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# Triple Talak Analysis through Judiciary as Well as Custom

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## ABSTRACT

*In this examination we will be analyzing the Triple talak Judiciary as well as customs. As we all know in Islam Divorce often takes so many forms. The old categories that are described for divorce from the side of legal reforms are talaq that can be performed the repudiation from the side of the Husband, Khula which can be said as the buying of the freedom of wife as well as mubarat that is done with the permission of both the sides. The rules and regulations that are in relation to divorce has been always in the governance of the Sharia, as according to the interpretation of the traditional as well as old Jurisprudence of the Islam. However, the practices that are done mostly don't match with the real soul as well as spirit of the Islamic community. Although Quran has been egalitarian as well as justice its cornerstone, but the idea of gender inequality that has been followed by the pre-Islamic times in regards to the divorce are still been followed by the people as well as are still existing in vogue. With the help of all the reasons, especially women are the communities that will be vulnerable. Triple talaq has been facing so much of criticism as well as controversies and debates on its account that this practice is correct or not. The criticism that it has to face has been completely on the aspects of gender inequality, human rights as well as justice that should be given to every gender. The India Supreme Court in the judgement that is being considered as landmark in the year 2017 on August 22, stated that the exercises that are related to triple talaq are non-constitutional as well as it does not fall under the supervision of the constitution as well as gave the Government of India power to perform the process of legislation in regards to these issues. Since, the practice that was banned by the Supreme Court of India was that the version in which the Husband speaks the phrase talaq three times and ultimately the bond of marriage breaks.*

**Keywords:** *Quran, triple talaq, Nikah, Islamic law, Hadith, etc.*

## I. INTRODUCTION

**Triple-Talaq:** Triple Talaq, as the name suggests, is a practice that historically allowed Muslim husbands to divorce their wives by pronouncing the word "talaq" (meaning divorce) three times in any form, including verbally, in writing, or via electronic communication such as text messages or emails. In 2017, the Supreme Court of India declared this practice unconstitutional, ruling against Triple Talaq and its related aspects. The

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court directed the government to enact necessary legislation promptly to address the issue comprehensively.

Supporters of the Supreme Court's ruling argued that banning Triple Talaq empowered women in the Muslim community by protecting their rights. Opponents, however, contended that the associated punishments were harsh and susceptible to misuse. Under the new law, men found violating the ban on Triple Talaq face up to three years in prison. The bill was first introduced in Parliament in 2017 but faced opposition from some Members of Parliament (MPs) who deemed it unfair. The ruling party, the Bharatiya Janata Party (BJP), supported the bill, while the main opposition party, the Indian National Congress, along with MPs from other parties, opposed it, citing concerns about its fairness.

The BJP lacked a majority in the Rajya Sabha, the upper house of Parliament, which initially stalled the bill's passage. After debates and some MPs either walking out or abstaining, the Triple Talaq bill passed with 99 votes in favor and 84 against. Prime Minister Narendra Modi celebrated the outcome, describing it as a victory for gender justice.

Asaduddin Owaisi, a Member of Parliament from the All India Majlis-e-Ittehadul Muslimeen (AIMIM) party, criticized the law as another attack on the Muslim community under the BJP government, which has been in power since 2014.

### **Sharia: Meaning and Philosophy**

According to the 2011 Indian census, approximately 14.12% of India's population, or about 173.3 million people, follow Islam. The Muslim population in India is largely governed by the Muslim Personal Law (Sharia) Application Act of 1937. This act mandates that Muslims in India be subject to personal laws concerning matters such as marriage, divorce, adoption, inheritance, and property rights, as outlined in Section 2 of the 1937 Sharia Act. The act specifies that, notwithstanding any contrary customs or practices, courts must apply Muslim Personal Law in cases involving Muslims, particularly in matters of marriage, divorce, inheritance, wills, and property rights, including those acquired through contracts or gifts.

Sharia, by definition, is a dynamic and evolving system of Islamic law that is not rigid. Far from being a set of minor regulations, Sharia provides comprehensive ethical guidance for the Muslim community. It prioritizes duties and moral obligations over individual legal rights, placing communal responsibilities at the forefront. Over its 14-century history, Sharia has developed into a moral framework reflecting Islamic values. Rather than a fixed or uniform code, Sharia is a living, evolving system shaped by continuous juristic interpretation and adaptation.

Historically, Sharia has been a normative system, with its foundations dating back to the 7th century. Viewing Sharia as static ignores centuries of judicial literature, juristic analysis, and legal interpretations by Muslim scholars. Traditional Sharia jurisprudence often went beyond strict scriptural adherence, allowing jurists to exercise discretion to balance authority, legitimacy, and practical outcomes under specific circumstances. The Quran, considered the verbatim word of God (*ipsissima verba*) and the criterion for truth (*al-furqan*), forms the egalitarian foundation of Sharia's philosophy. Islamic teachings emphasize justice, embedding both rights and duties in the pursuit of fairness.

Debates persist about whether Sharia is compatible with gender equality. Critics argue that Islamic law, as traditionally interpreted, conflicts with human rights, particularly women's rights, in areas such as marriage and divorce. These critiques highlight discriminatory practices against Muslim women in family and community laws, despite the Quran's assertion that all Muslims, regardless of gender, have equal rights, duties, punishments, and rewards before God.

In 2008, scholar Shabeen Sardar Ali noted that while certain Quranic verses appear to establish gender hierarchies, these are outnumbered by verses emphasizing equality and responsibility. For instance, alongside verses granting men authority over women, others enjoin Muslim men to care equally for orphans, the needy, and the poor. Ali questioned why interpretations often prioritize a single verse over the broader Quranic context, which includes thousands of verses advocating fairness. Researchers argue that discrimination against Muslim women stems not from the Quran itself but from historical interpretations dominated by male religious leaders, jurists, and commentators. These male-centric interpretations have often favored rulings that maintain patriarchal control, overshadowing the Quran's egalitarian principles.

### **Problem Statement**

Triple Talaq, as the name suggests, is a practice that historically allowed Muslim husbands to divorce their wives by pronouncing the word "talaq" (meaning divorce) three times in any form, including verbally, in writing, or via electronic communication such as text messages or emails. In 2017, the Supreme Court of India declared this practice unconstitutional, ruling against Triple Talaq and its related aspects. The court directed the government to enact necessary legislation promptly to address the issue comprehensively.

The traditional framework of Sharia law encompasses a rich body of judicial literature. This literature demonstrates that jurists often went beyond strict adherence to religious scriptures, exercising discretion in various ways to interpret and apply the law. Their approach balanced the demands of authority, legitimacy, and practical circumstances, aiming to achieve just

outcomes tailored to specific contexts. This flexibility highlights Sharia's adaptive nature, allowing it to address diverse legal challenges while maintaining its moral and ethical foundations.

### **Objective of Research**

This section outlines the objectives guiding the study of Triple Talaq and Sharia laws, addressing key questions and goals related to the topic. The following objectives shaped the research:

- Examine the practice of Triple Talaq, including the procedures involved, the actions required to initiate divorce through this method, and its legal status.
- Investigate the rights available to women affected by Triple Talaq, including options and recourse available to a woman after receiving a divorce through this practice.
- Analyze the perspectives of India's judiciary and legislature on Triple Talaq, including the factors considered in their decisions and the bills passed by legislative bodies.
- Explore the consequences of divorce via Triple Talaq, identify responsible parties for any resulting issues, and determine potential solutions to those problems.
- Study the processes of marriage and divorce within the Muslim community and assess their legality under Indian law.
- Review judicial rulings related to Triple Talaq, evaluating whether these rulings were effectively implemented or remained unenforced.
- Investigate Sharia laws, also known as Islamic laws, and the philosophy underpinning them.

These objectives provide a framework for understanding Triple Talaq and its related aspects. The research seeks to clarify the practice, its implications, and its legal context. In 2017, the Supreme Court of India declared Triple Talaq unconstitutional, delegating further action to the country's legislative bodies.

### **Hypothesis**

Islamic law categorizes divorce into three forms: Talaq, whereby the husband initiates divorce through repudiation; Khula, whereby the wife secures divorce through mutual agreement or compensation; and Mubarat, whereby both parties mutually consent to dissolve the marriage. The regulations governing divorce are administered under Sharia, according to interpretations of traditional Islamic jurisprudence. However, prevailing practices often diverge from the

egalitarian ethos and spiritual principles of the Islamic community. Although the Quran establishes justice and equality as foundational principles, gender inequalities in divorce, rooted in pre-Islamic traditions, persist among individuals and remain prevalent. Consequently, women constitute a particularly vulnerable group. Triple Talaq has faced extensive criticism, controversies, and debates regarding its legitimacy.

Triple Talaq permits husbands to divorce their wives by pronouncing “talaq,” meaning divorce, three times in any form, including verbally, in writing, or through electronic communication, such as text messages or emails. In 2017, the Supreme Court of India declared this practice and all related aspects unconstitutional. The court directed the government to enact necessary legislation promptly and delegated unresolved matters to legislative bodies for swift resolution.

Supporters of the 2017 Supreme Court ruling on Triple Talaq argued that banning the practice promotes the welfare of women in the Muslim community. Opponents contended that the associated penalties, including imprisonment for up to three years for men violating the newly implemented laws, are excessively harsh and susceptible to misuse. The bill addressing Triple Talaq, first introduced in Parliament in 2017, faced delays due to opposition from some Members of Parliament, who deemed it unfair to individuals.

According to the 2011 Indian census, approximately 173.3 million individuals, or 14.12% of India’s population, adhere to Islam. The Muslim population is primarily governed by the Muslim Personal Law (Sharia) Application Act of 1937, which mandates that Muslims be subject to personal laws in matters of marriage and divorce. Section 2 of the Act requires courts in India to apply Muslim Personal Law in cases involving marriage and dissolution of marriage.

Marriage constitutes a cornerstone of Islamic culture, serving as an institution that safeguards society by upholding chastity and moral values among its members. It promotes stable family life and legitimizes children, contributing to the continuation of the human race.

In Islam, marriage is a contractual institution regarded as honorable, and divorce, while permissible, is subject to moral considerations. Islamic law recognizes the husband’s right to initiate divorce but requires reasonable and verifiable justification, aligning with the moral principles of Islam. The Supreme Court of India’s 2017 ruling struck down Triple Talaq, specifically invalidating the utterance of “talaq” three times in a single sitting as a means of divorce.

## **Literature Review**

This section examines the experience of engaging with various sources, including research

papers, books, and PDFs, which are essential for obtaining accurate and comprehensive information on a research topic. These sources streamline the research process by providing reliable data, reducing the need for extensive searching. The following research papers and texts offered highly relevant insights into Triple Talaq and related judicial actions, with full citations provided in the references section.

The literature consulted for information on Triple Talaq and judicial responses includes:

- Hosseini, Ziba M. (2009). *Towards Gender Equality: Muslim Family Laws and the Shariah*. Retrieved 24th July, 2017.
- Emon, Anver M. (2008). *Islamic Law and the Canadian Mosaic: Politics, Jurisprudence and Multicultural Accommodation*. Retrieved 28th July, 2017.
- The second primary source of Sharia is Sunna, which means "tradition," referring to the oral teachings or practical traditions and model of behaviour of the Prophet Muhammad. Mashhour, A. (2005).
- *Islamic Law and Gender Equality: Could There Be Common Ground? A Study of Divorce and Polygamy in Sharia law and Contemporary Legislation in Tunisia and Egypt*, Human Rights Quarterly, 27(2). p. 566.
- Considered as a third source of laws after the Quran and the Sunna, consensus or *ijma* represented the ultimate sanctioning authority which guaranteed the ultimate infallibility of those positive legal rulings and methodological principles that are universally agreed upon by Sunni scholars. Hallaq, Wael B. (1997).
- *A History of Islamic Legal Theories- An Introduction to Sunni Usul al-Figh* (p.75). U.K. Cambridge University Press.
- Qiyas, translated as analogical deduction is the fourth source of Islamic law. As a source of law, it comes into operation in matters which have not been covered by a text of the Quran or Tradition of the Prophet ..., nor determined by consensus of opinion. Sardar, S. (2008). *Conceptualising Islamic Law, CEDAW (United Nations Convention on the Elimination of All Forms of Discrimination against Women) and Women's Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan*. Retrieved 24th July, 2017.

## **II. MARRIAGE AND DIVORCE IN ISLAM**

In Islamic law, the process of marriage, or Nikah, is regarded as a contractual agreement;

however, women possess limited rights to social status under traditional interpretations. A legally recognized marriage constitutes a contract between two parties, established through mutual proposal and consent, which permits termination, modification, or revision based on relevant circumstances. Named a Sunnah by the Prophet, marriage is positively encouraged, reinforced by the principle that “no monarchy exists in Islam.” Marriage serves as a cornerstone of Islamic culture, functioning as an institution that safeguards society by upholding chastity and moral values among its members.

Marriage in Islam promotes stable family life and legitimizes children, contributing to the continuation of the human race. As a contractual institution, marriage is regarded as honorable, and divorce, while permissible, carries no inherent immorality. Islamic law recognizes the husband’s right to initiate divorce but mandates reasonable and verifiable justification, aligning with the moral principles of Islam.

Islamic law stipulates that men lack the authority to abuse the power of divorce. Any misuse is subject to strict regulations that emphasize adherence to ethical and moral principles. Divorce based on frivolous or trivial grounds is strongly condemned, as it undermines family unity and disrupts social cohesion. Divorce practices contrary to the Prophet’s teachings are discouraged, and measures ensure that husbands do not exploit their rights to violate gender equality. Women in the relationship, who often face societal insult and discrimination as a consequence of divorce, possess equal rights and a degree of control over the marital relationship.

### **III. TRIPLE TALAQ AND JUDICIAL RULINGS**

Numerous legal precedents demonstrate that courts in India, across various periods, have issued significant rulings addressing the religious beliefs and practices of Muslim communities, particularly those deemed illegal. In recent times, the issue of Triple Talaq has lost prominence due to controversial debates highlighting its contentious nature. Triple Talaq reflects the persistence of patriarchal interpretations, which dominate contemporary society and perpetuate gender inequality.

In response to petitions opposing Triple Talaq, the All India Muslim Personal Law Board has staunchly defended the practice, asserting its legitimacy within the framework of community and religious identity. The Board claims that Sharia and Islamic law grant husbands the unilateral right to initiate divorce, attributing greater decision-making authority to men. Such assertions, made by religious authorities, disregard the Quran’s emphasis on equal rights, duties, rewards, and punishments for all Muslims, prohibiting discrimination between spouses. Any authority granting one gender the power to discriminate undermines this principle of equality.



On November 5, 2016, a single-judge bench noted that Triple Talaq does not align with the letter and spirit of Islam. The practice is considered contrary to the Quran and the Prophet's teachings, as divorce is permissible only under extreme circumstances outlined in Islamic law.

Islamic law stipulates that men lack the authority to abuse the power of divorce. Any misuse is subject to strict regulations that emphasize adherence to ethical and moral principles. Divorce based on frivolous or trivial grounds is strongly condemned, as it undermines family unity and disrupts social cohesion.

The court observed that Sharia, also known as Islamic law, grants men greater authority in matters of marriage. However, if a wife's misconduct or undesirable character renders the marriage unhappy for both parties, divorce may be justified. Without reasonable grounds, no man is permitted to seek divorce under any legal or religious framework.

The declaration of Triple Talaq as unconstitutional does not pertain to the Uniform Civil Code applicable to all citizens. The right to follow personal laws is constitutionally guaranteed, distinct from the framework of a Uniform Civil Code. Efforts to implement a Uniform Civil Code across India have raised concerns that such a measure could undermine the country's pluralistic ethos. In a public lecture on the Uniform Civil Code, these issues were highlighted. Islamic law recognizes the husband's right to initiate divorce but requires reasonable and verifiable justification, aligning with the moral principles of Islam.

Islamic law stipulates that men lack the authority to abuse the power of divorce. Any misuse is subject to strict regulations that emphasize adherence to ethical and moral principles.

The Muslim Personal Law (Sharia) Application Act of 1937 mandates that the Muslim population in India be governed by personal laws concerning marriage and divorce, as outlined in Section 2. This legislation requires courts in India to apply Muslim Personal Law in cases involving Muslims, establishing it as a key determinant in judicial decisions related to marriage and its dissolution.

Customary practices that diverge from the values and principles of the Quran, such as Triple Talaq, have emerged as significant issues. The Hanafi School of Islamic thought considers such practices sinful. Triple Talaq is deemed manifestly arbitrary, as it dissolves the marital bond capriciously without attempts at reconciliation.

Islamic law stipulates that men lack the authority to abuse the power of divorce. Any misuse is subject to strict regulations that emphasize adherence to ethical and moral principles. Divorce based on frivolous or trivial grounds is strongly condemned, as it undermines family unity and

social cohesion. The Supreme Court of India's ruling struck down Triple Talaq, specifically invalidating the utterance of "talaq" three times in a single sitting, though other forms of talaq remain valid.

The judiciary has previously opposed Triple Talaq. In 2016, a single-judge bench of the Kerala High Court declared the practice invalid under the Quran, rendering it a punishable offense under the Indian Penal Code. Similarly, the Kerala High Court ruled that the unilateral power of men to pronounce talaq thrice for divorce should be revoked, with courts assuming authority over such decisions.

#### **IV. CONCLUSION**

This paper contends that the presented facts and information are accurate, reflecting unaltered truths. Triple Talaq, an unjust practice, violates gender equality, human rights, and women's rights globally and nationally. It constitutes an unpredictable offense, with uncertain outcomes in legal proceedings, whether in lower courts or the Supreme Court of India.

Islamic law categorizes divorce into three forms: Talaq, initiated by the husband through repudiation; Khula, whereby the wife secures divorce through mutual agreement or compensation; and Mubarat, based on mutual consent. These divorce regulations are governed by Sharia, rooted in traditional Islamic jurisprudence. However, prevailing practices often diverge from the egalitarian ethos and spiritual principles of the Islamic community. Although the Quran establishes justice and equality as foundational, pre-Islamic gender inequalities in divorce persist, rendering women particularly vulnerable. Triple Talaq has faced extensive criticism and debate regarding its legitimacy.

Triple Talaq permitted husbands to divorce their wives by pronouncing "talaq," meaning divorce, three times in any form, including verbally, in writing, or through electronic communication, such as text messages or emails. In 2017, the Supreme Court of India declared this practice unconstitutional, directing the government to enact necessary legislation promptly and delegating unresolved matters to legislative bodies. Supporters argued that the ban promotes the welfare of Muslim women. Opponents contended that the penalties, including up to three years' imprisonment for men violating the new laws, are overly harsh and susceptible to misuse. The bill, introduced in Parliament in 2017, faced delays due to opposition from some Members of Parliament, who deemed it unfair.

According to the 2011 Indian census, approximately 173.3 million individuals, or 14.12% of India's population, adhere to Islam. The Muslim population is governed by the Muslim Personal Law (Sharia) Application Act of 1937, which mandates the application of personal laws in

matters of marriage, divorce, adoption, inheritance, and property rights for Muslims, as stipulated in Section 2. This Act overrides contrary customs, ensuring Muslim Personal Law governs relevant judicial decisions.

Marriage, designated a Sunnah by the Prophet, is encouraged as an honorable institution, reinforced by the principle that “no monarchy exists in Islam.” It serves as a cornerstone of Islamic culture, safeguarding society by upholding chastity and moral values. Marriage promotes stable family life and legitimizes children, contributing to human continuity. As a contractual institution, it carries no inherent immorality in divorce. Islamic law recognizes the husband’s right to initiate divorce but requires reasonable and verifiable justification, aligning with Islamic moral principles. The Supreme Court’s 2017 ruling invalidated Triple Talaq, specifically the pronouncement of “talaq” three times in a single sitting.

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