

EFFECT ON RIGHTS OF WOMEN IN HUSBAND'S PROPERTY IN RESPECT TO TRIPLE TALAQ

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INTRODUCTION

Divorce is the most hated permissible thing in the sight of Allah. It dissolves families and deprives children the family atmosphere. The Prophet (peace and blessings be upon him) said: "The most hateful permissible thing (al-Halal) in the sight of Allah is divorce." (Abu Dawud, Hadith 1863, Ibn Majah, Hadith 2008).

Triple Talaq is a type of divorce where a husband can divorce his wife by pronouncing triple Talaq thrice and can throw the wife out and exploit her in this way by threatening her to give divorce merely by pronouncing these words. It is majorly seen in majority of people of Muslim community following Hanafi Islamic School of Law. This is generally not preferred in certain school of law because there is a time given of three months before the decree of divorce is done.

And before understanding triple Talaq we need to understand what Nikah is, Nikah is marriage in Islam and in Islam marriage means contract which is agreed by both the parties which is the husband and wife, and the bride is given an amount or consideration which is compulsory it can be money/gold or land. The bride has right over meher and can waive it off according to her will, but the husband cannot claim right over meher.

So now comes the question that since the amount of meher is mere 1000rs will there be any rights of wife over property of her husband after the Talaq happening because than the wife will be deprived of its rights over property and to even reside at her matrimonial home.

Principally speaking there is also a provision in Islamic Jurisprudence that gives the wife any right over husband's asset. This is because Meher has already been given, but with changing times Meher has becoming a ritual more than a right.

Types of Talaq:

There are certain ways in which Talaq can be done which are as mentioned below

1. Khula (By Mutual Consent)
2. Talaq (Unilaterally by the will of husband)
3. Talaq-e-tawfid (mentioned in marital contract/By Delegation)
4. Nikah-e-fasq Judicial Divorce (Nullification of marriage) If the husband doesn't give divorce
5. Instant Triple Talaq
 - Talaq-ul-Sunnat or revocable Talaq
 - Talaq-ul-Bidaat or irrevocable Talaq

Significance of the Study:

Before researching on any topic, a base is to be formed to know what the problem is, and why is the study taken, to provide measures to solve the -problems.

This study mainly focuses on the problem that whether wife after getting triple Talaq from husband can have right of property on assets of her husband or not. Because the problem here arises is that because of triple talaq the women are exploited, and they are put into such social pressure that they are vulnerable a subjected to exploitation.

Article 14 of the Indian Constitution grants "equal protection of law" to all its citizens. But when it comes to personal issues (marriage, divorce, inheritance, custody of children, etc), Muslims in India are governed by the Muslim Personal Law which came into force in 1937. This study also talks about the significance of Muslim personal law and about its constitutional validity.

This study also talks about the Muslim Women (Protection of Rights on Divorce) Act which talks about the controversial landmark legislation passed by parliament of India to protect rights of women who have been divorced by their husbands al the matters related to it. This study signifies that if a woman can inherent land after the divorce with her husband or not and if she has the right to reside in her matrimonial home or not.

As per the Act, a divorced Muslim woman is entitled to reasonable and fair provision and maintenance from her former husband and this should be paid within the period of iddat.

The significance is also about the validity of triple talaq in consecutive three sittings under the Muslim Women's Act, the researcher through all this material tried to try to study effect on women's right over husband's property in respect to Triple Talaq.

PROPERTY RIGHTS OF WOMEN

Property rights basically means the entity owned by a person, property rights in Muslim religion are sacred in nature, they are taught that they should not waste their property in a very useless manner Muslim ladies' rights have been a subject of exchange as far back as the Constitution came into compel in 1950. Islamic law (Shariah) is considered by numerous as man centric and harsh to ladies. However, the Quran has tended to ladies' issues fourteen hundred years back by making a few changes to enhance the status of ladies however these changes don't appear to be polished in Muslim society today. Although Islam as uncovered to the prophet Mohammed isn't severe to ladies its translation instituted in the family law, and consistently living is male centric.¹

The law of inheritance was dependent on the patriarchy what's more, consequently even spouse and youngsters were avoided from legacy. Indeed, the law of legacy depended on the standards of agnatic inclination and rejection of females. Along these lines a little girl or a sister or girl's child or sister's child proved unable prevail to the property. It is obvious from this that before the coming of Islam ladies were denied of their entitlement to legacy as well as their extremely predetermination was in the hands of her better half's tribe or with her relatives. In the pre-Islamic society guys delighted in high ground over females in issues identified with legacy. At the point when a man lost his life, his beneficiary would guarantee the directly finished the dowager and weds her. After marriage, he denies her the privilege to assert the piece of legacy constituted by the endowment. He can likewise take the share and request that another man

¹ Shaista Kazmi, *Muslim Women and Property Rights*, INSTITUTE OF ECONOMICS AFFAIR (NOV,1 2017, 11:40 PM), <https://iea.org.uk/blog/muslim-women-and-property-rights>

wed her. Advance illegitimate kids never acquire, rather they were abused and not taken care of well and young ladies would move toward becoming casualties of sexual abuse².

Women's status turns out to be especially imperative when they oversee overseeing advances and reserve funds. They advantage from microfinance benefits that empower them to produce and control their own pay. Research demonstrates that credit reached out to ladies significantly affects their families' personal satisfaction and particularly benefits their youngsters. The implementation of property rights additionally brings monstrous social picks up and reinforces the position of the underprivileged, the most essential principle of Islam. Resource control gives ladies more noteworthy certainty and basic leadership control inside families and ensures against the danger of aggressive behaviour at home.

Simply if Muslim nations acted to bring their laws, and much more vitally their practices, in similarity with the Qur'an and the act of Prophet Muhammad, they would guarantee very much secured property rights for ladies. It is critical that Muslim nations and social orders concentrate on recognizing and killing prejudicial works on, including perplexing or obsolete lawful frameworks and the nearby traditions and customs which are regularly imagined as a feature of Islam. They should make and actualize approaches that enable ladies to claim, direct and oversee property.³

WOMEN'S STATUS IN TODAY'S TIME

Women in India have always been treated as a discrimination, they are not given the equality which they should, and women in India have always been the victim to the patriarchy of the family. The status of women in India is also questionable in all the religions of the country. After the recent judgement about triple talaq that its constitutionality is questioned. Now the ground reality about women is very different in Muslim community as they are not given the

² Imad- ad- Dean Ahmad, *Islamic Views on Property Rights, Economic Freedom, and Entrepreneurship*:

Application to Iraq, MINARET FREEDOM OF INSTITUTE (NOV,1 2017, 11:40 PM),
<http://www.minaret.org/Islamic%20Views%20on%20Property%20Rights.htm>

³ Dr. Maszlee Malik, *Property Rights from an Islamic Perspective*, INSTITUTE FOR DEMOCRACY AND ECONOMIC AFFAIRS & ISTANBUL NETWORK FOR LIBERTY (NOV.1 2017, 11:40 PM),
<http://istanbulnetwork.org/property-rights-from-an-islamic-perspective/>

equal rights. Women are not just exploited mentally but economically as well. As after their talaq is done they are not allowed to enter their matrimonial homes, and even though they have their rights in their husband's asset they don't get it and as a result they are deprived of their basic rights and are exploited daily. The women in Muslim community remain in bad shape because they are mostly not aware of their own rights and they don't know about their powers as a result they are manipulated by the patriarchy.

Muslims are governed by their personal laws. Under the provision of Muslim law, the daughter gets half the share of the son and the widow also has the same share as that of the daughter. The share of inheritance of the women as wife, daughter and mother is unequal to that of the corresponding male heir. In practice, rarely do daughters or widows receive their due share of inheritance, also under the influence of the local customs and traditions the Muslim women from the lower class are exploited in a way because the women from the upper class are mostly aware of their own rights and are not exploited easily. Women often face constant threats to their fundamental rights which include the right to live, and to live with dignity within the family, even when their husbands, sons and brothers are alive. Often, they have no place to turn to for help. Therefore, the government needs to pass urgently two legislations; one, that all assets acquired after marriage would be jointly owned by the wife and the husband; and, second, in the case of matrimonial discord, the property so acquired would be equally divided. A move in this direction has already been made by some government regulations. Then came the birth of all India women personal board, The AIMWPLB was greeted by condemnation and derision from members of the AIMPLB, who denied its legitimacy and questioned the women's scholarly credentials and political motives.¹³ But, that body was already becoming increasingly sensitive to charges-from both within and outside of the community-of failing to address women's problems. Also, express disapproval of triple talaq and the AIMPLB has gone on record as 'recommending' the more gradual procedure just described. In the English version of their new model nikahndma the husband is 'instructed' to 'avoid declaring "Talaq" thrice at a time. But the Board is unwilling to go any further than this, insisting that instantaneous divorce is a 'social evil', not a 'legal' one. They say they cannot either ban or invalidate divorces effected in this manner but can only endeavour to make the faithful aware that to pronounce a 'triple talaq' is a morally undesirable act. In fact, the oppression of Muslim women is due to the conservative readings of Shariat which also include gender discriminating customary norms

that are presented as god's immutable words. Muslim feminists trace the source of women's oppression to the same Shariah laws which interpret the divine laws wrongly. Further Islamic law is saturated with pro-patriarchal interpretations. Although the status of women improved during the time of the prophet it was only short lived Muslim masses do not look beyond Islam and they view it as complete way of life. The law of Divorce has become a tool in the hands of the husbands to oppress the Muslim women. The Muslim scholars believe the Muslim Personal law as practiced under the Shariat Act had brought untold miseries to Muslims women and if Allah appears in person, he would roll his head in shame over the plight of Muslim women. the popular Shah Bano case, the Supreme Court had held that if there should arise an occurrence of a separation, it is the obligation of the spouse to influence sensible and reasonable arrangement to keep up his previous wife to even after division under Section 3 (1Ha) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. This period reaches out past iddat as the lady holds control over her products and properties. In case of the demise of her better half, a dowager gets the one-eighth offer (when there are kids) yet will get one-fourth offer (if there are no kids). If there is more than one spouse, the offer may decrease to one-sixteenth.

To the extent getting property is concerned, a Muslim lady is qualified for dower that she got from her better half at the season of marriage. On the off chance that the spouse wishes, he can give away anything to his better half however it's not official on him.

As of late, maintaining the privileges of Muslim ladies, the Allahabad High Court had stated: "Ladies can't stay helpless before the man centric setup held under the grip of sundry ministers having their own elucidation of the blessed Quran. Individual laws of any group can't guarantee matchless quality over the rights conceded to people by the Constitution," the court said

⁴A Muslim lady is vulnerable against the times of uncalled for homes. Not exclusively can the spouse be separated by her better half for any reason, upon his impulses and fancies, however she is likewise denied Mehr (a type of remuneration gave by the husband to a separated lady to help her freedom after marriage). It, therefore, falls upon the courts to go about as torchbearers of equity and check this unreasonable practice at the most punctual. There is additionally the way that most Muslim ladies are pledged when they are youthful (many even

⁴ Ananya Patil, *Constitutionality and Validity of Triple Talaq*, RACOLB LEGAL (NOV,1 2017, 11:40 PM), <http://racolblegal.com/constitutional-validity-of-triple-talaq/>

previously the age of seven years). On the off chance that a Muslim man chooses to separate his better half when she is youthful or just a minor, it leaves the young lady helpless, particularly without the Mehr sum. Additionally, remarrying a separated lady is yet a forbidden idea in Muslim individual law and consequently, numerous a times, a separated lady needs to spend whatever remains of her life all alone and regularly bear weighty costs towards the childhood of her youngsters. Remarriage of a separated lady isn't simple regardless of the possibility that the two gatherings are ready, as much of the time, all costs of the marriage must be borne by the lady of the hour and the separated lady's folks occasionally spend that sort of costs.

The arrangement of triple talaq, at last, puts unjustifiable power in the hands of Muslim men. At the point when a man is permitted to wed and separation the same number of ladies as he wishes (and can even be hitched to four ladies anytime of time), with no specialist having the privilege to address him about his activities, ladies tend to end up noticeably an extra ware for him. What's more, nowadays, when each social and political discussion is endeavouring to accomplish sex balance, it leaves the Muslim ladies unarmed and defenceless.

JUDICIAL INTERPRETATION OF MUSLIM PERSONAL LAWS WITH REFERENCE TO TRIPLE TALAQ JUDGEMENT

India is a country with various groups that are administered by various individual laws. According to their religion, these individual laws regularly clash with the standards revered in Part III of the Constitution. The courts have by and large been hesitant to strike down these laws on the grounds of infringement of Fundamental Rights. This is incompletely because of the way that individual laws are by and large not considered 'laws' under articles 13 and 372, and halfway not to meddle with issues like marriage and legacy. In any case, a portion of the individual laws have been translated in a way so as to get them consonance with Part III. In any case, activities by the legal are insufficient; what is required is an expert dynamic approach by the law-making body.⁵ A uniform common code, combined with legal activism, can possibly achieve huge constructive changes to the circle of individual laws. As the arranged Muslim

⁵ Dr Afroz Alma, *Muslim Personal Laws and its Nuances*, LIVE LAW (NOV.1 2017, 11:40 PM), <http://www.livelaw.in/muslim-personal-laws-nuances/>

individual law are not state made law it doesn't have a place with section three of article 13 of the Indian Constitution which guarantees the essential rights, Article 13 says that any past or future law made by the State, as likewise any custom and use, conflicting with its arrangements would be void. Presently this does exclude individual laws into them likewise the Muslim laws in India are not there considering the Muslim religion, it is a result of the state enactment which is put by the Muslim Personal Law (Shariat) Application Act 1937.

⁶Jurisprudentially between an individual law which is authorized by an enactment and the ones which is instituted by the court with an expert has no distinction by any stretch of the imagination. Under article 25 of the Indian Constitution it is for the most part assumed that the individual laws are secured by the key ideal to religion under this article however this article additionally holds back itself expressing that state can't stop the social changes which will drop by the laws.

⁷A bench of five judges of supreme court gave their verdict about triple talaq on 22 august now Talaq means divorce and India is one of the countries where a Muslim man can divorce his wife in minutes by pronouncing the word talaq three times. Most Islamic countries including Pakistan and Bangladesh have banned triple talaq, but the custom is still prevailing in India. so far triple talaq has been considered a legal way or it be easily said an escape route for the country's Muslim men to end marriages. This came in the court after Shaira Bano filed a petition in the Supreme Court to declare triple talaq as unconstitutional. There have been cases in which Muslim men have divorced their wives by issuing talaq by letter, telephone and increasingly by text message and now WhatsApp and skype leaving families destitute. Several women's have contested this and had taken this to court, they were just not exploited emotionally but they were also exploited financially and because of that their pleadings were heard. As their financial, social and emotional needs are dependent on the whims and fancies of their husbands and that way they face lots of problems.

⁶ Tahir Mahmood, *Muslim Law*, SCROLL (NOV.1 2017, 11:40 PM), <https://scroll.in/article/805825/opinion-there-is-no-immunity-for-muslim-personal-law-from-the-jurisdiction-of-supreme-court>

⁷ E.T online and agencies, *Supreme Court Bars Triple Talaq for Six Months*, THE ECONOMIC TIMES, AUG 27, 2017 <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-bars-triple-talaq-till-parliament-makes-a-law-heres-a-11-point-primer/articleshow/60169892.cms>

⁸The Supreme Court therefore for the first time reviewed that whether triple talaq is fundamental to Islam or constitutionally binding in India. There were five judges who gave the judgment whose names are as following and they all belonged to different religions.

- Chief Justice Khehar
- Justice Joseph
- Justice Lalit
- Justice Nariman
- Justice Nazeer

The hearings were in the month of May, but the final judgement came in the month of August. Justice Joseph, Justice Nariman and Justice Lalit declared that triple talaq is unconstitutional as it is not integral to Islam and approval of Shariat is not required and also it breaks the marriage whimsically and capriciously, while Justice Khehar and Justice Nazeer said that it is very fundamental in nature and a constitutional body cannot take that into consideration it is the question of personal law also they said that it is very Islamic in nature and enjoys constitutional protection.

However, Justice Khehar said that no men can pronounce triple talaq for the next six months and, he said the other political parties to give their opinion and, he said that some laws will be made about the divorces and marriages of the Muslim community if triple talaq is upheld as invalid.

⁹ Incidentally, the triple talaq case, which is a battle by Muslim ladies for measure up of her rights, this also points the deposition in arrangement of ladies as judges and the desire to have a lady choosing ladies' destiny. There is likewise gap on the online networking rueing the way that there is no lady judge on the seat. Plus, the best court is likewise impaired by the way that of the 28 Supreme Court judges, just a single, — Justice R Bhanumati is a lady. This conveys us to the issue of lack of ladies' judges in the higher authority.¹⁰The judgement has, therefore,

⁸ Flavia Agnes, *Muslim Women's rights and Media coverage*. EPW, 2016

<http://www.epw.in/engage/article/triple-talaq-muslim-womens-rights-and-media-coverage>

⁹ Ashok Bagriya, *No Women Judge on Triple Talaq bench reflects poorly on judiciary*, HT, May 15, 2017

<http://www.hindustantimes.com/opinion/no-woman-judge-on-triple-talaq-bench-reflects-poor-on-india-s-judiciary/story-zTM770WHDpx1ILTU8gNuPM.html>

¹⁰ Raghav Pandey, *Dissecting the Triple Talaq judgement*, DAILY PIONEER (NOV.1 2017, 11:40 PM), <http://www.dailypioneer.com/columnists/edit/dissecting-the-triple-talaq-judgement.html>

indeed put an end to the medieval practice of triple talaq, but the reasoning it has given is not satisfactory. The Supreme Court also did miss the opportunity to establish in law that any custom under personal law of a religion, which is violative of fundamental rights, is liable to be struck down and will not be protected under Article 25.

ARTICLES OF INDIAN CONSTITUTION IN RESPECT TO TRIPLE TALAQ

¹¹The Supreme Court on Tuesday put aside the act of moment triple talaq saying it was violative of Article 14 and 21 of the Indian Constitution. The seat containing five judges, headed by Chief Justice J. S. Khehar, had held its decision on 18 May, six days after the hearing started on 11 May.

¹²A long way from entering the shrubbery of individual laws, the court ought to just solicit whether a tested practice from individual law disregards anybody's principal rights.

This approach, be that as it may, keeps running into one huge issue. Keeping in mind the end goal to subject triple talaq — as an asserted part of Muslim individual law — to established standards, the court should first overrule a 1951 judgment of the Bombay High Court (therefore attested by the Supreme Court for another situation) called *State of Bombay v. Narasu Appa Mali*. All things considered, Justices Chagla and Gajendragadkar held that uncodified individual laws may not be investigated for central rights infringement. They did as such on the specialized thinking that Article 13 of the Constitution subjected just "laws" and "laws in constrain" to the examination of major rights, and that "individual laws" are not one or the other "laws" for this reason, nor "laws in compel". Underneath this specialized thinking, in any case, was a more profound suspicion: a refinement between law, as made by the state or its organizations through demonstrations of enactment from one perspective, and "individual

¹¹ Priyanka Mittal, Supreme court to Rule on Constitutional Validity of Triple Talaq, LIVEMINT (NOV.1 2017, 11:40 PM), <http://www.livemint.com/Politics/ip75amXZfttgodQj1CE5N/Supreme-Court-to-rule-on-constitutional-validity-of-triple-t.html>.

¹² Gautam Bhatia, Triple Talaq and the Constitution, HT, MAY 11, 2017 <http://www.thehindu.com/opinion/lead/triple-talaq-and-the-constitution/article18420742.ece>.

law", which had its source in the sacred texts, and in non-state bodies for translation and implementation, on the other.

¹³ We, The People of India, exist as an aggregate because of confidence. Without this confidence, there is no devotion to the Constitution. Furthermore, confidence relies upon the recovery of the protected venture, the inalienable conviction that our laws will oversee similarly, will shield the general population of this republic from the state, or more all make equity a plausibility regardless of what divine beings we appeal to, whom we cherish and how. In quest for that reclamation, we have a lengthy, difficult experience ahead.



¹³ Suchitra Vijayan, How the Triple judgement was in many ways a wasted opportunity, SCROLL (NOV.1 2017, 11:40 PM), <https://scroll.in/article/848521/how-the-triple-talaq-judgement-was-in-many-ways-a-wasted-opportunity>.

CONCLUSION

¹⁴India is a common nation and likely has the most number of religious factions living inside it. By the idea of laws in India, individual laws are very respected and given preeminent significance. Be that as it may, if any such individual laws stretch out past its extension and backers, essentially, the infringement of fundamental human rights, it can be struck around the summit court. The abrogation of the custom of 'Sati' and the later Haji Ali Dargah judgment are two such cases. Truth be told, the center east nations don't have any current arrangement regarding triple talaq. It passes by no unprecedented extend of creative energy that India too would do well to stick to this same pattern.

Regardless of the possibility that the Supreme Court is worried about striking down the piece of the Muslim individual laws that allow triple talaq and proclaim it illegal, it can add an arrangement to the current law to such an extent that there is a time of holding up (no less than one menstrual period) between each sequential talaq affirmation. This will help give both the gatherings in a marriage, adequate time to endeavour towards compromise and will likewise avert incidental separations that can't generally be fixed. Moreover, if the arrangement is changed to guarantee that Muslim men give a legitimate motivation to settling on triple talaq and give the Mehr add up to the spouse, at that point we can have some similarity of a separation law that does not damage basic rights and is sexually impartial. If the Supreme Court pronounces "quick triple talaq" invalid and sets down rules for the three articulations to be spread more than 90 days, while Shayara Banu's name will be scratched in gold in the records of Muslim individual law change, in handy terms, what might its effect arrive individual life? The suit will undoubtedly detach her family that has a place with a traditionalist social milieu while the legitimate case will be alluded to the trial court to decide her cases through another round of case.

¹⁴ Mounica Kasturi, Judicial Activism under article 21 and Personal Law, LAWCTOPUS, (NOV.1 2017, 11:40 PM), <https://www.lawctopus.com/academike/judicial-activism-under-article-21-and-personal-laws/>