
TRIPLE TALAQ: A COMPARATIVE STUDY OF REFORMS IN PAKISTAN, EGYPT, AND INDIA

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ABSTRACT

The instantaneous, extra-judicial repudiation of marriage known as talaq-e-biddat, or triple talaq pronounced in a single sitting, occupies a contested space between classical Islamic jurisprudence and modern statutory law. Although a majority of classical Sunni jurists treated the practice as legally binding despite condemning it as sinful, a substantial number of Muslim-majority and Muslim-minority states have, over the course of the twentieth and twenty-first centuries, restricted or abolished it by statute. This paper undertakes a comparative doctrinal and legal-historical study of three jurisdictions that responded to the problem of triple talaq through markedly different legislative strategies: Egypt, which pioneered procedural reform through the Personal Status Law of 1929 and its 1985 amendment; Pakistan, whose Muslim Family Laws Ordinance 1961 embedded triple talaq within a mandatory arbitration-and-reconciliation framework without criminalising it; and India, which arrived at reform only in 2017 through constitutional adjudication in *Shayara Bano v. Union of India*, followed by criminal legislation in 2019. The paper's central argument is that these three jurisdictions do not represent interchangeable variations on a single reform agenda, but three distinct legislative logics substantive redefinition of talaq's legal effect, procedural constraint on its exercise, and criminal deterrence against its pronouncement and that, of the three, Pakistan's model of procedural neutralisation offers the most balanced template for reform elsewhere, because it targets the absence of notice, arbitration, and a reconciliation period that makes triple talaq harmful, without exposing the practice to the disproportionate and potentially counter-productive instrument of criminal law. Drawing substantially on Muhammad Munir's comparative account of reform trajectories across Muslim states, the paper further argues that Egypt's approach demonstrates the value of early, incremental codification, even though its own procedural safeguards developed only gradually over the course of the twentieth century. The paper concludes with recommendations for how procedural safeguards, rather than criminal sanction, might better protect the interests of Muslim women without provoking a backlash rooted in claims of religious persecution.

I. Introduction

The dissolution of a Muslim marriage through the husband's unilateral, extra-judicial pronouncement of the word *talaq* three times in immediate succession commonly termed *talaq-e-biddat*, or 'triple talaq' has generated more sustained controversy across South Asia and the wider Muslim world than perhaps any other institution of Islamic personal law. The practice permits a husband to end a marriage instantaneously and irrevocably, without recourse to arbitration, judicial oversight, or even the presence of the wife, and it has accordingly been characterised by critics as a vehicle for the arbitrary exercise of male authority within the family.

Notably, the controversy is not primarily theological. As Muhammad Munir observes in his comparative survey of reform across Muslim states, the overwhelming majority of Sunni jurists across the four schools historically agreed that three pronouncements of *talaq* made in a single sitting take effect as three separate and irrevocable divorces, even while condemning the practice as *bid'a* (sinful innovation) rather than *sunna* (praiseworthy practice).¹ A minority position, associated principally with the Hanbali jurist Ibn Taymiyyah and his student Ibn Qayyim al-Jawziyya, and shared by Twelver Shi'a and Zahiri jurists, held that three repudiations pronounced in one sitting count as only a single, revocable divorce.² It is this minority juristic position regarded by the classical Sunni majority as heterodox that has since the early twentieth century been progressively adopted into the statutory law of a substantial number of Muslim-majority states, beginning with Egypt in 1929.³

This paper undertakes a comparative examination of the legislative and judicial responses to triple *talaq* in three jurisdictions: Egypt, Pakistan, and India. The choice of these three states is deliberate. Egypt represents the earliest and most influential instance of codified reform in the modern Muslim world, and its 1929 and 1985 statutes shaped the drafting of subsequent personal status codes across the Arab world.⁴ Pakistan represents the paradigm case of reform within a South Asian, Hanafi-dominant legal culture through the Muslim Family Laws Ordinance 1961 (MFLO), whose section 7 mechanism has been the subject of Munir's

¹Muhammad Munir, *Reforms in Triple Talaq in the Personal Laws of Muslim States and the Pakistani Legal System: Continuity versus Change*, 2013 INT'L REV. L. 2, 3 (2013).

²*Id.* at 3-4.

³*Id.* at 4; see also the discussion of Egypt's Law No. 25 of 1929 in Part IV below.

⁴Nadia Sonneveld, *Divorce Reform in Egypt and Morocco: Men and Women Navigating Rights and Duties*, 26 ISLAMIC L. & SOC'Y 149, 152 (2019).

sustained academic scrutiny and which offers the closest comparator to the debates that took place in India. India, by contrast, retained triple talaq as valid and enforceable law despite judicial disquiet expressed over decades—until the Supreme Court's 2017 decision in *Shayara Bano v. Union of India*⁵, which was followed two years later by criminal legislation in the form of the Muslim Women (Protection of Rights on Marriage) Act 2019.

The paper's central claim is that these three jurisdictions illustrate three distinct models of legal response to the same doctrinal problem: Egypt's model of *early procedural codification*, which redefined triple talaq as a single revocable divorce without criminalising the husband's conduct; Pakistan's model of *procedural neutralisation through mandatory arbitration*, which left the classical law formally intact but rendered instant, unwitnessed talaq practically ineffective; and India's model of *constitutional invalidation followed by criminal sanction*, which is unique among the three for treating the pronouncement of triple talaq as a criminal offence attracting imprisonment. Drawing on Munir's comparative framework, this paper argues that the Pakistani approach—despite its own well-documented weaknesses in enforcement—offers a more balanced template than the Indian approach, because it addresses the underlying problem (the absence of notice, arbitration, and a reconciliation period) without exposing the practice to the disproportionate and potentially counter-productive instrument of criminal law.

The paper proceeds in five further parts. Part II outlines the doctrinal and Quranic foundations of talaq necessary to understand why reform was regarded as both necessary and controversial. Parts III, IV and V examine, respectively, the Pakistani, Egyptian, and Indian legal responses in turn. Part VI offers a comparative analysis organised around three axes: the choice between procedural and substantive reform, the strategy used to secure religious legitimacy for reform, and the practical question of enforcement. Part VII concludes with recommendations.

Methodologically, the paper proceeds by doctrinal and legal-historical analysis rather than by empirical field research. For each jurisdiction, it reconstructs the operative statutory text, the leading case law interpreting that text, and the secondary scholarly commentary surrounding it, and it draws comparative inferences from that reconstruction rather than from primary data such as court records, compliance statistics, or surveys of women affected by triple talaq. This method is well suited to establishing how the three legal systems differ in their formal design and underlying doctrinal logic, which is the paper's principal object of enquiry, but it

⁵ (2017) 9 S.C.C. 1.

correspondingly limits the paper's capacity to assess how each model performs in practice. Where the paper makes claims about enforcement or non-compliance in Part III.B and Part VI.C in particular those claims are drawn from the existing secondary literature rather than from original data collection, and should be read with that limitation in mind.

II. Doctrinal and Quranic Foundations of Talaq

The Quranic law of divorce, as classical commentators read it, does not contemplate an instantaneous, single-sitting triple repudiation. Quran 2:229 provides that *talaq* is twice, then either retain in kindness or release with good treatment, envisaging a staged process in which each pronouncement is followed by a waiting period (*iddah*) during which reconciliation remains possible, with only the third and final pronouncement rendering the divorce irrevocable.⁶

Classical jurists accordingly distinguished between *talaq al-sunna* (divorce in accordance with the Prophetic model, itself divided into *ahsan*, the single most-approved pronouncement made during a period of purity followed by no sexual relations during the waiting period, and *hasan*, three pronouncements made across three successive periods of purity) and *talaq al-bid'a* (innovative or sinful divorce), which includes the pronouncement of three talaqs in a single sitting or in a single utterance. A tradition reported in *Sunan Abi Dawud* records that the Caliph Umar ibn al-Khattab, on finding that men had begun using the triple pronouncement to circumvent the reconciliation process envisaged in the Quran, decreed that such pronouncements would nonetheless be enforced as three separate divorces as a matter of deterrent policy rather than because he regarded the practice as religiously sound.⁷

It is this administrative ruling of 'Umar—not the Quranic text itself—that came to be treated by the majority of classical Sunni jurists as authority for the proposition that three talaqs pronounced together take legal effect as three. Ibn Taymiyyah and Ibn Qayyim al-Jawziyya challenged this consensus in the seventh and eighth centuries of the Hijra, arguing that 'Umar's ruling was a discretionary policy measure (*siyasa*) responsive to particular social conditions

⁶See generally Munir, *supra* note 1, at 5-6 (discussing Quran 2:229 and 2:230 and the classical exegetical literature on the staged structure of talaq).

⁷Munir, *supra* note 1, at 6-7 (citing the report attributed to 'Abd Allah ibn 'Abbas concerning Caliph 'Umar's ruling); see also Muhammad Munir, "Triple Talaq in One Session": An Analysis of the Opinion of Classical, Medieval, and Modern Muslim Jurists Under Islamic Law (Shariah Academy, International Islamic University Islamabad) 2-3.

and not a binding statement of the Shari'a, and that the correct position reflecting both the Quranic text and earlier practice was that three pronouncements made together amount to only one, revocable, talaq.⁸ This same doctrinal fault line has been explored independently of Munir's account: al-Azri's study of the conflict, focusing on the Ibadi jurisprudence of Oman, argues that the inflexibility of scholars who insist on the majority position is a matter of juristic choice rather than religious necessity, and that Islamic law's own history of legal renewal supplies ample precedent for adopting the minority view.⁹ Ahmad reaches a related conclusion by a different route, arguing that neither the Quran nor an unambiguous, authenticated prophetic practice sanctions triple talaq pronounced in a single sitting, and that the practice persisted chiefly because later jurists treated Umar's administrative ruling as though it had settled a question of substantive law rather than policy.¹⁰

This juristic disagreement supplied the doctrinal resource that twentieth-century legislatures across the Muslim world would draw upon when reforming their divorce laws: because a genuine and long-standing minority position within Sunni jurisprudence already held that triple talaq counts as one, states seeking to restrict the practice could frame their reforms as a return to sounder Islamic doctrine (that of Ibn Taymiyyah and Ibn Qayyim) rather than as a secular departure from Islamic law altogether. As the following Parts show, this strategy of selective doctrinal retrieval characterises the Egyptian and Pakistani reforms far more clearly than it does the Indian reform, which proceeded principally through the register of constitutional rights.

III. Pakistan: Procedural Neutralisation under the Muslim Family Laws Ordinance 1961

Pakistan's response to triple talaq is generally regarded, including by Munir himself, as one of the more moderate and jurisprudentially grounded reforms among Muslim states, though it stops well short of Egypt's outright statutory adoption of the Ibn Taymiyyah position.¹¹ This relatively cautious, judge-mediated approach to Islamic reform is consistent with the wider pattern Lau identifies in Pakistan's post-independence legal history, in which courts and legislators alike have tended to favour incremental, procedurally framed accommodations of

⁸Munir, *supra* note 1, at 7-8.

⁹Khalid al-Azri, *One or Three? Exploring the Scholarly Conflict over the Question of Triple Talāq (Divorce) in Islamic Law with Particular Emphasis on Oman*, 25 ARAB L.Q. 277, 277-96 (2011).

¹⁰Nehaluddin Ahmad, *A Critical Appraisal of 'Triple Divorce' in Islamic Law*, 23 INT'L J.L. POL'Y & FAM. 53, 53-63 (2009).

¹¹Munir, *supra* note 1, at 10-11.

Islamic law over the wholesale doctrinal reclassification adopted in Egypt.¹² The reform followed the 1955 Report of the Commission on Marriage and Family Laws, a seven-member body appointed by the Government of Pakistan after public controversy over the then Prime Minister Muhammad Ali Bogra's contraction of a second marriage without the consent of, or notice to, his first wife.¹³ The Commission's recommendations were given legal effect by President Ayub Khan through the Muslim Family Laws Ordinance 1961 (MFLO), promulgated on 2 March 1961, which remains the principal statute governing Muslim marriage, divorce, and maintenance in Pakistan.¹⁴ Ahmad situates this reform within Ayub Khan's broader programme of state-led religious modernisation, arguing that the Ordinance functioned as much as an assertion of executive authority over religious institutions as a response to the specific grievance that had prompted the 1955 Commission.¹⁵

A. Section 7 and the Arbitration Council Mechanism

Rather than declaring triple talaq void, or reclassifying it doctrinally as the Egyptian legislature would do, the MFLO adopts a procedural strategy: it interposes a mandatory notice-and-arbitration requirement between the husband's pronouncement of talaq and the divorce becoming legally effective. Section 7(1) of the Ordinance requires a husband who has pronounced talaq, in any form, to give written notice of the pronouncement to the Chairman of the relevant Union Council, with a copy to the wife.¹⁶ Upon receipt of that notice, the Chairman is required to constitute an Arbitration Council for the purpose of taking such steps as are necessary to bring about reconciliation between the parties, and the divorce does not take effect until the expiry of ninety days from the date on which the notice was delivered to the Chairman, unless it has already been revoked by the husband in the interim.¹⁷ If the wife is pregnant at the time of the pronouncement, the divorce does not take effect until either the pregnancy ends or ninety days have elapsed, whichever period is longer.¹⁸

The critical doctrinal move made by section 7 is that it does not purport to alter the classical

¹²MARTIN LAU, *THE ROLE OF ISLAM IN THE LEGAL SYSTEM OF PAKISTAN* chs. 3-4 (Martinus Nijhoff 2006).

¹³Dr. Muhammad Ijaz, *Pronouncement of Talaq in Pakistan: Muslim Family Laws Ordinance 1961*, 23 AL-IDA 13, 14 (2011).

¹⁴Muslim Family Laws Ordinance, 1961, pmbl. (Pak.); Ijaz, *supra* note 12, at 14.

¹⁵Mumtaz Ahmad, *The Muslim Family Laws Ordinance of Pakistan*, 10 INT'L J. WORLD PEACE 37, 37-46 (1993).

¹⁶Muslim Family Laws Ordinance, 1961, § 7(1) (Pak.).

¹⁷*Id.* § 7(3); see also Muhammad Munir, *Talaq and the Muslim Family Law Ordinance, 1961 in Pakistan: An Analysis*, SSRN Working Paper, 6-7 (2011).

¹⁸Muslim Family Laws Ordinance, 1961, § 7(5) (Pak.).

law on whether three talaqs pronounced together count as one divorce or three; rather, it renders the question largely academic in practice by making *any* talaq—whether pronounced once or three times—provisional and revocable for a mandatory ninety-day period, and by making the pronouncement legally inoperative unless the statutory notice requirement is satisfied. Munir describes this as a distinctively Hanafi-compatible form of reform, because it does not require Pakistani courts to adopt the substantive position of Ibn Taymiyyah that three talaqs equal one; it instead uses a procedural device—compulsory notice and an intervening reconciliation period to prevent the mischief that the Quranic staged process of divorce was designed to guard against.¹⁹

Non-compliance with the notice requirement carries a criminal sanction that is markedly more modest than the sanction later adopted in India: section 7(2) provides that any person who contravenes the provisions of subsection (1) is liable to simple imprisonment for a term which may extend to one year, or a fine which may extend to five thousand rupees, or both.²⁰ Crucially, however, the sanction attaches to the *failure to give notice*, not to the pronouncement of talaq itself; a husband who observes the statutory procedure faces no criminal liability at all, however many times he pronounces the word *talaq* in a single sitting.

B. Judicial Interpretation and Practical Limitations

Pakistani courts have generally interpreted section 7 strictly, treating compliance with the notice requirement as central to the validity of the divorce, though with some flexibility where the husband's conduct otherwise makes his intention unambiguous. Munir notes that in litigation concerning the effectiveness of a talaq unaccompanied by notice to the Chairman, courts have on occasion given effect to a divorce where the husband's overall conduct including swearing an affidavit and registering the talaq demonstrated an unequivocal intention to dissolve the marriage, even where strict service of notice on the Chairman could not be proved.²¹ This ambiguity in judicial interpretation was noted by scholars considerably earlier than Munir's own critique: writing in 1979, shortly after the Ordinance's early case law had begun to develop, Carroll observed that courts' willingness to treat non-compliant talaqs as nonetheless effective sat uneasily with the Ordinance's plain wording, and predicted that such

¹⁹Munir, *supra* note 1, at 11-12.

²⁰Muslim Family Laws Ordinance, 1961, § 7(2) (Pak.).

²¹Munir, *supra* note 1, at 13-14 (discussing case law interpreting MFLO § 7).

departures from strict compliance would remain a recurring source of doctrinal inconsistency.²²

Notwithstanding this jurisprudential coherence, empirical and doctrinal critiques of the Pakistani model persist. Munir himself, whilst treating the MFLO favourably relative to reforms elsewhere, has separately criticised the Ordinance's vagueness in matters such as the calculation of the *iddah* period and its inconsistent application across the various High Courts, arguing that these ambiguities produce unpredictable outcomes for the very women the notice-and-arbitration procedure is meant to protect.²³ More significantly, in practice, a substantial proportion of talaq pronouncements particularly in rural areas continue to occur without the husband ever giving the statutorily required notice, with the wife typically becoming aware of the ambiguity in her marital status only when she seeks maintenance or attempts to remarry.²⁴ A 2025 study of divorce litigation in Pakistan reaches a consonant conclusion from a different angle, arguing that the MFLO's procedural safeguards, however well designed in principle, have in practice often increased rather than reduced hardship for women, because the burden of proving non-compliance with section 7 typically falls on the wife in subsequent maintenance or inheritance proceedings.²⁵ This gap between the statute's design and its practical observance is a recurring theme to which this paper returns in Part VI.

It is also worth noting that the MFLO's reform of triple talaq did not occur in isolation. The Ordinance simultaneously restricted polygamy, by requiring a husband to obtain the written consent of his existing wife or wives and the prior approval of an Arbitration Council before contracting a further marriage, the Council being tasked with assessing whether the further marriage was 'necessary and just'.²⁶ This combination of measures reflects the Commission's broader ambition to use the machinery of local arbitration councils as a check on unilateral male authority within the family generally, rather than to address triple talaq as an isolated problem.

²²Lucy Carroll, *The Muslim Family Laws Ordinance, 1961*, 13 CONTRIBUTIONS TO INDIAN SOC. 117, 117-43 (1979).

²³Muhammad Munir, *Talaq and the Muslim Family Law Ordinance, 1961 in Pakistan: An Analysis*, SSRN Working Paper, 15-17 (2011).

²⁴See the discussion of unregistered and unregulated talaq practice in rural Sindh in recent socio-legal literature on the MFLO's practical operation, e.g., *The Impact of Triple Talaq in Pakistan: Legal, Social, and Religious Perspectives with a Case Study of Sindh* (2025).

²⁵Taj Muhammad, *Faith, Law, and Gender Justice: Rethinking Divorce Law in Pakistan*, 7 J.L. & SOC. POL'Y 156, 160-65 (2025).

²⁶Muslim Family Laws Ordinance, 1961, § 6 (Pak.) (grounded in a modernist reading of Quran 4:3 and 4:129).

IV. Egypt: Codified Reclassification under the Personal Status Laws of 1929 and 1985

Egypt occupies a unique position in the comparative history of Islamic family law reform: it was, in Munir's words, the first Muslim state to depart from the majority (*jamhur*) position on triple talaq and to adopt, by statute, the minority position associated with Ibn Taymiyyah and Ibn Qayyim al-Jawziyya.²⁷ This reform predates the Pakistani MFLO by more than three decades and predates the Indian legislative reform by ninety years, and it substantially shaped the drafting of comparable statutes in Sudan, Jordan, Syria, Iraq, Morocco and elsewhere in the Arab world.²⁸

A. Law No 25 of 1929 and the Reclassification of Triple Talaq

Article 3 of Law No 25 of 1929 on Personal Status provides that a divorce accompanied by a number, whether expressed or implied, shall be treated as a single divorce and shall be revocable, save where the divorce is the third in a series pronounced across separate periods of purity, a divorce pronounced before consummation of the marriage, or a divorce given for consideration.²⁹ The practical effect of Article 3 is that a husband who pronounces the word *talaq* three times in a single sitting achieves, in law, nothing more than a single revocable divorce: the marriage is not dissolved, and the husband retains the right to revoke the divorce and resume the marriage during the *iddah* without any fresh contract of marriage.

This was a genuinely radical legislative choice by the standards of 1929, because it did not merely regulate the *procedure* for pronouncing talaq, as the Pakistani MFLO would later do, but redefined the *substantive legal effect* of the pronouncement itself, adopting wholesale the minority Ibn Taymiyyah position over the historically dominant Sunni majority view. The 1929 law thereby avoided the need for any criminal sanction against the husband: because the pronouncement of three talaqs simply does not, as a matter of law, produce an irrevocable divorce, there is no legal 'wrong' to punish, only a legal fiction to be corrected.

B. Registration, Notification and the 1985 Amendment

A second strand of Egyptian reform addressed not the legal effect of triple talaq but its

²⁷Munir, *supra* note 1, at 4, 8-9.

²⁸*Id.* at 9; Nadia Sonneveld, *Divorce Reform in Egypt and Morocco: Men and Women Navigating Rights and Duties*, 26 ISLAMIC L. & SOC'Y 149, 151-52 (2019).

²⁹Law No. 25 of 1929, art. 3 (Egypt); see Munir, *supra* note 1, at 8-9 (summarizing the provision's effect).

evidentiary and procedural dimension: the requirement that a divorce be registered and that the wife be notified of it. Under Article 5 bis of Law No 100 of 1985, which amended the 1929 statute, a husband who pronounces a repudiation outside of court is required to register that repudiation with the *ma'dhun* (marriage registrar) within thirty days of the date of pronouncement.³⁰ Non-registration does not, however, render the divorce invalid; it exposes the husband principally to the practical difficulty of proving, and to the wife the practical difficulty of disproving, that a divorce occurred, and it can trigger financial consequences, since a husband who divorces his wife must compensate her through payment of any deferred dower, maintenance for the waiting period, and in some circumstances an additional consolatory payment (*mut'a*).³¹

The 1985 amendment also expanded women's access to fault-based judicial divorce (*tatliq*) on grounds including the husband's prolonged unexplained absence, imprisonment for more than three years, and serious illness, building on grounds first introduced by the 1920 and 1929 statutes.³² A further, and arguably more significant, reform followed in 2000: Law No 1 of 2000 introduced *khul'*, a no-fault judicial divorce mechanism under which a wife may obtain a divorce by relinquishing her financial claims, including her dower, without having to establish any wrongdoing on the part of her husband, following a compulsory ninety-day arbitration period.³³ Arabi's contemporaneous analysis of the reform describes *khul'* as marking a decisive move by the Egyptian legislature to grant women an autonomous exit from marriage independent of fault, subject only to the forfeiture of financial claims, a characterisation that underscores how far the 2000 law departed from the fault-based structure of the 1929 and 1985 statutes.³⁴ Failure by a husband to pay court-ordered maintenance was, from 2000, made punishable by imprisonment for up to thirty days, illustrating that Egyptian law has been willing to deploy criminal sanction, but has directed that sanction at the husband's failure to fulfil his financial and procedural obligations following divorce, rather than at the pronouncement of triple talaq as such.³⁵

³⁰Law No. 100 of 1985 (Egypt), amending Law No. 25 of 1929, art. 5 bis; Nadia Sonneveld, *Divorce Reform in Egypt and Morocco*, 26 ISLAMIC L. & SOC'Y 149, 160 (2019).

³¹Sonneveld, *supra* note 4, at 160-61.

³²Sonneveld, *supra* note 4, at 152-54 (discussing arts. 6, 12 and 14 of Law No. 25 of 1929, as amended).

³³Law No. 1 of 2000, art. 20 (Egypt); Mulki Al-Sharmani, *Family Law Reforms and Women's Empowerment: Family Courts in Egypt* 1-2 (draft paper).

³⁴Oussama Arabi, *The Dawning of the Third Millennium on Shari'a: Egypt's Law No. 1 of 2000, or Women May Divorce at Will*, 16 ARAB L.Q. 2, 2-21 (2001).

³⁵Law No. 91 of 2000, art. 76 bis (Egypt), discussed in Sonneveld, *supra* note 4, at 160.

C. Egypt as Regional Template

The Egyptian model exercised a demonstrable influence over subsequent reforms across the Arab and wider Muslim world. Munir notes that the Sudanese law of 1935 adopted a substantially similar rule, treating all pronouncements of divorce by the husband as revocable except the third, a divorce pronounced before consummation, and a divorce given for consideration, while the Syrian Law of Personal Status of 1953 combined elements of both the Egyptian and Sudanese approaches.³⁶ Munir further observes that most Arab states and a majority of other Muslim-majority states—including Jordan, Iraq, Morocco, Kuwait, Yemen, Libya, Qatar, Bahrain and the United Arab Emirates—have, in formulating their own personal status codes, followed the position associated with Ibn Taymiyyah and Ibn Qayyim rather than the classical Sunni majority view, a trend he traces directly to Egypt's pioneering 1929 legislation.³⁷ Welchman's independent survey of family law reform across the Arab states corroborates this account of Egypt's influence, tracing how successive Arab legislatures drew on the 1929 and 1985 Egyptian statutes as a drafting template even where they departed from Egypt's specific choices, while cautioning that formal statutory reclassification of talaq did not, on its own, guarantee women's practical access to the safeguards the legislation promised.³⁸ Notably, Munir singles out Sri Lanka's Muslim Marriage and Divorce Act 1951, as amended, as in his assessment 'the most ideal legislation on triple talaq' among the jurisdictions he surveys, precisely because it combines the Egyptian model's substantive reclassification with more robust procedural safeguards, including mandatory registration before a Quazi and a structured conciliation process.³⁹ This strategy of substantive reclassification is best understood as one instance of a wider set of reform techniques identified across the Muslim world; Stilt, Waheedi and Griffin's broader survey situates statutory reclassification of talaq alongside other tools such as expanding judicial divorce grounds, procedural stipulation in the marriage contract, and delegated divorce that legislatures have used to constrain unilateral male repudiation.⁴⁰

³⁶Munir, *supra* note 1, at 9.

³⁷*Id.* at 4, 9.

³⁸LYNN WELCHMAN, *WOMEN AND MUSLIM FAMILY LAWS IN ARAB STATES: A COMPARATIVE OVERVIEW OF TEXTUAL DEVELOPMENT AND ADVOCACY* ch. 3 (Amsterdam Univ. Press 2007).

³⁹*Id.* at 12; see also Rohini Suneetha, *If Pakistan and 21 Other Countries Have Abolished Triple Talaq, Why Can't India?*, SCROLL.IN (Mar. 31, 2017) (reporting Munir's assessment of Sri Lankan law).

⁴⁰Kristen Stilt, Salma Waheedi & Swathi Gandhavadi Griffin, *The Ambitions of Muslim Family Law Reform*, 41 HARV. J.L. & GENDER 301 (2018).

V. India: From Judicial Restraint to Shayara Bano and Criminal Legislation

India's trajectory diverges sharply from both the Egyptian and Pakistani models. For most of the seventy years following independence, Indian courts applied triple talaq as valid and binding law under uncodified Muslim personal law, notwithstanding recurrent judicial disquiet about its compatibility with both classical Islamic doctrine and constitutional norms of equality. Reform in India occurred not through legislative initiative in the manner of Egypt or Pakistan, but through constitutional litigation culminating in the Supreme Court's 2017 decision in *Shayara Bano v. Union of India*⁴¹, followed by parliamentary legislation only in 2019.

A. Judicial Groundwork: Shamim Ara and Its Antecedents

Before 2017, the principal judicial check on the arbitrary exercise of the power of talaq in India came not from any legislative reform but from the Supreme Court's interpretive insistence, in *Shamim Ara v. State of U.P.* (2002), that a talaq must actually be pronounced, and that its pronouncement must be proved as a fact by evidence, rather than accepted merely because the husband asserts in subsequent litigation that a divorce occurred at some unspecified earlier date.⁴² The Court in *Shamim Ara* further held, drawing on the Quranic requirement of reconciliation efforts under Quran 4:35, that a talaq must be for a reasonable cause and must be preceded by attempts at reconciliation between the parties, effectively importing a procedural check into Indian law by interpretation rather than by statute.⁴³ This judicial technique requiring proof and reasonable cause rather than declaring the substantive practice unconstitutional left the underlying validity of instantaneous triple talaq formally undisturbed, and its practical protection for wives depended heavily on individual litigation and on lower courts' willingness to apply *Shamim Ara*'s reasoning consistently, which they did not always do.

B. Shayara Bano v. Union of India (2017)

The constitutional challenge that produced reform arose from the case of Shayara Bano, who was divorced by her husband, Rizwan Ahmed, after fifteen years of marriage, through a letter

⁴¹ (2017) 9 S.C.C. 1.

⁴² *Shamim Ara v. State of U.P.*, (2002) 7 S.C.C. 518 (India).

⁴³ *Id.*; see also Jeff Redding, *Shamim Ara and the Divorce Politics of a Secular and Modern India*, HARV. L. SCH. SHARIASOURCE BLOG (Oct. 31, 2016).

in which the word *talaq* was written three times.⁴⁴ Bano filed a writ petition before the Supreme Court seeking a declaration that the practices of instant triple talaq, polygamy, and *nikah halala* under Muslim personal law were illegal and unconstitutional as violative of Articles 14 (equality before law), 15 (non-discrimination), 21 (right to life and personal liberty with dignity) and 25 (freedom of conscience and religion) of the Constitution of India.⁴⁵ The petition was supported by women's rights organisations including the Bebaak Collective and the Bharatiya Muslim Mahila Andolan, and was heard alongside a suo motu matter that the Court had registered in 2015 concerning Muslim women's constitutional entitlements.⁴⁶

A five-judge Constitution Bench, presided over by Chief Justice J S Khehar, decided the matter by a majority of 3:2 on 22 August 2017. Justices Rohinton Nariman and Uday Umesh Lalit held that talaq-e-biddat was 'manifestly arbitrary' within the meaning of Article 14 of the Constitution, on the basis that the marital tie could be broken capriciously and irrevocably by a Muslim man without any attempt at reconciliation, and that this arbitrariness rendered the practice unconstitutional and void.⁴⁷ Justice Kurian Joseph, concurring in the result but proceeding on distinct reasoning, held that talaq-e-biddat is against the basic tenets of the Quran and enjoys no protection as an essential religious practice under Article 25, since a practice condemned as sinful within Islamic theology itself could not simultaneously be treated as constitutionally protected religious observance.⁴⁸ Chief Justice Khehar and Justice S Abdul Nazeer dissented, holding that talaq-e-biddat was a matter of Muslim personal law falling outside the scope of fundamental rights adjudication, and that any reform was properly a matter for Parliament rather than the judiciary; they nonetheless directed that an injunction restraining Muslim men from pronouncing talaq-e-biddat should operate for six months pending legislative action.⁴⁹ Mustafa and Sohi have criticised this fractured reasoning as symptomatic of a broader difficulty in the Indian Supreme Court's engagement with the essential-religious-practice doctrine, arguing that by adjudicating which practices are theologically authentic the Court risks assuming an interpretive role closer to religious authority than to constitutional adjudication.⁵⁰

⁴⁴*Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

⁴⁵*Id.*; INDIA CONST. arts. 14, 15, 21, 25.

⁴⁶*SC Strikes Down Practice of Triple Talaq*, DECCAN HERALD (New Delhi), Aug. 22, 2017.

⁴⁷*Shayara Bano*, *supra* note 42 (Nariman, J.).

⁴⁸*Id.* (Kurian Joseph, J.).

⁴⁹*Id.* (Khehar, C.J.); see *SC Strikes Down Practice of Triple Talaq*, *supra* note 44.

⁵⁰Faizan Mustafa & Jagteshwar Singh Sohi, *Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy*, 2017 BYU L. REV. 915, 915-16 (2018).

The result was that triple talaq was declared void, but the judgment's fractured reasoning—arbitrariness under Article 14 for the majority as against Article 25's protection of essential religious practice for the minority left considerable uncertainty as to the doctrinal basis of the ruling and, more practically, left unanswered the question of what legal consequence, if any, would attach to a husband who continued to pronounce triple talaq notwithstanding the Court's declaration that it was void. The Bench itself, and subsequently the Government, treated this gap as calling for legislative intervention.

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

Parliament's legislative response, delayed by procedural and political obstacles including repeated re-promulgation by ordinance, was eventually enacted as the Muslim Women (Protection of Rights on Marriage) Act 2019, which received presidential assent on 31 July 2019 and was made retrospective to 19 September 2018, the date of the first of three ordinances that preceded it, notwithstanding that the Act formally superseded only the third and final ordinance, promulgated on 21 February 2019.⁵¹ Section 3 of the Act provides that any pronouncement of talaq by a Muslim husband upon his wife, whether spoken, written, or communicated in electronic form—including, notably, by SMS or through electronic messaging applications—shall be void and illegal.⁵² Section 4 goes considerably further than either the Egyptian or Pakistani models by making the pronouncement of talaq-e-biddat itself, not merely a failure to comply with a notice or registration requirement, a criminal offence punishable with imprisonment for a term which may extend to three years, together with a fine.⁵³ The offence is cognisable, meaning police may arrest without a warrant, though section 7 requires that the complaint be made by the wife or a person related to her by blood or marriage, and provides for the possibility of bail and of compounding the offence at the instance of the wife.⁵⁴ Section 5 further entitles a wife against whom talaq-e-biddat has been pronounced to claim subsistence allowance for herself and any dependent children, as determined by a magistrate.⁵⁵

The 2019 Act has attracted considerable academic and practitioner criticism, much of it

⁵¹Muslim Women (Protection of Rights on Marriage) Act, 2019, pmbl. & § 1 (India); *India's President Ram Nath Kovind Gives Assent to Triple Talaq Bill*, GULF NEWS (New Delhi), Aug. 1, 2019.

⁵²Muslim Women (Protection of Rights on Marriage) Act, 2019, § 3 (India).

⁵³*Id.* § 4.

⁵⁴*Id.* § 7.

⁵⁵*Id.* § 5.

converging on precisely the point at which the Indian model diverges most sharply from the Egyptian and Pakistani models: the decision to criminalise the pronouncement itself. Writing shortly before the Bill's initial passage, Munir observed in an interview that he had 'reservations regarding most of the provisions of the Bill', criticising in particular its definition of talaq in section 2(b) as a formulation he had 'never seen ... in fiqh', and warning that imprisoning husbands for up to three years while the marriage itself is rendered void leaving the wife entitled to maintenance from a husband who is simultaneously incarcerated and, in law, no longer her husband—risked harming rather than protecting the interests of the women the statute was ostensibly designed to protect.⁵⁶ Zubair Abbasi, reviewing the enacted 2019 legislation for Harvard Law School's SHARIA source project, similarly questioned whether criminal sanction against the husband could meaningfully advance the Act's stated purpose of protecting married Muslim women, given that imprisonment removes the husband's earning capacity precisely when the Act also purports to entitle the wife to maintenance from him.⁵⁷ Writing shortly before the Act's passage, the Indian women's rights lawyer Flavia Agnes advanced a related but independently grounded critique, arguing from her own litigation experience that imprisoning the husband could leave the wife in a worse practical position than the civil remedies already available to her under *Shamim Ara* and related case law, since a term of imprisonment offers no mechanism for securing maintenance or reconciliation.⁵⁸

VI. Comparative Analysis

The preceding three case studies reveal not a single trajectory of reform repeated with local variation, but three genuinely distinct legal strategies for addressing the same underlying doctrinal and social problem. This Part draws out three axes of comparison: the choice between procedural and substantive reform; the strategy adopted to secure religious legitimacy for the reform; and the practical question of enforcement and unintended consequences.

Table 1: Comparative Summary of Triple Talaq Reforms

The table below summarises the three reform models across the principal dimensions discussed in this Part.

⁵⁶Muhammad Munir, quoted in Rohan Venkataramakrishnan, *Triple Talaq Bill Won't Protect Women, Will Expose Men to New Dangers: Pakistani Islamic Law Expert*, SCROLL.IN (Jan. 11, 2018).

⁵⁷Zubair Abbasi, discussed in *Spotlight: India's Criminalization of Extrajudicial Divorce*, HARV. L. SCH. PROGRAM IN ISLAMIC L. NEWSL. (Aug. 2019).

⁵⁸Flavia Agnes, *The Politics behind Criminalising Triple Talaq*, 53 ECON. & POL. WKLY. 13 (2018).

Dimension	Egypt	Pakistan	India
Legal instrument	Law No 25 of 1929 on Personal Status, amended by Law No 100 of 1985	Muslim Family Laws Ordinance 1961 (MFLO), section 7	Shayara Bano v. Union of India (2017); Muslim Women (Protection of Rights on Marriage) Act 2019
Reform technique	Substantive reclassification of the legal effect of triple talaq	Procedural neutralisation through mandatory notice and arbitration	Constitutional invalidation followed by criminal prohibition
Effect on triple talaq	Treated in law as a single, revocable divorce	Left doctrinally intact but rendered provisional for 90 days pending notice	Declared void by the Court in 2017, then made a criminal offence by statute
Notice / registration requirement	Registration with the marriage registrar within 30 days (evidentiary, not a condition of validity)	Written notice to the Union Council Chairman, copied to the wife, mandatory	No registration mechanism; the pronouncement itself is declared void
Reconciliation / arbitration period	None in the 1929/1985 reform; a 90-day arbitration period was later attached to khul' divorce in 2000	Mandatory 90-day period before an Arbitration Council, extended if the wife is pregnant	None
Criminal sanction	None for the pronouncement itself; up to 30 days' imprisonment for default on court-ordered maintenance (from 2000)	Up to one year's imprisonment or a fine for failure to give notice; none for the divorce itself	Up to three years' imprisonment and a fine for the pronouncement of talaq itself
Doctrinal / legitimising basis	Adoption of the minority Ibn Taymiyyah/Ibn Qayyim position that three talaqs together count as one	Procedural device that avoids requiring adoption of either substantive doctrinal position	Constitutional arbitrariness under Article 14; a concurring opinion also invoked absence of Quranic sanction
Financial protection for the wife	Deferred dower, waiting-period maintenance, and a	Maintenance during the 90-day period; no separate statutory	Subsistence allowance for the wife and dependent children,

Dimension	Egypt	Pakistan	India
	consolatory payment (mut'a)	compensation scheme	fixed by a magistrate
Year(s) of reform	1929, amended 1985	1961	2017 (judicial); 2019 (statutory)

A. Procedural Reform versus Substantive Reclassification

Egypt's 1929 law and Pakistan's 1961 Ordinance both restrict the effect of triple talaq, but they do so through structurally different legal techniques. Egypt achieves reform through substantive reclassification: Article 3 of Law No 25 of 1929 declares, as a matter of the operative legal rule, that three talaqs pronounced together simply *are* one talaq, adopting the Ibn Taymiyyah position outright.⁵⁹ Pakistan, by contrast, achieves a functionally similar outcome—preventing an instantaneous, irrevocable divorce through a procedural mechanism that leaves the underlying substantive question of Islamic doctrine formally untouched: section 7 of the MFLO does not say that three talaqs equal one, but instead makes *any* talaq provisional pending notice, arbitration, and a ninety-day reconciliation period.⁶⁰ This is precisely the distinction Munir identifies as the source of the MFLO's comparative doctrinal moderation: unlike Egypt, Pakistan does not require its courts, or its citizens, to accept that the historic Sunni majority position was simply wrong on a point of substantive law, only that the *exercise* of the husband's right requires a procedural safeguard.⁶¹

India's reform sits apart from this axis altogether, because it proceeds neither through Egyptian-style doctrinal reclassification nor through Pakistani-style procedural neutralisation, but through constitutional invalidation on grounds of arbitrariness (the majority's Article 14 reasoning in *Shayara Bano*) or on grounds that the practice lacks scriptural sanction (Justice Kurian Joseph's concurrence).⁶² The subsequent 2019 Act then converts that constitutional invalidation into a criminal prohibition, which is a legal technique found in none of the three jurisdictions' earlier legislative history: neither Egypt nor Pakistan criminalises the pronouncement of triple talaq as such, reserving criminal sanction (in Pakistan's case, up to one year's imprisonment; in Egypt's case, up to thirty days) for the narrower and more clearly

⁵⁹Law No. 25 of 1929, art. 3 (Egypt); discussed *supra* Part IV.A.

⁶⁰Muslim Family Laws Ordinance, 1961, § 7 (Pak.); discussed *supra* Part III.A.

⁶¹Munir, *supra* note 1, at 11-12.

⁶²*Shayara Bano*, *supra* note 42; discussed *supra* Part V.B.

definable wrongs of failing to give notice or failing to pay court-ordered maintenance.⁶³

B. Strategies for Securing Religious Legitimacy

Both the Egyptian and Pakistani reforms were consciously framed by their drafters as restorations of a sounder, minority strand of Islamic jurisprudence rather than as secular impositions upon religious law a framing made possible by the genuine juristic pedigree of the Ibn Taymiyyah position. Munir's own scholarship exemplifies this legitimization strategy: his repeated emphasis that the majority Sunni position rests on a policy ruling by Caliph 'Umar rather than on the Quranic text itself is deployed precisely to show that states adopting the minority view are not abandoning Islamic law but selecting between competing strands of authentic Islamic legal reasoning.⁶⁴ The Indian reform, by contrast, secured its legitimacy such as it achieved principally through the register of constitutional rights rather than through internal Islamic legal argument, notwithstanding Justice Kurian Joseph's parallel invocation of Quranic authority in his concurring opinion. This has left the Indian reform considerably more vulnerable than its Egyptian and Pakistani counterparts to the charge, made forcefully by organisations such as the All India Muslim Personal Law Board during the litigation, that the reform represents an intrusion by a secular, non-Muslim-majority state into matters of Muslim religious law, notwithstanding the Board's own acknowledgment, recorded in the *Shayara Bano* proceedings, that the practice was 'sinful and undesirable'.⁶⁵

C. Enforcement, Unintended Consequences, and the Criminalisation Problem

Each of the three models faces distinct enforcement difficulties. In Egypt and Pakistan, the principal weakness is one of practical observance rather than doctrinal design: husbands, particularly in rural areas with limited access to registrars or Union Council chairmen, frequently pronounce talaq without complying with the registration or notice requirements, leaving wives in a position of prolonged uncertainty about their marital status that the statutes were specifically designed to prevent.⁶⁶ This is a familiar problem in legal systems that rely on formal registration requirements in contexts of low literacy and limited institutional reach, and

⁶³Muslim Family Laws Ordinance, 1961, § 7(2) (Pak.); Law No. 91 of 2000, art. 76 bis (Egypt); discussed *supra* Parts III.A and IV.B.

⁶⁴Munir, *supra* note 1, at 3-8.

⁶⁵*SC Strikes Down Practice of Triple Talaq*, *supra* note 44 (recording the AIMPLB's concession that the practice was "sinful and undesirable" while defending its continuation on grounds of historical continuity).

⁶⁶See discussion *supra* Part III.B (on non-compliance with MFLO § 7 in rural Pakistan); see also Sonneveld, *supra* note 4, at 160 (on the practical significance of non-registration under Egyptian law).

it suggests that procedural reform of this kind, however doctrinally sound, is only as effective as the administrative infrastructure that supports it.

India's 2019 Act faces a different, and in some respects more troubling, enforcement problem: because the offence created by section 4 attaches to the pronouncement of *talaq* itself, and because the marriage is simultaneously rendered void under section 3, the Act creates a situation in which a husband may be imprisoned for up to three years for an act that the statute itself says produces no legal marriage to preserve, while the wife now formally unmarried in the eyes of the law but potentially still cohabiting with, or dependent upon, her husband must seek maintenance from a man who may be incarcerated and consequently unable to earn.⁶⁷ This is precisely the difficulty that Munir and Abbasi separately identified in their respective assessments of the 2018 Bill and the 2019 Act: a criminal law response calibrated to punish the husband can operate directly against the economic interests of the wife it purports to protect, in a way that neither the Egyptian financial-consequence model (compensation payable by the husband, with imprisonment reserved for maintenance default rather than for the divorce itself) nor the Pakistani notice-default model (a maximum of one year's imprisonment, attaching only to procedural non-compliance rather than to the divorce itself) risks to the same degree.

It should also be noted that all three jurisdictions continue to grapple with adjacent unresolved issues that lie beyond the scope of triple *talaq* narrowly defined. In Pakistan and India alike, *talaq-e-hasan* the staged, three-month pronouncement process nominally compliant with the Quranic model remains a live source of litigation; the Indian Supreme Court, in proceedings subsequent to *Shayara Bano*, has itself expressed disquiet about *talaq-e-hasan* and indicated the possibility of referring its validity to a fresh Constitution Bench, suggesting that reform confined to the single-sitting triple pronouncement addresses only the most extreme instance of a broader set of concerns about unilateral male-initiated divorce.⁶⁸

VII. Recommendations

On the basis of the comparative analysis above, this paper offers three recommendations, directed principally at the Indian legislative model, though of relevance to any jurisdiction

⁶⁷See discussion *supra* Part V.C; Munir, quoted in Venkataramakrishnan, *supra* note 54; Abbasi, discussed in Harvard SHARIAsource Newsletter, *supra* note 55.

⁶⁸*Supreme Court Deprecates Talaq-e-Hasan; Indicates Referring Its Challenge to Constitution Bench*, DECCAN HERALD (2022); discussed further *supra* Part V.

considering the reform of extra-judicial talaq.

First, criminal sanction, where thought necessary at all, should attach to a husband's failure to comply with defined procedural obligations giving notice, participating in arbitration, paying court-ordered maintenance rather than to the pronouncement of talaq as such. This follows the structure common to both the Egyptian and Pakistani statutes and avoids the perverse consequence, identified by both Munir and Abbasi in relation to the Indian Act, of a criminal law that undermines the very maintenance obligations it is meant to secure.⁶⁹

Second, jurisdictions considering reform would benefit from adopting a mandatory arbitration and reconciliation period modelled on section 7 of the Pakistani MFLO, during which any pronouncement of talaq however phrased or however many times repeated remains provisional and revocable. This mechanism directly addresses the practice's core defect, identified by the majority in *Shayara Bano* as its 'manifest arbitrariness', namely the absence of any opportunity for reconsideration, without requiring wholesale doctrinal reclassification of the kind attempted in Egypt, which while defensible invites deeper theological contestation than a purely procedural safeguard.⁷⁰

Third, and following the Egyptian model in particular, financial consequences attaching to divorce deferred dower, maintenance during the waiting period, and compensation for a wife divorced without just cause should be clearly quantified by statute and enforced through civil, rather than exclusively criminal, mechanisms, so that a wife's economic security following divorce does not depend upon her husband's continued liberty and earning capacity.⁷¹

VIII. Conclusion

The comparative study of Egypt, Pakistan, and India demonstrates that the regulation of triple talaq is not a binary choice between preserving classical practice unchanged and abolishing it by constitutional fiat. Rather, the three jurisdictions examined in this paper reveal a spectrum of legislative technique, from Egypt's early and doctrinally ambitious reclassification of triple talaq as a single revocable divorce, through Pakistan's more modest but administratively coherent strategy of procedural neutralisation via mandatory notice and arbitration, to India's

⁶⁹See Part VI.C *supra*.

⁷⁰*Shayara Bano*, *supra* note 42 (Nariman, J.); Munir, *supra* note 1, at 11-12.

⁷¹Law No. 25 of 1929 (Egypt), as amended by Law No. 100 of 1985, arts. 5 bis, 11; discussed *supra* Part IV.B.

late and constitutionally driven turn to criminal sanction. Munir's comparative scholarship, on which this paper has drawn extensively, suggests that reforms are most durable, and least vulnerable to charges of illegitimate interference with religious law, where they are grounded in an authentic, if minority, strand of Islamic juristic reasoning and where their sanctions are calibrated to the specific procedural wrong being addressed rather than to the underlying religious practice itself.

Measured against that standard, the Indian model's decision to criminalise the pronouncement of talaq-e-biddat, while understandable as a response to decades of judicial and legislative inaction, sits uneasily alongside both the Egyptian and Pakistani precedents that preceded it by many decades, and risks the specific harm economic destabilisation of the very women it seeks to protect identified by critics from within Islamic legal scholarship itself. A more calibrated Indian reform, combining Pakistani-style mandatory arbitration with Egyptian-style statutory quantification of a divorced wife's financial entitlements, would likely achieve the protective aims of the 2019 Act more effectively, and with less risk of provoking the perception whether justified or not that the reform constitutes majoritarian interference with minority religious law rather than a good-faith effort to protect vulnerable women within it.

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