



Instant Divorce and the Protection of Women's Rights in Islamic Family Law: A Comparative Study between Indonesia and India

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Abstract

The practice of instant divorce or triple talaq constitutes a form of unilateral divorce that remains controversial within Islamic family law, particularly in relation to the protection of women's rights. Although both Indonesia and India share a common spirit of safeguarding women, their respective legal approaches demonstrate fundamental differences. This study aims to analyze the legal regulation of instant divorce in both countries, identify the forms of legal protection afforded to women who are victims of instant divorce, and compare the effectiveness of the legal approaches used in ensuring justice. This research employs a qualitative method using a normative-juridical approach and comparative study. Data were collected from statutory regulations, court decisions, legal literature, and previous studies. The findings reveal that Indonesia legally rejects instant divorce and mandates that divorce proceedings must go through the religious court, thereby enabling more comprehensive protection for women through mechanisms such as mediation and judicial supervision. Conversely, India adopts a criminalization approach, explicitly banning the practice of instant divorce through the 2017 Supreme Court ruling and the enactment of the 2019 law. Both approaches have their respective strengths and limitations; however, they share a common goal of balancing Islamic legal principles with the values of gender justice. This study concludes that protecting women who are victims of instant divorce requires not only the force of formal legal frameworks but also sustained social education and support systems.

Keywords: Islamic Family Law, India, Indonesia, Legal Comparison, Women's Protection, Instant Divorce.

ARTICLE INFO

Article history:

Received

Nov 05, 2025

Revised

Okt 05, 2025

Accepted

Jul 16, 2025

Published by
Website

CV. Creative Tugu Pena

<https://attractivejournal.com/index.php/bil>

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INTRODUCTION

Islamic family law plays a central role in regulating relationships among members of the Muslim family, including in matters of marriage and divorce (Arrasyid dkk., 2024). One of the most sensitive and complex issues within this framework is the practice of talaq, particularly instant talaq or triple talaq a form of divorce whereby a husband pronounces divorce three times in a single sitting, thereby immediately ending the marital relationship without a gradual process or mediation. This practice has sparked various debates from the perspectives of fiqh, social justice, and human rights, especially concerning the fate of women who fall victim to such divorces (Kumar Yadav dkk., 2023).

A common problem arising from the practice of instant talaq is the potential for injustice toward women (Hajjar, 2004). In many cases, instant talaq is carried

out unilaterally, abruptly, and without court involvement, leaving women in a state of legal uncertainty and unequal protection of rights. When the legal system fails to provide adequate protection, women become the most adversely affected party emotionally, socially, and economically (Rawat & Namitha, 2021).

In the Indonesian context, the practice of talaq is strictly regulated within the religious court system. The Marriage Law and the Compilation of Islamic Law require that divorce must be processed through the court, rendering instant talaq legally ineffective in formal terms (Muslimin, 2005). Nevertheless, in practice, many cases of talaq-based divorce continue to occur outside the judicial process, exposing a gap between normative legal provisions and social realities (An-Na'im, 2002).

In contrast, in India, instant talaq has become a national issue that has sparked prolonged debate within society and the legal system. Following significant public pressure and women's rights campaigns, the Supreme Court of India in 2017 ruled that triple talaq is unconstitutional. This decision was reinforced by the Indian government through the enactment of the Muslim Women (Protection of Rights on Marriage) Act in 2019, which criminalized the practice (Tripathi & Kumar, 2024). While regarded as a progressive step, this policy also introduced new dilemmas, particularly concerning the criminalization of marital relationships and its impact on Muslim families (Huis, 2015).

The specific problem addressed in this study is how the protection of women's rights against instant talaq is regulated in the respective legal systems of Indonesia and India, and how effective the legal approaches in each country are in preventing injustices against Muslim women (Lestari, 2024). This study examines the applicable legal mechanisms, their implementation, and the challenges faced by women who experience instant talaq in both contexts.

Previous research by Melkiati, (2025) titled "*Talak Tiga Perspektif Hukum Perkawinan Indonesia: Kritik Terhadap Representasi Dalam Film Talak 3 (2016)*," explains that although Indonesian law does not recognize triple talaq conducted outside the court, such practices persist in society. The study recommends improving legal literacy and enforcing religious court regulations, but does not offer a comparative analysis with other countries.

Meanwhile, Siddiqui, (2021) in her article "*Triple-Talaq and the Political Context of Islamic Law in India*," argues that the criminalization of instant talaq in India presents unique challenges, as the approach is punitive rather than oriented toward mediation or strengthening of family institutions. Her research focuses on Indian legal policy without exploring alternative approaches, particularly in Muslim-majority countries such as Indonesia.

These two studies reveal a research gap that has yet to be extensively explored: a comparative approach to the legal systems of two countries with differing social, political, and legal backgrounds. Such comparative analysis is essential to assess the extent to which legal systems can adapt Islamic principles of justice within a contemporary context and to identify more effective models of legal protection for women.

This study aims to address this gap by critically exploring the differences and similarities in the regulation and implementation of instant talaq laws between Indonesia and India, with a particular focus on safeguarding women's rights. By

examining these two distinct legal contexts, this research seeks to identify a more just, humane, and contextually appropriate approach to addressing talaq issues in the Muslim world.

This inquiry is significant for strengthening women's positions in Islamic family law and for promoting policy formulation that is more responsive to gender justice values. The comparative approach also provides space for global reflection on Islamic law one that does not solely adhere to textual interpretations but also considers societal needs and universal human values.

RESEARCH METHOD

This study employs a qualitative method with a normative-juridical approach and a comparative legal analysis, as adapted from established legal research methodologies (Arikunto, 1983). The normative-juridical approach is used to examine and interpret the legal provisions governing the practice of instant *talaq* and the protection of women's rights under Islamic family law in Indonesia and India. This includes the analysis of statutory regulations, jurisprudence, and scholarly opinions within both legal systems. The comparative study complements this by identifying the similarities and differences in legal frameworks and their implementation in each country. Through this integration, the study assesses how normative legal principles are applied, compared, and interpreted to evaluate the effectiveness of each system in safeguarding women who are victims of *talaq*.

The data used in this study consist entirely of secondary sources, including legal documents such as legislation, court decisions, and religious fatwas, as well as academic literature—scholarly articles, books, and relevant prior research reports. The data analysis technique is descriptive-qualitative, focusing on the doctrinal interpretation of legal norms and their practical application within broader socio-legal contexts. In addition, the analysis incorporates socio-cultural and legal-political factors in each country to ensure contextual understanding. To strengthen its interpretive framework, this research also considers the principles of gender justice and *maqāṣid al-sharī'ah* (the higher objectives of Islamic law) as underlying perspectives in evaluating the effectiveness of legal protection afforded to women.

RESULT AND DISCUSSION

How is Instant Talaq Regulated in the Islamic Family Law Systems of Indonesia and India?

The legal regulation of instant talaq within the Islamic family law systems of Indonesia and India reflects fundamental differences in how each state approaches this highly sensitive issue of divorce. In Indonesia, talaq is strictly regulated under Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). According to Article 115 of the KHI, talaq must be filed through the Religious Court, which serves as a mediator to protect the rights of the wife and children during the divorce process. This approach affirms that instant talaq carried out outside judicial procedures has no legal validity and is not formally recognized (Kementrian Agama RI, 2021).

The Indonesian Islamic family law system prioritizes the protection of women by requiring formal legal procedures and mediation before a divorce can be legally granted. This mechanism aims to prevent unilateral and hasty divorces that may disadvantage women, particularly in economic and social terms (Vatuk,

2019). The Religious Court has the authority to assess the grounds for divorce and to issue balanced decisions to ensure that women's rights are protected, including rights to maintenance (nafkah), child custody, and the division of marital property (Sonbol, 1996).

Despite the clarity of formal regulations, in practice, cases of instant talaq conducted informally still occur in Indonesian communities, especially in areas with limited understanding of religious legal norms (Arifin dkk., 2025). This presents a significant challenge because, although such divorces are legally invalid, the women affected often suffer serious social consequences without effective protection. Therefore, the implementation of the law must be accompanied by comprehensive legal and social education to ensure that divorce procedures are properly followed (Kementrian Agama RI, 2021).

On the other hand, India faces a different yet equally complex set of challenges concerning instant talaq among its Muslim population. Prior to 2017, instant talaq was permitted under Muslim personal law in India, allowing a husband to pronounce talaq three times in a single instance (Sezgin, 2017). This practice drew criticism from various women's rights groups and activists who argued that it severely harmed women and contradicted the principles of gender equality (Kausar, 2025).

In August 2017, the Supreme Court of India issued a landmark ruling declaring instant talaq invalid and unconstitutional. The Court held that the practice violated fundamental human rights and the right of Muslim women to fair treatment within marriage. This decision marked a pivotal moment in the reform of Islamic family law in India and paved the way for stronger legal measures (Supreme Court of India, 2017).

Subsequently, in 2019, the Indian government passed the Muslim Women (Protection of Rights on Marriage) Act, which officially outlawed instant talaq and introduced criminal sanctions for its perpetrators. This legislation reinforced the Supreme Court ruling and signaled a shift in legal paradigm by combining the protection of women's rights with criminal law enforcement. However, this approach also faced criticism for potentially undermining family unity and being susceptible to political misuse (Parlemen India, 2019).

The comparison between Indonesia and India reveals two markedly different legal approaches to addressing instant talaq. Indonesia emphasizes a legal process based on mediation and the protection of women's rights through the religious court mechanism, while India adopts a criminalization approach with strict penal sanctions. Each model has its own strengths and limitations, but both aim to improve the conditions of Muslim women who are vulnerable due to the practice of instant divorce (Kementrian Agama RI, 2021; Supreme Court of India, 2017)

Thus, the legal regulation of instant talaq in both countries reflects not only religious norms but also dynamic adjustments to social demands and human rights standards. This comparative study is essential for understanding how differing legal approaches can impact the protection of women's rights within Muslim families. Balancing sharia principles with the protection of human rights emerges as a key element in the development of a just and dignified Islamic family law for the future.

Legal Protection for Women Victims of Talaq in Indonesia and India

Legal protection for women who are victims of talaq in Indonesia is grounded in the principle of safeguarding women's rights, as outlined in Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). The religious court system plays a central role by requiring that all divorce proceedings be processed through the court. As a result, a unilateral declaration of talaq without proper legal procedure is considered invalid. The religious courts also ensure that women's rights are upheld in matters of financial maintenance (nafkah), division of marital assets, and child custody (Sezgin, 2017). These protections aim to prevent women from suffering social and economic disadvantages following divorce and to mitigate the psychological distress often experienced by victims of triple talaq (Rahmawati dkk., 2023).

Moreover, the Indonesian government and religious institutions actively promote legal education to raise public awareness of lawful divorce procedures. Various programs on family law education and community outreach have been developed to reduce informal divorce practices (Cammack et al., 2015). The involvement of women's advocacy organizations and family support centers further strengthens protection by offering social and psychological assistance. Consequently, Indonesia's legal protection model integrates juridical mechanisms with preventive and rehabilitative approaches to support women affected by talaq (Siddiqui, 2021).

In contrast, India's legal protection for women affected by triple talaq has undergone a profound transformation following the Supreme Court's 2017 ruling, which declared the practice unconstitutional (Parveen, 2024). This milestone was followed by the Muslim Women (Protection of Rights on Marriage) Act of 2019, which formally prohibits and criminalizes instant talaq. The legislation aims to deter offenders while offering women legal safeguards against unilateral divorces conducted outside judicial procedures (Rehman, 2007).

However, the criminalization approach has generated extensive debate among scholars and civil society. Critics argue that an overly punitive focus may intensify family conflict and does not necessarily lead to constructive outcomes for women. Nonetheless, the law grants women the right to initiate legal claims, seek financial relief, and obtain judicial protection. Additionally, numerous non-governmental organizations in India provide legal aid and social support to Muslim women affected by talaq (Islam, 2020).

A comparison of the two legal frameworks reveals distinct strategies for protecting women. Indonesia emphasizes a judicial oversight model, requiring court approval and mediation before a divorce is recognized. This system enables women to assert their rights within a comprehensive religious-legal structure. Meanwhile, India adopts a prohibitive and penal model, seeking to eliminate triple talaq through criminal sanctions (Nafisah dkk., 2024).

Nevertheless, both systems face implementation challenges. In Indonesia, limited legal awareness and uneven enforcement, particularly in rural and remote areas, allow informal talaq practices to persist. In India, the criminalization policy remains controversial due to concerns about misuse and its limited ability to resolve deeper social and gender-related inequalities (Kementrian Agama RI, 2021; Suryani dkk., 2024).

Overall, both countries strive to balance religious values with principles of justice and human rights, albeit through different mechanisms. Indonesia's approach—anchored in judicial procedures and mediation—offers a more restorative and integrative model, emphasizing women's access to justice and family stability. India's approach, while more punitive, represents a strong legal deterrent against unilateral divorce. Therefore, a combination of legal enforcement and social empowerment appears essential to ensuring that protection for women victims of *talaq* is both effective and sustainable within each country's socio-cultural context.

Comparative Analysis of Legal Approaches to Instant Talaq in Indonesia and India

The legal approaches adopted by Indonesia and India in addressing the issue of *instant talaq* share a fundamental similarity: both acknowledge that the practice causes significant harm to women and requires specific legal regulation to safeguard their rights. Both nations recognize that *talaq* is not merely a matter of family law but also a social and human rights concern, necessitating stronger protections for Muslim women, who are often the most vulnerable in divorce cases. With this shared understanding, both Indonesia and India have sought to regulate *talaq* in ways that prevent unilateral harm to women.

However, the two countries diverge significantly in the implementation of their legal frameworks. Indonesia adopts a normative-judicial model, mandating that all divorce proceedings, including *talaq*, be conducted through the Religious Court. This system emphasizes mediation and comprehensive protection of women's rights throughout the process, thereby rendering any extrajudicial *talaq* legally invalid. Consequently, this approach provides women access to formal justice mechanisms and social protection while preventing abrupt divorces that could inflict psychological or economic harm (Suryani dkk., 2024).

In contrast, India has taken a more stringent legislative approach by criminalizing *instant talaq* under the Muslim Women (Protection of Rights on Marriage) Act of 2019. By categorizing the practice as a criminal offense, India aims to deter it entirely and send a strong message against gender-based discrimination within Muslim families (Nurjanah dkk., 2024). This approach is direct and punitive, designed to eliminate *talaq* without resorting to prolonged religious court procedures. Nonetheless, this strategy has provoked debate, as criminalization may create new social tensions and does not necessarily guarantee the full restoration of women's rights.

The effectiveness of these approaches in ensuring justice for women also varies. Indonesia's court-based model, which prioritizes mediation and post-divorce protection, is considered more effective in providing comprehensive safeguards. It not only formally prohibits *instant talaq* but also ensures women's access to financial maintenance and child custody. However, its implementation remains constrained by socio-cultural barriers and varying levels of legal awareness, especially in rural areas where formal legal procedures are often overlooked (Melkiati, 2025).

Meanwhile, India's criminalization model offers a clear legal deterrent against a practice harmful to women, yet it does not automatically yield holistic social justice. Critics contend that a punitive focus may exacerbate family conflict

and lacks mechanisms for peaceful dispute resolution (Sharma, 2024). Furthermore, the success of criminal enforcement depends heavily on the capacity of law enforcement agencies and women's access to legal assistance, both of which remain limited in practice (Fadah dkk., 2025).

Similarly, both countries attempt to integrate Islamic legal principles within their respective national frameworks, albeit through different mechanisms. Indonesia incorporates Islamic law through its religious court system, while India retains Muslim personal law within a secular legal framework, supplemented by targeted legislative reforms. This demonstrates that protecting women from *talaq* is a cross-jurisdictional issue requiring context-sensitive and adaptive solutions (Ismail & Ja'far, 2024).

In conclusion, although Indonesia and India employ different strategies, both seek to uphold justice and gender equality within their unique legal and cultural contexts. Indonesia's court-centered model appears more effective in practice because it integrates preventive, procedural, and restorative mechanisms that directly safeguard women's rights. India's criminalization model, while symbolically strong, risks over-reliance on punitive justice without ensuring social reconciliation. Thus, the Indonesian approach offers a more holistic balance between legal enforcement and social protection, while India's experience highlights the importance of combining legal deterrence with empowerment and access to justice for women.

CONCLUSION

Based on the analysis of the three research questions, it can be concluded that the regulation of *instant talaq* in Indonesia and India shares a common objective: to uphold women's rights and gender justice, though each country applies a distinct approach shaped by its legal system and socio-cultural context. In Indonesia, *instant talaq* has no legal validity, as a divorce is recognized only after a formal hearing in the Religious Court. This mechanism enables women to assert their rights and obtain protection from unilateral divorces that could cause social, economic, or psychological harm. By contrast, India adopts a prohibitive stance by criminalizing *instant talaq*, reinforced by the Supreme Court's 2017 ruling and the 2019 Act, which defines the practice as a punishable offense.

In terms of women's legal safeguards, Indonesia relies on a mediation-oriented judicial process, where the Religious Court plays a central role in ensuring women's access to maintenance, child custody, and post-divorce entitlements. This model offers a comprehensive framework for gender justice, though it continues to face challenges in communities where informal *talaq* practices persist. India, on the other hand, ensures immediate legal deterrence by outlawing *instant talaq* and imposing criminal sanctions. Yet, the social efficacy of this approach remains contested, as punitive measures alone do not always address deeper familial and gender dynamics.

The comparative findings suggest that achieving substantive justice for women affected by *talaq* requires more than formal regulation—it demands a holistic and context-sensitive strategy. Both Indonesia and India demonstrate that effective protection for women under Islamic family law must evolve through not only legal and institutional reforms, but also the strengthening of public legal awareness and gender-sensitive judicial practice. Going forward, reform efforts

should focus on aligning religious legal principles with human rights standards, ensuring that the application of Islamic law genuinely fulfills its ethical purpose—to uphold fairness, dignity, and equality for all women.

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