



STATUS OF MATRIMONIAL RIGHTS OF MUSLIM WOMEN IN POST SHAYARA BANO CASE: AN ANALYTICAL STUDY

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ABSTRACT:

The practice of triple talaq (Talaq-e-Bidat), a form of Islamic divorce, has long been a subject of legal and social debate in India. Under this practice, a Muslim man can unilaterally divorce his wife by pronouncing the word “talaq” three times in a single sitting, often without her consent and with no provisions for her maintenance or support. This form of divorce has caused significant emotional, social, and economic distress to Muslim women, leaving them vulnerable and without recourse. Despite its widespread use, triple talaq lacks foundation in Islamic law, with no clear support from the Quran or Hadiths. In fact, the Quran outlines a gradual and fair process for divorce, emphasizing reconciliation and fair treatment for women.

This paper critically examines the matrimonial rights of Muslim women in India post the landmark Shayara Bano case, wherein the Supreme Court of India declared triple talaq unconstitutional in 2017. The judgment was hailed as a victory for gender equality and women’s rights, affirming that the practice violated the fundamental rights of Muslim women under the Indian Constitution. This paper explores the legal implications of the ruling, the subsequent legislative reforms, including the Muslim Women (Protection of Rights on Marriage) Act, 2019, and the societal impact of these changes on Muslim women’s lives.

While the legal reforms brought about by the Shayara Bano case have made significant strides in ensuring justice for Muslim women, challenges persist in their implementation and acceptance. The paper concludes by arguing that while the legal framework has undergone substantial reform, social transformation and awareness are key to ensuring the complete empowerment and protection of Muslim women in India.

KEY WORDS;

Matrimonial Rights, Muslim Women, Triple Talaq,, Equality, Gender Justice, Constitutional Rights, Personal Laws, Shayara Bano .

INTRODUCTION:

The right to equality and justice are fundamental principles enshrined in the Indian Constitution, which guarantees every individual the right to live with dignity, freedom, and protection from discrimination. However, for many years, women in India—especially those from marginalized communities—have been denied these basic rights due to social customs and discriminatory practices. One such practice, the instant divorce (commonly known as triple talaq), has disproportionately affected Muslim women, leaving them in precarious positions with limited rights, resources, and avenues for justice¹.

The practice of triple talaq allows a Muslim man to divorce his wife by uttering the word “talaq” (divorce) three times, often without her consent, and with little to no legal recourse for the woman. This practice has been the subject of intense debate, criticism, and legal scrutiny over the years, as it has resulted in the social and economic marginalization of Muslim women in India. Many women have found themselves abandoned, destitute, and without financial support after being subjected to this practice. Moreover, they had no legal protection or maintenance rights to claim from their husbands once divorced.

The Shayara Bano case (2017), a landmark case in the Indian legal landscape, challenged the

¹ The Constitution of India, 1950, Article 14 & 15.



constitutionality of triple talaq and ultimately led to a monumental shift in the legal rights of Muslim women. Shayara Bano, a Muslim woman from Uttarakhand, became the face of the fight against triple talaq when she filed a petition before the Supreme Court after her husband divorced her via this practice. Shayara Bano's petition questioned whether triple talaq violated her fundamental rights under the Indian Constitution, including equality (Article 14), non-discrimination (Article 15), and the right to life and personal liberty (Article 21).²

The Supreme Court's judgment in this case, which declared triple talaq unconstitutional, was a milestone decision in the struggle for gender equality and social justice in India. In a historic ruling, the Court held that triple talaq was not protected under Islamic law or the Constitution and infringed on the fundamental rights of Muslim women. This judgment not only ended the practice of instant divorce in India but also highlighted the pressing need for reforms in personal law, particularly in the area of Muslim women's matrimonial rights.

In the wake of the judgment, the Indian Parliament passed the Muslim Women (Protection of Rights on Marriage) Act, 2019, which made triple talaq a criminal offense and introduced provisions for maintenance and protection for divorced Muslim women. However, while these legal reforms mark significant progress, the journey toward full gender equality and empowerment for Muslim women is far from over. Social resistance, lack of awareness, and slow implementation continue to hinder the realization of these reforms on the ground.³

The matrimonial rights of Muslim women in India in the context of the Shayara Bano case and its aftermath. The paper will critically analyze the legal implications, societal impact, and the status of Muslim women's rights post-Shayara Bano case, particularly

with regard to divorce, maintenance, and property rights. By examining the case from both legal and social perspectives, this paper will argue that while the legal reforms brought about by the case represent significant steps forward, further reforms are needed to ensure full equality and protection for Muslim women.

HISTORICAL AND LEGAL BACKGROUND OF SHAYARA BANO CASE:

The Shayara Bano Case (Shayara Bano v. Union of India) is one of the most significant legal battles concerning the rights of Muslim women in India. The case revolves around the practice of triple talaq (or talaq-e-bidat), which allows a Muslim man to divorce his wife by pronouncing the word "talaq" three times in a row. The case has sparked a national debate about gender equality, religious freedom, and the role of constitutional law in regulating personal laws in India.

This case was pivotal in examining the intersection of constitutional rights and religious practices, leading to reforms in the way divorce is treated under Muslim personal law⁴. Let's explore the historical and legal background that led to the Shayara Bano Case:

1. The Practice of Triple Talaq

The practice of triple talaq (instant divorce) has been a longstanding tradition within some Muslim communities, particularly in India. Under this practice, a husband could divorce his wife by simply pronouncing the word "talaq" three times, without any intervention from a court or a waiting period. Once the talaq was pronounced, the divorce was considered final and could not be reversed.

This method of divorce had significant social and legal consequences for Muslim women, as it was seen as arbitrary and unilateral. The woman could not contest the divorce, nor was she given the opportunity to be

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

³ The Muslim Women (Protection of Rights on Marriage) Act, 2019, No.20, Acts of Parliament,2019 (India)

⁴ Supreme court of India.(2017). Shayara Bano v. Union of India,(2017) 9 SCC 1. Retrived from <https://main.sci.gov.in>



heard or given time to reconcile the differences. Furthermore, it often left women without financial support or custody of children, with little recourse to claim maintenance or seek justice.

Although Sharia law (Islamic law) permits divorce under certain circumstances, the method of triple talaq was not universally recognized as a valid practice by all Muslim scholars or Islamic jurisdictions. Several Islamic countries and scholars have criticized triple talaq as being un-Islamic, emphasizing the importance of mutual consent and due process in the divorce procedure.

2. The Legislative Framework in India

India's legal system is based on a pluralistic approach to personal laws, meaning that different religious communities are governed by their own set of laws regarding marriage, divorce, and inheritance. For Muslims, personal laws governing marriage and divorce are primarily based on Sharia law, though they are supplemented by various statutory laws⁵.

The Muslim Personal Law (Shariat) Application Act, 1937, governs marriage, divorce, and maintenance among Muslims in India. However, there is no uniform civil code in India, and personal laws often result in conflicting interpretations. This is particularly evident in the practice of triple talaq, which was never officially codified but had become a part of customary practice in some regions, despite its controversial nature.

Historically, Muslim women faced significant challenges within this legal framework, as their matrimonial rights were often subjected to patriarchal interpretations of Islamic law. There were calls for reform of Muslim personal laws to ensure gender equality and the protection of women's rights. Judicial and legislative interventions in the past, such as the Muslim Women (Protection of Rights on Divorce)

Act, 1986, had failed to address the issue of triple talaq effectively.

3. The Shayara Bano Case: The Legal Challenge

The Shayara Bano Case began in 2016 when Shayara Bano, a woman from Uttarakhand, was divorced by her husband through triple talaq. She approached the Supreme Court of India, challenging the practice of instant divorce under the premise that it violated her fundamental rights guaranteed by the Indian Constitution, particularly Article 14 (Right to Equality), Article 15 (Right to Non-discrimination), Article 21 (Right to Life and Personal Liberty), and Article 25 (Freedom of Religion).

Shayara Bano's petition was supported by several women's rights organizations and activists, who argued that the practice of triple talaq was discriminatory, arbitrary, and unconstitutional. The primary legal argument was that triple talaq violated gender equality and was inconsistent with fundamental rights that the Constitution guarantees to all citizens, irrespective of religion. Shayara Bano's case was consolidated with several other cases where Muslim women had faced similar injustice due to the arbitrary practice of triple talaq.⁶ These included cases of women who had been divorced by their husbands without consent, often leaving them in dire situations, without access to financial support or custody of children.

4. Arguments for and Against Triple Talaq

Arguments Against Triple Talaq (In Favor of Shayara Bano)

a. Violation of Fundamental Rights: The petitioners argued that triple talaq violated the Constitutional right to equality (Article 14), freedom from discrimination (Article 15), and the right to live with dignity (Article 21).

⁵ Narain, V. (2008). Reforming Muslim personal Laws: The Shayara Bano Case and the Indian Courts. Harvard Human Rights Journal, 21(1), 79-110.

⁶ Press Trust of India. (2017, August 22). Supreme Court strikes down instant triple talaq as unconstitutional. The Hindu. Retrieved from <https://www.thehindu.com>



b. Unilateral and Arbitrary: The practice was seen as unilateral and arbitrary, leaving women without any protection. Women did not have the right to prevent or contest the divorce.

c. Reform of Muslim Personal Law: Supporters of the petition argued that Muslim personal law should be brought in line with modern principles of justice, gender equality, and human rights.

d. Un-Islamic Practice: Many Islamic scholars and organizations emphasized that the practice of instant triple talaq was not in line with the teachings of Islam, which advocates for mutual consultation and fairness in divorce.

Arguments in Support of Triple Talaq (Opposition to Shayara Bano)

a. Religious Freedom: Some argued that triple talaq was an integral part of Islamic law and that the Constitutional right to religious freedom (Article 25) allowed Muslims to follow their personal laws without interference from the state.

b. Historical Precedent: Opponents of the petition argued that triple talaq had been practiced for centuries and had been accepted as a valid form of divorce in Muslim communities.

c. Secularism vs. Religious Rights: There was also the concern that judicial intervention in religious practices would set a precedent for the state interfering with religious customs and practices.

5. The Supreme Court's Verdict

On August 22, 2017, the Supreme Court of India delivered a landmark verdict in the Shayara Bano case. A five-judge bench, headed by Chief Justice Khehar, ruled by a 3-2 majority that triple talaq was unconstitutional⁷. The court held that the practice of instant triple talaq was arbitrary, discriminatory, and violated the right to equality (Article 14) and right to life and liberty (Article 21) under the Indian Constitution. The court's ruling struck down the

practice, declaring it to be illegal and unconstitutional, and called upon the Parliament to enact a law to regulate the practice of divorce and protect the rights of women. The court emphasized that gender justice must be upheld and that religious practices must not be used to justify discriminatory and unjust practices.

6. The Aftermath and Legislative Action

Following the Supreme Court's ruling, the Indian Parliament passed the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the practice of triple talaq and made it punishable with imprisonment for up to three years. The law also provided for financial compensation for women who were victims of triple talaq⁸. While the law represented a significant victory for women's rights, it has also been met with controversy, particularly regarding issues like criminalization and the implementation of maintenance.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019:

The Muslim Women (Protection of Rights on Marriage) Act, 2019, also known as the Triple Talaq Law, was a major legislative development in India in response to the Supreme Court's ruling on the practice of triple talaq. The Supreme Court had declared the practice of instant triple talaq (talaq-e-bidat) unconstitutional in 2017 in the Shayara Bano case, deeming it a violation of fundamental rights under the Indian Constitution. The 2019 Act was introduced by the Bharatiya Janata Party (BJP) government to criminalize the practice and protect the rights of Muslim women who were victims of unilateral divorce⁹. This law was significant in the context of gender equality and justice for Muslim women, as it specifically aimed at curbing the practice of instant divorce and ensuring that women's rights to maintenance and financial security were protected.

⁷ Press Trust of India. (2017, August 22). Supreme Court strikes down instant triple talaq as unconstitutional. The Hindu. Retrieved from <https://www.thehindu.com>

⁸ BCC News. (2019, July 30). Retrieved from <https://www.bcc.com/nwes>

⁹ Agnes, F. (2018). Muslim women's rights and the Supreme Court judgment on triple talaq. Oxford University Press.



Key Provisions of the Muslim Women (Protection of Rights on Marriage) Act, 2019

1. Criminalization of Triple Talaq:

The Act made pronouncing triple talaq (instant divorce) either orally, in writing, or through electronic means (such as text messages, WhatsApp, or social media platforms) a punishable offense. It was made a cognizable offense, meaning that the police could arrest the offender without a warrant. The punishment for practicing triple talaq is three years of imprisonment and a fine. This provision aims to dissuade husbands from abusing the practice of instant divorce, ensuring that they face legal consequences for their actions.

2. Right to Maintenance:

One of the core aims of the 2019 Act was to ensure that Muslim women who are victims of triple talaq have access to maintenance. The law mandates that the woman who is divorced through triple talaq has the right to receive maintenance from her former husband during the iddat period (the waiting period after divorce) as well as beyond it. The law provides for financial support through a monthly allowance, which is to be determined by the magistrate. The maintenance amount is aimed at providing economic security for the woman, especially considering that many Muslim women who were divorced through triple talaq were left destitute and without resources.

3. Custody of Children:

The Act recognizes the custody rights of women and ensures that the welfare of minor children is prioritized. It empowers the woman to seek custody of her children in the event of a divorce and provides mechanisms to ensure the welfare of children following a triple talaq.

4. Magistrate's Role:

The Magistrate plays a crucial role in this law. Once a woman is divorced through triple talaq, she can approach the Magistrate to seek maintenance and custody of children. The Magistrate is tasked with determining the amount of maintenance, which will be paid to the woman by her former husband. The law gives the Magistrate authority to issue interim orders to ensure immediate relief for the woman in cases where she faces financial distress after being divorced.

5. Bail for Offenders:

The law provides a provision for bail for those accused of practicing triple talaq. The husband can apply for bail only after the Magistrate has given a decision on the case, but the court must take into account the rights of the wife and children before granting bail. Additionally, bail will not be granted if the woman or her children have not been provided with maintenance or adequate financial support.¹⁰

6. Applicability and Scope:

The Act applies to all Muslim men and women in India. It covers instances of triple talaq being pronounced both in public and private, whether orally, in writing, or via electronic means. The law aims to cover a broad range of cases and eliminate ambiguity in its application.

7. Constitutionality and Religious Freedom:

One of the key criticisms of the Act is that it criminalizes an established religious practice, raising concerns about the interference of the state in religious customs. However, the government argued that the law was necessary to protect the fundamental rights of Muslim women, who were being subjected to arbitrary and unilateral divorces under the guise of religious practices. The law was crafted in line with the Supreme Court's judgment and was positioned as a reform to ensure that the right to dignity and gender equality under the Constitution is upheld for all citizens, regardless of religious affiliation.

¹⁰ Agnes, F. (2018). Muslim women's rights and the Supreme Court judgment on triple talaq. Oxford University Press.



THE SOCIAL AND CULTURAL IMPACT ON MUSLIM WOMEN:

The Muslim Women (Protection of Rights on Marriage) Act, 2019, commonly known as the Triple Talaq Law, has had significant social and cultural impacts on Muslim women in India. These impacts are multifaceted and can be examined from different perspectives, including the empowerment of women, their social standing, and the transformation of long-standing cultural practices within the community.¹¹

1. Empowerment and Legal Protection:

One of the most profound effects of the law is the empowerment of Muslim women, particularly in terms of their legal rights. Prior to the passing of this Act, many women who were divorced through triple talaq had little recourse for justice. They were often left with no financial support, and their custody rights were frequently undermined. The Act provides them with legal protection, ensuring they receive maintenance from their ex-husbands during the iddat period and beyond, as well as custody of children where applicable. This has greatly enhanced their social security and financial independence. The introduction of the law has also brought awareness among women about their rights. It has provided an avenue for redressal and helped them assert their legal and social rights more effectively. Muslim women, who were once vulnerable to the whims of the practice of triple talaq, now have a framework that guarantees dignity and respect. This empowerment is a pivotal change in their status within society.¹²

2. Revaluation of Traditional Norms:

The triple talaq practice has been deeply rooted in the cultural practices of many Muslim communities in India. However, with the legal ban on this practice, it has led to a revaluation of traditional norms. Many

within the community, particularly women, have started questioning the interpretation of Islamic practices that undermine their status and rights. The law encourages a shift towards a more progressive and gender-sensitive interpretation of Islamic personal law. Socially, this has triggered important conversations about gender equality within Muslim families and communities. The triple talaq ban forces a reexamination of patriarchal attitudes and practices that once governed the treatment of women. These shifts, though controversial in certain quarters, contribute to a more inclusive and egalitarian society.

3. Social Stigma and Discrimination:

While the law has had many positive impacts, it has also led to new social challenges for Muslim women. For some women, the practice of triple talaq was an integral part of their cultural identity and their religious understanding. The outlawing of instant divorce has led to a backlash from certain sections of the community, including from conservative groups that argue the law interferes with religious freedom. This has sometimes contributed to social stigma for women who were affected by triple talaq, as their cases have often been highlighted in the media, leading to both sympathy and criticism. The law has also led to discrimination in some cases, where husbands and families have made efforts to circumvent the provisions of the Act, using alternative methods to divorce women. This could lead to increased social isolation or economic hardships for women, particularly if they are shunned or denied the resources mandated by the law.

4. Cultural Shifts and the Role of Women in Society:

The cultural impact of the Triple Talaq Law is also reflected in the changing role of women within their families and communities. The law has encouraged a shift towards more egalitarian relationships between

¹¹ Ali, F. (2020). The impact of the Triple Talaq ban on Muslim women's rights in India. *Journal of Indian Law and Society*, 7(2), 45-67.

¹² Khan, R., & Sharma, P. (2021). Gender justice and personal laws: A study on the Triple Talaq Act. *Indian Journal of Socio-Legal Studies*, 15(1), 89-102.



spouses, where women have the legal right to question unilateral divorce and demand maintenance. The cultural implications of the law extend to Muslim women's participation in public life. In many cases, women who were previously restricted to the private sphere due to their vulnerability in matrimonial relationships have now gained the confidence to engage more actively in social, political, and economic matters.¹³ They can now pursue education and careers without the constant fear of being abandoned by their husbands.

5. Awareness and Advocacy for Women's Rights:

The enactment of the law has generated significant awareness of women's legal rights and their entitlement to justice. Non-governmental organizations (NGOs) and activists have launched campaigns to educate Muslim women about their rights, especially in rural areas where knowledge of the law may be limited. This awareness has led to the formation of support groups and forums that advocate for women's rights within the Muslim community. In rural and conservative parts of India, the law has served as a tool for social change. More women are now standing up for their legal entitlements, whether in cases of triple talaq or in the broader context of gender justice. The law has paved the way for a larger discourse on gender equality, inspiring women from all communities to demand better treatment.

6. Impact on Muslim Men and Families:

While the law is intended to protect Muslim women, it has also impacted Muslim men and families. Muslim men, particularly those who were accustomed to using triple talaq as an easy method of divorce, have faced consequences, including legal prosecution and penalties. This has led to resistance from some quarters, where men feel the law infringes upon their freedom and rights. However, the law has also had a transformative effect on families. In many cases, Muslim women have used the Act to hold their husbands accountable, demanding fair treatment and

financial support. In some instances, the law has also led to reconciliation in families where misunderstandings or misuse of the talaq practice had previously caused estrangement.

7. Long-Term Cultural Transformation:

The law is not just a short-term fix but is expected to lead to long-term cultural transformation within Muslim communities. As religious interpretations evolve, the role of Muslim women is increasingly being seen as that of equal partners within their families and communities. The empowerment gained from the legal protections enshrined in the law will, over time, continue to challenge traditional patriarchal norms and encourage more progressive cultural attitudes. In the long run, the law's effect will be visible in wider acceptance of women's rights, and the elimination of gender-based violence and discrimination. Muslim women will be able to make decisions regarding their own lives, including their education, career, and marriage, without the constant threat of being arbitrarily divorced.

COMPARATIVE ANALYSIS OF LEGAL REFORMS IN OTHER COUNTRIES:

The issue of triple talaq and the rights of Muslim women in matters of marriage, divorce, and maintenance has not only been a matter of legal concern in India but also across several countries with significant Muslim populations. While each country has its own legal framework based on Islamic law and constitutional principles, many countries have implemented reforms to protect women's rights in the face of patriarchal interpretations of Islamic law. A comparative analysis of the legal reforms in countries like Pakistan, Bangladesh, Turkey, and Saudi Arabia offers valuable insights into the challenges and solutions that can be applied to improve the status of Muslim women in India.

¹³ Ministry of Law and Justice. (2019). Triple Talaq Act: Key provisions and impact. Government of India. Retrieved from <https://www.lawmin.gov.in>



1. Pakistan: The Protection of Muslim Women's Rights

In Pakistan, the Family Law Ordinance, 1961, serves as the primary legal framework governing Muslim marriages and divorces. The law brought several important reforms aimed at safeguarding women's rights, particularly with respect to divorce and maintenance.¹⁴ However, it was not until the Muslim Family Laws (Amendment) Ordinance, 2002, that significant strides were made in addressing issues like instant divorce (similar to triple talaq).

Reforms and Impact:

- **Marriage and Divorce Registration:** The Family Law Ordinance made the registration of marriages and divorces mandatory, ensuring that women have legal recourse in case of divorce or disputes.
- **Mahr (Dowry) and Maintenance:** The law introduced provisions for mahr (dower) and maintenance, making it a woman's legal right to seek financial support after a divorce.¹⁵
- **Talaq Process:** The divorce process requires the husband to file a notice with the local Union Council, and the wife is given an opportunity to present her case. This ensures that divorce is not unilateral and gives women a platform to be heard.

While these reforms have improved the legal position of Muslim women, triple talaq remains a significant issue. The legal framework does not fully address unilateral divorce and arbitrary talaq, leaving gaps in the protection of women's rights. However, Pakistan has recognized the need for further reforms, especially in light of the Shayara Bano case in India.

2. Bangladesh: Legal Framework and Reforms in Matrimonial Rights

Bangladesh, with a predominantly Muslim population, has also implemented legal reforms to

address issues related to marriage, divorce, and women's rights. The Muslim Family Laws Ordinance, 1961, which is largely inspired by Pakistan's Family Law Ordinance, has played a pivotal role in reforming marriage and divorce practices.¹⁶

Reforms and Impact:

- **Mandatory Marriage Registration:** The law requires that all Muslim marriages must be registered, ensuring the protection of women's rights in case of disputes.
- **Polygamy Regulations:** The law restricts polygamy, mandating that a man must seek permission from the local government before marrying a second wife, providing a safeguard against unfair treatment of women.
- **Divorce Procedure:** The Talaq process is regulated to ensure that it is not unilaterally executed. A man must file a written notice with the local Union Council, and the wife has the right to contest the divorce. This process ensures a level of accountability and fairness in the divorce procedure.¹⁷

However, despite these legal reforms, triple talaq still presents a problem in rural areas and uneducated sections of society, where traditional practices continue to overshadow the legal framework. Women are often unaware of their legal rights, and implementation remains weak, especially in remote or tribal areas.

3. Turkey: A Modern Approach to Family Law

Turkey is a unique example where secularism is a core component of its legal system, which influences the way family law is framed, including issues related to divorce, maintenance, and custody. Turkey abolished Islamic law in the early 20th century and adopted a secular Civil Code modeled after the Swiss Civil Code

¹⁴ Muslim Family Laws Ordinance, 1961. (1961). The Gazette of Pakistan. Retrieved from <http://www.pakistani.org/pakistan/legislation/1961/muslimfamilylaws.html>

¹⁵ Hussain, Z. (2019). Islamic divorce laws and women's rights in Pakistan. Lahore, Pakistan: Vanguard Books.

¹⁶ Muslim Family Laws Ordinance, 1961. (1961). The Gazette of Bangladesh. Retrieved from <http://bdlaws.minlaw.gov.bd>

¹⁷ Rahman, M., & Islam, K. (2019). Women's rights and Islamic divorce laws in Bangladesh. South Asian Law Review, 8(4), 112-130.



in 1926. This was a significant departure from traditional Islamic laws governing family matters.¹⁸

Reforms and Impact:

- **Civil Code:** Turkey's Civil Code treats marriage, divorce, and inheritance as civil matters, removing religious elements from the legal process. This is a stark contrast to other Muslim-majority countries where personal laws are governed by religious interpretations.
- **Equal Rights:** The law ensures gender equality in marriage and divorce, providing women with equal rights in matters of inheritance, maintenance, and child custody.
- **No Talaq:** Turkey does not recognize triple talaq or any form of unilateral divorce without due process. Both spouses must consent to a divorce, and the court ensures a just distribution of assets and custody. Turkey's secular approach to family law provides a model for countries like India, where constitutional secularism could be used to protect the matrimonial rights of Muslim women, ensuring that personal laws are in line with gender equality and human rights.¹⁹

4. Saudi Arabia: Conservative Approach to Family Law

Saudi Arabia follows a more conservative approach based on Shariah law and does not have a formal civil code. Family laws, including matters of marriage, divorce, and inheritance, are governed directly by Islamic jurisprudence (fiqh) and court rulings.²⁰

Reforms and Impact:

- **Divorce and Talaq:** Saudi Arabia has traditionally allowed for the practice of triple talaq; however, recent reforms have sought to ensure that the divorce process is more regulated. Judicial oversight is

required, meaning that divorce cannot be arbitrary or without consent of the wife.

- **Women's Legal Rights:** Saudi Arabia has made strides in providing women with more legal protections. The Family Protection Law, enacted in 2013, aims to protect women from abuse and discrimination within marriage.²¹
- **Access to Maintenance:** Women are entitled to maintenance and financial support following divorce, but the implementation of these laws remains inconsistent, and there are challenges in enforcing alimony or child support payments. While reforms are in progress, Saudi Arabia's legal framework remains highly patriarchal, and women's rights continue to be restricted by social norms and traditional interpretations of Islamic law.²²

5. Comparative Analysis: Lessons for India

When compared to India, countries like Pakistan, Bangladesh, Turkey, and Saudi Arabia have made varying degrees of progress in protecting Muslim women's rights in matrimonial matters. • Pakistan and Bangladesh have made significant strides in regulating divorce practices by ensuring that triple talaq is not arbitrarily practiced and providing women with legal recourse in divorce matters.

- Turkey's secular approach offers an interesting perspective, where personal laws are aligned with civil law, ensuring gender equality and equal rights in marriage and divorce.
- Saudi Arabia remains conservative, but recent legal reforms indicate a move towards providing greater protection for women, although implementation remains inconsistent.

¹⁸ Turkish Civil Code, 1926. (1926). The Official Gazette of Turkey. Retrieved from <https://www.resmigazete.gov.tr>

¹⁹ Arat, Y. (2019). The impact of secular reforms on Muslim women's rights in Turkey. *Turkish Journal of Social Studies*, 27(3), 89-105.

²⁰ Saudi Personal Status Law, 2022. (2022). Official Gazette of Saudi Arabia. Retrieved from <https://www.saudigazette.com.sa>

²¹ Al-Saud, H. (2018). Women's legal rights in the evolving Saudi legal system. *Middle East Law Review*, 35(2), 215-230.

²² Human Rights Watch. (2020). Women's rights reforms in Saudi Arabia: Progress and challenges. Retrieved from <https://www.hrw.org>



In the Indian context, the Shayara Bano case has provided a strong foundation for reform. However, it is evident from these comparative examples that India needs to focus on comprehensive legal reforms, including the implementation of matrimonial laws, social awareness campaigns, and the empowerment of women through education and economic support. Additionally, a secular approach that balances religious freedom with gender equality could be a key element in the future reform of personal laws in India.

CONCLUSION:

The Shayara Bano case marks a landmark moment in the evolution of gender justice in India, particularly regarding the matrimonial rights of Muslim women. This case challenged the deeply entrenched practice of triple talaq, a system that left many women vulnerable, often without financial support, and sometimes even without a home or custody of their children. The Supreme Court's ruling in 2017, which declared triple talaq as unconstitutional, was a significant step forward in upholding equality, justice, and dignity for Muslim women in India.

Before this ruling, Muslim women faced a legal vacuum when it came to divorce and maintenance rights. With no regulation on the instant divorce process, Muslim women were left to navigate a complex system without much protection under the law. The Shayara Bano case highlighted the vulnerability of these women and forced the judiciary to reexamine the conflict between religious practices and constitutional rights. By declaring triple talaq unconstitutional, the Court reaffirmed the principle that fundamental rights enshrined in the Indian Constitution, including equality (Article 14) and the right to life and personal liberty (Article 21), cannot be overridden by personal or religious practices. Following the court's judgment, the Muslim Women (Protection of Rights on Marriage) Act, 2019 was introduced, which criminalized the practice of triple talaq and provided legal recourse for women affected by it. This act is a pioneering reform in the realm of personal law and reflects a growing recognition that gender equality must be reflected not just in the formal

legal system, but also in social and religious practices. The law also guarantees maintenance for women who are victims of triple talaq, further strengthening their financial independence and security post-divorce.

However, the ruling and subsequent legislation are only part of the solution. Social resistance remains a formidable barrier to achieving full empowerment for Muslim women. Cultural and religious norms still continue to dictate attitudes towards marriage and divorce in certain sections of the Muslim community, often undermining legal reforms. Despite the legal protections, many women continue to face challenges such as social stigma, lack of awareness about their rights, and delayed justice due to lengthy judicial processes. Moreover, while the criminalization of triple talaq is a progressive step, there is a pressing need for comprehensive family law reform. Issues like inheritance rights, property rights, and child custody remain areas where Muslim women often find themselves at a disadvantage. The need for a more inclusive, secular family law system, which ensures that all women, irrespective of their religious background, have equal protection, is more urgent than ever.

The Shayara Bano case has demonstrated that judicial intervention, when coupled with legislative action, can create significant societal change. However, change cannot be limited to the legal realm alone. The real challenge lies in changing deep-rooted social attitudes that perpetuate gender-based discrimination. It is vital to ensure that women are not only legally protected, but also empowered with the knowledge and resources to claim their rights. While the Shayara Bano judgment and the Muslim Women (Protection of Rights on Marriage) Act are critical milestones in the fight for gender justice in India, they represent just the beginning of a long process of social and cultural reform. The legal system has provided Muslim women with important tools to challenge gender inequality, but a holistic approach—combining legal reforms with social education, awareness campaigns, and community participation—is essential to fully realize the rights and empowerment of Muslim



women in India. As India moves forward, it is crucial that the momentum created by this case is maintained, and that other areas of Muslim women's rights, particularly those concerning marriage, inheritance, and custody, are addressed in a manner that ensures equality, justice, and dignity for all women.

