

TRIPLE TALAQ: SUPPRESSION AND SUBJECTION OF MUSLIM WOMEN

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ABSTRACT

Triple talaq¹ is the practice under which a Muslim man can divorce his wife by simply uttering "talaq" three times. This means that a Muslim man can divorce his wife by oral or written means. In recent times, there have been a lot of instances where Muslim ladies have come up with complaints and cases where the divorce is delivered by an electronic means such as telephone, SMS and social media for ex- WhatsApp, Facebook, etc. Thus, with women in such great affliction, triple talaq has indeed, become a political hot potato in India and with a whole range of diverse opinions, it is quite clear and evident that this topic is open to a lot of debate and discussion.

In this paper, an attempt is made to analyse some judgements delivered by the court on this sensitive issue.

Key words- triple talaq, electronic means.

¹ Saif Khalid, What is 'triple talaq' or instant divorce? , Al Jazeera (May 12, 2017), <http://www.aljazeera.com/indepth/features/2017/05/tripple-talaq-triple-divorce-170511160557346.html>

Before, moving on to the contentions raised in the High Court and Supreme Court regarding the validity of triple talaq, I would first like to touch upon the history of divorce in pre-Islamic and post Islamic times.

So, it is often said that Islam changed the social position of women as far as divorce is concerned and this claim is on the basis that there are records which indicate an equal right of a woman to divorce her husband in the pre-Islamic times. But when Islam is considered, a woman does not have a right to divorce her husband, rather even for divorcing him, she has to ask to be divorced by him. So, this shows the gender inequality regarding divorce as the woman does not have not the very much required right whereas the husband has a right to dismiss her wife independently.

There have been a lot of judgements regarding this issue, some in favour of it and some against it. The ones not in favour of triple talaq have their own reasons for believing so and thus we will be discussing about some major cases.

- 1) The instrument of instant divorce (triple talaq), in the facts of the case present case, has been used for ulterior purpose for divorcing his wife.² In this case, a 53 year old Muslim man divorced his first wife just to marry another 23 year old woman. Many disturbing questions were raised by the Court like should Muslim wives suffer this tyranny for all times and should their personal law remain so cruel towards them?³

Then, the High Court very brilliantly observed one major fallacy i.e. a Muslim man enjoying an absolute authority to repudiate the marriage. Also, in this case itself, there is a mention about the permissibility of divorce in Islam which very clearly says that a divorce has to be a last option i.e. only when all the efforts for reconciliation fail, can a couple proceed to dissolution of the marriage. This particular case is very essential to this whole issue as the obiter dictum is undeniably very progressive in the whole thought process as the Honourable Judge Mr. Suneet Kumar has constantly laid emphasis on the constitutional rights of women and the kind of discrimination they tend to face due to this practice. In addition to this, the main motive of filing this petition

² Hina and Ors. v. State of U.P. and Ors. 2017 (2) ALLMR1

³ Hina and Ors. v. State of U.P. and Ors. 2017 (2) ALLMR1

was to restrain the respondent police authorities and the third respondent i.e. the mother of the lady from harassing them but the petition was dismissed by the High Court.

- 2) Such liberal view of talaq bringing to an end the marital relationship between Muslim spouses and heavily loaded in favour of Muslim husbands has met with criticism and strong disapproval at the hands of eminent jurists.⁴ The facts of this case are that the appellant and respondent no. 2 were married in 1988 according to Muslim Shariyat Law and 4 sons were born out of this wedlock. The husband accused his wife of bringing disgrace to the family and so without any strong reason, he divorced his wife. This matter first went to the Family Court, where the Presiding Judge refused to grant any maintenance to the appellant on the ground that she was already divorced by the respondent and hence was not entitled to any maintenance.⁵ Thus, the maintenance offered was Rs.150 and that too for the time period till the son remains minor. The appellant then filed a revision before the High Court where the Learned Judge found the corroboration of the divorce from an affidavit. Now there is a very major deficiency in this whole case where the husband has neither submitted the reasons for the divorce nor has he stated the circumstances under which and the persons in whose presence talaq had been pronounced. The matter then went to the Supreme Court of India where the Honourable Judge Mr R.C. Lahoti had a considerable disagreement with the judgement of the High Court and he stated that-

“No such text has been brought to our notice which provides that a recital in any document, whether a pleading or an affidavit, incorporating a statement by the husband that he has already divorced his wife on an unspecified or specified date even if not communicated to the wife would become an effective divorce on the date on which the wife happens to learn of such statement contained in the copy of the affidavit or pleading served on her.”

Also, the Honourable Judge Mr Lahoti reproduced several observations from the case **A. Yousuf Rawther v. Sowramma**⁶, among which one was-

⁴ Shamim Ara v. State of U.P. and Anr. AIR 2002 SC 3551

⁵ Shamim Ara v. State of U.P. and Anr. AIR 2002 SC 3551

⁶ AIR 1971 Ker 261

"Commentators on the Quoran have rightly observed -- and this tallies with the law now administered in some Muslim countries like Iraq --that the husband must satisfy the court about the reasons for divorce. However, Muslim law, as applied in India, has taken a course contrary to the spirit of what the Prophet or the Holy Quoran laid down and the same misconception vitiates the law dealing with the wife's right to divorce."⁷

Now, this observation is very essential to the whole concept of divorce in Islam because it states the misconception that a Muslim man can divorce his wife without a strong reason and in any circumstance which is indeed totally contrary to the Holy Quran as it permits divorce only in cases of extreme emergency. Thus, the SC held that the marriage has not dissolved as the husband failed to produce the evidence of the pronouncement of talaq.

- 3) A person's action should be in accordance with, both the Constitution of India, as well as, in accordance with personal law, to which he is subject to.⁸ In this case as well, the respondent divorced the petitioner due to unspecified reasons but the appellant Shabnam Bano in her statement asserted that her incompetency to fulfil her husband's dowry demands was the main cause of divorce. Though, the respondent claimed to divorce the petitioner through a registered letter, the Honourable Judge of the Family Court concluded that due to a lack of evidence, it cannot be proved so. But still because of the fact that Mohd. Rafiq claimed divorce in his testimony on 15-12-2003, the Court concluded the divorce to have taken place on 15-12-2003 itself. Now this order was beneficial for the husband but not for the wife, because she was entitled to receive the maintenance for a limited period of time.

The petitioner wife thus challenged the order and moved to the High Court and the major contention which was raised there was related to the corroboration of divorce. Also, the mode of divorce was through a registered letter and so the husband claimed to pronounce triple talaq. But the contention was very strong as the evidence related to it was not found. Another major argument from the petitioner's side was that even if the respondent had stated in his written statement about divorcing his wife, it is unacceptable as a proof of Talaq.

⁷ 1 Ahmad A. Galwash, *The Religion of Islam* 105-06

⁸ *Shabnam Bano v. Mohd. Rafiq* RLW 2009 (4) Raj 3158

The Honourable Judge Mr. R.S. Chauhan beautifully laid emphasis on the role of personal law and its conflicts with the Constitution of India by stating that-

“The Constitution of India in its preamble not only promises equality, but most importantly, ensures social and economic justice. Articles 14 and 15(3) and provisions of the directive principles speak about woman empowerment. In an era of gender justice, personal laws also need to be re-interpreted in the light of constitutional mandates and philosophy. It is, indeed, a misnomer that a Muslim husband has unbridled, uncontrolled, unlimited and unilateral power to divorce his wife. Such a power is neither granted by the Islamic Law, nor warranted under the constitution of India.”

This statement is laudable as it clearly tells about the fundamental rights that a woman has and the need of a different sort of interpretation of the personal laws so that they do not come into conflict with the basic rights of an individual. The Honourable Judge also talked about the role of Koran in providing woman with basic and crucial rights in order to maintain the gender equality.

The High Court then held that the petitioner was not validly divorced as the statement made by her husband was not corroborated by any sort of evidence and thus it was declared that the wife is entitled to file a maintenance application.

- 4) In the case **A.S. Parveen Akthar v. Union of India**⁹, the petition was filed to declare Talaq-ul-Biddat or Talaq-i-Badai form of divorce as void and unconstitutional. The contention raised by the petitioner was that triple talaq is not a mode recognised in the Quran and that the Holy Book provides for reconciliation and reconsideration before recognising a divorce as irrevocable. Another major contention was that this sinful form of talaq is grossly injurious to the human rights of the married Muslim women as it

⁹ (2003) 1 LW 370.

offends Article 14¹⁰, Article 15¹¹ and Article 21¹² of the Indian Constitution. The practice has also been termed as a spiritual offence in the Quran.

Also, it was necessary to file a case against triple talaq as most of the times; it is used as a weapon by the Muslim men to avoid paying maintenance. In addition to this, this case also had a valuable input of Mr. Syed Ameer Ali-

“The talak-ul-bidat, as its name signifies, is the heretical or irregular mode of divorce, which was introduced in the second century of the Mahommedan era. It was then that the Omeyyada monarchs, finding that the checks imposed by the Prophet on the facility of repudiation interfered with the indulgence of their caprice, endeavoured to find an escape from the strictness of the law, and found in the pliability of the jurists a loophole to effect their purpose.”¹³

This passage clearly explains how triple talaq was originated and how the Omeyyada monarchs found a way to escape from the law. This practice, in totality is contrary to what The Prophet preached and thus this is where a need of re-interpretation of the Muslim Personal Law arises.

Also, there is another excerpt which brilliantly explains the beautiful preaching of The Prophet which is misunderstood by majority of the Muslim men and is thus used to their own benefit-

“There is nothing in the law of Islam suggesting that the husband is free to exercise the power of talaq in an arbitrary, irrational or unreasonable manner. The Muslim law allows talaq subject to several conditions that are of a dissuasive nature; their purpose is to discourage the husband from exercising his right without a careful and cool consideration.”¹⁴

This paragraph explains about the real procedure of a divorce which has to be followed and a talaq strictly following this procedure is talaq-e-sunnat- a proper talaq.

¹⁰ The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹¹ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

¹² No person shall be deprived of his life or personal liberty except according to procedure established by law.

¹³ Syed Ameer Ali, Mahomeddan Law 572-73.

¹⁴ Professor Tahir Mohammed, Statutes of Personal Law in Islamic Countries; History, Texts and Commentaries (2nd Edition, 1995)

Moreover, the problem with divorce in Islam is that it gives men one-sided and unaccounted power over children and women which often lead to exploitation of the two as it depends too much on a man's discretion which results in a gender imbalance. Also, in this case what is to be noticed is that there is a clear emphasis laid down on the procedure established by Islam for divorce and how triple talaq is nowhere close to that process, in fact reproduction of several works as mentioned above have clearly stated how sinful triple talaq is. However, in this case it was held that the personal law cannot be regarded as being violative of any rights given in Part III of the Indian Constitution.

- 5) In the case of **Daniel Latifi and anr. v. Union of India**¹⁵, the petition was filed against the validity of the Muslim Women Act. Now for understanding this case, there arises a need to go back a little and analyse another case which is of utmost importance and relevance to the Daniel Latifi case. So, in *Mohd. Ahmed Khan v. Shah Bano Begum*¹⁶, it was held that a Muslim ex-husband cannot discontinue providing maintenance rather has to make continued payments to his divorced wife under 'Section 125 of the CrPC'¹⁷. Now this payment is in addition to what the husband used to give for the 3 month Iddat period under the Islamic Law.

Soon after this judgement, the Muslim community showed anger as they saw this as an interference in their personal law and so this case led to the formation of Muslim Women Act, 1986 which was in contrary to the judgement of the SC in the Shah Bano case as the Act limited the provision of maintenance only to the Iddat period. So, this Act was challenged by the petitioner in 2001 and the contention was based on the fact that it violated Article 14¹⁸, Article 15¹⁹ and Article 21²⁰ of the Constitution of India. So, the petitioners challenged this act on the ground that it discriminated the Muslim women on the basis of sex and religion as the women of other religion were entitled to receive maintenance even after divorce.

¹⁵ AIR 2001 SC 3958

¹⁶ 1985 SCR (3) 844

¹⁷ Order for maintenance of wives, children and parents.

¹⁸ The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹⁹ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

²⁰ No person shall be deprived of his life or personal liberty except according to procedure established by law.

The Supreme Court with a brilliant analysis upheld the Muslim Women Act but interpreted it in other manner so as to provide the Muslim women with maintenance even after the divorce. The Honourable Judge Mr S. Rajendra Babu observed that-

“A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood, after the divorce and, therefore, the word 'provision' indicates that something is provided in advance for meeting some needs.”

This is evidently pointing out that the Muslim Women Act requires a Muslim husband to provide maintenance of a reasonable and fair amount to maintain his ex-wife for the rest of her life, but that the amount has to be paid in total during the iddat period itself. So, by elucidating it in this way, the SC did not hold it unconstitutional and at the same time, it promoted gender equality. This interpretation proved out to be favourable as the SC prevented the communal conflicts in the way that neither did it term it as unconstitutional nor did its judgement act as an impediment to women's rights.

CONCLUSION

After reading all kinds of judgements and the reasoning behind them, I feel that there is a need to abolish such kind of practice. Abolishment of this practice would not interfere with any personal law as this is a step towards humanity and it is not to be confused with the domination over a minority rather this has to be looked upon as a progressive step. Also, it's not about the Muslim community itself, it's about the betterment of a personal law by keeping in the fundamental rights into consideration which would help in guaranteeing zero hindrance to any gender or community or class.

Triple talaq should be abolished as it was never a part of the Muslim customs and practices and it was condemned by The Prophet himself and it was him who declared this practice i.e. 'talaq-ul-bidat' as sinful. Also, this practice has been banned in several Muslim countries which include Iraq, Iran, and even Pakistan, and this is where the crucial question of India being called as a progressive nation arises because India is a country where the fundamental rights, fundamental duties and directive principles have been laid down by the Constitution and still such evil practices seem to continue. These kinds of practices do put women in a vulnerable state as their fundamental rights do not get ensured. Thus, there is a dire need of abolishing triple talaq as then and only then will the Muslim women get their reputed place back in the society or else this exploitation will continue ruining innocent lives.