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## TALAQ UNDER MUSLIM LAW: A COMPREHENSIVE LEGAL ANALYSIS OF DIVORCE, CLASSIFICATIONS, JUDICIAL DEVELOPMENTS, AND GENDER JUSTICE

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### **ABSTRACT**

The notion of *talaq* within Muslim law signifies the termination of marriage initiated by the husband, embodying both religious doctrines and legal interpretations found in Islamic jurisprudence. This study investigates the historical development, classifications, and procedures associated with *talaq*, including ***talaq-e-ahsan*, *talaq-e-hasan*, and *talaq-e-biddat*** (triple *talaq*). It delves into the tension between the husband's unilateral authority and the growing focus on gender justice and equality in contemporary legal frameworks. Through an analysis of judicial rulings and legislative changes, particularly in India, the research underscores the evolution of *talaq* from a solely religious act to a regulated legal procedure that ensures fairness and safeguards women's rights, highlighting the socio-legal ramifications and current discussions related to Muslim personal law.

### **I. INTRODUCTION**

A strong bond between husband and wife is essential for a fulfilling family life. Consequently, Islam emphasizes the importance of maintaining a marriage and advises against the dissolution of the marital contract. Ideally, marriages are not intended to be terminated; however, in unfortunate situations, the matrimonial agreement may be broken. The Islamic tradition regards divorce as permissible but undesirable—an institution of last resort meant to relieve parties from an irretrievably broken union rather than an easy exit from marital obligations.

One method of such termination is through divorce. According to Muslim law, divorce can occur either through the actions of the parties involved or via a court decree. Regardless of how the divorce is executed, it is not viewed as a normative aspect of life. In Islam, divorce is seen as an exception to the institution of marriage. The Prophet Muhammad (peace be upon him) stated that among the actions permitted by law, divorce is the least favorable—a maxim

that has profoundly shaped the theological and juristic approach to marital dissolution across centuries.<sup>974</sup>

As divorce is considered a negative outcome, it should be avoided whenever possible. Nevertheless, there are instances when this negative outcome becomes necessary; when it is unfeasible for the married couple to maintain their relationship with mutual love and respect, it is preferable to allow them to separate rather than force them to coexist in an environment filled with animosity and discord. The foundation of divorce in Islamic law is based on the inability of the spouses to coexist peacefully, rather than on any particular reason or fault that prevents them from living together.

A divorce may be initiated either by the husband or by the wife. There are various forms of divorce under Muslim law, each with distinct procedural requirements, theological underpinnings, and legal consequences. This paper undertakes a comprehensive

<sup>974</sup>The Holy Quran 2:229 (Yusuf Ali trans., 1934); see also Maulana Umar Ahmad Usmani, *Fiqh al-Quran* (Karachi: Maktaba Dar-ul-Uloom, 2005).

examination of these forms, tracing their origins in classical Islamic jurisprudence and assessing their contemporary application through judicial pronouncements and legislative developments in India.

## **II. TALAQ IN THE FOUR SCHOOLS OF ISLAMIC LAW**

Within the framework of Islamic jurisprudence, the issue of triple *talaq*—pronouncing divorce three times in a single sitting—has been subject to extensive interpretation among the four Sunni schools of law. An understanding of these divergent positions is indispensable to appreciate the complexity of the debate that eventually reached the Supreme Court of India in the landmark ***Shayara Bano case***.

### **A. The Hanafi Position**

According to the Hanafi jurists, triple *talaq* is considered *bid'ah* (an innovation) and sinful in nature, yet it remains legally valid and binding. Once the husband pronounces triple divorce, the marital bond is completely severed, rendering the wife *haram* (prohibited) for him. Reconciliation is only possible if she enters into a lawful marriage with another man and that marriage subsequently ends, either through divorce or widowhood.<sup>975</sup>

Maulana Umar Ahmad Usmani notes that this position is not exclusive to Imam Abu Hanifa but is also shared by Imam Malik and Imam Shafi'i. Imam Shafi'i explicitly maintains that triple *talaq* is valid and not an innovation, emphasizing that a husband cannot be prevented from exercising his legitimate right to divorce. Imam Ahmad ibn Hanbal initially upheld a similar position, aligning with the views of Imam Abu Hanifa and Imam Malik regarding the validity of triple *talaq*.

### **B. The Hanbali Reconsideration**

However, as recorded by Ibn Taymiyyah, Imam Ahmad ibn Hanbal later reconsidered his stance. Upon reflecting on the Qur'anic injunctions, he concluded that the Qur'an

permits only *talaq raj'i*—a revocable form of divorce in which the husband retains the right to restore the marriage during the *'iddah* period. Consequently, Imam Ahmad maintained that even if a man pronounces three divorces in one sitting, they should be treated as a single divorce. The husband, therefore, retains the right to reconcile with his wife within the *'iddah* period or to contract a new *nikah* once it has expired. This revised position was also adopted by Imam Ahmad's close companions and disciples.<sup>976</sup>

### **C. Companion Traditions and Minority Views**

Several Companions of the Prophet (peace be upon him), including Ibn 'Abbas and Hazrat 'Ali, supported the view that three divorces pronounced simultaneously should count as only one. Other Companions such as Abdullah ibn Mas'ud, Abdur Rahman ibn 'Auf, and Zubair ibn al-Awwam have also been reported to share similar opinions. The Ahl-e-Hadith scholars affirm the same interpretation—that triple *talaq* pronounced in a single sitting constitutes only one effective divorce. Likewise, the Ithna 'Ashari (Twelver Shi'a) and Imamiyya jurists hold that if three divorces are pronounced together, none take effect at all.<sup>977</sup>

Within the Hanafi school itself, some jurists have also expressed differing views. Scholars such as Hajjaj ibn Artat and Muhammad ibn Muqatil have asserted that if a man pronounces three divorces simultaneously, they do not take effect. Maulana Usmani observes that, according to Muhammad ibn Muqatil, one of Imam Abu Hanifa's two reported opinions was that such an instance results in only a single valid divorce. Imam Tilmisani similarly records that Imam Malik, at one point, held that three divorces pronounced together should be regarded as one.<sup>978</sup>

<sup>976</sup>Ibn Taymiyyah, *Majmu' al-Fatawa*, Vol. 33, pp. 6-86 (Riyadh: Matba'at al-Hukumah, 1381 AH); see also Ibn al-Qayyim, *Zad al-Ma'ad*, Vol. 5, p. 246 (Beirut: Mu'assasat al-Risalah, 1994).

<sup>977</sup>Syed Ameer Ali, *Mohammedan Law*, Vol. 2, p. 447 (Calcutta: Thacker Spink & Co., 4th ed. 1912); Ibn 'Abbas narration recorded in *Sahih Muslim*, Book of Divorce (*Kitab al-Talaq*), Hadith No. 1472.

<sup>978</sup>Hafiz Ibn Hajar al-Asqalani, *Fath al-Bari Sharh Sahih al-Bukhari*, Vol. 9, p. 362 (Beirut: Dar al-Ma'rifah, 1379 AH); Sheikh Mahmud Shaltut, *Al-Fatawa* (Cairo: Dar al-Qalam, 1966).

<sup>975</sup>Maulana Umar Ahmad Usmani, *Fiqh al-Quran* (Karachi: Maktaba Dar-ul-Uloom, 2005); Ibn al-Humam, *Fath al-Qadir*, Vol. 3, p. 27 (Bulaq ed., 1856).

#### **D. Modern Scholarly Opinion**

Among modern scholars, Sheikh Mahmud Shaltut, former Sheikh of Al-Azhar, issued a fatwa declaring that if three divorces are pronounced simultaneously, only one *talaq raji* (revocable divorce) occurs. This, he stated, allows the husband to resume the marital relationship either verbally or through physical reconciliation. Similarly, the distinguished scholar 'Allama Rashid Rida, in his *Tafsir al-Manar*, and Sheikh Jamal al-Din al-Qasimi, in his work *al-Istinas*, expressed the same interpretation, concluding that triple *talaq* lacks validity and should be treated as a single divorce.<sup>979</sup>

Drawing upon these authorities, Maulana Usmani concludes that the practice of triple *talaq* is inconsistent with the Qur'anic methodology and spirit of divorce, which emphasize reflection, patience, and the possibility of reconciliation. This scholarly consensus from diverse juristic traditions forms the intellectual bedrock upon which the Supreme Court of India would subsequently rest its constitutional challenge to the practice.

#### **III. MODES OF DIVORCE UNDER INDIAN MUSLIM LAW**

A husband may divorce his wife by repudiating the marriage. Pronouncement of such words which signify his intention to disown the wife is sufficient. Generally this is done by *talaq*. But he may also divorce by *ila* and *zihar*, which differ from *talaq* only in form, not in substance. A wife cannot divorce her husband of her own accord—she can do so only when the husband has delegated such a right to her or under a prior agreement. Under an agreement the wife may divorce her husband either by *khula* or *mubarat*. Before 1939, a Muslim wife had no right to seek divorce except on the ground of false charges of adultery, insanity, or impotency of the husband. But the Dissolution of Muslim Marriages Act, 1939 lays down several other

<sup>979</sup>Allama Rashid Rida, *Tafsir al-Manar*, Vol. 9, p. 683 (Cairo: Dar al-Manar, 1927); Sheikh Jamal al-Din al-Qasimi, *Al-Istinas* (Damascus: Maktabat al-Tawfiq, 1900).

grounds on the basis of which a Muslim wife may obtain a court decree of divorce.<sup>980</sup>

#### **Classification of Divorce Under Muslim Law**

Muslim law provides for two broad classifications of divorce: (1) extra-judicial divorce, and (2) judicial divorce.<sup>981</sup>

Extra-judicial divorce is further sub-divided as follows:

- (a) by the husband—*talaq, ila, and zihar*;**
- (b) by the wife—*talaq-i-tafweez and lian*; and**
- (c) by mutual agreement—*khula and mubarat*.**

Judicial divorce, on the other hand, is governed principally by the Dissolution of Muslim Marriages Act, 1939, which affords the wife recourse to a court-supervised dissolution on specified grounds.

#### **IV. TALAQ: DEFINITION, CONDITIONS, AND FORMS**

##### **A. Definition and Nature**

In its most basic sense, *talaq* signifies dismissal. Literally, it translates to 'setting free,' 'letting loose,' or removing any 'ties or restraint.' Within the context of Muslim Law, it refers to liberation from the bonds of marriage, rather than any other form of bondage. Legally, it denotes the dissolution of marriage by the husband through the use of specific terms. In essence, *talaq* represents the repudiation of marriage by the husband, following the procedures established by law.

Based on the Quran it is very much clear that Allah discourages divorce and encourages the continuation of marriage. However, if it becomes impossible to resolve disputes between the husband and wife, then the Holy

<sup>980</sup>Dissolution of Muslim Marriages Act, 1939, No. 8, Acts of Parliament, 1939 (India); see also Asaf A.A. Fyzee, *Outlines of Muhammadan Law* 172 (Oxford Univ. Press, 4th ed. 1974).

<sup>981</sup>Syed Ameer Ali, *Mohammedan Law*, Vol. 2, p. 433 (Calcutta: Thacker Spink & Co., 4th ed. 1912); Asaf A.A. Fyzee, *Outlines of Muhammadan Law* 148 (Oxford Univ. Press, 4th ed. 1974).

Quran itself provides for the procedure to be followed for the dissolution of marriage in an amicable manner—a procedure that includes a possibility of revocation before it becomes final.

### **B. Conditions for a Valid Talaq**

The following conditions must be satisfied for a *talaq* to be legally valid:

**1. Capacity:** Every Muslim husband who is of sound mind and has reached puberty is permitted to declare *talaq* without the need for justification. A husband who is a minor or insane is not allowed to pronounce it; such *talaq* is considered void. Nevertheless, a lunatic's *talaq* is valid if declared during a lucid interval. A guardian is not authorized to declare *talaq* on behalf of a minor, but if an insane husband does not have a guardian, a Qazi or judge may annul the marriage for his benefit.

**2. Free Consent:** With the exception of Hanafi law, *talaq* must be declared with free consent. According to Hanafi law, a *talaq* pronounced under coercion, deceit, undue influence, or voluntary intoxication is deemed valid; however, one pronounced under involuntary intoxication is considered void. In accordance with Shia and other Sunni laws, *talaq* declared under compulsion or intoxication is void.

**3. Formalities:** According to Sunni law, *talaq* can be either oral or written (in a *Talaaqnama*), with no specific wording or witnesses required—any clear expression of intent is sufficient. Under Shia law, *talaq* must be oral (unless the husband is mute) and must be declared in the presence of two witnesses; a written *talaq* by a capable husband is void.

**4. Express Words:** The words used in *talaq* must explicitly convey the husband's intention to dissolve the marriage. If the declaration is not clear and is ambiguous, it may not be considered valid.

### **C. Express Talaq by the Husband**

When clear and unequivocal phrases, such as 'I have divorced you,' are spoken, the divorce is considered express.

Express *talaq* is divided into two categories: **(a) Talaq-e-sunnat, and (b) Talaq-e-biddat.**

#### **1. Talaq-e-Sunnat**

Talaq-e-sunnat is regarded as being in accordance with the teachings of Prophet Mohammad. It takes two forms:

##### **(i) Talaq-e-Ahsan (Most Approved):**

The *ahsan talaq* consists of a single declaration of divorce made during the period of *tuhr* (purity, between two menstruations), or at any time if the wife is not menstruating, followed by abstaining from sexual relations during the *iddat* period. The stipulation that the declaration must be made during a *tuhr* period applies solely to oral divorce and does not pertain to *talaq* in written form. Likewise, this condition is not relevant when the wife has surpassed the age of menstruation, or when the couple has been separated for an extended duration, or when the marriage has not been consummated.<sup>982</sup>

##### **(ii) Talaq-e-Hasan (Less Approved):**

In the *hasan talaq*, the husband is required to pronounce the formula of *talaq* three times during three successive *tuhrs*. If the wife has crossed the age of menstruation, the pronouncement may be made after the interval of a month or thirty days between the successive pronouncements. When the last pronouncement is made, the *talaq* becomes final and irrevocable. It is necessary that each of the three pronouncements should be made at a time when no intercourse has taken place during the period of *tuhr*. By way of illustration: W, a wife, is in her period of purity and no sexual intercourse has taken place. Her husband, H, pronounces *talaq* upon her. This is the first pronouncement by express words. Then

<sup>982</sup>Baillie, Digest of Moohummudan Law 204 (London: Smith, Elder & Co., 2d ed. 1875); M. Hidayatullah & Arshad Hidayatullah, Mulla's Principles of Mahomedan Law 270 (N.M. Tripathi, 19th ed. 1990).

again, when she enters the next period of purity, and before he indulges in sexual intercourse, he makes the second pronouncement. He again revokes it. Again when the wife enters her third period of purity and before any intercourse takes place, H pronounces the third pronouncement. The moment H makes this third pronouncement, the marriage stands dissolved irrevocably, irrespective of *iddat*.

## **2. Talaq-e-Biddat (Triple Talaq)**

Talaq-e-biddat came into vogue during the second century of Islam. It has two forms: (i) the triple declaration of *talaq* made in a period of purity, either in one sentence or in three; and (ii) a single irrevocable pronouncement of divorce made in a period of *tuhr* or even otherwise. This type of *talaq* is not recognized by the Shias. This form of divorce is condemned and considered heretical because of its irrevocability, which forecloses the carefully calibrated process of reflection and reconciliation envisioned by the Qur'an.

### **V. TRIPLE TALAQ: CONSTITUTIONAL CHALLENGE AND JUDICIAL RESPONSE**

#### **A. Nature and Controversy**

Instant Triple Talaq is a distorted version of *talaq* employed by a Muslim man to divorce his wife simply by saying the word '*talaq*' three times in rapid succession. This form of *talaq* is irrevocable, leaving no room for reconciliation. It is primarily practiced by the Hanafis, a subgroup of Sunni Muslims in India. It is also referred to as *talaq-e-biddat*. The Supreme Court of India declared Instant Triple Talaq unconstitutional in 2017, a judgment that has reshaped the landscape of Muslim personal law in India.<sup>983</sup>

The practice is problematic on multiple grounds. It contradicts the principles of the Constitution of India, particularly Article 14 (right

to equality). Numerous religious leaders assert that it contravenes Qur'anic procedures since Instant Triple Talaq is not mentioned in the Qur'an as a valid mode of divorce. It is discriminatory towards women, as the husband unilaterally terminates the marriage without any procedural safeguard. The practice of Triple Talaq has been abolished in twenty-one Islamic nations, including Pakistan, demonstrating that the reform is consistent with contemporary Islamic governance worldwide.<sup>984</sup>

#### **B. Survey of Important Supreme Court Judgments**

**1. Shah Bano Case (1985):** Shah Bano and her husband separated in 1978. The Supreme Court of India ordered the husband to provide Shah Bano maintenance under Section 125 of the Code of Criminal Procedure, 1973. The court's progressive order was, however, overturned when the Rajiv Gandhi Government enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. Maintenance payments were limited by this Act to the *iddat* period—the three-month waiting period before the divorce becomes absolute.<sup>985</sup>

**2. Ahmedabad Women Action Group (AWAG) Case (1997):** A Public Interest Litigation was filed in court to address various issues relating to Muslim personal law, including the practice of triple *talaq*. The Supreme Court, however, determined that the adjudication of personal law matters was outside its jurisdiction in the abstract, declining to strike down personal law practices without appropriate legislative intervention.<sup>986</sup>

**3. Danial Latifi Case (2001):** Lawyer Danial Latifi contested the constitutionality of the Muslim Women's Act, 1986, which provided maintenance only during the *iddat* period. The

<sup>983</sup>Shayara Bano v. Union of India, (2017) 9 SCC 1; Muslim Women (Protection of Rights on Marriage) Act, 2019, No. 20, Acts of Parliament, 2019 (India).

<sup>984</sup>India Const. art. 14 (right to equality); India Const. art. 25 (freedom of religion); Muslim Personal Law (Shariat) Application Act, 1937, No. 26, Acts of Parliament, 1937 (India).

<sup>985</sup>Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945; Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25, Acts of Parliament, 1986 (India).

<sup>986</sup>Ahmedabad Women Action Group (AWAG) v. Union of India, AIR 1997 SC 3614.

Supreme Court ruled that the husband must pay a reasonable and fair amount necessary to support his ex-wife for the remainder of her life, thus reading the Act in consonance with the constitutional guarantee of equality and the right to life under Article 21.<sup>987</sup>

**4. Shamim Ara Case (2002):** In this case, Shamim Ara's husband purported to divorce her through triple *talaq*; however, she contested the validity of the divorce. The Supreme Court determined that *talaq* must be executed in accordance with Islamic principles and that the circumstances leading to *talaq* must be substantiated beyond any reasonable doubt. The court deemed the arbitrary *talaq* invalid and affirmed that the wife is entitled to receive maintenance from her husband.<sup>988</sup>

**5. Shayara Bano Case (2017):** The landmark decision came in *Shayara Bano v. Union of India*, where a five-judge Constitution Bench of the Supreme Court ruled by a majority of 3:2 that Instant Triple Talaq is unconstitutional. The majority held that the practice is manifestly arbitrary and subject entirely to the husband's unfettered discretion, thereby violating the guarantee of equality under Article 14 of the Constitution. The Constitution Bench also rejected the argument that instant *talaq* constitutes a fundamental aspect of Islam deserving protection under Article 25. Significantly, the majority recommended that Parliament enact comprehensive legislation to prohibit the practice. The minority, however, took a different view, holding that religious freedom under Article 25 protects not just individual faith but also personal laws that have been codified as custom.

<sup>987</sup>Danial Latifi v. Union of India, (2001) 7 SCC 740; see also Flavia Agnes, Muslim Women's Rights and the Shifting Discourse: Adjudicating Muslim Women's Rights in India, 4 Indian J.L. & Just. 1 (2013).

<sup>988</sup>Shamim Ara v. State of U.P., (2002) 7 SCC 518; Paras Diwan, Muslim Law in Modern India 85 (Allahabad Law Agency, 9th ed. 2008).

## **VI. LEGISLATIVE RESPONSE: THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019**

In response to the Supreme Court's verdict in *Shayara Bano*, the Government of India enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019. The legislation renders all declarations of *talaq* in the form of *talaq-e-biddat*—whether made in written, oral, or electronic format—null and void ab initio. The Act characterizes such *talaq* as any form of pronouncement by a Muslim man that leads to an immediate and irrevocable divorce.<sup>989</sup>

### **A. Key Provisions**

The Act contains the following principal provisions:

**Section 3:** Any pronouncement of *talaq* by a Muslim husband upon his wife, by words—spoken or written or in electronic form or in any other manner—shall be void and illegal.

**Section 4 (Offence and Penalty):** The Act makes the declaration of *talaq* a cognizable and non-bailable offence. A cognizable offence is one for which a police officer may arrest an accused person without a warrant. A husband declaring *talaq* can be imprisoned for up to three years.

**Section 5:** Notwithstanding a *talaq* being declared void, the wife is entitled to receive a subsistence allowance from her husband, and to seek custody of minor children.

### **B. Recommendations of the Law Commission**

The Law Commission of India had earlier released a consultation paper titled 'Reform of Family Law.' The Commission held that social evils such as the practice of triple *talaq* should not be allowed to shelter under religious custom. It observed that weaker sections of society, including women, should not face discrimination in the name of religious practice. The Commission recommended that both men and women be accorded identical rights and

<sup>989</sup>Muslim Women (Protection of Rights on Marriage) Act, 2019, § 3-4, No. 20, Acts of Parliament, 2019 (India); see Poonam Pradhan Saxena, Family Law Lectures: Family Law II 88 (LexisNexis, 3d ed. 2011).

grounds for divorce, and called for penalizing any man resorting to unilateral divorce under the provisions of the Protection of Women from Domestic Violence Act, 2005.

## **VII. ISSUES AND CHALLENGES IN CRIMINALIZING TRIPLE TALAQ**

### **A. Arguments in Favour of Criminalization**

Triple *talaq* is a serious injustice, and if properly enforced, the law could serve as a meaningful deterrent. Despite the Supreme Court's ruling in 2017, the practice continued unabated, with 201 reported instances of Triple Talaq in the period immediately following the verdict. This law is viewed as consistent with the State's obligation to eradicate practices that are morally condemned by the majority of the Muslim community, particularly women who seek its abolition. Triple Talaq is analogous to social evils such as dowry and polygamy, both of which attract criminal sanctions, and thus should similarly be criminalized.

### **B. Arguments Against Criminalization**

Critics raise several compelling objections. First, proving 'oral instant triple *talaq*' in a court of law will pose significant evidentiary challenges for women who typically lack witnesses or documentary proof. Second, the possibility of the husband facing imprisonment may paradoxically deter women from reporting instances of instant triple *talaq*, since they may not wish to send the father of their children to jail. Third, there is no conclusive evidence that criminalization effectively serves as a deterrent in the context of personal law. Fourth, a husband incarcerated under the Act will have little opportunity to discharge his maintenance obligations, creating a lacuna regarding financial support. Fifth, many Muslim men may choose to abandon their wives rather than pursue formal divorce proceedings, so as to avoid criminal liability.

### **C. The Question of Proportionate Punishment**

The imposition of a three-year sentence for triple *talaq* equates it with other serious offences such as sedition and rioting, rendering

the punishment arguably excessive and disproportionate. The principle of proportionality demands that punishment should only possess a level of severity sufficient to deter the conduct sought to be prevented, and should be calibrated to the culpability involved.

### **D. Personal Law versus Constitutional Law**

In India, Article 14 of the Constitution ensures the right to equality, while Article 25 guarantees the freedom of religion. Regarding personal matters such as marriage and divorce, Muslims in India are governed by the Muslim Personal Law (Shariat) Application Act, 1937. In the *Shayara Bano* case, the majority judgment determined that personal law must conform to the Constitution and cannot infringe upon fundamental rights, concluding that Instant Triple Talaq violates Article 14. The minority judgment, however, held that religious freedom under Article 25 extended to protecting personal laws too. This tension between personal law and constitutional rights remains a live issue in Indian jurisprudence and continues to generate scholarly debate.

## **VIII. OTHER FORMS OF DIVORCE BY THE HUSBAND**

### **A. Ila**

In *Ila*, the husband swears an oath to abstain from sexual relations with his wife. If no consummation occurs for four months, the marriage dissolves irrevocably. However, if he resumes cohabitation within that period, *Ila* is cancelled. Under the Ithna Asharia (Shia) school, *Ila* does not automatically dissolve the marriage; it requires a court's order. After the expiry of four months, the wife becomes entitled to seek a judicial divorce or may file a suit for restitution of conjugal rights if cohabitation is not resumed.

### **B. Zihar**

In *Zihar*, the husband compares his wife with a woman within his prohibited relationship—for example, his mother or sister—by saying that from today the wife is to him like his mother or sister. After such a comparison, if the husband does not cohabit with his wife for a period of

four months, *Zihar* is complete. After the expiry of four months, the wife has the following rights: (i) she may go to the court to seek a decree of judicial divorce; or (ii) she may ask the court to grant a decree of restitution of conjugal rights.

Where the husband wants to revoke *Zihar* by resuming cohabitation within the said period, the wife cannot seek judicial divorce.

Revocation is possible if:

- (i) the husband observes a fast for a period of two months; or
- (ii) he provides food to at least sixty people; or
- (iii) he frees a slave.

#### **IX. DIVORCE BY MUTUAL AGREEMENT: KHULA AND MUBARAT**

There exist two types of divorce by mutual consent under Muslim law; however, in both cases the wife is typically required to relinquish her dower or a portion of another asset. The Holy Quran states: 'And it is not lawful for you to take from women any part of what you have given them, except in the situation where both parties fear that they may not be able to adhere to the limits set by Allah. In such a case, it is not a sin for either party if the woman chooses to ransom herself.'

##### **A. Khula**

*Khula* signifies 'to draw,' 'dig up,' or 'remove,' representing the act of shedding garments as spouses separate. Legally, it is an agreement between spouses to end the marriage in return for compensation from the wife's assets. While consideration is necessary, the actual transfer is not required for the agreement to hold validity. Once the husband agrees, it results in an irrevocable divorce, even if the compensation has not yet been paid. Compensation may consist of the *mahr*, either fully or partially, or any legitimate property. In *mubarat*, as opposed to *khula*, both parties mutually seek divorce, and the proposal may be initiated by either spouse.

##### **B. Mubarat**

In *mubarat*, both the husband and wife mutually agree to part ways. Among Sunnis, once the agreement is made, all mutual rights and obligations are terminated. Shia law is more rigorous, requiring both parties to find the marriage burdensome before *mubarat* is permissible. Sunnis do not follow a specific format, while Shias necessitate a formal declaration in Arabic that includes the term *talaq*. The intention to dissolve the marriage must be explicitly stated. For both sects, *mubarat* is irrevocable, the wife must observe *iddat*, and the divorce is final upon agreement.

#### **X. DIVORCE INITIATED BY THE WIFE**

##### **A. Talaq-i-Tafweez (Delegated Divorce)**

*Talaq-i-tafweez*, or delegated divorce, is acknowledged by both Shia and Sunni sects. The Muslim husband has the authority to delegate his right to pronounce divorce to his wife or another individual. This delegation can be made either absolutely or conditionally, and it can be temporary or permanent. A permanent delegation of authority is subject to revocation, whereas a temporary delegation is not. The delegation must be explicitly made in favour of the individual receiving the power, and the intent behind the delegation must be clearly articulated. As noted by Professor Fyzee, this type of delegated divorce is arguably 'the most effective tool available to a Muslim wife to secure her freedom without court intervention' and is increasingly included in prenuptial agreements.

##### **B. Lian**

If the husband levels false charges of unchastity or adultery against his wife, this amounts to character assassination, and the wife has the right to ask for divorce on these grounds. Such a mode of divorce is called *lian*. However, it is only a voluntary and aggressive charge of adultery made by the husband which, if false, would entitle the wife to seek a decree of divorce on the ground of *lian*. Where a wife's bad behaviour provokes the husband into making an

allegation of infidelity in the heat of the moment, such a response cannot be used by the wife as a false charge of adultery for the purposes of *lian*. This principle was affirmed by the Calcutta High Court in *Nurjahan v. Kazim Ali*.<sup>990</sup>

### C. Dissolution of Muslim Marriages Act, 1939

Prior to 1939, a Muslim wife in India had virtually no recourse to judicial divorce save on the ground of false charges of adultery, insanity, or impotency of the husband. The Dissolution of Muslim Marriages Act, 1939 dramatically expanded these grounds. Section 2 of the Act provides that a woman married under Muslim law shall be entitled to obtain a decree for dissolution of her marriage on any one or more of the following grounds:<sup>991</sup>

- (i) That the whereabouts of the husband have not been known for a period of four years;
- (ii) That the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (iii) That the husband has been sentenced to imprisonment for a period of seven years or upwards;
- (iv) That the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- (v) That the husband was impotent at the time of the marriage and continues to be so;
- (vi) That the husband has been insane for a period of two years or is suffering from a virulent venereal disease;
- (vii) That she, having been given in marriage by her father or other guardian

before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated.

These grounds have been the subject of significant judicial interpretation. In ***Syed Ziauddin v. Parvez Sultana, Parvez Sultana*** was a science graduate who wished to pursue medical studies. She needed money for her studies, and Syed Ziauddin promised to provide it if she married him. She did. Later she filed for divorce for non-fulfilment of the husband's promise. The court granted her divorce on the ground of cruelty, recognizing that willful breach of a material pre-marital promise could constitute cruelty within the meaning of the Act.<sup>992</sup>

In ***Zubaida Begum v. Sardar Shah***, a case from the Lahore High Court, the husband sold the wife's ornaments with her consent. It was submitted that the husband's conduct amounted to cruelty. The court held that such conduct, being done with the wife's concurrence, could not be regarded as cruelty, and the petition for dissolution was accordingly dismissed.<sup>993</sup>

### XI. SOCIO-LEGAL RAMIFICATIONS AND CONTEMPORARY DEBATES

The regulation of *talaq* in India encapsulates a broader tension between the preservation of religious personal law and the constitutional mandate of gender equality. The practice of Instant Triple Talaq, in particular, has long been criticized as a manifestation of patriarchal authority that strips women of agency and security. Its abolition through judicial and legislative action marks a significant milestone in the ongoing project of harmonizing Muslim personal law with constitutional values.

Awareness of the practice of Triple Talaq has adversely affected the overall development and mindset of girls during their upbringing, creating

<sup>990</sup>*Nurjahan v. Kazim Ali*, AIR 1977 Cal 90; see also Paras Diwan, *Muslim Law in Modern India* 98 (Allahabad Law Agency, 9th ed. 2008).

<sup>991</sup>Dissolution of Muslim Marriages Act, 1939, § 2, No. 8, Acts of Parliament, 1939 (India).

<sup>992</sup>*Syed Ziauddin v. Parvez Sultana*, AIR 1981 Bom 45.

<sup>993</sup>*Zubaida Begum v. Sardar Shah*, AIR 1946 Lah 193.

a culture of subordination and vulnerability. The knowledge that a marriage could be dissolved instantaneously and without notice has been shown to generate anxiety, prevent women from investing in their futures, and render them economically dependent. These social consequences underscore why legal reform is imperative.

The Women (Protection of Rights on Marriage) Act, 2019 represents a decisive legislative response. By criminalizing the practice and providing for maintenance and custody rights, the statute seeks to deter the practice and offer a remedy to aggrieved wives. Yet, as noted above, the criminalization approach is not without its critics, who argue that it may be counterproductive in practical terms. The challenge for the legislature and the courts is to craft a regulatory framework that effectively deters the practice while preserving the possibility of reconciliation and not inadvertently worsening the position of Muslim women.

The broader movement for codification and reform of Muslim personal law in India continues to gain momentum. Scholars, jurists, and civil society organizations across the political spectrum have called for a comprehensive review that balances religious sensibilities with constitutional imperatives. The discourse around *talaq* reform is, at its core, a discourse about the meaning of equality, citizenship, and the place of religion in a pluralist constitutional democracy.

## **XII. CONCLUSION**

The institution of *talaq* in Muslim law presents a rich and complex tapestry of religious doctrine, juristic diversity, and legal evolution. From the meticulous three-stage procedure of *talaq-e-ahsan* to the contested irrevocability of *talaq-e-biddat*, Islamic jurisprudence has generated a multiplicity of approaches to marital dissolution, each reflecting particular theological commitments and social contexts. The classical schools of Islamic law themselves disagree profoundly on the validity and effect of

triple *talaq*, a fact that underscores the absence of any monolithic Islamic position on the subject.

In the Indian legal context, the journey from *Shah Bano* through *Danial Latifi* to *Shayara Bano* reflects an evolving judicial consciousness about the rights of Muslim women and the limits of religious freedom as a constitutional value. The enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019 represents the most decisive legislative intervention to date, signaling parliamentary commitment to gender justice in the domain of Muslim personal law.

Nevertheless, the tensions between personal law autonomy and constitutional equality are far from resolved. Effective enforcement of the 2019 Act, combined with awareness programmes, legal aid for Muslim women, and continued judicial vigilance, will be essential to translate the legislative promise into lived reality. The regulation of *talaq* serves as a microcosm of the larger challenge of constructing a truly egalitarian legal order in a diverse and pluralistic society—a challenge that demands sensitivity to cultural context without sacrificing the foundational commitment to the equal dignity of all citizens.



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