

TRANSFORMATION OF TRIPLE TALAQ (IRREVOCABLE DIVORCE) LAW IN ISLAMIC FAMILY LAW SYSTEM OF INDIA

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Abstract

Constitutionally, India adheres to the principle of secularism while still allowing religious communities to apply their respective laws in private matters. For Muslims, these provisions are regulated under the Muslim Personal Law (Shariat) Application Act, 1937. In practice, however, the implementation of this law faces challenges due to strong social and patriarchal influences. One of the most controversial issues is the practice of triple talaq, which has led to gender inequality. This study aims to analyze the process of legal transformation of triple talaq within Islamic family law in India and the implications of its prohibition. Using a qualitative method with a normative-juridical approach, this research examines primary legal sources and academic literature. The theory used in this study is the theory of legal pluralism. The findings reveal that the reform of Islamic family law in India has been a long process beginning with the Shah Bano case (1985) and the Muslim Women Act (1986), evolving through the Dania Latifi case (2001), and culminating in the Shayara Bano judgment (2017), which reinforced the prohibition of triple talaq. This transformation signifies a shift from the dominance of traditional fiqh toward a national legal system oriented toward justice and the protection of Muslim women.

Keywords: Triple Talaq at Once, Transformation, Islamic Family Law in India

Abstrak

Secara konstitusional, India menganut prinsip sekulerisme namun tetap memberi ruang bagi komunitas agama untuk menerapkan hukum agamanya dalam urusan privat. Bagi umat Islam, ketentuan ini diatur dalam Muslim Personal Law (Shariat) Application Act, 1937. Dalam praktiknya, penerapan hukum tersebut menghadapi tantangan akibat pengaruh sosial dan budaya patriarkal. Salah satu persoalan paling kontroversial ialah praktik talaq tiga sekaligus, yang menimbulkan ketimpangan gender. Penelitian ini bertujuan untuk menganalisis bagaimana proses transformasi hukum talaq tiga sekaligus dalam hukum keluarga Islam di India dan bagaimana implikasi pelarangan praktik tersebut. Penelitian ini menggunakan metode kualitatif dengan pendekatan normatif-yuridis melalui kajian terhadap sumber hukum primer dan literatur akademik. Teori yang dipakai adalah teori Pluralisme. Hasil penelitian menunjukkan bahwa reformasi hukum keluarga Islam di India merupakan proses panjang yang dimulai dari kasus Shah Bano (1985) dan MWA 1986, berkembang melalui kasus Dania Latifi (2001), hingga mencapai puncak pada putusan Shayara Bano (2017) yang menegaskan pelarangan triple talaq. Transformasi ini menandai pergeseran dari dominasi fikih tradisional menuju sistem hukum nasional yang berorientasi pada keadilan dan perlindungan perempuan Muslim.

Kata Kunci: Talaq Tiga Sekaligus, Transformasi, Hukum Keluarga Islam India

A. INTRODUCTION

Islam is the second largest religion in India after Hinduism, which is the majority religion. Meanwhile, other religions such as Islam, Christianity, Sikhism, Buddhism, Jainism, and Zoroastrianism are recognized as minorities. Based on data from the 2011 Census of India,¹ The number of people who practice Islam is 172,245,158 (14.2%) of India's total population of 1,210,854,977. With that number, Muslims in India are the third largest in the world after Indonesia and Pakistan.

The large size of this population not only reflects India's demographic diversity, but also shapes the distinctive religious and legal character of Islam. In terms of historical context and religious practice, Islam in India is divided into various sects (schools of thought), with Sunni Muslims forming the majority in India, who are followers of the Hanafi school of thought.² The dominance of this mazhab was due to the strong influence of the Abbasid Caliphate and later the Mughal Dynasty. This can be seen in the appointment of qadis and scholars from the Hanafi circle by Muslim rulers. In addition, there is also Islamic scientific literature based on the Hanafi Mazhab.³ Thus the spreading of the Hanafi Mazhab to become the main school of thought in India was not only due to the number of its followers, but also because it was a historical and institutional legacy.

The strong position of the Hanafi mazdhab of thought in India has not only influenced the community's religious practices, but has also become the main foundation for the formation of Islamic family law in the country. From the era of Mughal rule to the British colonial era, Islamic legal thinking in the Hanafi school of thought became the main reference in formulating regulations related

¹ Commissioner, *Census of India 2011: Population by Religious Community, Table C-1* (Government of India, t.t.), <https://censusindia.gov.in/>.

² Wisnu Fachrudin Sumarno dan Dony Rano Virdaus, "Sejarah Penyebaran Islam di India Dan hubungannya Dengan Islam di Nusantara," *JUSAN: Jurnal Sejarah Peradaban Islam Indonesia* Vol. 1, no. 1 (2023): 49–67.

³ Nurul Aqidatul Izzah dkk., "Sejarah Islam Modern India: Pola dan Pembaharuannya," *Al-Ubudiyah: Jurnal Pendidikan dan Studi Islam* Vol. 6, no. 1 (2025): 336–44, <https://doi.org/10.55623/au.v6i1.506>.

to marriage, divorce, inheritance, and guardianship. During the colonial period, the principles of Hanafi fiqh were even codified in Anglo-Muhammadan Law,⁴ which was adapted into the Muslim Personal Law (Shariat) Application Act, 1937.⁵ Therefore, the characteristics of Islamic family law in India still reflect the thinking of Imam Abu Hanifah.

In India itself, family law differs significantly due to the country's pluralistic legal framework.⁶ India constitutionally adheres to the principle of secularism, but in practice it still allows religious communities to administer their own religious laws in private matters such as marriage, divorce, and inheritance.⁷ The existence of this type of family law system reflects India as a country with a complex social and cultural society, but at the same time creates challenges in the application of the principles of equality and legal justice.⁸ For Muslims, provisions relating to Islamic family law are regulated in the Muslim Personal Law (Shariat) Application Act, 1937, which remains the primary reference for the implementation of Islamic family law in India.⁹ This legal pluralism represents that the application of family law in India is not separate from the state system, but is recognized as part of national law that requires a balance between religious norms and constitutional principles of justice.

Although India assures freedom of religion and recognizes the validity of each religion's family laws, the implementation of Islamic family law in the

⁴ Andrea Borroni dan Marco Seghesio, "The Development of the Anglo-Muhammadan Law in India," *Journal of Malaysian and Comparative Law* 41, no. 2 (2014): 77–103.

⁵ Akhmad Syahroni dkk., "Reformasi Hukum Keluarga Di Pakistan: Implementasi Muslim Family Law Ordinance 1961, Regulasi, Tantangan, Dan Dampaknya," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 1 (2025): 908–28, <https://doi.org/10.62976/ijijel.v3i1.1042>.

⁶ Lailatus Shofa dkk., "Eksistensi Hukum Perkawinan Personal di India: Analisis Komparatif Hindu Marriage Act dan Muslim Personal Law," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, Vol. 3, no. 2 (2025): 1775–1790, <https://doi.org/10.62976/ijijel.v3i2.1168>.

⁷ Shofa dkk., "Eksistensi Hukum Perkawinan Personal di India: Analisis Komparatif Hindu Marriage Act dan Muslim Personal Law."

⁸ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999), 23.

⁹ Muhammad Nur Shiddiq, "Marriage and Inheritance Law in The Law of India and Pakistan," *AL HAKAM: The Indonesian Journal of Islamic Family Law and Gender Issues* Vol. 1, no. 2 (2021): 35–53, <https://doi.org/10.35896/alhakam.v1i2.237>.

country faces a number of complex challenges. In practice, its implementation is often influenced by social and cultural factors, as well as the strong patriarchal structure in society.¹⁰ Islamic legal norms, which ideally uphold the values of justice and equality, are often interpreted narrowly due to conservative interpretations by some religious authorities.¹¹ This has led to disparities in the implementation of the law, particularly with regard to women's rights in marriage and divorce institutions. This situation shows that the application of Islamic family law in India is not merely a normative issue, but is also closely related to social dynamics and the interpretation of law that has developed within society. In this context, one of the most controversial practices is triple talaq or *talaq-e-biddat*.

The phenomenon of triple talaq cannot be separated from the reality of discrimination and gender inequality that is still deeply rooted in Muslim society in India. This practice places men as the dominant party in household decision-making, including divorce, thus becoming a tangible symbol of inequality in the Islamic family law system in India.¹² This practice of triple talaq refers to a divorce in which a husband pronounces the word talaq times in one sitting, and a divorced wife has no right to ask for the reasons behind the talaq. A woman is left severed from her marriage bond and given no explanation whatsoever.¹³ Unfortunately, this often puts women in an unequal position. However, because this culture has existed for so long and is so deeply ingrained, women sometimes do not realize that they are being discriminated against.

¹⁰ Moh Kusen, *Pembaharuan Hukum Keluarga di Negara Muslim* (Stain Salatiga Press, 2013), 39-40.

¹¹ Sindhuja D dan Sunita Choudhary, "Comparison of Marriage under Hindu Law and Muslim Law," *International Journal of Law Management & Humanities* 4, no. 1 (2021): 2076-85, <http://doi.org/10.1732/IJLMH.25975>.

¹² Dinita Ayu Novela, "Pengaruh Budaya Patriarki Terhadap Partisipasi Politik Perempuan Di India: Studi Kasus Mayawati Kunari Dan Perjuangannya Melawan Diskriminasi Politik Terhadap Perempuan Dalit," *Jurnal Indonesia Sosial Teknologi* Vol. 4, no. 7 (2023): 818-31, <https://doi.org/10.59141/jist.v4i7.651>.

¹³ Ajay Kumar Gupta, "Legality of triple talaq or Talaq-E-Biddat in India : An analytical study," *International Journal of Criminal, Common and Statutory Law* Vol. 3, no. 2 (2023): 64-66, <https://dx.doi.org/10.22271/27899497>.

Several cases show that women suddenly lose their rights without adequate legal protection, whether related to alimony, housing, or child custody.¹⁴ In the context of modern countries that uphold the values of justice and gender equality, the practice of triple talaq has sparked controversy because it often places women in a weak position legally and socially. This situation has led to discussions of reform and transformation of Islamic family law in India, especially after the practice of triple talaq faced significant legal challenges through various lawsuits.¹⁵

To support the analysis, the author conducted a review of several previous publications relevant to the research topic. Among others, Ajay Kumar Gupta (2023) emphasized the legality of the 2017 Supreme Court verdict and the polemic surrounding the ratification of the 2019 Law, which stipulates that the practice of triple talaq is a criminal offense, but his analysis is still limited to the normative realm.¹⁶ Saxena and Sen (2021) review the content of the Supreme Court's verdict, highlighting limitations in its implementation and revealing a gap between legal verdicts and social practices.¹⁷ Similarly, Parveen (2024) critically evaluates the criminalization of divorce in the 2019 Act and concludes that the provisions do not yet provide effective and comprehensive protection for Muslim women.¹⁸ The studies mentioned above show that previous research tended to focus primarily on legal-formal aspects and regulatory implementation. In contrast, this study seeks to complement that research by examining the transformation of Islamic family law following the 2017 Supreme Court verdict in relation to gender equality.

¹⁴ Nining Kurnia dkk., "Keamanan Manusia dalam Pengaruh Tradisi Dowry di India Terhadap Kekerasan Berbasis Gender di India," *Indonesian Journal of Global Discourse* Vol. 5, no. 1 (2023): 73–89, <https://doi.org/10.29303/ijgd.v5i1.87>.

¹⁵ Gupta, "Legality of triple talaq or Talaq-E-Biddat in India : An analytical study."

¹⁶ Gupta, "Legality of triple talaq or Talaq-E-Biddat in India : An analytical study."

¹⁷ Radhika Saxena dan Rajarshi Sen, "The Talaq tiga sekaligus Judgment-Its Contents and Discontents," *Journal of Law and Social Change* Vol. 25, no. 1 (2021).

¹⁸ Nazima Parveen, "Criminalization of Divorce and Muslim Women: A Reality Check of Triple Talaq Law, 2019 in India," *South Asia Multidisciplinary Academic Journal* 32 (2024), <https://doi.org/10.4000/136kf>.

Based on the above explanation, triple talaq has long been a controversial practice that has had a negative impact on Muslim women in India. This practice not only affects their personal lives but also reflects the gender inequality embedded in society. Therefore, the author is interested in conducting this research to analyze in depth how the transformation of triple talaq in the Islamic family law system in India and the implications of the prohibition of triple talaq. Thus, this research makes an important contribution in the context of Islamic family law and gender reform, and serves as a reference for further studies in the field of law and gender equality.

This research is qualitative and descriptive-analytical approach. The approach used in this research is normative-juridical, which is a method in legal research that focuses on written legal norms. This research then uses the library research method. The theory used as the analytical tool is the theory of Legal Pluralism. This theory offers a perspective on the simultaneous functioning of various legal systems within a single social space.¹⁹ In the Indian context, the theory of legal pluralism is relevant because its legal system is diverse. The country recognises the validity of religious law in private matters, including Islamic family law, alongside secular constitutional law. This method involves collecting data through various literature, namely primary data consisting of the Indian Supreme Court's decision number Writ Petition (C) No. 118 of 2016 and The Muslim Women (Protection of Rights on Marriage) Act, 2019. Secondary data consists of books, scientific journals, articles, and other supporting documents related to this topic. The process begins with identifying and collecting relevant sources, followed by classifying and categorising the data based on topic for ease of analysis. The final stage is to conduct a critical analysis of the grouped data.

¹⁹ Hairun Tri Wahyuni Sagal, "Kajian Teori Pluralisme Hukum Terhadap Sistem Hukum Di Aceh," *Interdisciplinary Journal on Law, Social Sciences and Humanities* 3, no. 2 (2022): 115–29, <https://doi.org/10.19184/idj.v3i2.35095>.

B. FINDING AND DISCUSSION

1. Historical Roots and Development of the Law of Triple Talaq in India

Historically, the practice of triple talaq and its legality are rooted in the Muslim Personal Law (Shariat) Application Act, 1937, which grants authority to settle all family matters in accordance with the provisions of Islamic Sharia law.²⁰ According to Islamic law, talaq is the husband's right to end the marriage, but ideally it should be done gradually and accompanied by a period of iddah as a space for reconciliation. However, in the Hanafi school of This perspective then became the basis for the legitimization of the practice of triple talaq in Indian society. thought, which is the majority school of thought used in India, pronouncing talaq times within a certain period of time is still considered valid even though it is ruled as *makruh*.²¹

The absence of specific regulations governing divorce in Indian national law has resulted in classical fiqh law becoming the primary source of positive law in the settlement of marriage and divorce cases. As a result, husbands have the full right to divorce without having to go through the courts or obtain their wives' consent. Once the word talaq is uttered, the marriage bond is immediately considered severed and cannot be revoked.²²

Triple talaq is the most common and prevalent form of divorce in India. In addition to legal regulatory issues, the patriarchal culture inherent in Indian society also contributes to the prevalence of triple talaq.²³ Several studies have mentioned that the practice of triple talaq has increased rapidly. Research by Awaz-e-Niswaan (Voice of Women), a non-governmental Muslim women's organisation in Mumbai, states that the divorce rate in 1989-1990 was 2.37%, but increased to 8.19% in the following ten years. The organisation also

²⁰ Nayum Husain dan Rinu Saraswat, "Historic and Legal Developments Of Triple Talaq," *IJFANS: International Journal of Food and Nutritional Sciences* 11, no. 11A (2022): 353–68.

²¹ Usman Quddus dkk., "Verdict on Triple Talaq: Finding the Way-Out," *Al-Qirtas* Vol. 3, no. 3 (2024): 151–60.

²² Nayum Husain dan Rinu Saraswat, "Historic and Legal Developments Of Triple Talaq."

²³ Nurul Islam, "Talaq tiga sekaligus : A Curse on Muslim Women in India," *Journal of the Asiatic Society* Vol. 63, no. 1–2 (2017): 113–28.

revealed that 65% of divorce cases were the result of triple talaq.²⁴ Furthermore, according to the 2011 census report, it is known that the ratio of divorced Muslim women is much higher than the national average. The number of divorced women is 3.1 per thousand married women nationally, while the number of divorced women is 5.6 per thousand married Muslim women.²⁵

The large number of cases of triple talaq in India has sparked debate among various groups. Supporters argue that triple talaq is a valid interpretation of Islamic law and should not be interfered with by the state as it falls within the realm of religious freedom as guaranteed by Article 25 of the Indian Constitution. On the other hand, critics argue that this practice disproportionately empowers Muslim men, giving them the authority to divorce their wives unilaterally and immediately. Conversely, women often have few options and resources available to them in the event of a triple talaq verdict.²⁶

To fully understand this aspect, it is important to consider several things. First, triple talaq allows a husband to end a marriage by saying the word “talaq” times, usually at once. This sudden divorce can have a significant and immediate impact on women, due to the absence of legal protection. The absence of legal proceedings deprives women of the opportunity to obtain their rights, such as alimony and child custody. Second, triple talaq often leaves women economically vulnerable. In many cases, they experience economic hardship or become dependent on their families or face the risk of poverty. Thirdly, women are also at risk of psychological impact. Sudden divorce can cause emotional stress and deep trauma.²⁷ These aspects have led to widespread criticism of the government from various quarters.

One of the most famous cases involving triple talaq is that of Shah Bano. She is a woman from Madhya Pradesh, a state in central India. In 1985, Shah Bano became the first woman to respond to the issue of triple talaq. She was one

²⁴ Islam, “Talaq tiga sekaligus : A Curse on Muslim Women in India.”

²⁵ Islam, “Talaq tiga sekaligus : A Curse on Muslim Women in India.”

²⁶ Nayum Husain dan Rinu Saraswat, “Historic and Legal Developments Of Triple Talaq.”

²⁷ Sohaira Z Siddiqui, “Triple Divorce and the Political Context of Islamic Law in India,” *Journal of Islamic Law* Vol. 2, no. 1 (2021): 5–32, <https://doi.org/10.53484/jil.v2.siddiqui>.

of the victims of triple talaq and went to court to claim her right to alimony. The court decided to grant her protection in the form of alimony.²⁸ The verdict was rejected by her husband, Mohammad Ahmed Khan, who argued that it violated the provisions of the Muslim Personal Law (Shariat) Application Act, 1937. Ahmed Khan then appealed to the Supreme Court of India, but the Supreme Court rejected the appeal and ruled in favour of Shah Bano. This Supreme Court verdict sparked controversy and debate in India, with mass protests being held by the Muslim community who felt that the verdict violated Sharia law. As a result, in 1986, the Indian Government passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA), which overturned the progressive effects of the Shah Bano verdict. The new law limited alimony to the period of iddah, meaning that Muslim women once again lost their long-term financial protection.²⁹

In response to the law, feminists consider the MWA to be a setback for Muslim women's rights, arguing that it burdens women and makes it easier for Muslim men to end marriages. However, some other activists consider the MWA to be the beginning of reform of Islamic family law in India, as it begins to codify women's rights. Taking these issues into account, Dania Latifi filed a lawsuit against the MWA, which resulted in a landmark verdict on the maintenance rights of divorced Muslim women.³⁰

Dania Latifi sued the constitutional validity of MWA in the Supreme Court on the grounds of fighting for the rights of divorced Muslim women. The verdict was issued in 2001, which strengthened MWA. The obligation of Muslim husbands to pay alimony to their divorced wives can now be extended beyond the 'iddah period. This means that alimony does not stop after the 'iddah period,

²⁸ Raihanah Abdullah, "Maintenance Rights for Muslim Wives in India: Legal Response," *Jurnal Syariah* Vol. 15, no. 1 (2007): 43–54, <http://myais.fsktm.um.edu.my/7551/>.

²⁹ Ummul Fayiza, "From Shah Bano to Shayara Bano (1985–2017): Changing Feminist Positions on the Politics of Muslim Personal Law, Women's Rights and Minority Rights in India," *Journal of Muslim Minority Affairs*, Vol. 41, no. 1 (2021): 122–40, <https://doi.org/10.1080/13602004.2021.1903164>.

³⁰ Ummul Fayiza, "From Shah Bano to Shayara Bano (1985–2017): Changing Feminist Positions on the Politics of Muslim Personal Law, Women's Rights and Minority Rights in India."

but can continue as long as the ex-wife has not remarried and still needs financial support. Thus, the Shah Bano case reflects the tension between religious law and constitutional law, between minority autonomy and the principle of gender equality in secular India. This case laid the groundwork for a lengthy debate on Islamic law reform, which ultimately culminated in the Shayara Bano lawsuit (2016) and the 2017 Supreme Court verdict prohibiting triple talaq.

2. Indian Supreme Court Verdict on Triple Talaq

A number of Muslim women, activists and organisations such as Muslim Women's Quest for Equality have agreed to submit a written petition to the Indian Supreme Court requesting that the practice of triple talaq be banned and ended as it discriminates against women. Among the petitioners is a woman named Shayara Bano, aged 35 and mother of two children from her marriage. She was divorced by her husband in October 2015 after 15 years of marriage.³¹ Shayara Bano is contending that the triple talaq pronounced by her husband against her should be declared null and void from the outset. The provisions governing divorce are set out in section 2 of the Muslim Personal Law (Sharia) Implementation Act, 1937. In her lawsuit, Shayara Bano requested that section 2 be declared unconstitutional because the act of triple talaq results in the sudden, unilateral and irrevocable termination of the marriage. Her lawsuit was then expanded to include at least four additional points, in which the petitioner stated that (i) triple talaq is invalid because it is not part of Sharia law, (ii) the practice of triple talaq cannot be treated as a 'rule of decision' or 'legal rule' under Sharia law, (iii) the practice of triple talaq violates the fundamental rights guaranteed in Articles 14, 15 and 21 of the Indian Constitution; and (iv) the practice of triple talaq is not protected under the right to religion or any other right guaranteed to any religious denomination or faction under Articles 25(1),

³¹ Tanja Herklotz, "Shayara Bano versus Union of India and Others. The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice," *Verfassung und Recht in Übersee* Vol. 50, no. 3 (2024).

26(b) and 29.³² The essence of this lawsuit is that triple talaq is a sinful, arbitrary, unreasonable act, a form of oppression, and is not in accordance with the principle of gender equality and cannot be upheld in a progressive society.³³

During the trial, one of the groups defending the practice of triple talaq was the All India Muslim Personal Law Board (AIMPLB). They warned the court not to interfere in religious matters.³⁴ The petitioners responded to AIMPLB's argument that the court had no right to interfere in religious matters, saying that religion, understood proportionally, did not and never had allowed triple talaq. There is a clear difference between triple talaq at once or triple talaq at once (where the marriage is dissolved when 'talaq' is pronounced three times consecutively at one time) and talaq ahsan, which requires a period of three sacred periods, namely 90 days after the talaq is pronounced, and talaq hasan, which requires a long interval between the pronouncements of talaq. The latter two types of talaq are indeed part of Islamic personal law, but the first is not.³⁵

In response to this request, the Court issued a divided opinion and delivered three separate verdicts. Two judges recommended no intervention in the practice of triple talaq, two judges invalidated triple talaq on constitutional grounds, and one judge invalidated it on the basis of Qur'anic principles.³⁶ The Court considered the petitioners' position sufficiently persuasive to be accepted. The judges also accepted that the petitioners' position provided an opportunity and a chance for reform to be carried out.

1. First verdict

This verdict was the opinion of Judge Khehar J, who at that time served as Chief Justice of the Supreme Court of India, and Judge Nazeer J, who stated that there should be no state intervention in the practice of triple

³² Somlata Sharma, "From Shah Bano to Shayara Bano: A Long Journey by Muslim Women," *International Journal in Commerce, IT & Social Sciences* Vol. 3, no. 7 (2019).

³³ Saxena dan Sen, "The Talaq tiga sekaligus Judgment-Its Contents and Discontents."

³⁴ Swapnil Tripathi, "Justifiability of Triple Talaq: An Update Introduction:," *Parisheelan* Vol. 13, no. 4 (2017).

³⁵ Tripathi, "Justifiability of Triple Talaq: An Update Introduction :"

³⁶ Neha Kishore Banka, "Triple Talaq Judgement And Act: Do Muslim Women Really Benefit?," *Journal of the Indian Law Institute* Vol. 61, no. 4 (2019): 439-54.

talaq. According to these two judges, the practice of triple talaq is an integral practice in Islam that is protected by Article 25 of the Constitution, which guarantees the right to freely profess, practise and propagate religion. Furthermore, if family law were allowed to be challenged on constitutional grounds, it would open the door to other challenges to family law for specific interests.³⁷ The panel of judges recommended rejecting the plaintiff's request for an egalitarian approach to be applied in this case. According to the judges, religion is a matter of belief, not logic. The bench also accepted that the practice, which has been in place for the last 1400 years, does not violate the limits set out in Article 25 of the Indian Constitution, nor does it exceed the limits of constitutional morality. It should be noted that the bench did not discuss the Sharia Act of 1937 at length. According to these judges, the practice of triple talaq falls under personal law and does not become 'statutory law'. Therefore, the question of whether the Sharia Act violates the constitution was only partially considered by the panel of judges. Reform can only be carried out through legislative intervention and not.³⁸

2. Second Verdict

This verdict states that triple talaq violates the right to equality guaranteed under Article 14 of the Indian Constitution, and is therefore considered unconstitutional. This is the verdict of Judge Nariman and Judge Lalit. Both judges are of the opinion that through the Muslim Personal Law (Shariat) Application Act, 1937, which is statutory law, the practice of triple talaq can be tested based on the principle of constitutionality in accordance with Article 13.³⁹ These two judges differed from their predecessors, Judges Nariman and Lalit, in denying protection under Article 25. Triple talaq, which is considered sinful

³⁷ Sharma, "From Shah Bano to Shayara Bano: A Long Journey by Muslim Women."

³⁸ Sharma, "From Shah Bano to Shayara Bano: A Long Journey by Muslim Women."

³⁹ Banka, "Triple Talaq Judgement And Act: Do Muslim Women Really Benefit?"

according to theology, is not an integral practice in Islam and is therefore not protected by Article 25.⁴⁰ The judges discussed whether the Muslim Personal Law (Shariat) Application Act, 1937, which legalises triple talaq, violates Article 14 of the Indian Constitution. They applied the 'manifest arbitrariness test' and concluded that triple talaq is arbitrary because it can dissolve a marriage without reasonable grounds or attempts at reconciliation. Therefore, they declared that the part of the 1937 Act that recognises and enforces triple talaq violates the right to equality and must be declared invalid.⁴¹

3. Third Verdict

Judge Kurian Joseph argued in this third verdict that triple talaq is not in accordance with Islamic teachings. According to Judge Joseph's understanding, the Qur'an only permits talaq if there has been a prior attempt at reconciliation. However, because in the case of triple talaq, reconciliation is impossible, this practice must be considered contrary to the principles of the Qur'an. What is considered bad in the Qur'an cannot be considered good in Sharia, and in that sense, what is bad in theology is also considered bad in law.⁴² Judge Joseph held that Muslim family law is not statutory law and cannot be tested against fundamental rights.⁴³

In summary, although there is a difference in the arguments of Judge Nariman and Judge Lalit regarding Judge Joseph's verdict, both reached the same conclusion. In a 3:2 majority verdict on 22 August 2017, the Indian Supreme Court declared that triple talaq was unconstitutional, void and in violation of Article 14 of the Indian Constitution, which governs the right to equality before the law.

⁴⁰ Herklotz, "Shayara Bano versus Union of India and Others. The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice."

⁴¹ Herklotz, "Shayara Bano versus Union of India and Others. The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice."

⁴² Veit Bader, "Legal pluralism and differentiated morality: Shari'a in ontario?," *Legal Practice and Cultural Diversity*, no. July (2016): 49-72, <https://doi.org/10.4324/9781315250557-10>.

⁴³ Banka, "Triple Talaq Judgement And Act: Do Muslim Women Really Benefit?"

3. Implications of the Indian Supreme Court's Verdict

After its decision in August 2017, the Supreme Court verdict has drawn a lot of criticism. In the first verdict, Judge Khehar J and Judge Nazeer J. Both judges said that they did not intervene, making the verdict explicitly grant official recognition only to male-dominated bodies and also give them religious control, ignoring the expression and aspiration of Muslim women.⁴⁴ The verdict is conservative because it rejects the legitimacy of groups who want reforms to represent their beliefs in any negotiations with the state. Most criticisms of judges Khehar and Nazeer's verdicts focused on the notion that Muslim family law is considered an essential practice in Islam. Furthermore, Judge Joseph's verdict implies that religious practices will only be examined through religious glasses. Women must fight for equality in the language of religion, not the language of constitutional values about equality, rights, and freedom. The court verdict that looks at what is Islam or not, may not be accepted by various walks of life.⁴⁵

"Nonetheless, this verdict is a step in the right direction, compared to previous courts in dealing with Islamic family law (in India, referred to as Muslim personal law), the verdict is quite bold and may be referred to as a ""historic verdict"" marking an important moment in the women's movement in India."⁴⁶ The composition of the assembly of judges is diverse and aimed at providing a "neutral" and different view in this case. Although the lack of composition of gender aspects cannot be ruled out due to the absence of female judges.⁴⁷

The Supreme Court verdict was welcomed by applicants consisting of several women affected by three talaq at once via lightning post, such as Shayara Bano, Gulshan Parween, Ishrat Jahan, Afreen Rehman and Atiya Sabri,

⁴⁴ Banka, "Triple Talaq Judgement And Act: Do Muslim Women Really Benefit?"

⁴⁵ Parveen, "Criminalization of Divorce and Muslim Women: A Reality Check of Triple Talaq Law, 2019 in India."

⁴⁶ Sohail Nazim, "Criminalization of Triple Talaq in India: Impact and Challenges," *Jus Corpus Law Journal* Vol. 2, no. 4 (2022).

⁴⁷ Herklotz, "Shayara Bano versus Union of India and Others. The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice."

or by phone such as Zakia Soman, co-founder of the organization Bharatiya Muslim Mahila Andolan. They asserted that they would continue the fight against polygamy, halala marriage and other discriminatory Muslim practices.⁴⁸

The verdict over the Shayara Bano case has brought about a change. The case gives a binding precedent about the three talaq at once, strengthens judicial knowledge of the legal position of the three talaq at once, and embodies a shift in the political context of Muslim personal law reforms in India.⁴⁹ Given the wide attention received by the case and its decision, it has raised the awareness of judges and lawyers on the legal position of this talaq. However, this is a short-term benefit, as the verdict itself does not explain with certain implications of “overriding” the talaq. Therefore, in the long run there is a legal umbrella in the form of laws to overshadow Muslim personal laws. The Government of India in December 2017 took steps to this issue that will be discussed at the end of this article.⁵⁰

"Shayara Bano's case is the embodiment of ""a change"" in the Muslim Indian public space." The main actors who opposed this lawsuit, such as AIMPLB, eventually accepted the verdict. They welcomed him as an affirmation of the three talaq position at once. This change in attitude of AIMPLB is due to at least two factors, acceptance of judicial interventions in Muslim personal law and lack of trust for legislative interventions.⁵¹ Muslim women's organizations seem to be increasingly playing a significant role in religious, political and legal spaces that were previously dominated by men. Their presence enriches public discourse on gender, law, and justice in modern India.⁵² Shayara Bano is a reflection of the changes not only involved in the case, but contributed to ideologically diverse vision of gender justice and concrete proposals to reform

⁴⁸ Islam, "Talaq tiga sekaligus : A Curse on Muslim Women in India."

⁴⁹ Siddiqui, "Triple Divorce and the Political Context of Islamic Law in India."

⁵⁰ Saptarshi Mandal, "Out of Shah Bano's shadow: Muslim women's rights and the Supreme Court's triple talaq verdict," *Indian Law Review* Vol. 2, no. 1 (2018): 89-107, <https://doi.org/10.1080/24730580.2018.1510162>.

⁵¹ Mandal, "Out of Shah Bano's shadow: Muslim women's rights and the Supreme Court's triple talaq verdict."

⁵² Siddiqui, "Triple Divorce and the Political Context of Islamic Law in India."

the law. Thus, Shayara Bano became a point of change from the protectionist approach of the past, where the interests of Muslim women are often represented only by the state or society.⁵³

The implications of this verdict are seen in the judgment of Judge Khehar and Judge Nazeer, which after both ruled in minority opinions, both urged the government to immediately consider legislation with a six-month deadline.⁵⁴ At the time, it seems that the government was not too committed to forming legislation, but after 4 months since the Supreme Court's decision precisely December 2017, the government introduced the draft of The Muslim Women (Protection of Rights on Marriage) act or the Muslim Women Act (Protection of Rights on Marriage) in the Lok Sabha (the so-called "People's Council" in India). The reason for the prosecutor drafted this bill is that the exit of the court verdict did not prevent men from dropping the three talaq at once and did not succeed in lowering the divorce rate. The bill aims to state that the practice of three talaq at once and other instant form of talaq is illegal and adds some provisions to protect women who are entered into talaq.⁵⁵ Although it was successfully passed in Lok Sabha, the bill was delayed in Rajya Sabha. In 2018, it reintroduced the same bill but with little change to answer some criticism, such as the provisions of a living allowance for wives and children. However, the bill fared the same as before that failed in Rajya Sabha.⁵⁶

In May 2019, the sixth Lok Sabha was disbanded and the design of the Muslim Women (Protection of Rights on Marriage) act in 2018 and 2019 became expiry. Instead, the government passed a Muslim Women's Bill (Protection of Rights on Marriage) to continue the proposed provisions and

⁵³ Mengia Hong Tschalaer, *Muslim women's quest for justice : gender, law and activism in India* (Cambridge University Press, 2017).

⁵⁴ Hemanth. S dan Kavin. M, "A critical study of triple talaq in india," *Indian Journal Of Integrated Research In Law* Vol. 2, no. 5 (2022): 203-7, <https://doi.org/IJIRL/V2-I5/A31>.

⁵⁵ S dan M, "A critical study of triple talaq in india."

⁵⁶ Nasla K, "Muslim Women [Protection Of Rights On Marriage] Act, 2019 : A Critical Analysis" (The National University Of Advanced Legal Studies, Kochi, 2020).

submitted to parliament.⁵⁷ Finally in July 2019, after a long debate, the bill was passed by both assemblies and in August 2019 officially became law which stipulates three talaq at once is illegal, illegal, and void and is an act of criminal offence that can be punished by prison. This legalization is considered a major step in supporting gender equality and providing social justice for Muslim women in India.⁵⁸

4. The Muslim Women (Protection of Rights on Marriage) Act, 2019

The court ruling on the Shayara Bano case has had a major impact on the position of talaq in Indian law. As mentioned earlier, the government passed a law in response to the Supreme Court's ruling on three talaq at once, namely The Muslim Women (Protection of Rights on Marriage) Act, 2019. The Law aims to protect the rights of married Muslim women, prohibit divorce by the pronouncement of three talaqs at once by their husbands, and regulate matters related to or related to them.⁵⁹

More clearly, The Muslim Women (Protection of Rights on Marriage) Act, 2019), stipulates that any statement by a Muslim husband to his wife, whether orally, written, electronic, orally, orally, orally, orally, orally, orally, is void and illegal. Husband who violates this rule can be sentenced to up to three years in prison and fined. In addition, Muslim women who have been married and charged with talaq are entitled to receive a living allowance for themselves and the children who are dependent on them, in accordance with the judge's decision.⁶⁰ In the case of talaq, the woman is also entitled to custody of her minors under the arrangement prescribed by the Judge. Violations of this law are recognizable and can be reported by Muslim women affected by talaq or family parties. The case may be resolved at the request of the woman with the approval of the Judge. However, the defendant cannot be released on bail unless

⁵⁷ Shreya Jha, "Analysis of the ban on triple talaq," *Indian Journal of Law and Legal Research* Vol. 4, no. 1 (2022), <https://doi.org/10.1007/978-94-024-1267-3>.

⁵⁸ Jha, "Analysis of the ban on triple talaq."

⁵⁹ Rajendra Prasad Verma, "Gender Equality and Personal Law: Impact of ShayaraBano case on status of Muslim women in India," *RESEARCH REVIEW International Journal of Multidisciplinary* Vol. 03, no. 09 (2018): 1091-93, <https://doi.org/10.31305/rrijm>.

⁶⁰ The Muslim Women (Protection Of Rights On Marriage) Act, 2019.

the judge confirmed, after hearing the testimony from the woman affected by the talaq, that there is reason strong enough to provide bail. The law is designed to protect the rights of Muslim women and ensure justice in divorce cases.⁶¹

The Muslim Women (Protection of Rights on Marriage) Act, 2019, includes major target groups and other groups that are indirectly or unexpectedly affected. The impact can be evaluated using rights-based analysis. Muslim women who were previously vulnerable to the practice of three talaq at once, which left them losing access to legal protection, now have a clear legal mechanism to deal with the issue. This Act is designed to keep their rights and prevent unilateral divorce committed by husbands.⁶² This Act is an important step in raising awareness of society, especially the Muslim community, about the importance of maintaining women's rights in the context of personal law.

In addition, the law also seeks to protect the rights of children affected or may be affected by the practice of three talaqs at once, where they may lose support from their father under any circumstances. With this law enacted, there are legal paths to be taken. For society in general, this law is expected to have a positive impact because it promotes gender equality and protects women's rights, which is essential for the development and progress of a society.⁶³ Overall, The Muslim Women (Protection of Rights on Marriage) Act, 2019 marks a change in the paradigm of the law in India. The forms of legal transformation that occur can be summarized as follows.

Table 1. Forms of Three Talaq Legal Transformation

Transformation Aspect	Conditions (Before the 2017 Decree)	Conditions (After Law 2019)	Transformation form
Legal Substance	The practice of talaq is	Talaq is three at once declared	From the legitimacy of

⁶¹ Shradha Chaudhary, "Criminalisation Without an Object: Critical Reflections on the Muslim Women (Protection of rights on Marriage) Act, 2019," *Socio-Legal Review* Vol. 17, no. 2 (2021), <https://doi.org/10.55496/dcjg7858>.

⁶² Aayushi Bhargava, "Legislative Analysis Of The Muslim Women (Protection Of Rights On Marriage) Act, 2019," *Indian Journal of Law and Legal Research* Vol. 5, no. 5 (2023).

⁶³ Bhargava, "Legislative Analysis Of The Muslim Women (Protection Of Rights On Marriage) Act, 2019."

	considered valid according to the Hanafi madzhab and is not explicitly regulated in national law.	illegal, void by law, and criminalized (a prison sentence of up to 3 years).	classic fikih to state regulations that guarantee gender equality and women protection.
Legal Structure	The settlement of divorce is entirely in the realm of religious authority (ulama, Sharia Council).	The state through court and the law apparatus has full authority to enforce the ban on three talaqs at once.	Shifting authority from religious institutions to state legal institutions.
Legal Culture	Muslim communities tend to accept three talaq as a reasonable practice in patriarchal traditions.	Awareness of the justice and rights of Muslim women; the increasing activism of women and progressive Muslim organizations.	Changes in value and social awareness towards an egalitarian legal culture and gender justice.
Social Protection	Women lose their breadth and custody after being sent to three talaq at once.	The 2019 law guarantees a living, custody of children and legal protection for divorced women.	Transformation of uncertainty of rights into a guarantee of certain and justice law.
Legal System Orientation	Domination of religious law (Muslim Personal Law) without state control.	The integration of constitutional value (justice and equality) into religious law through national law.	Transformation from traditional religious pluralism to constitution-oriented legal pluralism.

The Muslim Women (Protection of Rights on Marriage) Act, 2019, on the one hand, has protected Muslim women from discrimination of three talaq practices at once that have made them suffer greatly, but on the other hand there are some shortcomings that have been criticized by the Muslim community and the Muslim community, causing doubt and confusion in the minds of the layman. One of the main issues of debate is the constitutional

validity of three talaq criminylasation at once.⁶⁴ The Act is less effective in protecting the interests of Muslim women who face economic, social and emotional challenges due to the three talaq. Criminalization of three talaqs at once may not effectively prevent the practice and encourage it to do it in secret, making it harder to deal with. They emphasize the importance of education, awareness and social reform to address the root causes of gender discrimination and promote gender equality within the Muslim community.⁶⁵ The Government should emphasize the implementation of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which governs the responsibility of the husband to make a living during the idah period (90 days). The move will further protect women's economic stability and provide legal clarity regarding their living rights, compared to the criminal approach.⁶⁶ Supporters of criminalization argue that this step provides indispensable protection for Muslim women who are vulnerable to unilateral divorce and neglect due to three talaq at once. They argue that by making the practice a criminal offence, it provides a strong message against gender discrimination and gives women harmed the right to get justice through legal paths. However, criticism comes from the party who said criminalization alone would not solve the problem deeper, such as socio-economic factors that affect women's vulnerability in the Muslim community.⁶⁷

In addition, the impact of criminalization of the three talaq at once that led to the husband being imprisoned is that the status of the wife becomes obscure (half widow), herself and the community consider having divorced the husband, while in the eyes of the law is not so. Then for the man/husband who was put into prison because of dropping the three talaq at the same time he had

⁶⁴ Nazim, "Criminalization of Triple Talaq in India: Impact and Challenges."

⁶⁵ Swasti Pandey, "Triple Talaq In India: A Comprehensive Analysis Of Legal, Social, And Gender Perspectives," *International Journal of Creative Research Thoughts (IJCRT)* Vol. 12, no. 4 (2024).

⁶⁶ Banka, "Triple Talaq Judgement And Act: Do Muslim Women Really Benefit?"

⁶⁷ Pandey, "Triple Talaq In India: A Comprehensive Analysis Of Legal, Social, And Gender Perspectives."

the responsibility to give his wife a living. Wives can't get married anymore because they remain a married couple until the husband goes out of prison.⁶⁸

One aspect that is also debate is the need for dialogue and collaboration between religious and legal parties. Some have criticized that legal changes should be accompanied by the involvement of religious experts and community leaders to address problems and create a better understanding. They emphasize the importance of an approach that combines both sides, both legal aspects and religious sensitivity.⁶⁹

Since its enactment in July 2019, the law has raised growing and alarming trends. Some Muslim men allegedly tortured their wives physically and mentally to force them to ask for khulu, a divorce request submitted by the wife with the consent of the husband. According to Jameela Nishat, founder of the Shaheen Women Resource and Welfare Association, the organization noted the increase in cases of women forced to take the Khulu path due to torture by their husbands.⁷⁰

Before the banning of three talaqs at once, the organization handled more cases of talaq than khulu. However, after the ban, the number of khulu cases increased significantly, while the talaq case decreased dramatically.⁷¹ In 2017-2018, Nishat organisation handled 38 cases of talaq and only four cases of khulu. The following year, they handled 32 cases of talaq and only three khulu requests. But suddenly, in 2019, the number of khulu' demand jumped to 24, while there were only three cases of talaq. And from 2020 to March 2023, there are no cases of talaq, but there are 62 khulu requests. This trend is also reflected by the increasing number of khulu certificates issued by the Waqf body in Hyderabad during the same period. In one year between 2021 and 2022, that

⁶⁸ Nasla K, "Muslim Women [Protection Of Rights On Marriage] Act, 2019 : A Critical Analysis."

⁶⁹ Pandey, "Triple Talaq In India: A Comprehensive Analysis Of Legal, Social, And Gender Perspectives."

⁷⁰ Rishika Sadam, "Muslim men have found a way around Modi's talaq tiga sekaligus ban—torture wife to give khulu," <https://theprint.in/ground-reports/muslim-men-have-found-a-way-around-triple-talaq-torture-wife-to-give-khula/1536910/>, akses 29 Desember 2024.

⁷¹ D.rajasenan dkk., "Muslim Women Protection of Rights on Marriage Act and Divorce of Muslim Women in Malappuram District," *Journal of Polity & Society* Vol. 14, no. 2 (2022).

number increased by about 35 percent. Worrying about the legal consequences of pronouncing the three talaq, some men encourage their wives to take the step.⁷²

Although controversial, the law can still be considered a progress in the context of protection of Muslim women's rights in India, especially in terms of the practice of three talaq at once, which, in the past, has been seen by many cases of discrimination against women.

C. CONCLUSION

The practice of three talaq at once in India is a legacy of Hanafi school Islamic law that has been valid since pre-colonial times. This practice persists due to the absence of renewal of Islamic family law in line with gender justice, as well as the dominance of conservative interpretations that legitimize three talaks at once. Shah Bano (1985) became the starting point of reform of Islamic family law. The Supreme Court ruling that grants a post-ideal living for Muslim women triggered a violent reaction from conservative groups. The Government responded by publishing the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA), which limited women's right to interpret their living in idah period, causing legal uncertainty. The Dania Latifi case (2001) demonstrates the expansion of the meaning of Muslim women's protection with the progressive interpretation of the 1986 MWA. The judge confirmed that the breadwinning obligation includes sustainable economic guarantees.

The peak of the transformation occurred in the case of Shayara Bano (2016) which challenged the constitutionality of three talaq at once. The Supreme Court ruling in 2017 declared that the three talaq at once contrary to the principles of the Qur'an, violates women's rights, and is not in accordance with the constitution. The Muslim Women (Protection of Rights on Marriage) Act, 2019, which prohibits three talaq at once and sets it as a criminal offence. This transformation of law shows a major change in Islamic family law in India

⁷² Bhargava, "Legislative Analysis Of The Muslim Women (Protection Of Rights On Marriage) Act, 2019."

that upholds gender justice through a ban on women's harmful practices. However, criminalization of the three talaq triggered debate over its effectiveness and impact on Muslim household stability. The Reformation marked a shift from traditional fikih domination to a national legal system oriented to justice and protection of Muslim women's rights.

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