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Triple Talaq & Its Facets

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The question of whether or not women should have equal rights under Muslim personal law is one that is hotly debated in modern times. In particular, Muslim women's rights, such as those pertaining to the triple talaq divorce, inheritance, and maintenance, have received a lot of attention in recent years. Despite the fact that the Constitution of India protects citizens from being discriminated against on the basis of their gender or religion, there are still a number of traditions in India that are rooted in a cruel traditionalist society. As is well known, a significant portion of Muslim Personal Law has not been updated in modern times, and the majority of legal decisions are made by the courts on the basis of the standards outlined in the Quran and hadith. The major issue over the interpretation of Muslim personal regulations has both good and bad characteristics at its core. Some writers have argued in favour of the notion that Muslim personal law has endowed Muslim women with a variety of rights, including the ability to choose whom they marry and the right to an inheritance, among other things. While some are of the opinion that there are a variety of behaviours that go against the spirit of the Indian Constitution, there are many who hold this view. In this vein, the purpose of this research paper is to try to analyse the ongoing discussion on the consequences of Muslim Personal Law in India and to recommend a variety of solutions to empower Muslim women. Specifically, this debate has been taking place in India. Because of this, some inconsistencies need to be rectified by revealing the Holy Quran in its purest form in order to advance the rights of Muslim women. This paper analyses all these above problems vis-à-vis The Muslim Women (Protection Of Rights on Marriage) Bill, 2017.

Keywords: *women rights, personal law, islam, triple talaq.*

INTRODUCTION

The public divorce of a husband and wife is known as talaq. The Quran makes it very clear that Allah opposes divorce and encourages the continuation of the marriage, making divorce a sin that cannot be absolved. However, the Holy Qur'an itself outlines the process to be followed for the mutual dissolution of marriage with the potential of reversing the same if it becomes challenging to resolve differences between the husband and wife. The talaq regulations outlined in the Hadeeth and the Holy Quran are mistaken by Muslim scholars. As stated by the Prophet Muhammad, talaq should indeed be avoided at all expenses until and unless it is impossible to keep the link of the wedding. Talaq means dismissal in its purest form. The word indicates "removing any chains or constraints" or "creating basic rights." As per Islamic laws, this relates to a fundamental right to the bondage of wedding only, not to any other type of bondage. Lawfully, it alludes to the husband using the appropriate terminology to end the marriage. By Islamic law, talaq is the husband's formal renunciation of the marriage.¹

FORMS OF TALAQ

- **Talaq-ul-Sunnat:** "Sunnat" means Muhammad's (the prophet) way of life viewed as a model for Muslims. Talaq-ul-Sunnat is divided into two categories:

Talaq-ul-Ahsan: This is probably the most appropriate way to repudiate a marriage. There are two root causes: First, the pronouncement may be reversed before the Iddat time ends (period of waiting). Second, it is only necessary to utter Talaq's poisonous words once. Given how terrible they are, it is advisable to avoid saying them again.

Talaq-ul-Hasan: Talaq-ul-Hasan is viewed as a "legal" way to divorce by the restrictions of the Holy Quran and in light of the Hadees said by Prophet Muhammad. Before the three tuhrs have passed, the divorce may be annulled using this form. (The interval between bouts of

¹ Geetangali Gangoli, *Indian Feminisms: Law, Patriarchies and Violence in India* (Routledge 2016)

menstruation). Since the man is required to declare "Talaq" to his wife after finishing each Tuhr, this gives the parties time to make amends.²

- *Talaq-e-Biddat* (triple talaq): "Any invention is referred to as "biddat," according to the Prophet Muhammad as follows:

As per Muhammad (Prophet), anyone who creates something that is in opposition to our subject (Islam) will have it discarded. In the interpretation of the Holy Quran, even Allah declares that biddat is forbidden in Islam. [Sacred Quran 5:4]. According to A. Hurraira's account of the Prophet Muhammad, "The greatest person among you is best to his wife." This remark stressed the importance of marriage in Islam as well as the proper treatment of women. (In Al Tirmidhi, 628) According to additional Hadees narrated by Ibn-Musnad, the Prophet Muhammad said, "There are three things that are needed for happiness: A good lady, a capacious house, and a sound means of conveyance." (Musnad, 1:168).³

These Hadees are interpreted to mean that a wife and the marriage connection must remain unbroken. The Holy Quran places value on weddings in verses like Chapters 2, 4, and 65. Therefore, to end a marriage, the parties must attempt reconciliation or use another tactic to maintain it. Only when all of this has failed may recourse be sought through a divorce. The worst aspect of talaq-ul-biddat is that the divorce is finalized the moment "Talaq" is said. This type of talaq was never approved by Prophet Muhammad. The Holy Quran indicates in chapters 2, 4, and 65 that Muslim men must wait until the iddat (time of waiting) is through before they may disapprove of the talaq (divorce) in one go.⁴

TRIPLE TALAQ ORIGINATION

² Flavia Agnes, 'Muslim Women's Rights and Media Coverage' (2017) 52(34) Economic & Political Weekly <<https://www.epw.in/journal/2016/22/commentary/muslim-womens-rightsand-media-coverage.html>> accessed 12 December 2022

³ *Ibid*

⁴ Flavia Agnes, 'Shahbano to Kausar bano: Contextualizing the "Muslim woman" within a communalized polity' in Ania Loomba and Ritty A. Lukose (eds), *South Asian Feminisms* (Duke University Press 2012)

The earliest recorded occurrence of Talaq-ul-Biddat occurred in the second century of the Islamic era. After a decade in power, the second caliph Umar implemented triple divorce, which prohibited anybody from obtaining their spouse back after filing for three divorces at once. Author Umar Ahmad Usmani quotes renowned Egyptian historian Muhammad Husain Haykal from the book "Women's Rights in The Qur'an, Women, and Modern Society," in which the author claims that caliph Umar devised this (interpretation) to avoid difficulties when, in fact, it was necessary at the time. Maker Umar Ahmad Usmani then uses the hardline rightist artist Haykal's artwork once again to explain why caliph Umar was forced to enact triple divorce. The author states that Arabs who lived before the caliph Umar's rule used to transport male and female slaves to the countries of Makkah and Madinah following successful conflicts. These females were particularly attractive and charming, and the Arabs were charmed by their allure and preferred to marry them. These ladies requested an irretrievable divorce from their ex-better halves, nevertheless. To placate them, they would suddenly declare a triple divorce and act as if they had already been formally divorced from their better halves. There, fundamentalism is a gift that is put to use.

India-born origin:

The Muslim Personal Law (Shariat) Act, of 1937, which became followed by the British authorities, governs Muslims. All Muslims dwelling in India had been concerned about this legislation. To in addition Muslim women`s rights, the British authorities additionally accredited the Dissolution of Muslim Marriage Act, of 1939. Triple Talaq became one of the right rules approximately divorce covered in those acts, consequently, it became not unusual to place exercise amongst Indian Muslims to terminate marriages the usage of Triple Talaq. Unless the couple chooses to sign in their marriage beneath the Special Marriage Act of 1954, Muslim weddings in India are the concept of as a non-public issue. Due to those historic causes, India had now no longer followed the regulations that different countries had imposed on the husband`s exceptional strength to divorce, together with the ban on triple talaq.⁵

⁵ *Ibid*

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) BILL, 2017

This bill⁶ was introduced in Lok Sabha on December 28, 2017, by the Minister of Law and Justice, Mr. Ravi Shankar Prasad and luckily bill was passed on the same date.

Background:

In its 397 judgement on Instant Triple Talaq, which was published in August 2017, the Supreme Court determined that the practice was being used to oppress women and was thus unlawful, arbitrary, and in contravention of Islamic law. In the same ruling, the Supreme Court mandated that legislation governing marriage and divorce within the Muslim population be passed by the Central Government within the next six months. Up till the government draughts laws, husbands are not allowed to give their wives an instant triple talaq. As a result, only fast talaq was affected by the Supreme Court's decision, while other types of divorce were unaffected. The legislation was made by the central government and presented to the legislature in December 2017.

Salient Provisions:

The key provisions of this bill are as follows:

- This law is valid across all of India, excluding Jammu and Kashmir.
- Any declaration of talaq (talaq-e-bidat) made by a man against his wife verbally, in writing, electronically, or in any other way is invalid and forbidden.
- Anyone who gives his wife the triple talaq will be penalized with up to three years in prison as well as a fine.
- A married Muslim woman who receives the talaq has the constitutional right to obtain from her husband the amount of a living stipend for her and any dependant children that the Magistrate deems appropriate.
- In the case that her husband issues a talaq, a married Muslim woman is entitled to custody of her minor children at the Magistrate's discretion.

⁶ Muslim Women (Protection of Rights on Marriage) Bill, 2017

- Triple talaq use is a punishable offence that cannot be avoided with bail.

Criticism of the Bill:

Major criticisms of the bill are as follows:

- It is obstructing Muslims' ability to practice their religion. This objection, however, has little weight because Muslims themselves have several interpretations and Talaq-e-biddat is a fundamental right acknowledged by everyone.
- The issue of unilateral talaq, which men can still issue over three months under personal law, is not addressed by criminalizing talaq-e-biddat. The argument made to address this problem is that the government should alter the current Dissolution of Muslim Marriages Act, 1939, rather than enacting a new law that just criminalizes quick talaq.
- The Act mandates that women file for divorce with the court. It should be gender-neutral so that anybody can apply to the court for a divorce, even males. Even if the criticism is well-founded, passing legislation to at least outlaw immediate triple talaq is a positive step that demonstrates the government's will and effort to advance the cause of preventing harassment of women.

Personal Law v Fundamental Rights Debate:

The conflict between personal law and basic rights has also been reopened by this measure. All legislation must be consistent with the basic rights, according to Article 13 of the constitution. Any law that violates fundamental rights must be overturned. The question at hand is whether the term "law" includes the private laws of separate communities. In other words, may personal laws be overturned if they infringe on fundamental rights? The following are some significant examples in this context:

- In *Krishna Singh v Mathura Ahir*, the Supreme Court ruled in 1980 that "Part III of the Constitution does no longer penetrate with the privacy laws of the parties.
- As per the 1952 ruling of the Bombay High Court, privacy laws are not covered by Article 13 of the Constitution.

- In *Anil Kumar Mhasi v Union of India*, 1994, the court used the standard of basic rights to determine whether some portions of the Indian Divorce Act—a personal law for Christians—were lawful.
- The Supreme Court found triple talaq to be constitutional, despite it being a violation of Article 14 and "towards the core principles of the Holy Quran. The court hasn't issued any conclusive rulings on this matter or seen it as a strikingly basic conflict between the constitution and personal law.

As a result, the court rulings have been inconsistent, and there is no established or common position of the courts in this matter. To preserve the hard-won ideals of justice, liberty, and democracy, all legislation must be evaluated in light of the constitution. Therefore, all personal legislation should be consistent with the constitution in that sense. Even many committees, like the Pam Rajput Committee on the Status of Women in India, called for a prohibition of discriminatory acts based on gender that are supported by personal laws. The report of many law commissions is similar. However, the improvements cannot be implemented overnight. They can only be accomplished via social transformation and mental shifts. Therefore, by considering the wishes of Muslim women in its most recent decision, the Court may have made the appropriate decision.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ORDINANCE, 2018

On December 17, 2018, Mr. Ravi Shankar Prasad, Minister of Law and Justice, presented the Muslim Women (Protection of Rights on Marriage) Bill, 2018 in the Lok Sabha. It takes the vicinity of an Ordinance issued on September 19, 2018. On December 28, 2017, the Muslim Women (Protection of Rights on Marriage) Bill, 2017 turned into brought and accredited via way of means of the Lok Sabha. It is indexed that the 2017 Bill be withdrawn.

No matter if they are made verbally or in writing, the Bill declares all talaq statements to be void (i.e., no longer legally binding) and illegal. It specifies talaq as a Muslim man announcing talaq-e-biddat or another comparable form of talaq, which results in an immediate and irrevocable divorce. The term "talaq-e-biddat" refers to a technique in Muslim private regulation wherein a

Muslim guy without delay and irrevocably divorces his spouse via way of means of pronouncing the word "talaq" to her 3 instances in a single sitting.

Offence and penalty: The Bill states that it is illegal to make a talaq declaration and that doing so can result in a maximum of three years in jail and a fine. A police officer may detain an accused individual without a warrant if the offence is cognizable. Only if the married woman (to whom talaq has been proclaimed) or someone who is blood- or marriage-related to her provides information about the crime would it be possible to identify the offender.

- According to the Bill, the Magistrate may also deny the accused's request for bail. The Magistrate may only issue bail once the woman (against whom talaq has been proclaimed) has been heard and if the Magistrate is convinced that there are sufficient grounds for doing so.
- The Magistrate may compound the offence at the woman's request (against whom talaq has been declared). Compounding is the process where the parties concur to halt legal action and resolve the conflict. The magistrate will decide the terms and circumstances of the offence's compounding.

Allowance: A Muslim woman who has had talaq proclaimed against her is allowed to ask her husband for a living stipend for both her and her dependent children. The Magistrate will choose how much the allowance will be.

Custody: Muslim women who have experienced such talaq are permitted to request custody of their young children. The Magistrate will choose how to handle custody.

The key functions of the Ordinance are as follows:

- The State of Jammu and Kashmir is not an amendment of the Ordinance, which applies to all of India.
- According to the Ordinance, any pronouncement of `talaq` through a Muslim husband to his spouse in any manner, spoken or written, will be void and illegal.

- Muslim spouses who issue a verbal or written "talaq" face up to a few years in prison. Probability of increased punishment.
- Even though there are well-known rules in existence, the Ordinance states that if a Muslim man announces "talaq" to his wife, the woman and her children are entitled to a living allowance. Additionally, this amount may be decided by a Judicial Magistrate of the First Class.
- If the Muslim girl insists on it and the Justice of the Peace agrees to search terms and instances that he can also additionally determine upon, the offence is also compoundable.
- The offence of saying talaq is cognizable if the Muslim girl on whom it is miles reported informs a police officer.
- A person suspected of this offence cannot be given bail unless they apply for it following a hearing at which the Muslim girl (on whom the talaq is alleged) is present and the Magistrate is convinced that they have good cause to press charge.

TRIPLE TALAQ BILL CLEARS RAJYA SABHA HURDLE AS OPPOSITION FALTERS

According to the Muslim Women (Protection of Rights on Marriage) Bill, 2019, divorcing a Muslim woman by saying the word "talaq" three times is a crime that carries a maximum three-year jail sentence. The controversial triple talaq bill was approved on Tuesday (30-7-19), despite opposition attempts to have the Rajya Sabha refer the measure to a select committee for scrutiny failing. With 99 votes in favour and 84 against, the measure was approved.⁷

TRIPLE TALAQ JUDGEMENT BY THE SUPREME COURT⁸

In a majority decision, the Supreme Court of India deemed the Muslim practice of triple Talaq, or immediate divorce, in which "Talaq" is said three times, to be "illegal and wicked." The practice of triple talaq is not essential to religion and is against unconstitutional ethics. The five justices, including Chief Justice JS Khehar, are from Hinduism, Christianity, Islam, Sikhism, and Zoroastrianism, which are among India's five main religions.

⁷ Muslim Women (Protection of Rights on Marriage) Act 2019

⁸ *Shayara Bano v Union of India and Ors* (2017) 9 SCC 1

Justices Rohinton Nariman, Kurian Joseph, and UU Lalit, three of them, agreed that "what is wicked under religion cannot be legitimate in law." They said that "Triple talaq is a backward and unworthy practice, even if it is legal. Triple talaq breaches the right to equality since it is quick, irrevocable, and breaks the marriage ties." A petition challenging the 1,400-year-old custom was heard by the constitution bench from five Muslim women, including one who was divorced over WhatsApp. "What is regarded wicked in the Holy Quran cannot be good in Shariat, and in that sense, what is wrong in theology is also bad in law," *Justice Kurien Joseph* stated. While triple talaq "may be wicked," according to Chief Justice JS Khehar and Justice Abdul Nazeer, the court cannot meddle in personal laws since they are recognized by the constitution as fundamental rights. They believed that a bill should be introduced by parliament to stop the practice. "Contrary to the Chief Justice, Justice Joseph asserted that such a conduct cannot be protected by the Constitution".

Muslim citizens are subject to the 1937-enacted personal legislation. The government has long contended that acts like triple talaq are against women's fundamental rights. The Muslim Personal Law Board has resisted any legal action, contending that the court should not become involved in religious affairs. The Center testified before the Supreme Court that procedures like "triple talaq" hurt the social standing and integrity of Muslim women and deprive them of constitutionally protected fundamental rights. Justices Nariman and Lalit stated the following: "The marriage ties that are essential to Islamic family life are broken by divorce. It not only shatters the bond between a man and a woman as husband and wife, but it also has negative psychological effects on the offspring of such a marriage."⁹

CONCLUSION

The Indian government has enacted the measure to stop the ongoing persecution of defenceless married Muslim women as a result of the proclamation of triple talaq. The essential obligation of a welfare and secular state like India is to implement a uniform civil code over its whole territory. The worldwide effort to establish gender justice in society is also one that is envisioned

⁹ Kimberley Crenshaw, 'Mapping the Margins: Intersectionality, Identity politics and violence against women of colour' (1991) 43(6) *Stanford Law Review*

in the international agreement on the abolition of all kinds of discrimination against women. Triple talaq was outlawed and deemed illegal by the Supreme Court in the well-known case of "Shamim Ara v State of U.P. & A.N.R. (2002)." So how can one outlaw something that is already outlawed? The issue isn't talaq, but rather males respecting the rights of women. That outlawing it would not alter the situation for Muslim women in any way. However, the issues that Muslim women are having are not brought on by talaq (triple or not), but rather by anti-Islamic practices. Triple talaq is prohibited by all Islamic jurists and schools of thought since it is inherently against Sharia. Islam strictly forbids dowry. People request it, and it is granted. Islam places the whole burden of paying for the marriage's expenditures on the males, yet people insist on dumping it on the woman, and she and her family accept this. Although individuals insist on having pricey, extravagant weddings, Islam forbids them. Instead, marriages must be straightforward and modest. If a divorce is inevitable, Islam forbids any form of harassment, yet men act in the other way. The true causes of Muslim women being oppressed by their husbands and being left out in the cold include all of these and more. How would prohibiting triple talaq address these issues? According to Census 2011 information on Indians' marital status, 68 percent of divorced women are Hindus whereas just 23.3% are Muslims. If "rampant divorce" is genuinely a barrier to women's empowerment and gender equality, it is shown that Hindu women demand more care than Muslims. And as of right now, according to a study created by the Muslim Mahila Research Kendra in collaboration with the Shariah Committee for Women, there were 1,307 Muslim divorce cases compared to 16,505 Hindu ones. In these districts, there were 4,827 divorce cases for Christians and 8 for Sikhs. However, the aforementioned ruling will provide some relief for Muslim women and is entirely consistent with Islamic law, notably with the verses of the Holy Quran that discuss talaq. Justice, not arbitrariness, is emphasized in the Holy Quran. Anyone who disobeys the concept of righteousness is against the spirit of the Holy Quran. No Holy Quranic prohibition or spirit may be disregarded, according to the mullahs and members of the Muslim Personal Law Board. The Holy Quran has greatly aided the cause of women and given them authority via the clearly stated legal rights that are guaranteed to them. It is now necessary to uphold the spirit of the Holy Quran and to provide justice for oppressed Muslim women.