

ISSUES AND CHALLENGES OF TRIPLE TALAQ WOMEN IN INDIAN SOCIETY – A STUDY

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Abstract: In Islam, divorce is considered as an exception to the status of marriage. The Prophet Mohammad (peace be upon him) declared that among the things which have been permitted by law, divorce is the worst.¹ Divorce being an evil, it must be avoided as far as possible. But sometimes this evil becomes a necessity. When it is impossible for the parties to carry on their union with mutual love and affection, it is better to allow them to be separated instead of compelling them to live together in an atmosphere of hatred and sufferings. With the consideration of Islam which emphasizes on the protection of family life and avoidance of divorce taken based on caprice and whim and nervousness, the consideration of procedure of divorce can have an effective role in its prevention. Accordingly, as opposed to Indian Muslim-Sunnis law, in Iranian Muslim- Shi'a laws, there are some formalities for divorce such as refer to the court, determination of arbitrations, etc which are taken into account.

Keywords: Issues of Divorced Women, Broken Relationship, Scientific Advice.

Introduction: Divorce is not a private matter between, only, husband and wife. It is a public issue because of having great impact on society as well. Therefore, divorce must only be permitted to take place in the last resort. All the ways by which the reconciliation may be achieved, should be considered not by the spouses themselves, but by impartial arbitrators too. The basis of the Islamic law of divorce is the inability of the spouses to live together. It is to be noted that with this idea behind a divorce, Muslim law recognizes several modes of divorce which is the purpose of this study to be explained. Muslims are divided into two major groups: the Shi'is and the Sunnis. The sunnis are divided into four sub-sects: (a) the Hanafis (b) the Malikis (c) the Shafeis (d) the Hanbalis ; and The Shi'is are divided into three main sub-sects: (a) the Imamis (the Twelver's/ Ithna Asharia), (b) the Zaydis (followers of Zayd, the great son of the fourth Imam), and (c) the Isma'ilis (followers of Isma'il, one of Imam Sadiq's sons). There is a phenomenon occurring in India at this very moment with the use of three words that torment, create fear and are misused against Muslim women by their husbands, creating such an outcry it is difficult to not find an article in an Indian newspaper almost every day about Triple Talaq. Triple Talaq is a form of divorce that is practiced only amongst Muslims and only the husband can say to his wife, instantly divorcing her and many times leaving her destitute. As an example, a man, who maybe does not like his wife's dinner, or a comment she has made to him, can utter, "Talaq, talaq, talaq," and he will consider the marriage completely over. However, the issue here is that the proper form of Talaq allowed within the realm of Islamic Law and that is sanctioned in the Qur'an and the Hadith, (Traditions revealed from the Prophet Muhammad), do not allow for this form of divorce. As Sona Khan writes on the use of Triple Talaq in India in a very recent article from Express India, *The Indian Express Group*, "[Triple Talaq is a] social evil and not [an] Islamic practice and only continues to be propagated because of the ignorance of community leaders as well as the community as a whole."¹

Niqah is an Arabic word to denote marriage in Muslims. According to 'Ashabah' –"Marriage is a contract underlying a permanent relationship based on mutual consent on the part of the man and woman". Marriages are not only religious but also sacrament in nature and dissolution of *nikah* is considered sin as per the Holy Book Quran. Islam disapproves of divorce to a great extent, and it recommends its followers to be very careful, and has pointed out the steps that the spouses have to take for reconciliation in the event of disagreement between the two and ways of divorce in case where reconciliation does not work. Divorce is known as *Talaq* in Islamic law and *Talaq* is not only a word which fascinates others but it also dissolves the purest relationship of husband and wife.

As it is also been said by Professor Tahir Mahmood in his eminent book "the Muslim law of India" -Talaq is "worst of all permitted things"¹. Talaq in its original sense means repudiation or rejection of marriage but

under Muslim Law, it means a release from the marriage tie immediately or eventually. In India, Divorce in Muslims is regulated by their personal Muslim laws and according to that *Niqah* can be dissolved either by the death of husband or wife i.e. the act of god or by divorce i.e. the act of parties. Large population of Muslims in India are belong to Sunni community and in Sunnis, a Muslim Husband has an exclusive right to give divorce to his wife just by pronouncing *talaq* for three times either in one sentence or in three sentences menacingly, by saying "I divorce you, I divorce you, I divorce you".

Concept of Triple Talaq: Triple Talaq was neither recognized nor sanctioned by The Holy Book Quran and The Holy Prophet. It was not in practice during the span of first caliph but the second caliph brought this concept of instant divorce. It came into existence to meet some emergency situation and was not made a law permanently. Unfortunately, the Hanafis jurists on the strength of this administrative order of second caliph declared this form of divorce as valid. ²

Triple-Talaq is also known as *Talaq-ul- Biddat* which gives a right to a man that whenever he thinks fit, he may give divorce to his wife anytime and which becomes void and irrevocable. This not only violates Muslim women rights but this also makes them inferior in the eyes of society as well as in the eyes of men. Since what does triple-Talaq conclude that it is on the whims of men due to which most of them think that they are superior to Muslim women. It is true that every religious practice is sacred, and no one has right to interfere in these religious practices. It is being said by some of the Muslims that triple talaq comes under the ambit of religion but on the other hand some of the Muslims contradict the same. Now a days this practice is being misused by many Muslim mans which severely affects their wives life and we don't agree that religion can take away the basic human rights and natural rights of any human being which this practice does and the most barbaric thing about this type of divorce is that it will be completed even in the absence of wife and even if the wife does not have any knowledge of such divorce. And it will become void and irrevocable. In addition to this, the most interesting fact about this is that it is being used by men but consequences are faced by women. According to the Hanafis when *Talaq-ul- Biddat* is pronounced, the wife will become alienated from the husband and he cannot remarry her. She becomes 'Haram' (totally prohibited) for him. Neither can he take her back nor can he go for fresh *nikah* with her. He can go for *nikah* with her only after paying a penalty of 'Halala' meaningly, she has to marry another man and her marriage must consummate and then that person divorces her on account of marital conflict or she becomes a widow. Muslims are India's largest minority community with a population of 155 million and their marriages and divorces are governed by the Muslim personal law, ostensibly based on the Sharia. The invidious procedure of triple Talaq is confined to the Sunnis alone, not only in India, but around the world. And the most of the population of Indian Muslims is Sunnis.

Agony of Triple Talaq: Most of the Muslim men treat their wives as chattel; they think that they can marry them anytime as well as they can get rid of them just by uttering "Talaq Talaq Talaq". But think about those women who are being deserted by their husbands just by the way of 'instant talaq' without any justification and reasonable cause. "Since 2007, we have come across thousands of cases of oral triple talaq, rendering women destitute with nowhere to go," says Professor Zakia Soman, social activist and BMMA founder.³ This male dominant community give divorce by any medium which may be telephone or telegram or letter or through Whatsapp or text messages or speed post, etc. These are the things that make it patriarchal. As in the case *Rashid Ahmad v. Anisa Khatoon*⁴, man pronounced the triple talaq in the presence of witnesses, though in the absence of the wife. Four days later, the talaqnama was executed which stated that the three divorces were given. The intolerable concept of triple talaq has made husband very robust and a wife very paralyzed. It is rightly said by Justice Krishna Iyer in case *Yusuf v. Sowramma* that "It is a fallacy that Muslim men enjoys under muslim-quranic law".⁵

According to a survey conducted by Mumbai-based Bhartiya Muslim Mahila Andolan, nearly 92 per cent of Muslim women want a total ban on oral unilateral divorce,⁶ because of the adversities faced by them. The reasons which proves that Triple talaq is like a sword hanging on the women constantly are under-mentioned-

1. They threaten their wives on account of triple-talaq for procuring dowry even when the concept of dowry nowhere exists in the Holy book Quran.
2. After pronouncing talaq thrice, they desert their wives and also den to maintain them or they abscond themselves from their responsibilities by exploiting this notion as 79% women reported not having received any maintenance from their husband post their divorce.⁷
3. Over 50% of women had not received their *mahr*⁸ as they even refuse to give *mahr* (dower) amount too.

4. In most of the cases, triple talaq is given in the absence of his wife which is totally arbitrary like happened in the case *Aisha Bibi v. Qadir Ibrahim* in which complainant's husband gave her instant divorce in her absence without any reasonable cause.
5. In certain cases a man believes that he has an ostensible authority that if he gets attracted towards any other woman he can marry her by giving an instant talaq to his any of the wives, and because of his that one decision woman has to pay for that.
6. In certain cases, a divorced Muslim woman is not allowed to see and interact with her children and also not allowed to give compassion and caring to her children as happened in Shayara Bano's case where she was not even permitted to have telephonic conversation with her children.
7. If a husband drives out his wife out of the house immediately after the divorce and refuses to maintain her is the violation of Islamic-Law. In most of the cases it is noted that Muslim husbands do not provide any sort of financial assistance to their wives as they only grant minimum amount of *mahr* (dower) to them.
8. The condition of Muslim women becomes worst as and when they are divorced by their husband that also by the way of triple talaq. The husbands, whenever they want can pronounce to their wives talaq thrice and leave them. Women at this instance are left alone to live her upcoming life. It would also not be easy for a divorced woman to get marry again because the society does not accept a divorced woman. There are many other hardships that have to be faced by the women. It is all because of this orthodox system of divorce by triple talaq.
9. 8% of the women reported having being asked to go through a halala procedure in case husband wants to remarry her.¹⁰

Whether Triple-Talaq is Constitutional or Not?

In the Qur'an, *nikah* is described as *Misqaan Ghaliza*, i.e., strong bond and has explained how and with whom one can enter into this strong bond and this strong bond cannot be dissolved without proper reason and method. It certainly cannot be dissolved whimsically. A man has to pass through different stages to bring about reconciliation either by persuading his wife to behave properly, or by appointing arbitrators as per Qur'anic injunctions (4:35)¹¹. If all this fail only then recourse can be taken to divorce. Thus, according to the Qur'an, triple talaq is not only an arbitrary but also whimsical thing.¹²

Constitutionality of Triple Talaq: Triple talaq has not only resulted in atrocity but also has inflicted a great blow to fundamental rights which form the basic structure of the Constitution of India. This instrument violates the fundamental rights of the Muslim women.

Article 14: "The state shall not deny any person equality before the law or equal protection of the laws within the territory of India"¹³.

This fundamental right inherits the Rule of Law, expounded by A.V. Dicey, according to which- No person is above the law, it is the law which is supreme and every person is equal in the eyes of law irrespective of gender or religion.

- The most detestable aspect of triple talaq is its inequality which gives all rights to give divorce to the man only. The Muslim wife have to go to the *Qazi* and have to prove the atrocities committed by her husband in order to get a divorce where a husband can pronounce talaq without any reasonable logic.
- When marriage is undertaken by the mutual consent of both the parties then is this fair or in line of equality to dissolve it unilaterally. If no, then it should be considered violative of article 14.

The learned bench in the case *Chotu Pathan, Latur v. Rahimbi Dagdu Pathan*¹⁴ stated that a Muslim husband has a right to give divorce to his wife, if his wife does not care for him, she is incompatible, she does not listen to him, she does not love him, she refuses to cohabit with him, she engages in cruel behaviour, she is unfaithful or for any other reason. But triple talaq gives him an unquestionable authority to give divorce to his wife even without reasonable cause. Sometimes they misuse this doctrine just to satisfy their male ego which can be seen in a case from Madhya Pradesh cited by Zakia Soman, co-founder of Bhartiya Muslim Mahila Andolan in one of her articles¹⁵ where a woman was given triple talaq because she did not wake up when her husband returned late from work. She was informed by her mother-in-law about divorce. It raises a question why a man should have been given unilateral powers to give divorce, and the women just comply. Isn't this a breach of fundamental rights of Muslim women? Isn't it against the Equality before the law.

Article 15(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

- Triple talaq distorts the fundamental right enshrined in article 15 of the constitution in which any form of discrimination is prohibited. But triple talaq being an obnoxious practice has given all the rights of divorce to men and women has left being the puppets in the hands of male. Muslim women suffer a “triple penalty” on account of their gender.
- Male members of the Muslim community have right to give triple divorce on their own will where Muslim women suffer a “triple penalty” on account of their gender.
- According to a survey conducted by BMMA 90% of Muslim women have called for Qazi to be made accountable to law based on principles of gender justice¹⁶.

Article 21: In order to escape the strictness of law, no one has right to infringe the basic human rights or right to life and personal liberty which is the most sacrosanct fundamental right conferred by the law of the laws. The practice of talaq-ul-Biddat and divorce of a woman without proper attempt at reconciliation violates the basic right to live with dignity of every Muslim woman.¹⁷ Hence, this practice is repugnant to the basic dignity of a woman enshrined under Article-21. Even the Quran teaches to respect a woman and not to abandon her without any reason or for nothing. The petitioner in the case *A.S. Parveen Akthar v. The Union of India (UOI)*¹⁸ has referred to Chapter IV verse 35 of Quran which says, "Any if you fear a breach between the two, appoint an arbiter from his people and an arbiter from her people. If they desire agreement, God will effect harmony between them." She has also stated that due to lack of knowledge and understanding of the permissible forms of talaq and of the need for reconciliation and reconsideration before it could be regarded as irrevocable, this form of talaq has been widely used resulting in untold misery and harm to the divorced wife and the children of the marriage.¹⁹ If a spouse gives divorce to his spouse without any logical and reasonable cause it will not only violate the Quran but also the supreme law of the land as it violates the basic rights of a woman to get to know why she has been given divorce and not to be deprived of her rights on her children and her matrimonial house. She becomes helpless after such divorce. It, thus, falls upon the courts to act as torchbearers of justice and curb this unjust practice at the earliest and also, remarrying a divorced woman is still a taboo concept in Muslim Personal law and hence, many a times, a divorced woman has to spend the rest of her life on her own and often bear hefty expenses towards the upbringing of her children.²⁰ After the divorce, again it is woman, who has to suffer a lot, as they are not much educated and most of them are dependent on their husbands for their livelihood. Husbands only provide the amount of *mahr* to them and refuse to give maintenance amount and in certain cases they even refuse to give whole *mahr* amount.

The most important contention which makes a triple talaq violative of article 21 is this concept is totally arbitrary and woman has no say in this process which is totally unfair and unconstitutional.

Talaq-ul-Biddat paralyzes women as they constantly live in a fear that if they will not follow their husbands they will be given triple divorce so they cannot live freely. Even after the divorce nothing left with them especially in terms of basic necessities as food, shelter etc. and this practice also trespasses in the respect of a woman and this is also being protected by the Holy Book of Muslims i.e. Quran, which also teaches that a woman should be given more respect but this practice does not even provide the basic respect to woman.

Article 25(1): Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. Article 25 provides for freedom of conscience and freedom of religion where every citizen is made free to exercise any religion and no one is forced to adopt any particular religion. It also provides that no state shall interfere in the religious practices of the citizens.

Muslims are India's largest minority community with a population of 155 million and their marriages and divorces are governed by the Muslim personal law, ostensibly based on the sharia.²¹ But these personal laws are the reason behind the infringement of the fundamental rights of the Muslim women. Constitution is the supreme law of land and no other law is above the constitution. Even in the holy book Quran, it is nowhere mentioned that talaq-ul-Biddat should be practised to dissolve a marriage.

Indian Judiciary's Response on Triple Talaq: The court has held that this form of “instant divorce” is “most demeaning”, which “impedes and drags India from becoming a nation”.²³

- In the case *A.S. Praveen Akhtar v. The Union of India*²⁴, the court held ²⁵ that the Triple Talaq is illegal as the so-called triple talaq or the talaq-al-bidah, is clearly an innovation and is treated as less than ideal, because it does not allow reconsideration, and evidently bad for women. Not surprisingly, the triple talaq has found favour with men, and there has been widespread abuse of this male discretion to divorce.
- The 'Talaq' must be for reasonable cause and there must be an attempt to reconciliation between the two by the arbiters, one from the wife's family and other from the husband's family. If the attempts fail, then they can recourse to talaq.²⁶

In the case, *Mohammad Farooq v. Chief of Army Staff and ors.*²⁷, four steps should be taken in order to take talaq reasonably-

1. Husband should talk about the differences with his wife;
2. If misunderstanding still exists, both the spouses should sexually distance themselves from each other so that temporary physical separation may stimulate them to unite;
3. If this also does not work then husband is instructed to take third step i.e. to discuss the problems arising between them again with his wife and try to bring reconciliation between them;
4. If the disputes still remain unresolved, the fourth step is to be followed according to which the matter should be placed before arbiters, one from the family of each spouse. This practice of giving divorce by triple talaq is declared unconstitutional and violative of rights of women by Allahabad high court also. It, thus, falls upon the courts to act as torchbearers of justice and curb this unjust practice at the earliest.

When Other Islamic Countries Can Ban Triple Talaq, Why Can't India: There are more than 20 Islamic countries that have banned this inhuman practice of triple talaq including neighboring countries like Pakistan, Bangladesh, Sri Lanka, etc.

- Egypt was the first ever country to declare triple talaq as invalid and it provides 90 days procedure for divorce.
- In 2006, Sri Lanka amended its Marriage and Divorce Act, 1951 that does not grant validity to the concept of triple talaq. As stated, the law requires a husband wishing to divorce his wife to give notice of his intention to a *Qazi* (Islamic judge), who should attempt a reconciliation between the couples over the next 30 days. In the case of disagreement after the devised period, the husband can give *talaq* to his wife only in the presence of the *Qazi* and two witnesses. Many people who understand and study Muslim Law rates the Lankan law as the "*most ideal legislation on triple talaq.*"²⁸
- The abolition of triple talaq in Pakistan took place in 1951 and they also have a system of validating a talaq after a period of 90 days only and not before that.
- Tunisia and Algeria both adopted Tunisian code of personal status and banned instant talaq.

In 1959, Iraq contrary to most Arab countries has banned the triple talaq. In spite of all above countries who have a great number of Muslim population residing in their countries has banned the archaic and intolerable practice of talaq-ulbiddat then why can't we abolish this inhuman practice. This is the high time for India to consider this topic in the ambit of law.

Conclusion: Marriage is a very sacred relationship and it should be dissolved in very sacrosanct manner irrespective of religion but this sinful practice of Talaq-ul-Biddat violates the basic human rights which are enshrined to each and every human. This practice makes Muslim men superior and Muslim women inferior. This is totally being exercised at the whims and fancies of Muslim men.

Muslim men are misusing this practice arbitrarily. Muslim women are given divorce through speed post or telegram or telephonic conversation or even in the absence of wife and the most barbaric thing is even then it is valid and irrevocable. Women are thrown out from the house as she becomes *haram* for him. In case, if they want to remarry then also woman has to suffer as she is the one who has to go through *nikah-halala*.

Some Muslim men use this doctrine as a weapon against women sometimes to procure dowry then sometimes to abandon them without any reasonable cause. The post effect of divorce is another peril which a woman has to suffer, they become economically poor and socially backward society resist to accept and they are being taken for granted by even by their own parents as they taunt them as if they were at fault or as if they have done something annoying due to which they got divorced. Its consequences are also suffered by men. Sometimes they pronounce divorce in the state of intoxication or out of their senses and it become valid as well as irrevocable. Then they are left only with repentance or to remarry that is also by inhuman procedure.

This notion is un-Quranic too. As Quran also state that a marriage is very pious and its dissolution should be preceded by attempts of reconciliation and consent of two. The most interesting and disgusting thing about this is, In the Muslims, marriage is a contractual relationship between the male and female and its get completed when both the parties pronounce “Qubool Hai, Qubool Hai, Qubool Hai”, then why it gets dissolved when the husband pronounce “talaq, talaq ,talaq” by husband.

Article 14 is that which explicitly provides equality before the law and equal protection of laws. Equality before the law means –every person is equal in the eyes of law irrespective of religion, sex etc. and equal protection of laws which means every person shall be treated equally. This practice does not treat Muslim men and women equally as this power are only given to males and secondly, he can use this power at any time and without reasonable cause. Since this classification is not done on the basis of intelligible differentia, hence this practice is volatile of article 14 of the constitution of India.

Article 15 gives protection against any kind of discrimination but this practice discrimination the basis of gender. But Muslim women have to suffer just because they are Muslim. Hence, it is also volatile of article 15. The most supreme right i.e. Right to life and personal liberty prohibits every person to do any act or practice which takes away their right to live a dignified life under Article 21.

Article 25 advances protection to all the religious practices which are subjected to public order, morality and health. Since this practice is not in favor of public order, morality and health, therefore this religious practice is not protected under this article.

This is really ironic that most of the Islamic countries including Sri Lanka, Tunisia, Egypt , Pakistan etc. have banned or abolished this form of talaq and those countries to provide for reconciliation attempt then why can't us adopt another form of talaq what are not only Quranic but also constitutional in nature like Talaqul-Ahasan.

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