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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

TRIPLE TALAQ JUDGEMENT: LEGAL REFORM AND MUSLIM WOMEN'S SOCIAL REALITY

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Abstract

Instant triple talaq (*talaq-e-biddat*) has long been one of the most debated practices within Muslim personal law in India due to its unilateral and abrupt nature. By allowing a husband to dissolve a marriage without notice or procedural safeguards, the practice historically exposed Muslim women to sudden emotional distress, economic insecurity, and social marginalisation, while offering them minimal legal protection. This long-standing inequality was addressed by the Supreme Court of India in the landmark case of *Shayara Bano v. Union of India* (2017), where instant triple talaq was declared unconstitutional for being arbitrary and violative of fundamental rights guaranteed under Articles 14, 15, and 21 of the Constitution. The judgement reaffirmed the primacy of constitutional principles such as equality, dignity, and non-discrimination over discriminatory personal law practices. In response, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which gave statutory force to the judgement by criminalising instant triple talaq and providing safeguards including maintenance and subsistence allowances for affected women. This article examines the constitutional reasoning behind the Triple Talaq judgement and assesses the extent to which the subsequent legal reform has influenced the lived social realities of Muslim women. While the reform has contributed to a reduction in reported cases and strengthened legal remedies, challenges such as limited awareness, social resistance, and informal abandonment persist. The study concludes that achieving substantive gender justice requires not only legislative intervention but also sustained social awareness and empowerment initiatives.

Keywords: Triple Talaq, Gender Justice, Muslim Personal Law, Constitutional Equality, Women's Rights.

I. Introduction

The institution of marriage under personal laws in India has historically reflected deeply embedded social and religious norms. Among the most contested of these norms was the practice of triple talaq (talaq-e-biddat), which allowed a Muslim husband to unilaterally and instantaneously dissolve a marriage by pronouncing the word “*talaq*” three times in one sitting. This practice, though claimed by some to be religiously sanctioned, was widely criticized for its arbitrary character and its devastating consequences for Muslim women.

For decades, Muslim women subjected to instant triple talaq were left without meaningful legal protection, often facing sudden abandonment, economic insecurity, social stigma, and emotional trauma. The practice became emblematic of the broader tension between personal law autonomy and constitutional guarantees of equality and dignity. This tension culminated in the landmark decision of the Supreme Court of India in *Shayara Bano v. Union of India* (2017), where instant triple talaq was declared unconstitutional.

The judgement marked a transformative moment in Indian constitutional law and women’s rights jurisprudence. It not only invalidated a discriminatory personal law practice but also paved the way for legislative intervention through the Muslim Women (Protection of Rights on Marriage) Act, 2019. This article critically examines the legal reform brought about by the Triple Talaq judgement and assesses its impact on the social reality of Muslim women, situating the discussion within broader debates on gender justice, constitutional morality, and personal law reform in India.

II. Historical and Religious Background of Triple Talaq

A. Understanding Triple Talaq

Triple talaq, also known as talaq-e-biddat, refers to a form of divorce recognized under certain interpretations of Sunni Muslim law, where the husband pronounces *talaq* three times either orally, in writing, or even electronically resulting in the immediate and irrevocable dissolution of marriage. Unlike other forms of talaq, it does not provide scope for reconciliation, arbitration, or consent of the wife.

Islamic scholars and jurists have long debated the legitimacy of this practice. Several Islamic countries, including Pakistan, Egypt, and Bangladesh, have either reformed or abolished instant triple talaq, recognising it as inconsistent with the Quranic emphasis on fairness and due process in divorce. Despite this, the practice persisted in India, often justified as a matter of religious freedom under personal law.

From a social perspective, instant triple talaq placed Muslim women in a position of extreme vulnerability. Women divorced in this manner frequently faced loss of shelter, denial of maintenance, and exclusion from their matrimonial families, with limited access to legal remedies. Feminist scholars and women's rights groups consistently argued that the practice violated basic principles of natural justice and gender equality.¹

B. Constitutional Challenge: Shayara Bano v. Union of India

The constitutional validity of triple talaq was directly challenged in *Shayara Bano v. Union of India*,² where the petitioner, herself a victim of instant triple talaq, questioned the practice on the grounds that it violated her fundamental rights under Articles 14, 15, and 21 of the Constitution.

In a historic 3:2 majority decision, the Supreme Court held that instant triple talaq was arbitrary and unconstitutional. Justice R.F. Nariman, writing for the majority, emphasized that arbitrariness is antithetical to equality under Article 14. The Court observed that a practice which allows a man to dissolve a marriage at his whim, without any attempt at reconciliation, cannot be sustained in a constitutional democracy.

Importantly, the Court clarified that personal laws are not immune from constitutional scrutiny when they infringe fundamental rights. This judgement marked a decisive shift in Indian jurisprudence, reinforcing the supremacy of constitutional morality over patriarchal social practices.³

¹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999).

² *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

³ Baxi Upendra, 'The Struggle for Constitutional Justice' (2018) 60 *Journal of the Indian Law Institute* 1.

III. Legal Reform: Muslim Women (Protection of Rights on Marriage) Act, 2019

A. Salient Features of the Legislation

In response to the Supreme Court's judgement, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019 to provide statutory backing to the prohibition of instant triple talaq. The Act declares any pronouncement of instant talaq whether oral, written, or electronic to be void and illegal.⁴

Key provisions of the Act include:

- **Section 3:** Declares pronouncement of triple talaq void and illegal.
- **Section 4:** Prescribes punishment of imprisonment up to three years and a fine.
- **Section 5:** Entitles the aggrieved woman to subsistence allowance for herself and her dependent children.
- **Section 6:** Grants custody of minor children to the woman, as determined by a Magistrate.

By making the offence cognizable and non-bailable, the legislature signalled its intent to treat instant triple talaq not merely as a civil wrong, but as a serious violation of women's rights requiring criminal sanction.

IV. Constitutional and Jurisprudential Rationale

A. Equality, Dignity, and Non-Discrimination

The Triple Talaq judgement rests firmly on constitutional guarantees of equality and dignity. Article 14 mandates equality before law, while Article 21 protects the right to live with dignity. The Court recognized that instant triple talaq disproportionately harmed women by denying them agency, security, and equal status within marriage.

By permitting unilateral divorce solely at the husband's discretion, the practice entrenched gender inequality and reinforced patriarchal dominance within personal law. The Court's

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

reasoning aligns with earlier decisions emphasizing that dignity is a core constitutional value that cannot be compromised by discriminatory customs.⁵

B. Reconciling Religious Freedom with Fundamental Rights

Article 25 of the Constitution guarantees freedom of religion, but this freedom is subject to public order, morality, health, and other fundamental rights. The Court held that instant triple talaq was not an essential religious practice, and therefore did not enjoy absolute constitutional protection.

Justice Nariman observed that practices which are manifestly arbitrary and unjust cannot be shielded under the guise of religious freedom. This approach reaffirmed the principle that constitutional values must prevail where religious practices conflict with individual rights.⁶

V. Impact of Legal Reform on Muslim Women

A. Decline in Instances of Triple Talaq

Post-2019, official data and government statements indicate a substantial decline in reported cases of instant triple talaq. This decline has been attributed to the deterrent effect of criminalization and increased awareness among Muslim women regarding their legal rights. While precise figures vary, reports suggest a reduction of nearly 80 percent in such cases.⁷

B. Expansion of Legal Remedies and Economic Security

The Act has strengthened women's access to maintenance and subsistence allowances. In addition, the Supreme Court has clarified that Muslim women divorced through illegal triple talaq can claim maintenance under Section 125 of the Criminal Procedure Code, thereby ensuring that personal law does not override women's right to financial support.⁸

⁵ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁶ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

⁷ Ministry of Minority Affairs, Government of India, *Annual Report 2020–21*.

⁸ *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

These measures collectively represent a significant step towards addressing the economic vulnerability historically associated with instant divorce.

VI. Social Realities and Continuing Challenges

Despite legal reforms, the lived reality of many Muslim women remains fraught with challenges. Lack of awareness, limited access to legal aid, and fear of social ostracism continue to deter women from seeking remedies. In some cases, husbands resort to informal abandonment or prolonged separation to evade legal consequences, giving rise to the phenomenon of “half-divorcees”.

Critics have also raised concerns regarding the criminalization of triple talaq, arguing that imprisonment of the husband may adversely affect the economic stability of the family. These debates underscore the complexity of balancing punitive measures with restorative justice within family law reform.⁹

VII. Broader Implications for Gender Justice and Personal Law Reform

The Triple Talaq judgement has far-reaching implications beyond Muslim personal law. It reinforces the principle that gender justice is integral to constitutional governance and sets a precedent for scrutinizing other discriminatory practices within personal laws.

By prioritizing equality and dignity, the judgement signals a move towards a rights-based approach to family law, where individual freedoms are not subordinated to regressive traditions.

VIII. Conclusion

The Triple Talaq judgement and the Muslim Women (Protection of Rights on Marriage) Act, 2019 represent a watershed moment in India’s journey towards gender-just personal laws. Together, they affirm that constitutional values of equality, dignity, and non-discrimination cannot be compromised by arbitrary religious practices.

⁹ Tahir Mahmood, *Muslim Law in Modern India* (Universal Law Publishing 2017).

However, legal reform alone cannot transform deeply entrenched social realities. For meaningful change to occur, statutory protections must be complemented by legal awareness, social education, and economic empowerment of Muslim women. The Triple Talaq reform thus stands not only as a constitutional triumph, but also as an ongoing call for sustained social and institutional engagement to ensure that women's rights are realized in practice, not merely recognized in law.

