

PROLONGED FIGHT FOR MUSLIM WOMEN: TRIPLE TALAQ

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INTRODUCTION

Imagine living with the mental insecurity that your marriage could end anytime at the husband's whim simply by the utterance of three words "Talaq, Talaq, Talaq". That's the thought a Muslim Woman has to live with through her married life. Instantaneous Triple Talaq or Talaq-ul-bidat is one of the eight ways to divorce in Islam. However, unlike popularly known in India, this form of irrevocable talaq is not Quranic but a post-prophet innovation of Umayyad Oligarchs in second century of the Hijri era – approved by the jurists of Hanafi Law as Islamic Law differs from community to community.¹

It may be true to say that not a high population of women are directly and actually affected by practices such as divorce by talaq-e-bidat or being in a polygamous marriage, the fact still remains that every woman to whom the Sharia law applies, lives under the threat, fear or prospect of being subject to such practices, which in turn heavily impact her status and her right to a life with confidence and dignity.

THE PROPHET AND TRIPLE TALAQ

Prophet Muhammad was born in Mecca at a time when daughters were considered a burden, and the practice of burying baby girls alive was prevalent. The Quran, the Islamic sacred book, believed to be the word of God as dictated by archangel Gabriel, lays down the conduct of both genders as governed by regulations from birth to death where women have the right to inherit

property and a right to protection, raising the status of women and prohibiting the burying of female babies.

Over the years, the Islamic sacred text has been interpreted by various scholars according to their own understanding which has resulted in the religion's far drift from the original teachings of the Prophet. He put much emphasis on family whereas sexual relations between the two sexes were permitted only in marriage/Nikah. Muhammad denounced the practice of triple talaq, and the second caliph Umar punished husbands who made use of it.

THE GEOGRAPHY OF TRIPLE TALAQ

In more than 20 Muslim countries, including Kuwait, Jordan, Pakistan and Bangladesh the practice of instant divorce by triple talaq has been banned. But in India, the practice still prevails thanks to the country's laws protecting Muslim, Christian and Hindu communities by way of fundamental rights respecting all religious practices. Majority of the 170 million Muslims living in India are Sunnis governed by Muslim Personal Law for family matters and disputes. Those laws allow men to divorce their wives at any time and by any medium including telephone, text message or social media post.

The absence of reforms in the Muslim community during the past 65 years has left Muslim women extremely vulnerable, both socially as well as financially. India has separate sets of personal laws for each religion and the call for overhauling these codes date back decades. While Hindu law reform began in the 1950s and is still being worked on, activists have been arguing for a long time that Muslim personal law has remained mostly unchanged and has been following the ancient patriarchal norms.

IMPACT ON WOMEN

The victim women are fed up with what they refer to as an archaic and patriarchal rule that leaves them destitute and destroys their lives. Muslim women do not have the same rights, and the women who are left by their husbands have no claim to alimony though they can collect a small payment for three months after divorce. The absolute power of a Muslim husband to

divorce his wife unilaterally, without assigning any reason, literally at his whim, even in a jest or in a state of intoxication, and without recourse to the court, and even in the absence of the wife, is recognized in modern Indiaⁱⁱ. All that is necessary is that the husband should pronounce talaq, how he does it, when he does it, or in what way he does it is not very essential.

A survey by Bharatiya Muslim Mahila Andolan found that 95% of divorced women received no maintenance from their husbands. According to the Census 2011 data, out of all married Muslim women 13.5 % were married before the age of 15 and 49 per cent were married between 14 and 19 years of age. ⁱⁱⁱMarriage at such an early age, in most cases, decreases the possibility of being educated enough or being financially sound taking away the opportunity for women to be self-reliant and confident.

In a number of cases, women are not able enough to immediately become the breadwinner and manage kids. Recently the case of a pregnant woman being thrown out the house for not getting an abortion added more weight to the issue. But the Census 2011 data also show that the percentage of women *staying in marriage* is highest amongst Muslims.

DECADES TO EQUALITY

With the questions raised on the constitutionality of Triple Talaq, Islamic law is before the Supreme Court of India again.

In the *Shah Bano case*, 1985, the wife was fighting for maintenance from her husband. This landmark case moved the Rajiv Gandhi Government and in 1986 the parliament of India passed *The Muslim Women (Protection of Rights on Divorce) Act* to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto and to nullify the decision in the Shah Bano Case. ^{iv}

Three decades down and women are still fighting for their rights, the *Shayara Bano Case of 2016* strikes a resemblance with the 1985 case in terms of the plight of women and the fight for gender justice. In the 2016 case, adequate maintenance was not the issue, instead she went on to challenge the very provision of instantaneous triple talaq (talaq-e-bidat) and two other

evils associated with it – polygamy and nikah halala on the grounds that they violate the rights guaranteed by the Constitution under Articles 14, 15, 21 and 25. The Supreme Court's decision in this case will affect many victim and vulnerable women in the country.

In the same case, the counsel to the All India Muslim Personal Law Board, Kapil Sibal said that the court should not interfere in the matter as the practice is intrinsic to one's faith and belief and the change needs to be brought within the community. He also asked the apex court, "Triple talaq is going on since 1400 years, how can you say it is unconstitutional?"

The Practice of Triple Talaq, polygamy and Nikah halal violate Muslim women's right to equality and dignity which are available to all Indian citizens regardless of their caste, race, sex etc. Article 13 of the Constitution states that any law, which goes against the provisions of fundamental rights, shall be void to the extent of contravention. In a secular democracy such as India, taking away one's Fundamental right for a reason such as Religion is not acceptable. What is against the constitution is void and unconstitutional.

TRIPLE TALAQ AND ISLAM

The procedure of Talaq is clearly laid down in the Holy Quran which goes on for a period of three months or three menstrual cycles, to make sure if there would be a need for child care, after separation and failure of reconciliation efforts. The Holy Quran is against Triple Talaq and it is nowhere mentioned as a sanctioned practice. In *Shamim Ara v State of Uttar Pradesh*, 2002, the Supreme Court held Triple Talaq invalid.

The Hanafis believe that though triple talaq form of divorce is sinful and innovative, it is nevertheless a valid form and the divorce does take place. In accordance with the Hanafis, when triple divorce is pronounced, the wife becomes totally 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^v. He can go for *nikah* with her only after she marries another person and that person divorces her on account of marital conflict or she becomes a widow.

Lawyer Viju George claimed that in one case a 90-year-old man and his 80-year-old wife had been asked to marry third parties, and consummate those marriages before they could divorce the third parties and remarry each other ^{vi}.

The practice of Triple Talaq is not integral to the religion of Islam, it is not essential for the existence of the religion, nor would the edifice of the religion crumble if the practice is discontinued. Triple Talaq is optional and what is optional cannot be an essential or integral part of the whole system.

COMBATING INJUSTICE OVER THE YEARS

From the outlines, one may see Islam as a faith powered by violence, inflexible laws, and sexism but that is a result of how men have interpreted and preached the Islamic classical texts for centuries.

In Saudi Arabia where the number of women that attend college or go for higher education is more than men, women are still banned from driving. In Egypt a husband can divorce his spouse without grounds or going to court and the wife has no say in it. Most Muslim countries run on the conjecture that men have a God-given authority over women.

Muslims are the largest religious minority in India, making up for 14.2% of the 1.311 billion population and a part of that minority are the suffering Muslim women. It would be ignorant to say that all Muslim Women are facing oppression from their male counterparts or guardians but even though the number of women that are subject to such practices isn't that high, it is happening.

Each and every citizen of the country has the right to live with dignity and respect regardless of their background or gender and such insensitive treatment towards Muslim Women is a direct infringement of their rights.

Even in countries such as the United States Muslim women have had to face discrimination and oppression, some of them had to resort to hiding their religion and give up the hijab. In 2015, the first women-only mosque was opened in Los Angeles, which can be seen as a victory for women but such segregation is what the contemporary feminists are fighting against.

Women have been fighting for equal treatment and equal rights for years now. With respect to India, the Supreme court's judgement on the Triple Talaq case has brought a positive change and come as a relief for the Muslim Women. The Honourable Supreme Court of India declared the practice void, illegal and unconstitutional in 2017. This landmark judgement led to the enactment of The Muslim Women (Protection of Rights on Marriage) Act, 2019 which makes declaration of 'talaq' a cognizable offence, attracting up to three years imprisonment with fine. In effect, approximately 574 cases were reported after the Supreme Court verdict.

Though the verdict came as a huge win for Muslim women in India and all over the world, the act has its pros and cons. There is no denying that this has been a big step in the promotion of the feminist ideals and beliefs that are burning strongly in the contemporary society.

It is high time that the society let go of its obsession with the male superiority and realise that empowering women and treating them as equals will only empower them and benefit society as a whole.

REFERENCES

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ⁱⁱⁱ <http://indiatoday.intoday.in/story/triple-talaq-muslim-women-supreme-court-sharia-law-islam/1/916882.html>

^{iv} The Muslim Women (Protection of Rights on Divorce) Act 1986

^v http://www.irfi.org/articles/articles_151_200/triple__talaq.htm

^{vi} <http://economictimes.indiatimes.com/news/politics-and-nation/triple-talaq-heres-why-supreme-court-may-strike-down-unilateral-talaqs/articleshow/58779803.cms>