheld, albeit by a small number of Muslim states, although with strict regulations. As an example, Pakistan has been successful in preventing bigamous marriages due to the stringent restrictions that control them. Following a progressive interpretation of the bigamy provision in the 2015 family law enactment, the Lahore High Court ruled in 2017 that a second marriage completed without the first wife's consent is seen to be "*breaking the law*." The Lahore court fined the person 200,000 Pakistani rupees and sentenced them to six months in prison.

### **Pakistan**

Many Muslim states have amended their legislation in response to the legal dispute over the number of times "*talaq*" can be rejected in a single session and whether or not this counts as "*one*" repudiation. i Among Sunni jurists, this is a highly contentious issue, with the majority taking the three-is-three stance

and the outspoken minority advocating for the three-is-one stance. This is an issue on which various Islamic schools of thought have traditionally taken very varied stances. Please keep in mind that the validity of a divorce, whether granted by talaq or khula, cannot be seriously questioned till it is officially recognised. Bigamy and zina cases involving women who remarry are two examples; difficulties in settling divorce-related matters, including deferred haq mehr claims or prior support, are another example. Disputes regarding paternity of a child may also arise. Therefore, a certificate of dissolution of marriage from the appropriate government authority is required as legal proof of a marriage's dissolution under Pakistani law. However, it should be mentioned that Islamic scholars argue that a khula or divorce decreed by a court of law is obligatory and enforceable once announced, regardless of whether the husband decreed it or not. This legislation is put in place to protect women from hasty, unrecorded divorces. The maximum penalty for bigamy is seven years in prison (or ten years if the previous marriage was hidden), and there have been instances where a woman who remarried following an unjust divorce could face punishment for the crime. The first husband would have to register a complaint in order for this punishment to be applied. Protecting a remarried woman from an unnecessary criminal prosecution and penalty is, thus, the aim of this Act. So, it's crucial for a woman to be forthright about her marital status and have official documentation reflecting her divorce. The talaq notice can only be delivered to a wife by her parent(s), sibling(s), or adult child(ren) with permission from the appropriate government agency. If her location is still unknown and no one in her family can get in touch with her, her husband can still alert the Pakistani government through a newspaper that has their approval.

Therefore, if the woman's nikahnama does not offer her the right to divorce, she will need to seek for Khula. Khula, meaning "untying the knot," is the name given to the woman's plea for a court-approved dissolution of marriage. According to the West Pakistan Family Courts Ordinance, a wife can ask for Khula by suing before the Family Court. She must mention in her lawsuit that she feels she is unable to continue living with her husband "within the limits prescribed by Allah" and that her oath supports her claim for Khula.

Before the bride receives the nikahnama to sign, it is customary to remove the allotted right to divorce. Instead of going through a Khula, women in Pakistan can now petition family courts for a divorce. The practice of prenuptial agreements, however, runs counter to the spirit of the legislation. Therefore, it is thought that by providing legal information & educating the public, many individuals will be motivated to challenge the current system and stand up for their rights.

If Islamic scholars hold the aforementioned views and think that legislation should be enacted to remove such clauses from the Nikanama, then the subject should be brought up in parliament. In addition, the bride should carefully read and understand all of the Nikanama's provisions before signing it, as a woman in Pakistan has a delegated right to divorce that cannot be changed or eliminated without her permission, according to Pakistani law. The husband's proclamation was deemed a conditional talaq by the Karachi High Court in Pakistan. Nonetheless, the talaq has not taken place as a result of the announcement's unfulfilled criteria.

In Pakistan, getting married while a previous marriage is still active is a crime. A written application must be presented to the Arbitration Council in the event that such a marriage is contracted under extraordinary

circumstances. It is essential to obtain the approval of the present wife or wives before submitting such an application. The Council's written decision, whether granting or rejecting the application, is final and binding. If a husband marries without the sanction of the Arbitration Council, he must nevertheless give his present wife or spouses the whole dowry as soon as possible. By filing a complaint, he may potentially be held guilty of the identical offence. With its 18th Report, the Law Commission of India finally recognised the international background of Islamic law in India.

## **DATA ANALYSIS AND TALAQ LAWS**

Talaq is still a valid divorce procedure in the most of the nations on the list, although women's rights and the specifics of the process differ greatly. Legal processes, such as khul', enable women in Kuwait, Iraq, to obtain a divorce. Talaq is still widely accepted as a husband's right in Iran and Afghanistan, but women do have certain legal options. In general, talaq is still common in these countries, but reforms, court processes, & alternatives like khul' have been increasing women's legal rights to seek divorce in various nations. But societal mores, political climates, and legal barriers still limit women's access to divorce in many areas. Traditional Islamic precepts, new legal changes, and shifting social dynamics all play a role in the legislation governing talaq (divorce) in contemporary Muslim countries. Based on regional interpretations of Sharia, social norms, and evolving legal frameworks, this analytical analysis shows that the application of talaq varies significantly across the Middle East and North Africa. Although talaq is still recognised as a legitimate divorce in Islamic law, the rules surrounding it and the consequences it carries with it differ greatly from one country to the next, reflecting the complex social, political, and cultural dynamics at play there. Countries with more conservative norms, such as Iran and Afghanistan, have talaq as a husband's unilateral prerogative, which leaves women with little options when it comes to seeking a divorce. According to the research, divorce laws are slowly but surely evolving to reflect current values of equity and social justice; nevertheless, this trend is not uniform across nations. Patriarchal views, legal loopholes, and social stigma are some of the continuous obstacles that women face while trying to exercise these rights. Other countries with a Muslim majority can learn from the progressive legal frameworks that have led to greater gender equality in some areas. The changing conversation surrounding talaq in Muslim nations has consequences for Muslim law in India, highlighting the necessity for laws that are sensitive to context and bring religious principles into line with modern life. Maintaining individual rights while encouraging social harmony is the future of talaq legislation, which must find a middle ground between tradition and modernity. In order to attain fair outcomes after a divorce, this study concludes that reform and ongoing discussion are crucial.

## **SUGGESTION**

Our investigation into Triple Talaq has yielded numerous helpful suggestions:

(a) **The Intersection of Tradition and Modernity:** The practice of triple talaq compels us to confront the phenomenon of the intersection of modernity and tradition. In doing so, it draws attention to the challenge of maintaining religious traditions while also bringing them into line with modern ideas of equality and justice.

(b) **The Importance of Inclusivity:** Any effort to address or amend Triple Talaq must prioritise the

opinions and experiences of women who are directly impacted by it. In order to create effective solutions, their agency and life experiences are crucial.

(c) **Striking a Balance Between Rights and Responsibilities** Tackling Triple Talaq requires us to expertly traverse the fine line between personal liberties and collective obligations. It should make us think about the ways in which religious activities and larger ideas of social justice relate to one another.

(d) **The Value of Dialogue:** Achieving shared goals requires open and honest communication amongst diverse groups of people, including religious leaders, lawyers, activists, & community members. Better understanding and the elimination of barriers can result from conversations that are both open and courteous.

(e) **The Importance of Legal Frameworks:** When it comes to safeguarding people's rights, legal frameworks are crucial. Legal systems have a responsibility to offer protections and solutions in situations where religious traditions infringe upon human rights, such as Triple Talaq.

A complicated, contentious, and legally evolving path characterises the pursuit of understanding Triple Talaq. Within Muslim communities and around the world, there are larger discussions about gender equality, religious freedom, and social justice. It has become clear as we wrap off this investigation that comprehending Triple Talaq is not a destination but an ongoing journey. All people, regardless of their gender or religious affiliation, deserve respect and equal treatment, and the lessons we've learnt emphasise the importance of maintaining open lines of communication and embracing diversity. In a society where varied traditions and developing norms impact everything, the path of understanding Triple Talaq is a call to reflect on our larger desire for justice and equality. It serves as a gentle reminder that we are all in this together, and that our openness to working towards a more equal and just society is the measure of our dedication to creating a more welcoming and caring global community. In this extensive investigation, we traverse the complex junctions of religion, legislation, and social norms in an effort to shed light on a way forward that is more fair and equal for everyone affected by Triple Talaq.

## CONCLUSION

Talaq is still a valid divorce procedure in the most of the nations on the list, although women's rights & specifics of the process differ greatly. Talaq is still widely accepted as a husband's right in Iran and Afghanistan, but women do have certain legal options. In general, talaq is still common in these countries, but reforms, court processes, and alternatives like khul' have been increasing women's legal rights to seek divorce in various nations. In the case of *A.S. Parveen Akthar v. Union of India*, the Supreme Court maintained that Triple Talaq is legal, which is a devastating blow to basic rights that are vital to the Constitution and the basic framework. The basic foundations of Article 21 are undermined by Triple Talaq since it deviates from the regular divorce procedure. According to the Constitution, the government can do what it needs to in order to help women. Many international treaties and accords have guaranteed women's equality, and India is no exception. Multiple conventions have been ratified by India, one of which is the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women).

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