

## Triple Talaq - A Deep Study

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### ABSTRACT

Triple Talaq is a form of divorce under Islamic law, that was practiced in India which means termination of contract of marriage between husband and wife. The Islamic concept of dissolution of marriage stands on power of announcement by Husband bestowed to the latter by Almighty Allah. It is this unique authority, which makes Talaq different from Divorce. It is prevalent among India's Muslim community majority of whom follow the Hanafi Islamic school of law. This unilateral power of one partner though sanctioned under Islamic scriptures, nonetheless has often been exploited. A comparative case study of legislations adopted by different countries has been undertaken to evaluate this issue. Triple Talaq has been critically analyzed in the background of Islamic law and many scholars have suggested reforms to bring this law into conformity with the true spirit of Islam by treating both partners on equal footing in a society. Reconciliation, which is an essence of Islamic form of divorce, is only possible in case of declaring Triple Talaq void.

**KEY WORDS:** *Divorce, Hanafi, Reconciliation*

## INTRODUCTION

Islam looks at marriage not as sacrament which is eternal unlike Hinduism, but as a civil contract which is accepted between the parties based on basis of mutual consent. Triple Talaq is a form of divorce which is being used in Islamic law. Instant triple talaq or talaq-e-biddah was deemed to be unconstitutional. Triple talaq is the custom under a muslim, a man can divorce his wife by simply uttering "talaq" thrice. In classic Islamic jurisprudence, triple talaq is considered to be an accurately disproved, but legitimately valid form of divorce. Triple talaq basically happens when the husband spells out the word 'talaq' three times either on phone, email or single setting. Then the women have to prepare her for 'iddat' period covering her three menstrual cycles. Iddat is basically a waiting period that is required before the pronouncement of Talaq. In this time, the husband can re-think over his decision. In this Iddat Period, couple can reunite without having to have a new marriage contract between them. But after the Completion of his period, re-marrying can only be done by the way of 'nikah'.. According to All India Muslim Personal Law Board (AIMPLB), there are 8 different forms of divorce in Islam, from which Triple Talaq was one. The practice of triple talaq or instant divorce is abolished in near about 22 Muslim majority countries including Pakistan, Iraq, Iran, Bangladesh, Turkey, Cyprus, Tunisia, Algeria, Malaysian state of Saranak, Iran, Sri Lanka, Jordan, Indonesia, United Arab Emirates, Qatar, Sudan, Egypt, Iraq, Brunei and Malaysia. Triple talaq infringes the fundamental rights of muslim women as it is irreversible end marriage without any chance of reconciliation.

Triple talaq or instant divorce is not mentioned in Sharia Islamic law anywhere or the Koran even though the custom existed for decades. Triple talaq or instant divorce often dispute with the countries legal arrangement from 8th century AD. It is sardonic that the follower of triple talaq claims that triple talaq cannot be a subject verdict before court of law and shall persist to remain extra judicial, but fail to notice that the outcomes following triple talaq are arbitrated before court of law. The most discussed question in this concept is that, can only men divorce in Islam? The answer is that Women have an option of asking for 'khula' meaning returning of dower (mehr) that she received as a wedding gift or by mentioning the same in a clause mentioned in contract made at the time of Marriage.

## **HANAFI SCHOOL OF LAW**

The Hanafi school is one of the four schools of law (Madhhabas) in Fiqh within Sunni Islam. Hanafi is relatively great size of the four schools. Hanafi is predominant among Sunni Muslims in Pakistan and Northern Eastern, in that the influence of the Ottomans was strongest. The Hanafi madhhab is established or originated by scholar Abu Hanafi an-Nu'man ibn Thabit (767 - 699 CE/ 80 - 148 AH). The Hanafi law of school established the principle that the universal accord of the Ummah (community) of Islam on a point of law, entitled by legal and religious scholars, constituted evidence of the will of God. This process is known as "Ijma" which means the consensus of the scholars. It is followed by around 30% of Muslims world wide. Hanafi jurisprudence remains the most influential school in the world today and is used in Jordan, Pakistan, Lebanon, Syria, Turkey and the United Arab Emirates. Hanafi, Fiqh is being predominated in Bangladesh, Indonesia, Egypt, India, Iraq, Pakistan, Syria, Libya and for exceptional minority populations in Iran and Malaysia. The Hanafi School definitively established the Quran the tradition of the prophet, Ijma and Qiyas as the basis of Islamic Law. Hanafis make up more than 90% of the Sunnis in India and Triple Talaq was being followed by them from more than 1,400 years.

### **Status of Triple Talaq in India & Other Countries**

#### **INDIA**

India is a secular state, where each and everyone have a right to worship or follow their own religion. According to the 2017 list there is 14.20% Muslim population. It is ubiquitous among India's Muslim community majority of whom follow the Hanafi Islamic school of law. The Muslim lived in India also practice the triple talaq. It allows any Muslim man to lawfully divorce his female partner by uttering the word talaq three times in oral, written or currently in electronic form. In this a man did not need to cite any reason for the separation and the wife need not have been present at the time of promulgation. On 22 August 2017, the Indian Supreme court held instant divorce or triple talaq unconstitutional. The triple talaq was not abolished in India before March 2017, on this date over one million of Indian Muslim population took step against triple talaq majority of whom were women, they signed a petition to end the triple talaq, which was started by Muslim Rashtriya Manch, this Muslim Rashtriya

Manch is an Islamic organization federate to the rights wing hindu nationalist association Rashtriya Swayamsevak Sangh.

At last a bench of judges was set up and they the controversial related to triple talaq in 2017. So, after all the hearing, the court said that until the government composes a law regarding triple talaq, there would be an injunction against husbands pronouncing triple talaq on their wives. Triple talaq may be admissible custom but it deteriorating and unworthy, since, triple talaq I instant it is changeless and then marital tie gets broken, it violates the right to equality. The judgment of court only banned triple talaq not the other forms of muslim divorce.

### **SRI LANKA**

In Sri Lanka there is a freedom of religion as there are 9.7% of population belongs to Muslim community. So, According to Sri Lanka's Muslim Marriage and divorce Act, 1951, amended up to 2006, as the "most ideal codification on triple talaq". According to this act a husband aspire to divorce his wife has to give a notice to the Qadi (Muslim judge) who, with the help of the relative of spouse or the closed one they attempt for the reconciliation between the spouses. The Qadi shall not record any reason for the proclamation of talaq.

The notice for this also sent to wife but if she's not present in Sri Lanka the notice of the talaq shall be send on the closet relative of the wife, After 30 days, the husband if he wants to proceed with the divorce, will announce the talaq in the presence of the Qadi and two witnesses. The kathi court and the magistrate court have cooperation jurisdiction as to maintenance.

### **ALGERIA**

Algeria is a hierocracy state, which declares Islam to be its provincial religion. Sunni Islam is the preponderant religious belief system in Algeria, while Ibadi Muslims are Christians comprise significant religious minority groups. Algeria is dominated by muslims at about 94% of the population. Therefore, Islam the religion of almost all of the people lived in Algeria.

In Algeria the divorce allows only through court of law where effort are first made for cooperation. Decision for divorce confirmation is granted only after the proper investigation and in a appropriate procedure. In code of family law 1984, law no. 84-11 of 1984 as amended in 2005,

Under Article 49- " Divorce cannot be established except by a judgment of the court preceded by an attempt for a period not exceeding three months".

Before the abolishment of triple talaq, Divorce was much easier for men then for women. According to Algerian law article 142 and article 144 of the family code, women cannot claim the same part of an inheritance as men, since they have the right to only of what men are entitled to. But in Algeria the triple talaq or instant divorce by uttering talaq thrice is not authorized.

## **IRAQ**

Iraq a theocratic state, which constitute Islam to be its official religion, the majority population of Iraq is shia muslim. The shia muslim population in Iraq is around 60 to 65% while there are 15 to 20 % are Arab sunni and 17% are sunni Kurdish. According to Iraq law-

Under Article

Article 37 - 1) the husband performs the divorce by pronouncing three repudiations.

2) Three verbal or gestural repudiation pronounced at once will count on only one divorce.

And in its 1987 amendment of the code of Personal Status, 1959 provides that a talaq, couple with a number, express or implied will not be regarded as more than one divorce, the law also authorized that a person purport to divorce his wife must bring a suit in the court of personal status requesting that it be effected.

The certificate of marriage shall remain valid till it is cancelled by the court Under Article 39(2). If a person doesn't approach court, the marriage will remain valid until cancelled by a court. If the registration of the divorce in court, during the iddat period is not filed or bring in the court,

Under Article 39(1) - when a person intends to divorce his wife, he shall institute a suit in the court of personal status requesting that it be effected and that an order be issued therefore, if a person cannot so approach the court, registration of the divorce in the court during the period of iddat shall be binding on him.

During the period of left aptitude exhaustive government in 1959, Iraq become the first Arab countries to replace sharia's courts with government personal status courts. According to Iraq's personal status law, "three verbal or gestural repudiations pronounced at once will count as only once divorce", Under the 1959 Iraq law of Personal status, both spouses have the right to

ask for separation when a dissension arises between them whether before or after consummation.

### **REASONS WHY TRIPLE TALAQ SHOULD BE ABOLISHED IN INDIA?**

It causes Gender Disparities and Inequality. After Divorce, Women are more likely to live in poverty and have low level of standard of living. Higher Rates of Divorces. It is defamatory and humiliating for a woman to re-marry same man after talaq. Less possibility of re-marriages especially in country like India. Misused laws and Law Boards are of no help

Many people argued that Abolishing Triple Talaq is not correct idea since it is diversity in change, Interference in religion of person and the power to decide by themselves. But reasons of the abolition has over-shadowed them all since Abolition of Triple Talaq has brought some positive effects. The most pivotal change, it has brought up, Speeding of Uniform Civil Code in the country. Basically it will focus on family laws of all religions and the diversity of all customary rites practiced in the nation. It will address the social injustice and gender inequality rather than plurality of laws. Personal laws will not be touched until the extent of the constitution. Basically, Under Uniform Civil Code, all the personal laws will be replaced by a common governing law for all citizens. Common Civil Code will help the cause of national integration by removing disparities by removing different ideologies. These are the laws relating to marriage, divorce, inheritance of property and adoption. In the Shah Bano Case, The government were asked to make Uniform Civil code. In Latifi Case, the right of muslim women to maintenance was granted till re-marriage. Banning triple talaq will protect the interests of large number of population of women. Since they also want to have life equal to another women. But if the existence of these laws were to be protected by Article 25, then it seems that Uniform Civil Code would be Unconstitutional. This will furthermore create Tension and Confusion since Article 44 permits the adoption if Uniform Civil Code.

In India, Triple Talaq got unconstitutional by a majority of 3:2. The All India Muslim Personal Law Board (AIMPLB) in favor of continuing this practice argued that it would violate their personal law since this practice is mentioned in Section 2 of Muslim Personal Law (Shariat) Application Act, 1937 & had the lower rate of divorce as compared to other religious

communities. Petitioners asked for this section 2 to be scrapped since it violates Article 14 of The Indian Constitution. Over 1 million petitions were signed to end this triple talaq. Under Triple Talaq, Women were thrown out of homes without any reason by their husbands. There are list of cases that woke the nation for the need of abolition of Triple Talaq. Most Pivotal case was itself the 'Triple Talaq Case' or 'Shayara Bano Case' whose petition sparked abolition of Triple Talaq from the country. The case Grabbed whole nation's attention when Supreme Court admitted her petition and declared Triple Talaq unconstitutional. Second case was the Afreen Rehman Case where She was being divorced through Speed Post. She filed a petition against the Islamic provision i.e. Triple Talaq. Third Case was the Triple Talaq via Social Media where a woman was being divorced by a message on Whats App. She was shocked as well as her family. She filed the petition against the same. These cases played an Important Role in abolishing Triple Talaq from the country. The practice of Triple Talaq was violative under Article 14 and 15 of the Constitution of India.

### **ANALYSIS OF JUDGEMENT OF TRIPLE TALAQ CASE**

It all started with a Petition by Shayara Bano. Triple Talaq case was been benched by 5-judge bench comprising of Chief Justice J.S. Khekar , Justice S Abdul Nazeer , Justice Kurian Joseph, Justice R. Fali Nariman & Justice Uday Lalit. Triple talaq was deemed as unconstitutional by a majority of 3:2. All the judges had their own views and reasons for their judgement. Justice Khekar said that Triple Talaq being a personal law, was not unconstitutional. He was being supported by Justice A. Nazeer. According to Justice K. Joseph, this issue is not being decided, since in the case 'Shamin Ara vs. State of UP', in 2002 , Supreme Court declared that triple talaq lacks legal sancity. He disagreed with Justice Nazeer that a Fundamental Right as found by them can be suspended. Justice F. Nariman said that Triple Talaq is contrary to Article 14 being a Fundamental Right and therefore, it is unconstitutional. It was contrary to Shariat Law. If not contract to Shariat law, it would not have survived the constitutional vires on the account of Article 13. The court basically aims to protect the rights of women and also the right to husband who bonafide wants to get rid off her wife on valid reasons. The Judges asked parliament to fill up this gap by making a statute for the same within 6 months. Till then, triple talaq has been dissolved and no one can practice it. The Supreme Court Observed all the crucial

aspects and overlooked the crucial difference between legal marriage and a Religious Marriage. They analyzed whether Article 25 was being violated or not. Article 25 was broader and didn't set any standard to be followed to follow any Religion. Supreme Court said that Religious Freedom doesn't mean it should only be allowed to practice one's customs but also understand the legality of customs from the point of law. This has built a wall of separation between Religious Practice and the Legal System. There is a need of Uniform Civil Code which will help us leave religious customs intact and therefore not in collide with Article 25. In Conclusion, It is the Justice and Equality for Muslim Women.

### **CURRENT SCENARIO PREVAILING IN MODERN WORLD**

In this Digital & Growing world, Census of 2011 shows that more than 60% women of Muslims were married before the age of 18. Situation are as worse as that 45% women get divorced before age of 21 and 95% women didn't receive any type of maintenance or compensation. This led to poor housing and low standard of living. This issue is needed to be addressed to Government for fixing of the problem and getting the solutions for it. History has evidences that women has been considered as the properties of men. Now also, they are vulnerable to abuse and at disadvantageous positions in the society. They are now also considered Inferior to Men which is due to huge Gender Indifferences existing in the Modern World. They are now also a victim of Indiscrimination, Violence and Abuse. At Many Places, Muslim Men threw their wife out of home treating them like objects by instant talaq. In a survey, it was found that for every Muslim man, 4 Muslim women are divorced. According to census 2011, there was an increase of 40% of divorces in 2011 as compared to 2001. By the time, a Muslim women reached at the age of 60, half of a million are divorced. Under Islamic law, A Muslim Man is allowed to keep 4 wives at same time. It is a right of every person to live their life with dignity as an equal partner same goes with Muslim women. Conditions, especially in western countries, is that women are stopped from exercising their legal rights. For protecting certain rights of women, many organization have held hands together and issues are being discussed at conferences globally to aware all about the Problems faced by them. This is a step forward which will lead to Modernization. In a Developing Country like India, it is pivotal that both men and women play an equal role in development purposes. As time is passing by, there is



improvement in Position of women in the society. Education has played an important role in improving the situation. Literacy Rate of Muslim Women has improved as the time has progressed but the Drop-out rate has increased. Triple Talaq becomes a reason for withdrawal of women from Formal Sectors. Personal Boards were created for maintaining integrity & law and order but they are no help since they aren't listening to grievances of women and finding solutions rather they are sitting idle and refused to listen.

## CONCLUSION

The Supreme Court with the help of this Judgement have contributed in the rights of the Muslim women and improved their lives. But laws are to be framed and Enactment of Uniform Civil Code has become a need in an hour. Supreme Court gave a Judgement keeping in mind all the fundamental rights and without violating them. But it failed to clarify the relation of state and religion since India is a Secular state. Abolishing Triple Talaq is a step forward towards a better future which will help in the welfare of the society as a single unit. This Judgement has also built a wall of separation between the religious practice of marriage and the legal system prevailing. By the Abolition of this, I am merely arguing that the Uniform Civil Code would be constitutional. But like all other laws, they have to meet the Validity of the Statute to make it Constitutional. Many attempts were made by Muslim Personal Law Board to demonstrate its validity but failed to do so which resulted in abolition of Triple Talaq.