

# Diminished Access to Islamic Divorce for Domestic Violence Survivors

by Veena Bhatia\*

One in three women in India has experienced domestic violence in her lifetime.<sup>1</sup> In fact, in 2018, India was the most dangerous place in the world to be a woman.<sup>2</sup> Now, amid the coronavirus pandemic, many Indian activists predict that the lockdown will lead to a significant increase in gender-based violence there.<sup>3</sup>

For women survivors of domestic violence, divorce is an important exit strategy. However, divorce in India is considerably easier for men to obtain than it is for women. This article examines several dimensions of survivors' diminished access to divorce in India, specifically the domestic-violence-related implications of a Sharia practice allowing easy divorce. Sharia law is the Islamic religion's legal system. In Sharia law, Muslim men may divorce their wives by saying the word "divorce" three times consecutively ("talaq, talaq, talaq"), at any time and without cause. The practice is commonly called "triple-talaq" or "triple-divorce" and only men can perform it. Triple-talaq divorce may occur via phone, email, text, or any form.

Notably, neither Sharia Islamic law nor the Quran mention triple-talaq. Nonetheless, the practice is a long-standing, highly controversial family law practice in India. Opponents of the practice contend that the law marginalizes Muslim women by forcing them to remain in a marriage with men who verbally and emotionally abuse them.<sup>4</sup>

## Triple-Talaq: A "3 Seconds Divorce"

The practice of triple-talaq is highlighted in a recent Hindi-language documentary, "3 Seconds Divorce," that was filmed in Mumbai, India, and released in 2019 on Netflix. The film is an eye-opening account highlighting India's delay in giving Muslim women redress from domestic abuse,

and the relationship between Sharia practice and Indian family law.

The documentary explores the origins of the social movement that led to a ban on instant, oral divorce in India.<sup>5</sup> The film follows the story of a particular Indian woman, Lubna Choudhary, recounting her personal experience as a victim of triple-talaq. Lubna's husband divorced her by saying, "talaq, talaq, talaq," leaving her suddenly and without warning to fend for herself.

As the documentary explains, the Indian Muslim Women Movement (BMMA) is a grassroots organization that works to educate and empower

families. Sharia law permits polygamy. Not only do victims of triple talaq face judgment and sexism from their family and community, but they also have nowhere to turn following the divorce and often have children to take care of as well.

Some men resort to instant divorce with an ulterior motive of harassment. For example, Lubna, the protagonist in the documentary, advocates for a woman whose husband divorced her and then filed in Family Court but then failed to show up — solely for the purpose of harassing his wife. The husband's court filing was part of a maneuver threatening triple-divorce

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Muslim women in India to oppose instant divorce. Countless women like Lubna turn to BMMA to advocate for others who experienced the same hardships. BMMA surveyed about 5,000 Muslim women concerning their views of Muslim Personal Law. This study, conducted across 10 Indian states, was the first to solicit the views of so many Muslim women. BMMA found that oral divorce is an abusive practice that is strongly linked to the manipulation of dowry. Upon marriage, the woman's family pays more than 10 to 15 lakhs (about \$14,500 USD), and the man gains that amount by virtue of the marriage. Unfortunately, many men spend only a short time with their wives, divorce them, kick them out, and then marry again to collect additional dowry.

Another emotionally abusive practice is that some husbands may marry women but fail to disclose that they currently have other wives and

to coerce the woman into making certain concessions. In another case, when a woman filed a police complaint alleging domestic violence, her husband orally divorced her in the same police station as retaliation.

## Significance of Triple-Talaq on India's Family Law System

The documentary sheds light on family law in India.<sup>6</sup> India does not have a uniform codified law on marriage or divorce applying to every citizen.<sup>7</sup> Instead, different groups have different laws. The Hindu majority in India established their law in 1955. Persians have their law based on their own religious text, although they are the smallest minority in India. Christians have their own codified law. But Muslims do not have their own family law — a serious shortcoming because they are the largest minority in India.<sup>8</sup>

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\*Veena Bhatia is a J.D. candidate at the University of California, Hastings College of the Law, and expected to graduate in May 2021. Email: veena.bhatia@uchastings.edu.

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All these groups manifest different practices and beliefs when it comes to marriage and divorce. This diversity explains why it would be difficult for the Indian Parliament to create a uniform law without evoking considerable controversy. The Indian Parliament has made slow progress in reforming the law. However, the judiciary effectuated a major reform in 2017, as will be explained below.

### **Effects of Islamic Divorce on the Family**

The problem of women's diminished access to divorce in India has

and dynamics of domestic violence. Wives' initiation of divorce prompts many husbands to react by threatening, sexually assaulting, or beating their wives in retaliation. The predominant perception, shared by both husbands and imams, is that men have the right to control the actions of their wives, and wives must obey their husbands without question.<sup>13</sup>

### **A Global Comparative Analysis**

The problem of triple-talaq is widespread in other countries that follow Sharia law.<sup>14</sup> Sharia law is not confined solely to India, but is practiced in all communities where Muslims practice Islam. For example, Sharia law operates

filed a petition in the Supreme Court of India for a ban on triple-divorce. BMMA started planning a campaign to collect signatures in support of the petition and planned an event to launch the campaign. Eventually, the All India Muslim Personal Law Board (AIMPLB), a non-governmental organization with a mandate to protect and apply Muslim Law of the Persons in India, intervened in the Court and opposed the petition for the ban.

Nonetheless, nationwide efforts supporting the ban continued. In 2016, BMMA members went to the Women's Commission in Mumbai to submit the signatures they had collected. The advocates collected 50,000 signatures opposing triple-talaq.

In response to this social movement, the Supreme Court of India finally declared (instant) triple-divorce unconstitutional on August 22, 2017. Two years later, in July 2019, the Indian Parliament responded by approving a controversial bill that made the Muslim practice of instant divorce a criminal offense. Men who break the new law can be jailed for up to three years. Supporters of the bill proclaimed it a victory for gender justice. However, the practice of triple-talaq had not ceased despite the Supreme Court's ban and the Parliamentary criminal law reform.

At the time of the documentary (2018), triple-divorce cases continued to surface. Parliament's law that criminalizes triple-divorce remains controversial and unenforced. Members of BMMA continue to fight against domestic violence as well as other issues of women's rights (polygamy, laws of unequal inheritance, and the right of entry for women to places of worship in India).<sup>17</sup>

Law reform efforts opposing triple-talaq have been more successful in other countries. Some of these countries banned triple-talaq decades before India did. Successful campaigns have occurred in Pakistan, Bangladesh, Sri Lanka, Turkey, Cyprus, Tunisia, Algeria, Malaysia, Jordan, Egypt, Iran, Iraq, Brunei, the UAE, Indonesia, Libya, Sudan, Lebanon, Saudi Arabia, Morocco, and Kuwait.<sup>18</sup> Further, these same countries have continued reform efforts to address gender inequality generally.

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many ramifications. One common thread in Islamic divorce is the shame and stigma surrounding both divorce and domestic violence — thereby preventing women from seeking socio-legal interventions, including divorce. When women file legal grievances or seek a divorce, relief is delayed or non-existent because of two facts: women must secure their husband's consent to divorce and Sharia law allows men to remarry without divorcing their other wives.<sup>9</sup> Because triple-talaq is a man's privilege to initiate and it takes effect immediately, the woman's voice in Islamic divorce is shockingly diluted.<sup>10</sup>

When Muslim women seek divorce, they face additional hurdles. Frequently, imams (religious officials) will not grant a divorce unless the woman either has her husband's consent or proves legitimate reasons for annulment. Such reasons may include physical, financial, or emotional harm, infidelity, and sexual dysfunction.<sup>11</sup> In practice, however, proof of these grounds is extremely difficult. As a result, women are trapped in abusive relationships for years.<sup>12</sup>

Problems of access to divorce are magnified for abused wives. Many social workers and survivors note that religious leaders are dismissive and/or uninformed about the seriousness

in North America, Yemen, Australia, England, Pakistan, Indonesia, Malaysia, and Morocco to name a few countries.<sup>15</sup>

In Australia, for example, a Muslim woman's right to initiate a divorce is not always recognized because Islamic Sharia law takes precedence over the official legal system. All-male imams oversee religious divorce with impunity. Similar to Muslims in many countries, Australian Muslims technically have access to civil divorce. But, even after civil divorce, they are still considered married under Sharia law and in the eyes of their family and community unless they secure a religious divorce (which is only possible with the husband's consent). Many imams deny religious divorce to wives if the imams cannot get approval or communication from husbands. Sometimes, husbands bully imams into denying divorces that are sought by wives.

Law reform in several countries, including India, is taking place to address the diminished access to divorce for women generally and domestic violence survivors in particular. To address triple-talaq in India, BMMA set out to intensify its campaign to ban both triple-divorce and polygamy.<sup>16</sup> On February 11, 2015, a woman whose husband had sent her divorce through speed post,

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The above reform efforts reveal just how much India has lagged in introducing divorce reforms. Although recent reforms are a step in the right direction, much progress remains to be effectuated — in India as well as other countries — in terms of improving Muslim women’s rights to divorce generally and especially in cases of domestic violence.

### End Notes

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