



## FROM RELIGIOUS PRACTICES TO CONSTITUTIONAL JUSTICE : REFORM OF TRIPLE TALAQ IN INDIAN LAW

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### Abstract

This research paper examines the constitutional validity and criminalization of *triple talaq* (*talaq-e-biddat*) in India, tracing its journey from a controversial religious practice under Muslim personal law to a landmark legal reform promoting gender equality. The study highlights the violation of fundamental rights under articles 14, 15, and 21 of the Constitution through the Supreme Court's decision in *Shayara Bano v. Union of India* (2017) and the enactment of the *Muslim Women (Protection of Rights on Marriage) Act, 2019*. Empirical evidence, legal analysis, and case studies demonstrate that while there has been a substantial decline in reported cases following the implementation of the law, significant challenges in enforcement still remain. The paper emphasizes the need to balance religious freedom and women's rights, presents some practical applications, and offers suggestions to strengthen personal laws while also underscoring the role of the judiciary and legislature.

**Keywords:** Triple Talaq, *Shayara Bano* judgment, Supreme Court landmark judgement, Muslim women's rights, gender equality, Protection of Muslim Women.

### Introduction

Despite the absence of any explicit sanction in the Quran, the practice of *triple talaq* remained prevalent and accepted within the Muslim community for centuries.

Imagine: a woman who has lived with her husband for years suddenly finds herself divorced merely through the utterance of three words — “*talaq, talaq, talaq*” — spoken in anger. This is the harsh reality of *triple talaq*, a practice imposed upon Muslim women that directly violated their constitutional rights to equality and dignity.<sup>1</sup> This practice, which made women socially, economically and mentally unsafe, was brought under the purview of judicial review by various movements and petitions. This research paper tells how we reach justice from unjust religious practice i.e. how did we complete the journey from *Sayara Bano* case to the new law was enacted.

In the Muslim Personal Law, *triple talaq* (*talaq-e-biddat*) has been a practice under which the husband could finish the marriage by saying the word “*Talaq*” three times through oral, written, or modern technical means like SMS, email, etc., this process was applied with immediate effect and there was no opportunity for the wife's consent and reconsideration.

In 2016, *Shayara Bano* from Uttarakhand challenged the practice of *triple talaq* before the Supreme Court of India. This case was not merely a personal dispute but became a constitutional history, where the judiciary had to decide the extent to which religious practices can restrict fundamental rights. It triggered widespread social and political debate across the country, involving women's rights activists, religious organizations, and the government alike.

### Objectives of the Study:

1. To evaluate the constitutional validity of *triple talaq*.
2. To understand the legal reasoning and judicial analysis in *Shayara Bano v. Union of India* and to assess its impact on the rights of Muslim women.
3. To explore the balance between religious freedom and gender equality.
4. To examine the legal reforms and social changes that followed the judgment.

<sup>1</sup> <https://blog.ipleaders.in/triple-talaq-2-08-16-2025>



### Research Methodology:

This study is based on qualitative, doctrinal research. The methodology adopted includes a comparative and analytical study of judicial pronouncements, arguments of the parties, and statutory provisions.

### Review of Literature:

- The complete judgment of *Shayara Bano v. Union of India* (2017).<sup>2</sup>
- Relevant provisions of the Constitution of India (Articles 14, 15, and 21).
- The *Muslim Women (Protection of Rights on Marriage) Act, 2019*.
- The *Muslim Personal Law (Shariat) Application Act, 1937*.
- Books relating to women's rights and Muslim personal law.
- Previous Research and Journal Articles
- Newspapers and Online Legal Databases.

### Historical Background

In contrast to other forms of divorce mentioned in the Quran, which provide for an intermediate and reflective waiting period (*iddat*), triple talaq came up as a new but controversial form of divorce. Under this practice, a husband could, without giving his wife any opportunity, unilaterally terminate the marriage by pronouncing the word "talaq" three times in a single sitting.<sup>3</sup> This form of instant divorce lacked explicit religious sanction, and many scholars criticized it on the grounds that it deprived Muslims from the fundamental principles of Islam.<sup>4</sup> As Justice Kurian

Joseph observed in *Shayara Bano v. Union of India*, "What is bad in theology cannot be good in law."<sup>5</sup>

Trile Talaq originated from that interpretation of Islamic history which is known as *talaq-e-biddat*. (Engineer, 2008). This practice was not consistent with the Quran and Prophet Muhammad also considered this inappropriate (Khan, 2015) In India, the *Muslim Personal Law (Shariat) Application Act, 1937* reinforced this practice by applying Shariat to family matters, thereby granting it indirect legal recognition (Menski, 2001).

The inherent gender inequality within this practice emerged as its core problem. It vested excessive power in husbands while depriving wives of their right to equality, often resulting in economic hardship, social ostracism, and psychological harm.<sup>6</sup> It undermined women's dignity, as demonstrated in *Shayara Bano's* petition, where she challenged her husband's pronouncement of instant divorce after 15 years of marriage, bringing to light the limitations of religious and social customs.<sup>7</sup> At the international level, it is evident that modernization is possible without dismantling cultural traditions. For example, countries such as Tunisia abolished such practices as early as 1956 through progressive legislation.<sup>8</sup>

### Judicial Perspective

The judiciary has repeatedly raised questions about the validity of this practice. In *Shamim Ara v. State of Uttar Pradesh* (2002),<sup>9</sup> the Supreme Court held that divorce would be valid only if based on reasonable cause and accompanied by proper legal procedure. Nevertheless, the widespread prevalence of the practice continued in society, adversely

<sup>2</sup> AIR 2017 SC 4609

<sup>3</sup> <https://www.scoobserver.in/reports/shayara-bano-union-india-triple-talaq-plain-english-summary-of-the-judgment-08-16-2025>

<sup>4</sup> <https://byjus.com/free-ias-prep/triple-talaq-bill-upsc-notes-08-16-2025>

<sup>5</sup> <https://docs.manupatra.in/newsline/articles/Upload/F>

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<sup>6</sup> <https://tijer.org/jnrid/papers/JNRID2409020.pdf-08-18-2025>

<sup>7</sup> Ibid note 5

<sup>8</sup> <https://share.google/Y6EuIyy84jFQwnYNQ-08-22-2025>

<sup>9</sup> AIR (2002) 7 SCC 518



affecting the social and economic status of Muslim women (Hasan, 2017).

Thus, the issue extends beyond religious beliefs and falls within the scope of constitutional law, where maintaining practices like triple talaq becomes incompatible with the principles of gender justice in a secular state.<sup>10</sup>

### Constitutional Analysis

The practice of *triple talaq* violated several fundamental rights. **Article 14**, which guarantees equality, was undermined since the practice was arbitrary, allowing a husband to dissolve the marriage in an instant. Justice R. F. Nariman explicitly observed that the practice was “manifestly arbitrary” as it validated the dissolution of marriage without any reasonable cause.<sup>11</sup>

**Article 15**, which prohibits discrimination on the basis of sex, was also infringed. Triple talaq deprived Muslim women of equal marital rights and relegated them to a subordinate status.<sup>12</sup>

Similarly, **Article 21**, which ensures the right to life with dignity, was compromised. The sudden pronouncement of divorce stripped women security, often pushing them into poverty or, in many cases, into far worse conditions.<sup>13</sup>

### Judicial Scrutiny in the Shayara Bano Case

In *Shayara Bano v. Union of India* (AIR 2017 SC 4609), a five-judge bench of the Supreme Court, by a 3:2 majority, declared the practice of triple talaq unconstitutional. **Justice Rohinton Nariman and Justice Uday Lalit** held that the practice was arbitrary

and, therefore, violated **Article 14** of the Constitution. **Justice Kurian Joseph** concurred, observing that triple talaq was not an essential part of Islam and thus could not be protected under **Article 25** (freedom of religion).<sup>14</sup> On the other hand, **Chief Justice J. S. Khehar and Justice Abdul Nazeer** dissented, agreeing that reform was necessary but arguing that such change should be carried out by Parliament, not the judiciary.<sup>15</sup>

### Legislative Reforms

Following the Supreme Court’s judgment, Parliament enacted the *Muslim Women (Protection of Rights on Marriage) Act, 2019*. The Act clarified the following key provisions:

- Under **Section 3**, the practice of triple talaq was declared void and illegal.
- **Section 4** prescribed imprisonment of upto three years and a fine for any husband pronouncing triple talaq.
- **Section 5** provided for subsistence allowance for the divorced woman and her dependent children.
- **Section 6** ensured that custody of minor children would be granted to the Muslim woman.
- **Section 7** made the offence cognizable and non-bailable, but compoundable at the discretion of the magistrate with the consent of the wife.<sup>16</sup>

However, critics argue that criminalization may exacerbate the economic hardships of women, whom the law intends to protect.<sup>17</sup> Debates continue over whether the imprisonment of the husband could further disrupt family life (Chopra, 2020). Nevertheless, the Act is considered a significant step toward safeguarding the rights of Muslim women.

### Statistical Impact and Implementation

<sup>10</sup> Supra note 3 at 3

<sup>11</sup> Supra note 1 at 1

<sup>12</sup> <https://blog.ipleader.in/shayara-bano-v-union-of-india-08-19-2025>

<sup>13</sup> <https://blog.ipleader.in/the-muslim-personal-law-shariat-act-1937-08-19-2025>

<sup>14</sup> Supra note 3 at 3

<sup>15</sup> Supra note 5 at 3

<sup>16</sup> The *Muslim Women (Protection of Rights on Marriage) Act, 2019*

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<https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1089&context=slr&utm=08-18-2025>

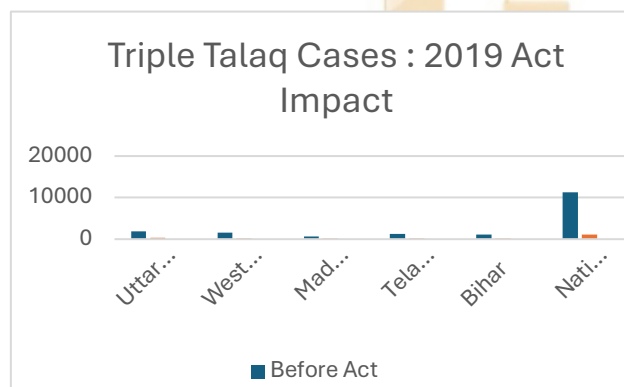


After the enactment of the 2019 law, there has been a significant decline in cases of triple talaq. Data from the Ministry indicates that the annual average number of cases fell from **11,264 (1985–2019)** to only **1,039 in 2019–2020** — representing an **82% reduction**.

A state-wise breakdown shows:

- Uttar Pradesh: cases dropped from 1,865 to 281,
- West Bengal: from 1,523 to 201,
- Madhya Pradesh: from 670 to 32,
- Telangana/Andhra Pradesh: from 1,217 to 203,
- Bihar: from 1,136 to only 49.

The **NCRB (National Crime Records Bureau)** statistics corroborate this sharp decline.<sup>18</sup> However, **implementation challenges remain**. Due to social pressures, underreporting persists, and proving private pronouncements of divorce also poses difficulties.<sup>19</sup>



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<sup>18</sup><https://www.newindianexpress.com/nation/2020/Jul/31/law-criminalising-triple-talaq-brings-down-cases-to-1k-from-11k-in-a-year-2177128.html-08-17-2025>

<sup>19</sup><https://www.insightsonindia.com/2019/07/31/muslim-women-protection-of-rights-on-marriage-bill-2019-2-08-17-2025>

<sup>20</sup> Ibid 18

## Challenges

The enforcement of the Act has undoubtedly brought changes in the status of Muslim women; however, several issues continue to persist. For instance, controversial practices such as *nikah halala* and polygamy remain unresolved, despite being in clear violation of constitutional principles of equality.<sup>21</sup>

Furthermore, rural women often remain deprived of justice due to limited awareness and lack of access to legal remedies.<sup>22</sup> The provision of imprisonment for the husband creates a constant risk of family breakdown and also carries the possibility of misuse (Sinha, 2020).

## Suggestion

- Inspired by the Tunisian model, the law should be amended to emphasize **civil remedies** over imprisonment.<sup>23</sup>
- Muslim women should be empowered through the initiation of **nationwide legal literacy campaigns** with the assistance of NGOs.<sup>24</sup>
- In line with the recommendations of the Law Commission, and while respecting the rights of minorities, India should gradually move toward the adoption of a **Uniform Civil Code**.

<sup>21</sup> <https://www.scobserver.in/journal/nikah-halala-and-personal-law-reform-i-08-19-2025>

<sup>22</sup> <https://ijlss.com/the-changing-landscape-of-muslim-womens-legal-protection-under-shayara-bano-case-08-17-2025>

<sup>23</sup> Supra note 8 at 3

<sup>24</sup> <https://www.bluekraft.in/empowering-muslim-women-in-india-time-for-intentional-policy-actions-08-16-2025>





- To monitor effective implementation, a *dedicated helpline system* should be established for structured data collection.<sup>25</sup>
- To foster wider social acceptance, steps must be taken to **promote gender equality awareness** within minority communities.<sup>26</sup>
- Hasan, Z. (2017). Muslim women and law reforms in India. *Journal of Social Change*, 47(3), 15– 28.
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If these measures are effectively implemented, the impact of reforms can be consolidated while reducing the backlog of pending cases.

### Conclusion

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The abolition of triple talaq reflects India's commitment to uphold **constitutional values** over centuries-old traditions. What was once an arbitrary practice has now been transformed into a framework of justice and equality.

The judgment in *Shayara Bano v. Union of India* and the **2019 Act** have not only reduced the number of cases but have also advanced the cause of **women's empowerment**. Nevertheless, the pursuit of genuine gender justice requires addressing the remaining inequalities in personal laws. As Justice Nariman rightly observed, "**arbitrary practices cannot withstand constitutional scrutiny**".

In my view, future reforms must reconcile religious traditions with **fundamental rights**, ensuring dignity for all. This legal reform serves as a **model** for balancing religious practices with modernity in a democratic society.

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<sup>25</sup> Supra note 18 at 6

<sup>26</sup><https://kuey.net/index.php/kuey/article/download/8281/6199/16052-08-17-2025>