



## Law on Talaq in Contemporary Muslim Countries:

### An Analytical Study

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#### ABSTRACT

The laws regarding talaq (divorce) in countries across the Middle East and North Africa vary significantly, reflecting a combination of Islamic law (Sharia), civil law, and regional legal reforms. In countries like Tunisia and Morocco, modern legal frameworks emphasize judicial oversight of divorce, requiring court involvement for talaq and offering women additional rights through mechanisms like khul' (wife-initiated divorce). In Jordan, Libya, Kuwait, and Iraq, while talaq remains valid, women have the right to seek divorce through khul' or judicial processes, though societal and legal barriers can persist. Countries such as Iran, Afghanistan, and Yemen maintain more traditional practices where talaq is a unilateral right of the husband, with women facing more challenges in accessing divorce. Overall, while talaq is a legal form of divorce in most of these countries, there has been a gradual shift toward more equitable legal approaches in some nations, offering women greater autonomy in seeking divorce. However, significant variations remain based on legal, social, and political contexts. Any progressive reform in these countries can have a significant effect on Indian Muslim law.

#### Introduction:

For Muslims in India, it is impossible to ignore the significant changes that have occurred over the course of time. An enormous amount of progress has been made in personal law all across the world, and nobody can deny it. In nations where Muslims make up the majority of the population, there has been a consolidation, systematization, and updating of these laws. The legal systems of many countries, particularly those with Islamic roots, have been reformed in order to meet changing societal realities. This is the case despite the prevalent notion that Muslim law is theocratic. With the concepts of Ijtihad as a foundation, the legal systems of a number of countries have undergone significant alterations in order to change marriage law, either in a significant way or completely.

The codification of Muslim law in the Muslim world commenced during 1915-1916. These countries have codified the law relating to marriage, divorce, succession, waqf, and family relations. They have made conditions like reconciliation before divorce, intention to divorce, free consent, compensation to the wife in case of any hardship, supervision of the court, etc. essential conditions for divorce. This means that their laws are in accordance with Quranic provisions and

gender justice principles. These laws have given Muslim women some rights, thus improving their conditions and uplifting their status. Countries like Algeria, Iraq, Jordan, Kuwait, Morocco, Somalia, Syria, and Tunisia have enacted a comprehensive code of personal law. Few countries, such as Albania, Brunei, Indonesia, Lebanon, Libya, and Malaysia, have enacted special laws regarding matrimonial and family relationships. The neighboring countries of India, like Bangladesh and Pakistan, have also brought about a few reforms in various aspects of personal law. On the other hand, there are countries like India that have continued with the traditional form of uncoded personal law. For the purpose of the study, the researcher has discussed the Legal position on Talaq of 10 Muslim Countries

### **Iran:**

Iran is a theocratic state with a majority population of Shia Muslims. To regulate the matter relating to divorce, the Code of Personal Status, 1959, was enacted and later, amended in 1987. The law makes Talaq, which is involuntary or on the deathbed, futile. Article 35 of the Code of Personal Status, 1959, lays down that any Talaq pronounced in the state of intoxication, insanity, or under duress, anger, sudden calamity, old age, or death sickness will be ineffective<sup>1</sup>.

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<sup>1</sup> Kohli, K., & Narayanan, D. (2024, October 10). As India debates triple talaq, here are 9 Islamic countries that have regulated divorce. *The Print*. <https://theprint.in/india/governance/9-islamic-countries-that-have-outlawed-instant-triple-talaq/25413/>

**Kuwait:**

Kuwait is a theocratic state where the majority population is Sunni Muslims. Kuwait enacted the Code of Personal Status to regulate matters related to the Talaq. The Code prescribes the essentials for a valid divorce, which are as follows:

- A. At the time of the formal declaration of divorce, the husband must fulfill the requirements of being of legal age and mentally healthy.
- B. The act of making a proclamation must be done voluntarily.

Article 102 of the Code states that for talaq to be effective, it must be pronounced by the husband who has attained majority and is sane. Further, if talaq is pronounced in anger, fear, mistake, coercion, or intoxication, it will be invalid. In Kuwait, the Code of Personal Status states that if the husband pronounces Talaq, in any form, which is followed by the number two or three will be treated as one. Article 109 states that Talaq pronounced in any form if followed by number two or three will be taken as one.

**Sudan:**

Sudan is a theocratic State with the majority population of the Sunni sect. Sudanese government codified the law relating to Talaq back in the year 1935. As per the law, if the husband pronounces divorce when he is intoxicated or under duress, it will not have any effect. Contingent divorce will also have no effect if it is used by the Muslim husband as an inducement or threat. Article 14 of the law on Talaq, 1935 states that A declaration of divorce made by the husband while under the influence of alcohol or under the effect of coercion is not legal. As per Art. 25, if the husband uses contingent divorce as an inducement or threat, it will have no effect. In Sudan, where the Sunni sect is in majority, law on Talaq, 1935 provides that any symbolic expression used for divorce will have no effect if pronounced without intention. Article 46 of the law on Talaq states that any divorce pronounced unintentionally will have no legal effect. Sudanese law states that any pronouncement followed by a number will be taken as one. Article 37 lays down that divorce followed by numbers will be treated as one divorce.

**Yemen:**

Yemen is a theocratic state with the majority population of Muslims of Sunni sects. To regulate the matter relating to divorce, Decree on Personal Status, 1992 was passed. According to the law, any talaq pronounced under the influence of intoxication or without sense, or due to lack of discernment will be



ineffective<sup>2</sup>. Article 61 lays down that any divorce pronounced in the state of drunkardness or without senses or under discernment will be ineffective. This could be shown through actions or conduct. A conditional divorce will have no effect if it comes into effect when the wife does something or fails to do something or if she breaks any oath or vows. A husband can revoke divorce during the Iddat period after which remarriage between parties is lawful. But if the husband arbitrarily gives divorce to his wife without any reason due to which she has to suffer hardship then the court has the power to ask the husband to compensate the wife with an amount pay equal to the amount of maintenance for one year according to her status. The mode of payment will also be decided by the Court. Articles 65 and 66 deal with conditional talaq. The Articles lay down the conditions as to when the talaq will be effective and may be imposed by the husband. To make talaq effective it may be in the form:

- A.** if the wife does something, or
- B.** if the wife abstains from doing something.

Further, the Art. also specifies that the wife also has the power to lay down conditions for herself for making talaq effective.

Article 65 comprehends those conditions with talaq which would be effective in performing or not performing of an act by a wife. The Act makes such conditional talaq ineffective. As far as Article 66 is concerned if the condition has been laid down by the wife for herself by taking an oath or vow for making talaq effective such marriage will not be dissolved even if that oath or vow is broken. Article 67 states that the husband has the ability to revoke the divorce proceedings at any time throughout the iddat term. Following the conclusion of the iddat, both parties are allowed to remarry at any time. When a husband dissolves marriage without any reasonable ground then Article 71 makes him liable to pay compensation to his wife along with maintenance. But the amount of compensation cannot exceed the maintenance amount of one year and this amount will be decided by the court. In Yemen, the Decree on Personal Status, 1992 makes the provision for compensation to the wife by her husband. According to Article 71 of the Decree on Personal Status, 1992, if a husband dissolves marriage without any reasonable ground, then he has to make provision for compensation for his wife along with maintenance. But the amount of compensation cannot exceed the maintenance amount of one year and this amount will be decided by the court.

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<sup>2</sup> Press Trust of India. (2024, October 10). India's Muslim neighbours among 23 countries that have banned triple talaq. *Hindustan Times*. <https://www.hindustantimes.com/india-news/india-s-muslim-neighbours-among-23-countries-that-have-banned-triple-talaq/story-J8b9HkOCwdMAIWscwxZMK.html>

**Morocco:**

Islamic faith is recognized as the official religion of Morocco, which is a theocratic state. Sunni Muslims make up the vast bulk of the Muslim population. For the purpose of regulating issues that are associated with divorce, the Code of Personal Status was formed in the year 2004. According to the Moroccan Code, the proclamation of talaq is regarded as unlawful if it is made without any rational basis, under coercion, or in response to provocation. Article 90 states that divorce pronounced under coercion or provocation or without senses will have no effect. It is the responsibility of the husband, in line with the regulations of the Code of Personal Status, to present the petition for divorce to the Public Notaries in the jurisdiction in which the marital residence is situated, the residence of the woman, or the location within which the marriage took place. The registration of the petition can be done only after the permission of the court<sup>3</sup>. Article 80 provides that the following information must be present in the petition: -

- A. The names of the spouses
- B. The occupations of the spouses
- C. The addresses of the residences
- D. The number of children and their ages
- E. The state of their health
- F. The level of education they have received.

The petition must be accompanied by a copy of the marital agreement, as well as evidence of the husband's standing in society and his financial commitments. Article 81 states that the court will attempt reconciliation between the parties. But where the husband intentionally abstains from the proceedings then it will be treated as a withdrawal of the petition by him. Additionally, the wife will be informed by the court that the petition will be considered without her presence if she chooses not to appear. It is within the wife's legal rights to submit a complaint against her husband in the event that he deliberately provides her with the incorrect address. During the process of granting a divorce decree in Morocco, the court will conduct a comprehensive examination of both parties, including any witnesses, through the use of live video feed. It is possible that the court will appoint an arbitrator or establish a family reconciliation council as part of this procedure in order to assist the spouses in working through their problems and reconciling with one another. If reconciliation between the parties takes place, a report is filed with the court. In the

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<sup>3</sup> Kohli, K., & Narayanan, D. (2024, October 10). As India debates triple talaq, here are 9 Islamic countries that have regulated divorce. *The Print*. <https://theprint.in/india/governance/9-islamic-countries-that-have-outlawed-instant-triple-talaq/25413/>



event that the husband and wife are unable to come to an agreement, the court will make a determination as to how much the husband is obligated to pay in child support and other post-divorce expenses. Article 82 lays down the procedure to be followed when reconciliation takes place. It states that the court will hear both parties on camera and take all necessary measures to reconcile them including the appointment of arbitrators or a family reconciliation council. If the children are born out of the marriage, then the efforts must be made within thirty days. If parties arrive at reconciliation, then a report is filed with the court. In case an attempt for reconciliation fails, the court fixes an amount to be deposited by the husband with the court for the maintenance of children and the wife's post-divorce dues. Article 92 of the Code of Personal Status stipulates that multiple declarations of divorce will be considered as a single divorce. According to the Moroccan Code of Personal Status, all types of talaq (divorce) can be undone except for divorce that occurs before the marriage is consummated, divorce by mutual agreement, and divorce by Khula or Talaq-e-Tafweez. Art. 123 states that all forms of divorce are revocable except:

- A. The third divorce decree.
- B. A dissolution of the marriage taking place prior to its consummation.
- C. Jointly agreed upon dissolution of the marriage.
- D. Talaq-e-Tafweez or Khula-based divorce.

### **Afghanistan:**

In Afghanistan, the vast majority of the population is comprised of Muslims, and Islam is officially acknowledged as the official religion of the country. Among Muslims, the Sunni sect is the most prevalent. A piece of legislation known as the Civil Code of the Republic of Afghanistan was enacted to address difficulties concerning the dissolution of marriage. For a woman in Afghanistan to be eligible for a divorce, she must be married to a male who is mentally capable and has reached the age of majority<sup>4</sup>. He has the ability to petition for the divorce of his marriage if he is spending an excessive amount of money or is handicap that is not psychological. The husband is not permitted to file for divorce in any of the aforementioned circumstances since it is deemed to be against the law:

- A. Drunkardness
- B. Insane,
- C. Un-discerning
- D. Under duress,

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<sup>4</sup> Kohli, K., & Narayanan, D. (2024, October 10). As India debates triple talaq, here are 9 Islamic countries that have regulated divorce. *The Print*. <https://theprint.in/india/governance/9-islamic-countries-that-have-outlawed-instant-triple-talaq/25413/>



- E. Sleep
- F. Person whose sanity gets affected due to old age or disease
- G. Senseless person who has lost his discerning ability due to anger or other factors and cannot understand his own words.

The Civil Code of the Republic of Afghanistan provides that divorce can be given orally or in writing, if it cannot be affected in any of the above ways then divorce may take place through common signals explicitly denoting divorce. A minor wife cannot be divorced. A husband has the power to divorce his wife three times. If the husband pronounces divorce which is followed by a number, it will be considered as one. The Civil Code of the Republic of Afghanistan provides that divorce is revocable excluding:

- A. The third divorce
- B. The divorce proclaimed before the consummation of marriage
- C. Divorce in exchange for consideration
- D. Divorce is recognized as irrevocable under this law.

After divorce, the husband is not allowed to remarry his third-time divorced wife until she undergoes Halala.

#### **Jordan:**

It was in 1976 when the Code of Personal Status was adopted in order to govern problems pertaining to family law. A statement that is made while under the influence of alcohol or drugs, while comatose, while under the influence of coercion, while suffering from a mental illness, or while dreaming in accordance with the Code will not be legally enforceable. Article 88 provides that No statement that is made while under the influence of alcohol, while unconscious, while being compelled, while mentally sick, while hopeless, or while asleep shall be considered valid. The Code also explains the meaning of the term “bewildered” as a person who is in a situation in which they are unable to comprehend the core of their actions or when they have been disoriented as a result of anger or provocation. According to the Code, conditional Talaq will not be effected as Talaq if it was given with the intention to force someone to do or not to do something. According to the Code of Personal Status, 1976, if Talaq is followed by a number and that number is repeated in a single session then it is taken as a single revocable Talaq. According to the Code, an irrevocable divorce must be pronounced separately on three separate occasions. Re-marriage between the parties with their consent is allowed or permissible only after the first and second pronouncements. In Jordan, Article 98 of the Code of Personal Status, 1976 declares all forms of Talaq revocable except:





- A. The third and final third,
- B. The one before consummation,
- C. The third following consideration,
- D. The renewal of marriage between parties is permissible only if they consent.

**Libya:**

Libya, a theocratic country with the majority of the population of the Sunni sect, passed Family law, 1984 to regulate the matter relating to divorce. In order for the divorce to be recognized by the law, it must be declared by an adult who is physically and mentally capable of doing so in the presence of the other party or their authorized representative. Also, it must be pronounced in court. The divorce shall be deemed invalid according to Article 32 if the divorce in question is underage, suffers from a mental disease, is coerced into filing for a divorce, or does not have a concrete intention to end the marriage. It is essential that the Iddat period be terminated in order for the reversible divorce to go into effect without any delay on the other hand, the consequences of an irreversible divorce begin to manifest themselves immediately. Further, a divorce will have no legal consequence if it comes into effect on some action or omission on the part of the wife or given to bind the wife on oath or restraint her from doing something. Article 35 makes registration of divorce by mutual consent compulsory. In case of divorce by mutual consent, if parties are not able to reach an agreement on the terms of the divorce, then the court may appoint an arbitrator for reconciliation between them. To regulate matters relating to divorce in 1984, Family law 1984 was enacted. According to law, the divorce must be pronounced in court. When the parties are not able to come to a consensus then the court appoints arbitrators to settle the matters between the parties and to bring them to a consensus. According to Article 28 of Family law, divorce dissolves marriage only if a court of competent jurisdiction passes a decree to that effect. In Libya, Family law 1984 lays down essential conditions on which a Muslim husband can dissolve the marriage. According to the law, the husband must have the intention to dissolve the marriage. According to Article 33, divorce will have no effect if:

- A. Takes into effect some action or omission on the part of the wife, or
- B. It abstains the wife from doing something.

It is necessary for an adult who is of legal age and mentally competent to formally proclaim the divorce in the presence of either the other party or their authorized agent in order for a divorce to be recognized legally effective. This is because the divorce must be formally declared by an adult. on top of that, it is really necessary to bring this particular information up during a legal proceeding. In the event that any of



the following circumstances are satisfied, a divorce will be deemed invalid: the individual is underage, suffers from a mental illness, is compelled to file for a divorce, or does not have a clear intention to end the marriage. In the event that the Iddat time has passed, it is possible to have the divorce annulled thereafter. In spite of this, the repercussions of an irrevocable divorce are felt almost immediately. Furthermore, if the grounds for the divorce are linked to the wife's actions or inactions, or if the objective behind the divorce is to compel her to take an oath or prohibit her from particular actions, then the divorce will become invalid in the eyes of the law. Article 35 makes registration of divorce by mutual consent compulsory. In case of divorce by mutual consent, if parties are not able to reach an agreement on the terms of the divorce, then the court may appoint an arbitrator for reconciliation between them. In Libya, divorce followed by a number will be taken as a single revocable divorce until pronounced for the third time. Divorce by mutual consent must be registered in the court. In Libya, divorce is categorized into two kinds which are:

**A. Revocable Divorce:** In the case of revocable divorce marriage subsists until the expiration of Iddat.

**B. Irrevocable Divorce:** Irrevocable divorce dissolves marriage immediately.

According to Article 30, the majority of divorces can be revoked if both parties to the marriage so choose. It is important to note that this provision does not apply to divorces that have been proclaimed a third time, those that take place prior to the consummation of the marriage, those that entail consideration, or those that are expressly classified as irreversible by this law.

### **Iraq:**

The Shia Muslim community constitutes the majority of the population in Iraq, which is a theocratic democracy. The Code of Personal Status, which was enacted in 1959, governs the procedure of getting a divorce. In accordance with the provisions of Article 39 of the Code, a husband who wishes to acquire a divorce from his wife is required to commence legal proceedings before the Court of Personal Status. If due for some reason filing a suit is not possible, the Code provides that the husband must register the divorce. The Code further provides that the certificate of marriage will be valid until cancelled by the Court. This signifies that marriage will subsist even though the husband has pronounced divorce because he has not registered it. of his own free will. The Code of Personal Status, 1959 provides that where Talaq is followed by a number, it will be treated as one and if the woman is divorced thrice on three different occasions then divorce becomes irrevocable and remarriage between parties becomes impermissible. But Talaq comes into effect only when the husband has obtained a decree from the Court of Personal Status

to that effect. If he is not able to obtain a decree, then even registration of divorce in the court during Iddat will also be binding. At last, the Code states that the certificate of marriage will be effective until cancelled. Art. 35 of Code of Personal Status, 1959 also provides that “No divorce shall be effective when pronounced by the persons mentioned below:

1. one who is intoxicated, insane or imbecile, under duress, or not in his senses due to anger, sudden calamity, old age or sickness;
2. a person in death-sickness or in a condition which in all probabilities is fatal and of which he actually dies, survived by his wife.”

### **Tunisia:**

Tunisia is a theocratic state where the majority of the population is Muslims of Sunni sects. In Tunisia, different personal laws are governing different religions for example Christians are governed by French Code, and Jews are governed by their Code. But for Muslim Family law there was no Code in Tunisia. Therefore, on August 3rd, 1956, the Code of Personal Status of Tunisia was enacted. This Code came into force on January 1<sup>st</sup>, 1957, and was amended in 1981. Tunisian Code has brought revolutionary changes in Muslim Personal laws. It has not only prohibited polygamy but also made it punishable with fines and imprisonment. As per the new Code, now divorce has to be done under the supervision of the Court. The husband’s right to dissolve marriage has been curtailed and women have been given equal rights in the matter of divorce by the Code. While determining the divorce case, judges have been given discretionary powers to fix the financial indemnity on either spouse under the Act for divorce to be effective, it must take place before the Court of law. Article 31 of the Code lays down the circumstances in which divorce can be granted and also makes provision for indemnity to the aggrieved party. The court will grant the decree for divorce. The decree for divorce will be granted by the court under the following circumstances:

1. on the application by the husband for reasons enumerated in the Court,
2. on the mutual consent of the parties
3. If the husband insists or the wife requests so.

After conducting a comprehensive analysis of the case, the court will make a decision regarding the precise amount of compensation that must be granted to the victim. After completing a comprehensive investigation and making unsuccessful attempts to bring the parties back together, the court has decided to award a divorce agreement. Once the court has considered all of the facts presented during the reconciliation process, it will make a decision about spousal maintenance. It is necessary for the decree to detail the factors that will be taken into consideration when deciding on extra provisions. The court of first



instance is the one that has the authority to make decisions regarding child custody, child support, domicile, compensation, visiting rights, and any other things that are associated with these decisions. The judges in Tunisia do not have the authority to issue a divorce decree before they have made an effort to bring the spouses back together. In accordance with Article 30, it is necessary to make an effort to bring divorced couples back together. The court must first comply with this criterion in order to avoid releasing a divorce decision before conducting a comprehensive investigation into the disagreements between the parties and failing to mediate a mediation session for reconciliation. A further provision of the article indicates that if the parties are unable to reach a consensus regarding the housing, support, child custody, and visitation arrangements for their children, the court will make the decision. This is the case unless the parties have voluntarily given up their rights. on the occasion of determining the amount of maintenance to be paid, the court will take into consideration all of the relevant issues that have been brought up during the process of reconciliation between the parties. Depending on the decisions made by the court, the decree will include all of the essential components that cannot be appealed. According to the legal system of Tunisia, if a divorce order is obtained prior to the consummation of the marriage, the wife is entitled to fifty percent of the dowry value in addition to compensation for any bodily damage that may have occurred. It is possible that the woman will be entitled to maintain the marital house as recompense for the material harm she has suffered after the Iddat term has passed. It is possible that the amount of compensation will be modified in the event that the circumstances surrounding the divorced lady change, such as when she dies or remarries. It is the responsibility of the heirs of the husband, with the wife's permission, to pay the indemnity in the event that the husband passes away while she is still alive. In the event that consent is not obtained, the court will decide the amount of indemnification that will be provided. It is possible to make the complete payment of the required sum until one year has passed since the death of the ex-husband.

## Conclusion:

In most of the countries listed, *talaq* remains a legal form of divorce, but the rights and process for women vary significantly. Tunisia, Morocco have reformed divorce laws to make the process more balanced and equitable. Jordan, Libya, Kuwait, Iraq, Sudan allow women to seek divorce through mechanisms like *khul'* or judicial procedures. Iran, Afghanistan, Yemen still heavily favor *talaq* as a husband's right, but women have some legal options. Overall, while *talaq* remains prevalent in these countries, women's legal rights to seek divorce have been expanding in some nations through reforms, judicial processes, and alternatives



like *khul'*. However, in many regions, the ability of women to access divorce is still constrained by social norms, political environments, and legal hurdles. The laws governing talaq (divorce) in contemporary Muslim countries reflect a diverse interplay of traditional Islamic principles, modern legal reforms, and evolving social dynamics. This analytical study reveals significant variations in the application of talaq across the Middle East and North Africa, shaped by regional interpretations of Sharia, societal norms, and progressive legal frameworks. While talaq remains a valid form of divorce in Islamic jurisprudence, its regulation and implications vary widely, reflecting the broader socio-political and cultural fabric of each nation. Countries such as Tunisia and Morocco have embraced judicial oversight, ensuring court involvement in divorce proceedings and granting women enhanced rights through mechanisms like *khul'* (wife-initiated divorce). These reforms signify a shift towards gender equity, balancing the rights of both spouses. In contrast, nations like Iran, Afghanistan, and Yemen continue to adhere to more traditional practices, where talaq remains a unilateral prerogative of the husband, often leaving women with limited avenues to seek divorce. The study highlights a gradual yet uneven trend toward modernizing divorce laws, with some countries prioritizing equity and social justice. However, persistent challenges, including societal stigma, patriarchal attitudes, and legal loopholes, often undermine the accessibility of these rights for women. Progressive legal frameworks in certain regions have paved the way for broader gender equality, serving as models for reform in other Muslim-majority countries. The evolving discourse on talaq in Muslim countries also bears implications for Indian Muslim law, emphasizing the need for context-sensitive legal reforms that harmonize religious principles with contemporary realities. The future of talaq laws lies in striking a balance between tradition and modernity, ensuring the protection of individual rights while fostering societal harmony. Ultimately, this study underscores the importance of continued dialogue and reform to achieve equitable outcomes in the context of marital dissolution.