

Women's Right to Divorce Within Muslim Personal Law in India

A Study of Khula and Talaq-e-Tafweez

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ABSTRACT

Muslim personal law in India has often been discussed through the lens of male unilateral divorce, especially triple talaq. This focus has left less attention on the ways Muslim women can initiate the end of a marriage. This paper studies two such mechanisms: *Khula*, where a wife seeks divorce by returning the *mahr* or any other agreed consideration, and *Talaq-e-Tafweez*, where the wife exercises a right of divorce through a condition in the *nikahnama*. The paper examines their doctrinal status, treatment in courts, and the social and institutional barriers that limit their use in India.

The paper uses secondary legal and socio-legal sources, including judicial precedents and existing scholarship, along with primary data from telephonic interviews with ten Muslim women from different parts of India who had attempted to go through these divorce processes. Drawing on feminist legal analysis and scholarship on Islamic law, including Vatuk and Menon, the paper argues that Muslim women do have meaningful divorce options within sharia but these rights often remain difficult to exercise in practice. There is a gap between legal entitlement and lived reality, largely due to male-dominated interpretation, economic dependence, limited legal awareness, and weak institutional support.

The paper also discusses reform debates around the *nikahnama*, including efforts associated with Uzma Naheed and the limited role played by the All India Muslim Personal Law Board. It argues that legal reform cannot stop at formal recognition of women's divorce rights and meaningful change requires clearer legal awareness, stronger judicial recognition, practical socio-economic support for women, and reform efforts from within Islamic legal and community institutions.

KEYWORDS *Khula*; *Talaq-e-Tafweez*; Muslim personal law; Islamic divorce law; feminist legal theory; Muslim women's rights; *nikahnama*; *mahr*; *Dar-ul-Qaza*; gender justice; legal pluralism; socio-legal research; structural inequality; Dissolution of Muslim Marriages Act, 1939; Bharatiya Muslim Mahila Andolan; All India Muslim Personal Law Board; model *nikahnama*.

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Preface

This paper began with a conversation at home that I was not meant to be part of. An older woman in the family spoke, about a marriage that had ended long ago, and about how little say she had in its ending. The word *Khula* was mentioned in passing, with the familiarity of something lived but rarely examined. The vocabulary of Muslim personal law had been around me for as long as I can remember, yet I had only heard about it from those applying it, not from those who were governed by it.

The majority of recent writing on Muslim women's rights in India has focused on triple talaq and the law passed against it, but has left other questions in the background. *Khula* and *Talaq-e-Tafweez*, the two main ways in which a Muslim woman can herself end a marriage, have not received the same attention even though they are older than the present debate and continue to shape how personal law works in everyday life. This paper tries to bring them back into focus.

Both *Khula* and *Talaq-e-Tafweez* show that a woman's right to end a marriage is not a new or borrowed idea within Muslim personal law but has long been part of the tradition. Looking at the two provisions together helps move the conversation away from the picture of Muslim women only as someone to be rescued by reform, and towards a clearer view of the rights they have held, used, and at times had to fight for. The paper takes this thread through historical and present-day material, and does not claim to cover everything.

I am grateful to my supervisor, Ms Ambar Ahmad, for the guidance and the space to find my own way through the subject, and for conversations that often helped me see what I was trying to say. I thank my parents for their steady encouragement.

List of Symbols and Abbreviations

Abbreviation	Full Form
AIMPLB	All India Muslim Personal Law Board
BMMA	Bharatiya Muslim Mahila Andolan
DMMA	Dissolution of Muslim Marriages Act, 1939
MPS Act	Muslim Personal Law (Shariat) Application Act, 1937
NGO	Non-Governmental Organisation
R-01 to R-10	Interview Respondent Codes (anonymised)
SC	Supreme Court of India
SCC	Supreme Court Cases (Law Reports)
UCC	Uniform Civil Code
WP	Writ Petition

Glossary of Islamic Legal Terms

Term	Meaning
<i>Dar-ul-Qaza</i>	An Islamic arbitration forum or qazi court that deals with personal law matters, including matrimonial disputes.
<i>Faskh</i>	Judicial annulment or dissolution of marriage through the intervention of a court or recognised authority.
<i>Fiqh</i>	Islamic jurisprudence, referring to juristic interpretation and legal reasoning developed by scholars.
Hanafi	One of the major Sunni schools of Islamic law, followed by many Muslims in South Asia.
Hanbali	One of the four major Sunni schools of Islamic law.
<i>Iddah</i>	The waiting period observed by a woman after divorce or the death of her husband before she may remarry.
<i>Ila</i>	An oath of continence by the husband, recognised in classical Islamic law as one of the mechanisms connected with marital dissolution.
<i>Irtedad</i>	Apostasy, historically discussed in relation to women who left Islam in order to escape unbearable marriages before statutory reform.
Jaafari	A Shia school of Islamic law followed by many Shia Muslims.
<i>Khula</i>	A form of women-initiated divorce in which the wife seeks release from marriage, generally by returning the <i>mahr</i> or another agreed consideration.
<i>Mahr</i>	Dower or mandatory marital payment owed by the husband to the wife under Muslim marriage law.
Maliki	One of the four major Sunni schools of Islamic law, often noted for allowing greater judicial intervention in certain matters of divorce.
<i>Mubara'ā</i>	Dissolution of marriage by mutual agreement between husband and wife.
<i>Nikah</i>	Muslim marriage, understood in Islamic law as a contractual relationship based on consent and reciprocal obligations.

Term	Meaning
<i>Nikahnama</i>	The Muslim marriage contract, which may include terms relating to rights, obligations, maintenance, polygamy, and delegated divorce.
<i>Nikah khawan</i>	A marriage officiant who conducts or records a Muslim marriage ceremony.
<i>Qazi</i>	A religious legal authority or adjudicator who may deal with matrimonial and personal law matters in community forums.
<i>Qur'an</i>	The central religious text of Islam, relied upon as a primary source in Islamic legal and ethical reasoning.
<i>Shafi'i</i>	One of the four major Sunni schools of Islamic law.
<i>Sharia / Shariat</i>	Islamic law or the broader normative path derived from religious sources, including the Qur'an, Sunnah, and juristic interpretation.
<i>Shia</i>	A major branch of Islam, including legal traditions such as the Jaafari school.
<i>Sunni</i>	The largest branch of Islam, within which the Hanafi, Maliki, Shafi'i, and Hanbali schools are commonly recognised.
<i>Talaq</i>	Divorce initiated by the husband under Muslim personal law.
<i>Talaq-e-Biddat</i>	Instant triple talaq, where the husband pronounces divorce three times in one sitting. It was held unconstitutional and void by the Supreme Court in <i>Shayara Bano v. Union of India</i> .
<i>Talaq-e-Tafweez</i>	Delegated divorce, where the husband confers the power of divorce upon the wife through a clause in the <i>nikahnama</i> or another contractual arrangement.
<i>Triple talaq</i>	A commonly used expression for <i>Talaq-e-Biddat</i> , referring to the immediate termination of marriage through three pronouncements of divorce.
<i>Zihar</i>	Injurious assimilation, a classical Islamic law concept connected with marital injury and possible dissolution.

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Introduction

The debate on Muslim personal law in India has long been driven by questions of gender justice, minority rights, and state authority. Within this debate, triple talaq has received the most public, media, and legal attention. Triple talaq refers to a husband pronouncing divorce three times in order to immediately end the marriage. This long-running debate reached a decisive point in *Shayara Bano v. Union of India* (2017), where the Supreme Court held instant triple talaq to be unconstitutional and void. This was followed by the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalised the practice. The judgment addressed a serious injustice faced by Muslim women. However, its wider effects also need attention. By keeping the focus almost entirely on male unilateral divorce, the debate further pushed aside women-initiated forms of separation that already exist within Islamic jurisprudence.

As Subramanian (2014) argues, the intense public and media focus on triple talaq has reduced academic and social attention to the broader range of divorce mechanisms available within Islamic law. *Khula* and *Talaq-e-Tafweez* are two such mechanisms which allow women to bring a marriage to an end, yet they remain poorly understood, not only by the wider public but often by Muslim women themselves. This lack of awareness is not because these mechanisms are marginal to Islamic law but on the contrary, they are rooted in classical Islamic jurisprudence and have also been recognised within Indian legal frameworks. Their limited visibility is therefore better understood as a social, cultural, and institutional problem. Although these rights exist, the interpretive and community structures around Muslim personal law have often prevented them from becoming part of informed public discussion.

This paper examines women-initiated divorce under Muslim personal law in India. It focuses on *Khula* and *Talaq-e-Tafweez* through a feminist legal lens, studying their doctrinal basis and their position within Indian statutes and case law. The paper also identifies the material, social, and institutional barriers that limit women's ability to exercise these rights in practice. In doing so, it breaks down the simplistic stereotype of Muslim women as passive or powerless subjects, and instead explores both the possibilities and limits of women's agency within Islamic legal frameworks (Vatuk, 2017).

The discussion locates *Khula* and *Talaq-e-Tafweez* within the wider social, community, and judicial arenas that shape their practical effectiveness. Alongside legal texts, judicial precedent, and socio-legal scholarship, the paper draws on primary qualitative data from interviews with Muslim women who attempted to access these mechanisms. It argues that Islamic law contains meaningful protections for women in matters of divorce. However, patriarchal interpretation, economic dependence, and limited legal

awareness continue to maintain a significant gap between doctrinal rights and lived reality.

1.1 Theoretical Framework: Feminism, Law, and Structural Limits

This paper approaches Muslim women's divorce rights through feminist legal theory, especially its attention to the limits of law as an instrument of social transformation. Sylvia Vatuk, in *Marriage and its Discontents: Women, Islam, and the Law in India* (2017), makes an important point: the existence of legal rights does not necessarily lead to their actual realisation. Vatuk warns against treating law as a "magic wand," since its transformative capacity depends on the social and institutional conditions that make formal rights usable in practice. The women in Vatuk's study were not always unaware of their rights but rather, their ability to act on those rights was constrained by community pressure, financial dependence, institutional bias, and internalised social norms. In such circumstances, rights may exist formally while remaining ineffective in lived reality.

Nivedita Menon, in *Recovering Subversion: Feminist Politics Beyond the Law* (2004), develops a broader critique of legal reform as a feminist strategy. For Menon, legal reform can produce important formal gains, but it often fails to address the structural conditions that sustain gender subordination, including patriarchal social relations, economic inequality, and dominant ideological formations. Legal victory can therefore create an illusion of transformation while leaving deeper structures largely intact. This insight is especially useful for studying *Khula* and *Talaq-e-Tafweez*. Their recognition within Muslim personal law may show that the tradition is not intrinsically or uniformly discriminatory against women. However, such recognition does not by itself answer the more important question of whether these mechanisms are actually accessible to women.

The framework also draws on feminist jurisprudence more broadly. Okin's analysis of formal and substantive equality is useful here. Formal legal rights are indispensable because they define entitlement and create the possibility of legal claims. However, they cannot by themselves transform deeply rooted patriarchal structures. Rights relating to property, divorce, and bodily autonomy may be formally recognised, but their practical exercise depends on enabling conditions such as economic independence, freedom from coercive social pressure, access to information, and access to responsive legal institutions. Where these conditions are absent, formal rights remain fragile.

Together, Vatuk, Menon, and Okin provide the analytical framework for this paper. Vatuk helps explain why legal rights require enabling social and institutional conditions. Menon shows why legal reform alone cannot be treated as sufficient feminist progress. Okin clarifies the gap between formal equality and substantive equality. This framework allows the paper to examine *Khula* and *Talaq-e-Tafweez* not only as doctrinal mechanisms within Muslim personal law, but also as rights whose effectiveness depends on the social, economic, and institutional contexts in which women attempt to use them.

1.2 Research Methodology

This study uses a qualitative methodology to capture the experiences of Muslim women who had gone through, or attempted to go through, the processes of *Khula* and *Talaq-e-Tafweez*. Telephonic semi-structured interviews were conducted with ten Muslim women from different parts of India who had sought or attempted to seek divorce through these mechanisms. The respondents were located in Delhi, Mumbai, Lucknow, Hyderabad, Kolkata, Bangalore, Ahmedabad, Chennai, Jaipur, and Patna. The interviews were conducted in Hindi or Urdu, depending on the respondent's preference, and each interview lasted approximately thirty to forty-five minutes.

Participants were selected through convenience sampling, using community networks, and personal references. Given the sensitive nature of the research and the difficulty of accessing women who had directly engaged with Islamic legal or community-based divorce processes, a non-probability sampling method was considered appropriate. Verbal consent was obtained from all participants before the interviews were conducted. To preserve anonymity, respondents are referred to through coded identifiers from R-01 to R-10 throughout this paper. In the appendix cases, no names are used. Identifying details, including specific localities, family names, and institutional references, have either been generalised or omitted.

The interview findings are integrated throughout the paper to illustrate the structural, procedural, financial, and social barriers that women face in exercising their divorce rights under Muslim personal law. Interview data are cited using coded respondent identifiers in accordance with the ethical protocols followed in this study.

1.3 Structure of the Paper

The paper is organised as follows:

- **Chapter 2** sets out the doctrinal foundations of *Khula* and *Talaq-e-Tafweez* within classical Islamic jurisprudence, and discusses the diversity of views among the major schools of law.
- **Chapter 3** examines the legal framework governing Muslim divorce in India, including relevant statutory provisions and judicial developments.
- **Chapter 4** analyses the procedural, economic, social, and institutional barriers that obstruct women's access to these mechanisms, drawing substantially on interview data.
- **Chapter 5** discusses prospects for reform, with particular attention to the *nikah-nama* as a site of contractual protection and the limitations of state-only legislative intervention.
- **The Conclusion** draws together the paper's findings and offers recommendations for multi-level reform.

Doctrinal Foundations of Khula and Talaq-e-Tafweez

2.1 Islamic Marriage as Contract

According to the basic principles of Islamic family law, marriage in the form of *nikah* is a contract that may be set aside by mutual consent or in accordance with stipulated rights. Its contractual character is important because it creates not only obligations within marriage, but also recognised mechanisms for its dissolution. Islamic law recognises the husband's unilateral power of *talaq*; however, this does not mean that the wife is incapable of seeking divorce. Rather, the structure of Islamic divorce law contains various exit mechanisms for women as well (Fyze, 2008). Feminist scholars such as Mahmood (1986) have read the Qur'anic reference in 4:21 to marriage as "a firm covenant" as emphasising reciprocal rights and obligations within marriage. This reading supports the view that either party may seek dissolution where the obligations of the other party have been breached.

Zia-us-Salam (2017) makes several observations showing that Islamic law allows different ways in which a marriage can be ended or treated as invalid. However, these different methods are not widely known, especially because public and legislative discussions have mostly focused on triple *talaq*. Apart from *talaq*, *Khula*, and *Talaq-e-Tafweez*, a marriage may also come to an end through *faskh*, or judicial annulment, *ila*, or an oath of continence, *zihar*, or injurious assimilation, and *mubara'a*, or mutual release from marriage by agreement. These different routes show that *nikah* has a contractual nature, and they also challenge the simple idea that Islamic marriage is only a space of male privilege. Therefore, the lack of awareness about these mechanisms is better understood as the result of patriarchal interpretation and practice, rather than as something that necessarily follows from the doctrine itself.

2.2 Khula: The Wife's Right to Redemption

Khula refers to the dissolution of marriage at the instance of the wife, generally involving the return of the *mahr* or dower, or some other consideration, to the husband. Its sanction is traced to the Qur'an in Surah Al-Baqarah (2:229), which contemplates a situation where the wife gives something in order to free herself from the marital bond, without fault attaching to either party. According to Sailasri (2020), the contextualisation of this Qur'anic verse shows that the wife's desire to be freed from marriage should

not be understood as a mere renunciation, but as the exercise of a recognised right. In classical tradition, *Khula* is recognised across all four major Sunni schools of Islamic law, although there is variance on whether the husband's consent is a prerequisite for its legal completion.

In the Hanafi school of thought, followed by the majority of Muslims in South Asia, the husband's acceptance has generally been treated as necessary for completing the wife's offer of *Khula* (Tyabji, 1940). Maliki and Hanbali jurisprudence, however, allow greater scope for judicial intervention where the husband unreasonably refuses to release the wife, as noted by Mahmood (2002). The consideration required for *Khula* has also remained a matter of juristic debate. Ameer Ali (1929) refers to the wife's obligation to return the *mahr*, while also recognising that excessive demands may require regulation by courts. Zia-us-Salam (2017) records instances where husbands demanded sums far beyond the original *mahr*, thereby converting *Khula* into an instrument of financial coercion and transgressing its very standpoint of liberation. Similar concerns were expressed by several respondents in the present study, who described financial demands as one of the major barriers to accessing *Khula* in practice (Interview R-01; Interview R-04; Interview R-09).

The controversy surrounding *Shayara Bano v. Union of India* brought renewed attention to Muslim divorce law in India, although the case itself centred on *Talaq-e-Biddat* rather than *Khula*. The Supreme Court disapproved instant triple talaq and held it to be unconstitutional and void. While this decision was welcomed as a corrective against an arbitrary form of male unilateral divorce, it also reinforced the tendency of public debate to focus overwhelmingly on male-initiated divorce. As a result, mechanisms such as *Khula*, which are recognised within Islamic law as routes for women seeking release from marriage, remained comparatively under-discussed. For many women, *Khula* continues to operate not as the gentle relief contemplated by Islamic moral duty, but as a process marked by financial bargaining, community pressure, and institutional uncertainty. The opposition of conservative bodies such as the All India Muslim Personal Law Board (AIMPLB) to judicial intervention in Muslim personal law further illustrates the contested terrain within which women-initiated divorce rights are situated.

2.3 Talaq-e-Tafweez: Delegated Divorce

Talaq-e-Tafweez, which refers to the husband's conferral of divorce rights upon the wife, is generally carried out through a clause stipulated in the marriage contract. The jurisprudential basis for *Talaq-e-Tafweez*, as presented by Farooq (2023), is inspired by the Prophet's execution of the command in Surah Al-Ahzab (33:28), which offered his wives the freedom to choose between remaining with him or leaving. This verse was interpreted by Sunni jurists as paving the way for the delegation of the power of *talaq* to women. *Talaq-e-Tafweez* is accepted by the four major Sunni schools, namely Hanafi, Maliki, Shafi'i, and Hanbali. However, within the Shia Jaafari school, it remains unrecognised in India, where both Sunni and Shia communities are found (Farooq, 2023).

One feature that distinguishes *Talaq-e-Tafweez* from *Khula* is that the wife is not required to return her *mahr*, nor is any other consideration required to be given to the husband. Furthermore, since the wife exercises a power delegated to her by the husband, rather than seeking dissolution through court action, the divorce may be effected without formal legal proceedings, thereby reducing financial and emotional costs (Ameer Ali, 1929). Carroll (1982) asserts that *Talaq-i-Tafwid* has been a well-settled institution in the Indian subcontinent. It has received consistent judicial favour, both in antenuptial and post-nuptial agreements, with courts endorsing the validity of delegated divorce.

None of this, however, changes the central issue that *Talaq-e-Tafweez* remains largely a dead letter in practice. Three interviewees, R-02, R-05, and R-08, encountered substantial resistance while attempting to invoke *Talaq-e-Tafweez* clauses included in their *nikahnamas*. This resistance took different forms: a husband questioning the validity of the clause, a *qazi*'s refusal to process the divorce, and a lack of family support for enforcing the contractual provision. For R-02, this pointed to a fundamental gap between the theoretical recognition of a right and its practical application.

The Legal Framework in India

3.1 Statutory Provisions

At the very outset, the Muslim Personal Law (Shariat) Application Act, 1937, and the Dissolution of Muslim Marriages Act, 1939, are the two principal instruments of reference concerning Muslim divorce in India. The former provides for the application of Shariat to Muslim marriages and divorces, while the latter sets out the specified grounds upon which judicial dissolution may be instituted at the request of Muslim women. The 1939 Act was especially noteworthy as a reformist intervention. Prior to this Act, the strict Hanafi law applied by Indian courts afforded women very few chances of obtaining judicial divorce and compelled some to apostatise (*irtedad*), to escape unbearable marriages (Fyzee, 2008). The 1939 Act demonstrated the capacity for reform within the Islamic legal tradition by borrowing from the more flexible Maliki jurisprudence (Mahmood, 2002).

It is worth mentioning that neither *Khula* nor *Talaq-e-Tafweez* is specifically recognised as a ground for the dissolution of marriage under the 1939 Act. *Khula* has emerged through judicial interpretation rather than statutory provision, and the enforceability of *Talaq-e-Tafweez* depends on the more general doctrine that contractual stipulations incorporated into the *nikahnama* are legally binding under Indian law, mostly scrutinised through the Indian Contract Act, 1872 (Carroll, 1982). The Family Courts Act, 1984 established family courts to deal with matrimonial disputes and to facilitate more flexible procedures for litigants. Nevertheless, Vatuk (2017) shows how family courts often prioritise reconciliation and preservation of the family over the autonomy of the woman, especially with respect to claims of marital discord that are not supported by physical cruelty. Respondents R-09 and R-10 also spoke of how uncomfortable these family court processes were, and how expensive they became in practice (Interview R-09; Interview R-10).

3.2 Judicial Interpretation

Indian courts have slowly built upon Muslim women's divorce rights under personal law, even though the development has been uneven across jurisdictions. A landmark decision by the Supreme Court in *Shamim Ara v. State of UP* (2002) confirmed that unilateral divorce should not be arbitrary, and that divorce must be supported by reasonable cause and preceded by attempts at reconciliation. Although the judgment in *Shamim Ara* did not expressly assign a name to *Khula*, it unsettled the orthodox as-

sumption that the husband possessed an unchecked and undefined male prerogative. As Flavia Agnes (2011) has argued, the assumption that a Muslim husband had unfettered discretion in matters of divorce was legally inaccurate. Muslim wives also had routes to divorce through judicial decree.

The constitutional challenge in *Shayara Bano v. Union of India* (2017) brought this debate to the foreground, where the majority held the view that the practice of triple talaq violated constitutional principles, including Articles 14 and 21 of the Constitution.

The higher courts in India have also demonstrated a more liberal approach to recognising the right of women to initiate divorce. The judgments in *Zeenat Fatima v. Union of India* (2018) and *Nasra Begum v. Rizwan Ali* (2015) confirmed the rights of women to seek divorce settlements, even without the consent of the husband, thereby approaching questions of *Khula* through non-Hanafi doctrines and constitutional values. This development, however, has remained selective as these decisions have not always operated as binding or uniform authority across jurisdictions, producing what Mahmood (2002) described as interpretive pluralism and leading to legal doubt for women seeking divorce. The coexistence of progressive juridical readings and conservative standpoints from other courts has created considerable incoherence in the legal situation.

3.3 The Nikahnama, Uzma Naheed, and the Failure of Reform

One of the region's most discussed yet least realised sites of reform in Muslim personal law is the issue of the *nikahnama*, or marriage contract. Both Carroll (1982) and Farooq (2020) argue that the marriage contract provides an avenue to legally secure women against a variety of vulnerabilities, including through the delegation of divorce rights by *Talaq-e-Tafweez*, the prohibition of polygynous marriage, and the determination of maintenance. Without such contractual protection, women often have to pursue these rights through court litigation after the marriage has already broken down.

Uzma Naheed's prime contribution to this issue has been the designing of a model *nikahnama* that would incorporate such protective clauses. Naheed's *nikahnama* offers an insight into the contractual architecture of marriage in Islam, and into the possibility that women's rights can be embedded in terms agreed upon at the time of marriage. Such a framework ensures that protections are placed within the relationship before they have to be sought after marital complications arise. The Bharatiya Muslim Mahila Andolan (BMMA) has similarly sought the adoption of model *nikahnamas*, incorporating standardised protective clauses while also educating women about their rights before marriage (Vatuk, 2008).

The All India Muslim Personal Law Board (AIMPLB) had internally deliberated upon *nikahnama* reform for fifteen to twenty years, and yet there was hardly any substantive change. The Board did not manage to propose a model *nikahnama* with *Talaq-e-Tafweez* as a standard provision. The discourse that generated such possibilities never really materialised into a popular movement or a binding institutional practice. Faizan Mustafa, in his public lectures and writings on Muslim personal law reform, has ob-

served that after a point, discussion about the *nikahnama* disappeared into the web of controversies around triple talaq. Mustafa (2017) argues that reforms deriving their authority from Islamic principles, and advocating the promotion of *Talaq-e-Tafweez* as an institutionally accepted and legally secured Islamic right of divorce, have the potential to gain community acceptance and produce long-term change. Such reforms recognise the contract rather than criminalising *nikah*.

Here one could also mention Shireen Moosvi's historiography on women and legal change within Muslim personal law in India. Movements for reform from within, based on scriptural and juristic resources, rather than only external legislative pressure, have often proven more salient in changing social practices. The non-embedding of the progressive *nikahnama* must therefore be traced not only to institutional failure, but also to a hostile political environment where any discussion on Muslim personal law reform is viewed through the lens of state interference in the community.

Farooq (2023) also reports that *nikah* officiants, or *nikah khawans*, generally tend to skip over or complete the *Talaq-e-Tafweez* column in the *nikahnama* without actually explaining its significance to the bride. Even when a couple knows what the mechanism does, cultural norms discourage discussion of divorce during marriage negotiations. Consequently, in practice, a mechanism with the potential to protect a woman in immediate, low-cost situations of domestic violence is nullified at the very moment when it is supposed to come into operation.

Barriers to Accessing Women-Initiated Divorce

4.1 Legal and Procedural Barriers

The absence of codification of Muslim personal law is an important structural impediment in the way of *Khula* and *Talaq-e-Tafweez* for women. In the absence of clear statutory provisions, the outcome is, to a large extent, dependent on the interpretive proclivities of individual judges, religious functionaries, and community structures. Evidential issues are particularly problematic in cases of *Khula*, especially when the need for divorce is based on emotional neglect, incompatibility, or marital breakdown without documented physical cruelty (Agnes, 2011). Interview respondent R-04, coming from a lower socio-economic background and having limited legal literacy, was informed by the local *qazi* that incompatibility was insufficient for *Khula*. She was thereby pressured into an informal separation unaccompanied by any form of divorce documentation (Interview R-04).

Dar-ul-Qazas, or Islamic arbitration councils and *qazi* courts, play a socially pivotal role in adjudicating matrimonial disputes. According to Lemons (2019), they are often institutionally biased towards reconciliation rather than dissolution, even when women state that they wish to leave. As several respondents noted, they met *qazis* who initially refused to process *Khula*, insisted on reconciliation sessions, or imposed unnecessary delays spanning months or years (Interview R-01; Interview R-03; Interview R-07; Interview R-09). The absence of female voices in institutional Islamic arbitration means that women's viewpoints are systematically marginalised in the very forums most directly affecting their lives (Interview R-03).

Complications may also arise from the procedure of *Talaq-e-Tafweez*. Carroll (1982) notes that a wife who exercises her delegated right is, in legal effect, divorcing on behalf of her husband and is therefore required to comply with the legal formalities of *talaq*. This includes observing the *iddah*, as well as pronouncing the divorce in the appropriate manner. Many women are unaware of these legal requirements and may therefore lose the opportunity to exercise a valid *talaq*. Respondent R-08 encountered a *qazi* who questioned the authenticity of the *nikahnama* provision and even suggested periodic renewal of the clause. This represented an additional imposition with no classical basis in Islamic jurisprudence.

4.2 Economic Barriers

The economic aspect of *Khula* introduces a serious structural problem. It makes it possible for the wife to return the *mahr*, or to provide compensation or consideration, in exchange for release from the marriage. Where the *mahr* has already been paid, or where the promised *mahr* was never fulfilled in the first place, the woman may be placed at a considerable disadvantage. Zia-us-Salam (2017) records instances of husbands demanding sums far beyond the original *mahr*, without which they were hesitant to proceed with *Khula*. This transforms exit from marriage into a form of financial coercion. The present study fortifies this narrative through interview data: respondent R-01 was required to return the entire *mahr* amount from her immediate earnings while raising two children, while respondent R-07 had to forgo her claim to deferred dower while also returning the *mahr* (Interview R-01; Interview R-07).

One of the more substantial barriers to the exercise of divorce rights by women is economic dependence, notwithstanding any formal rights provided by law. It is difficult for women who are financially dependent on their husbands or immediate families, who may themselves want the marriage to continue, to gather the resources necessary to sustain protracted legal proceedings, forfeit their *mahr*, and support themselves and their children during the transition. Respondent R-09, a lower-class domestic violence survivor, could not proceed through formal legal channels without the intervention of women's rights organisations, and the process ultimately took over three years. Class, gender, and legal illiteracy intersect in blocking access to divorce rights, and this pattern recurs throughout the interview material (Interview R-04; Interview R-09; Interview R-10).

4.3 Social, Cultural, and Institutional Barriers

In many Muslim communities in India, divorced women are subjected to strong social stigma, which acts as an informal but extremely effective constraint on the exercise of actionable divorce rights. In most instances, women faced insult from relatives, the local community, and religious authorities, who treated marriage dissolution as a disgrace or failure while primarily holding the wife responsible. Basu (2015) argues that women's relationship with law is often a matter of strategic negotiation, restricted by the options available to them. The costs of divorce, including isolation, economic instability, and child-rearing burdens, normally compel women not to exercise the legal right to divorce even when they wish to do so. These social factors are strengthened by internalised religious norms. Vatuk (2017) shows that many women considered divorce an act of shame and religious transgression even though divorce is not legally prohibited.

The institutional dimension of this barrier is sharpened by patriarchal renderings of Islamic law by some religious authorities. Sailasri (2020) records how certain *qazis* and religious scholars define *Khula* as permissible only in conditions of extreme hardship, thereby imposing substantive conditions greater than those found in classical ju-

risprudence upon women's rights. Respondent R-06 encountered a *qazi* who refused to accede to her demand for divorce on the ground that polygamy is allowed in Islam, until a specialist lawyer argued for her right by pointing out that the husband had not maintained equity between wives (Interview R-06).

The absence of standardised procedures across various *qazis* and *Dar-ul-Qazas* means that women often encounter unpredictable institutional circumstances, where outcomes are contingent on the arbitrary personal predilections of the presiding religious authority. Respondent R-03 noted distinct procedural expectations being set forth by different *qazis*, along with a complete lack of standardised documentation for *Khula* proceedings (Interview R-03).

4.4 The Problem of Awareness

Legal awareness may be enhanced through education and free legal aid, and such measures may weaken some of the existing barriers. Solanki (2011) reports that Muslim women may have a general sense of their rights but still remain uncertain about whether *Khula* and *Talaq-e-Tafweez* are legally sanctioned mechanisms. This chasm reflects a wider problem among community leaders, local clerics, and legal professionals, who often have limited exposure to the details of Muslim family law concerning avenues of divorce. This ignorance is not coincidental. It is the result of several decades in which public discussion of Muslim divorce was dominated by triple talaq, while discussion of independent women-initiated divorce mechanisms was largely excluded. Subramanian (2014) points out how research, education, and public discussions remain inattentive to *Khula* and *Talaq-e-Tafweez* because of the dominance of debates over triple talaq.

The inadequacy of this knowledge is also reflected in the interview data. At first, R-01 had no idea about what happens during formal divorce procedures and completely relied on the community process, which turned out to be uninformed and unhelpful (Interview R-01). R-05 found out only after the breakdown of her marriage that the *nikahnama* contained a *Talaq-e-Tafweez* provision, and she had not been made aware of this at the time of her marriage (Interview R-05). R-10 was unaware that she could seek judicial dissolution of marriage through family court intervention until guidance was provided (Interview R-10). Across the interview evidence, one point recurs: women often reach the point of considering divorce without prior education about their rights, without clear guidance from religious or legal functionaries, and without adequate support from community institutions.

Prospects for Reform: The Nikahnama and Beyond

5.1 The Nikahnama as a Site of Reform

A substantial body of reform literature emphasises the *nikahnama* as an important site for strengthening women's rights within Muslim personal law. According to Carroll (1982) and Farooq (2013), the marriage contract can become a legal instrument through which women secure a range of protections at the time of marriage. These may include the delegation of divorce rights through *Talaq-e-Tafweez*, conditions restricting polygamy, and provisions relating to maintenance. Such protections are often far more difficult to obtain through litigation after the collapse of the marital relationship. In this sense, the *nikahnama* may be elevated from a largely ceremonial document to an active instrument of legal protection.

The model *nikahnama* initiatives associated with the Bharatiya Muslim Mahila Andolan (BMMA) and Uzma Naheed are among the strongest embodiments of this reformist approach. By including enabling clauses in marriage agreements, and by requiring brides to be informed of their rights before marriage, these initiatives seek to convert the *nikahnama* into a contract that *de facto* embeds and protects women's rights at the moment of marriage. The inability of the All India Muslim Personal Law Board (AIMPLB) to institutionalise such reform, despite fifteen to twenty years of internal discussion, attests to the difficulty of transforming progressive positions into general practice. This difficulty is particularly acute in the present political climate, where discussions of Muslim personal law reform are often entangled with concerns about state interference, minority rights, and communal identity.

At the same time, reform of the *nikahnama* cannot by itself overcome structural inequality. Agnes (2011) cautions that legal reform remains inadequate where women continue to face economic vulnerability, social stigma, and familial pressure. A woman who knows about *Talaq-e-Tafweez*, but is unable to have it included in her *nikahnama* because of opposition from her family or prospective husband, has not been empowered in any meaningful sense. Reform of the *nikahnama* must therefore be accompanied by socio-economic measures, including access to education, gainful employment, independent financial resources, and changes in community attitudes towards female agency in marriage.

5.2 Limitations of State-Led Reform

Much of the literature views state-led reform of Muslim personal law with caution. Subramanian (2014) and Agnes (2019) argue that interventions based on criminalisation often present Muslim women as victims requiring state rescue, and Muslim men as culturally backward oppressors, rather than addressing the structural constraints that limit women's agency. The criminalisation approach has also been experienced by many within the community as alien to the internal fabric of Muslim personal law. This has allowed conservative voices to frame reform as external interference, thereby strengthening communal defensiveness and making it more difficult to advance progressive reforms from within.

Mir-Hosseini (2006) provides a theoretical basis for an internal reform strategy by distinguishing between the eternal values of the Sharia, such as justice, equity, and human dignity, and the historically contingent constructions of classical *fiqh*. Within this framework, contemporary Muslims are not only permitted but required to develop interpretations of Islamic law that better serve its normative aims, including a woman's entitlement to exit a marriage. Engineer (2001) similarly argues that patriarchal interpretation has overshadowed the Qur'an's basic commitment to gender equality, producing legal understandings that do not fully correspond to the ethical implications of revelation.

A feminist strategy of legal reform is therefore inadequate if it is separated from the larger project of structural transformation. Economic relations, social norms, institutional practices, and ideological formations must also be addressed. This does not diminish the importance of legal reform. Rather, it places legal reform within a broader field of social and normative change. As Menski (2006) argues, reform must engage multiple normative orders at once, including state law, religious doctrine, and social practice. Each of these orders is a site of contestation, but also a possible site of transformation.

Conclusion

The debates on *Khula* and *Talaq-e-Tafweez* reveal a paradox in Muslim personal law in India. A system that has been widely criticised for suppressing women's agency also happens to contain legal mechanisms through which women may seek divorce. However, these mechanisms are frequently ignored, improperly implemented, or little known. Although *Khula* and *Talaq-e-Tafweez* originate in Islamic jurisprudence and have received recognition in parts of Indian legal discourse, their practical availability remains constrained by patriarchal interpretation, lack of legal literacy, economic inequality, institutional uncertainty, and the continuing dominance of triple talaq in public debate.

The theoretical framework of this study has shown that the formal recognition of rights is a necessary but not sufficient condition for women's empowerment. Vatuks (2017) insists that law cannot always serve as a panacea, a point further developed by Menon (2004), who warns that legal reform can too easily become a substitute for deeper structural transformation. Okin's analysis of formal and substantive equality similarly helps mark this distinction. The gap between law on the books and law in action is shaped by economic, social, and institutional conditions that must be addressed together.

The interview data gathered for this study provide a sharp empirical portrait of how wide this gap can be. Women seeking *Khula* reported *qazis* who refused or delayed proceedings, families that pressured them toward reconciliation, and financial demands that converted a process of release into one of coercive bargaining. Women attempting to rely on *Talaq-e-Tafweez* encountered institutional resistance, including challenges to the validity of contractual clauses and uncertainty over whether religious authorities would recognise them. Across the testimonies, respondents described emotional exhaustion, financial strain, and the profound opacity of divorce procedures (Interview R-01 through R-10).

The failure to institutionalise a progressive *nikahnama* further illustrates the limits of reform in practice. Despite nearly two decades of deliberation by the All India Muslim Personal Law Board, the work of Uzma Naheed, the Bharatiya Muslim Mahila Andolan's model *nikahnamas*, and Faizan Mustafa's appeal for internal reform, *Talaq-e-Tafweez* has not become a standard or widely enforced contractual protection. This failure is not merely procedural but instead reflects the deeper difficulty of translating doctrinal possibility into social and institutional practice.

Meaningful reform must therefore proceed at multiple levels. *Khula* and *Talaq-e-Tafweez* require clearer legal recognition, more consistent judicial enforcement, and greater procedural certainty. Judges, lawyers, *qazis*, *nikah khawans*, families, and women themselves must be made aware of the doctrinal and legal basis of these

mechanisms. The *nikahnama* must be transformed from a largely formal or ceremonial document into a meaningful instrument of contractual protection. These interventions cannot operate in isolation but instead engage state law, religious doctrine, and social practice together, in the spirit of the pluralist approach advanced by Menski (2006).

Merely recognising women's divorce rights under Islamic law is therefore not the end of reform. It is the beginning of the work required to give those rights practical, social, and institutional substance.

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Primary Data Collection

Annexure A: Interview Methodology

The research focused on analysing and synthesising the subjective experiences of Muslim women with respect to *Khula* and *Talaq-e-Tafweez* in India. I gathered women's accounts through telephonic interviews in order to explore the procedural, social, and legal aspects of divorce under Muslim personal law.

Sampling Method

The study employed convenience sampling, through which participants were contacted directly. Since Islamic divorce processes can be difficult to study because of their sensitive and confidential nature, a probability-based sampling method could not be used. Participants were selected on the basis of accessibility, restrictions on approaching women known to have engaged with legal processes within the Islamic framework, and the difficulty of locating suitable respondents willing to discuss the issue. Responses were gathered primarily through community networks, legal aid contacts, and personal referrals.

Data Collection Process

Ten telephonic interviews were conducted after obtaining consent from the respondents. The interviews took place through telephone calls and each interview lasted approximately thirty to forty-five minutes. Based on the respondents' preferences, the interviews were conducted mainly in Hindi and, in some instances, in Urdu. Verbal consent was obtained before commencing each interview. Respondents were assured of confidentiality and informed that all interview material would be anonymised. References to the ten interviews in this document are made through coded identifiers, from R-01 to R-10. In Annexure C, the case summaries also use these coded identifiers, and no names appear.

Interview Guide

The semi-structured interview guide covered the following themes:

1. Background and circumstances leading to divorce
2. Knowledge and awareness of *Khula* and *Talaq-e-Tafweez*
3. Procedural experiences with *qazis*, family courts, or legal institutions
4. Family and community pressures
5. Financial implications and *mahr* arrangements

6. Legal obstacles and institutional barriers
7. Social stigma and psychological impact
8. Suggestions for reform

Ethical Considerations

All interviews were anonymised, details including specific place names, relatives' names, and institutional references have been disguised or omitted to protect the emotional well-being, privacy, and everyday security of the respondents. Participation was voluntary, and respondents were free to withdraw from the research process at any stage.

Limitations

The findings cannot be generalised to all Muslim women in India as the sample size is small. The study represents the experiences of a group of women who were willing to discuss a highly sensitive topic. Regional and sectarian diversity within the Muslim community may also limit the extent to which broader conclusions can be drawn from the findings.

Annexure B: Respondent Demographic Profile

Table 1: Demographic Characteristics of Interview Respondents ($N = 10$)

Code	Age	Location	Sect / School	Socioeconomic	Children	Divorce Type Sought
R-01	30-35	Delhi	Sunni Hanafi	Lower-middle	2	Khula
R-02	25-30	Mumbai	Sunni Hanafi	Middle class	0	Talaq-e-Tafweez
R-03	40-45	Lucknow	Shia Ithna Ashari	Middle class	3	Khula
R-04	35-40	Hyderabad	Sunni Hanafi	Lower class	2	Khula
R-05	28-33	Kolkata	Sunni Hanafi	Middle class	1	Talaq-e-Tafweez
R-06	45-50	Bangalore	Sunni Shafi'i	Upper-middle	4	Khula
R-07	30-35	Ahmedabad	Sunni Hanafi	Lower-middle	2	Khula
R-08	25-30	Chennai	Sunni Shafi'i	Middle class	0	Talaq-e-Tafweez
R-09	38-43	Jaipur	Sunni Hanafi	Lower class	3	Khula
R-10	32-37	Patna	Sunni Hanafi	Lower-middle	2	Khula

Note: Age ranges and locations have been generalised to protect respondent anonymity. No respondent names are disclosed in this paper, including in Annexure C.

Annexure C: Case Summaries

The following synopses are case summaries constructed from the raw interview data. They have been abbreviated and described where appropriate to preserve confidentiality. Respondents are identified only by code, to protect their identities; this does not alter the substance of the data.

Respondent R-01

Respondent R-01 was in her early thirties, had two children, and was facing marital conflict when she sought *Khula* through a local *qazi*. She was not aware of the procedure at all and therefore had to depend on guidance from the community. However, the *qazi* had limited experience with such cases and eventually referred the matter for reconciliation. After several reconciliation sessions over six months, she was required to give up her *mahr* completely. Along with this, she also lost her maintenance claims, faced pressure from the community to return to her husband, and experienced significant stigma within her own community. She later sought legal advice so that the divorce could be resolved through the family court. Her main concern was the financial burden of returning the *mahr*, especially while she also had responsibility for her children.

Respondent R-02

Respondent R-02 was a young working woman in her late twenties from Mumbai who tried to use her right to *Talaq-e-Tafweez* under her marriage contract. However, her husband challenged this and claimed that she could not use the provision unless he gave express permission at the time of divorce. She then approached a *qazi*, but he refused to finalise the divorce through *Talaq-e-Tafweez* because he was not familiar with the practice. As a result, she faced a lot of frustration because of procedural confusion and the lack of proper institutional support. In the end, she had to take the matter to the family court, which recognised her right only after a long legal process. Her case therefore shows the gap between what is recognised in writing and what is actually applied in practice.

Respondent R-03

Respondent R-03 was a woman from Lucknow in her early forties, belonging to the Shia community, who applied for divorce through the *Khula* procedure. She had faced severe mistreatment through much of her married life. She was drawn into both civil court and Islamic adjudicatory processes. The *qazi* summoned her family members to give statements, and reconciliation proceedings were initiated. Financial matters were heavily disputed, as her husband demanded a large amount of compensation. She experienced considerable mental distress, along with social ostracism. A non-governmental organisation eventually provided legal assistance in relation to her divorce. She also pointed to the absence of standardised procedures among different *qazis* and the marginalisation of women in institutional decision-making.

Respondent R-04

Respondent R-04 was a woman in her late thirties from a low socio-economic background in Hyderabad who faced severe obstacles in obtaining *Khula*. Limited literacy

and lack of awareness of the legal system made her case more difficult. The local *qazi* insisted that she provide specific reasons for divorce and treated incompatibility as insufficient. This placed pressure on her to accept an unofficial separation without any legal documentation. Her financial dependence on her family further limited her ability to pursue formal proceedings. She also noted that the social stigma attached to such cases made it difficult for her to seek better employment.

Respondent R-05

Respondent R-05 was a professional woman in her early thirties from Kolkata who tried to use *Talaq-e-Tafweez*, which had already been written into her marriage contract. However, her husband's family tried to stop the process by saying that the clause was only symbolic and did not have any legal force. She then approached a *qazi*, who accepted that the provision existed, but was still hesitant to proceed because he hoped that a settlement could be reached. Later, she filed a case in the family court, where *Talaq-e-Tafweez* was recognised as an enforceable procedure, and the clause in the *nikah-nama* was accepted. The process lasted for more than a year and also involved significant legal expenses. She therefore emphasised that Muslim women should be made aware of their contractual and legal rights at the time of marriage.

Respondent R-06

Respondent R-06 was a woman in her late forties from Bangalore and was the mother of four children. She sought *Khula* because her husband had entered into a polygamous marriage, which created serious difficulties in their marital life. However, the negotiations became complicated because questions of *mahr*, maintenance, and child custody were also involved. At first, the *qazi* refused to grant *Khula* by saying that polygamy is permitted under Islamic law. She then hired an advocate who specialised in Muslim personal law, and the advocate argued that divorce was justified because the husband had failed to treat his wives with fairness and equality. The proceedings therefore moved between informal religious decision-making and formal court processes. She also complained that there are no codified and uniform procedures for *Khula*, and argued that custody of her children should remain with the mother, as she was the appropriate guardian.

Respondent R-07

Respondent R-07 was a woman in her early thirties from Ahmedabad who sought *Khula* after her marriage broke down following her husband's migration for employment and prolonged absence. The *qazi* required proof that her husband had stayed away and was unwilling to maintain the marital bond. She also faced strong family pressure, including interference from her in-laws, to accept an informal arrangement rather than pursue formal divorce. She gave up both her *mahr* and deferred dower. Her ability to exercise free choice was constrained by community mediation, and she finally obtained divorce after a two-year struggle marked by several procedural irregularities.

Respondent R-08

Respondent R-08 was a twenty-nine-year-old married woman from Chennai who attempted to invoke *Talaq-e-Tafweez* after marital breakdown. The *Talaq-e-Tafweez* clause had been included in her *nikahnama* at the insistence of her father. Nevertheless, the *qazi* questioned the existence of the clause and suggested that it required periodic renewal. Her husband was relatively inactive in the process but claimed monetary compensation. Although the legal process moved more smoothly because of mutual consent, institutional uncertainty and social judgment still affected her experience. She stated that *Talaq-e-Tafweez* remains one of the least known and least used mechanisms because of weak enforcement and limited institutional support.

Respondent R-09

Respondent R-09 was a woman in her early forties from Jaipur and from a low socio-economic background. She sought *Khula* after many years of domestic violence. Initially, she approached a closely knit community panchayat, which attempted ineffective conciliation. When she later approached a *qazi*, she was advised to pursue reconciliation rather than *Khula*. Limited financial resources constrained her ability to approach the formal legal system. During the process, however, she received support from a women's organisation, which provided legal help and counselling. After three years, she described herself as belonging to a particularly vulnerable group of economically weakened women within the present system.

Respondent R-10

Respondent R-10 was a woman in her mid-thirties from Patna who sought *Khula* because her husband did not grant *talaq*, even though both of them had agreed to separate. However, the *qazi* asked her to explain why she wanted *Khula* and expected reasons beyond simple incompatibility. She was also pressured into accepting a low settlement so that the *Khula* process could move forward more easily. Although family mediation was attempted, it did not work and only made her struggle for divorce longer. In the end, the family court recognised her right to civil dissolution, but the whole process was emotionally draining and financially exhausting for her. She therefore stressed the need for clearer procedures and better legal awareness among Muslim women about their rights in divorce.

Annexure D: Interview Coding Framework

The interviews were coded according to the following thematic categories for analysis:

Table 2: Thematic Coding Framework for Interview Analysis

Theme	Sub-categories
1. Procedural Knowledge and Awareness	Pre-existing knowledge of <i>Khula</i> / <i>Talaq-e-Tafweez</i> ; sources of information; misconceptions and gaps in understanding
2. Institutional Interactions	Experiences with <i>qazis</i> and <i>Dar-ul-Qazas</i> ; family court proceedings; legal representation and aid
3. Financial Dimensions	<i>Mahr</i> negotiations and returns; maintenance and dower claims; economic dependency and hardship
4. Social and Familial Pressures	Family intervention and mediation; community stigma and social ostracisation; impact on children
5. Procedural Barriers and Delays	Documentation requirements; reconciliation periods; inconsistent application of procedures
6. Gendered Power Dynamics	Male authority in religious institutions; burden of proof on women; consent and agency in divorce processes
7. Legal Pluralism and Forum Shopping	Navigation between religious and civil systems; conflicts between personal and statutory law; judicial attitudes and interventions
8. Reform Recommendations	Suggested procedural improvements; awareness and education needs; institutional accountability

Note: All mentioned data have been anonymised or omitted to protect the privacy and confidentiality of participants. The case summaries retain narrative elements based on interview data while excluding respondent names entirely, thereby preserving anonymity and confidentiality. No respondent name appears in the main text; instead, coded identifiers from R-01 to R-10 are used for reference.