

TRIPLE TALAQ: NEED FOR A CHANGE

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INTRODUCTION

In this chapter researcher highlights the challenges and issues faced by the Muslim women due to the concept of “triple talaq”. The researcher would further discuss as to how this mode is gender discriminative and why there is a great need launch reform movements and end up with this barbaric concept.

Saira Banu is in her mid-30s. a sociology postgraduate and mother of two, she is just one of the many victims of the tyranny of triple talaq. Her story is gut-wrenching. Saira Banu endured physical and mental agony for over 10 years. Bad marriage, an abusive husband, forced abortions and then, last year, her husband sent a letter to her parents' home where she was staying for almost a year. Inscribed on that piece of paper were three words: "Talaq, Talaq, Talaq". The practice of triple talaq is certainly not without its fair share of controversies. However, the troubling aspect is that the so-called triple talaq, or instant divorce, has been banned in more than 20 Muslim countries, including our neighbours; Pakistan and Bangladesh, making it a cause for serious concern.

We are a nation which proudly professes to be the world’s largest democracy, guaranteeing the protection of equal rights to all our citizens However, underneath all the rosy claims, lies the cruel underbelly of discriminatory and tyrannical personal laws which tear apart the foundation of equality upon which our great nation was built. The most heinous form of tyranny to which Muslim women have been subjected to since time immemorial is the outrageous practice of triple talaq or more commonly known as “instant divorce.

Women cannot be treated in the old ways any more. In India also Muslim women have become more conscious about their Islamic rights and are demanding changes in the Personal Law in keeping with the Qur’anic teachings. As pointed out the Islamic laws in relation to women are most modern in their approach but Muslim societies have preferred traditional interpretations by Imams in pre-modern feudal society to the clearly worded Qur’anic injunctions.

Talaq is a highly sensitive issue as it can break years of marital relations between husband and wife. Thus the Holy Qur'an is also very cautious in matters of divorce. Firstly, it has adopted most modern approach to this sensitive issue. It requires arbitration before any breach of relations. The Qur'an says, "And if you fear a breach between the two, appoint an arbiter from his people and an arbiter from her people. If they both desire agreement, Allah will effect harmony between them."(4:35)

Thus through arbitration the breach should be prevented and attempt should be made to bring them together again as Allah desires harmony. Despite such clear Qur'anic injunction, we approve of triple divorce in one sitting and destroy marital life in one breath. How such an act be Islamic? It is greatest injustice, especially with women. Again justice ('adl) is so central to Qur'anic teaching. And to throw one's wife but by pronouncing three words of talaq is most unjust act. There are three four key words in Qur'an – 'adl, ihsan, rahmah and hikmah (i.e. justice, benevolence, compassion and wisdom) and triple talaq is against all these key words. Neither it is justice, nor it is benevolence (ihsan), nor is it compassion (rahmah) nor is it an act of wisdom (hikmah).

All Muslims are also not unanimous on this form of divorce. Ahle-Hadith, Hanbalis and Shi'ahs reject this form of talaq. Even Hanafi Muslim countries like Jordan have reformed this practice and enforced the Quranic injunction of arbitration. Arbitration can and does save many marriages. The Qur'an does not permit triple divorce at all. Three talaqs has to be spaced over a period of three months so that husband and wife get enough time for reconciliation through intervention of relatives and friends. Moreover talaq can be given only when wife is in a state of tuhur i.e. purity after menstruation. If talaq is pronounced during the period of menstruation it will not be valid. The Prophet has ordered wife to be taken back if the talaq is pronounced during menstrual period. Triple divorce disregards all this completely.

All 'ulama agree that pronouncing triple talaq in one sitting is bid'ah (innovation) and that bid'ah is sin and yet this sinful practice is enforced in the name of divine law. In fact triple divorce indeed is great sin as it so unjust and oppressive for women. Every possible attempt should be made to eradicate this sinful practice from our society. The 'ulama who are guardians of Islamic law should play a leading role in this matter. There are many 'ulama who privately agree that this form of divorce should be abolished but do not have courage to say so publicly.

The personal law board should at least launch an awareness movement educating Muslim men about desisting from this sinful form of divorce and resort to the Qur'anic form of divorce as clearly spelled out.

Maulana Ashraf Thanvi and others had taken a bold step in 1939 and drafted the Dissolution of Muslim Marriage Act, which gave great relief to suffering women. Can the members of Muslim personal law board not show such wisdom and draft a comprehensive law codifying the Muslim personal law on the lines of the 1939 Act. It will give great and much needed relief to Muslim women.

However, there is no such sign of codifying the Muslim personal law and suffering of Muslim women continues. If Maulana Ashraf Thanvi and others could take such bold step way back in 1939 why can't our 'ulama in 21st century take such step? This will be not only in keeping with the true spirit of Islam but will also go a long way in improving the image of Islam in India. It is due to such un-Qur'anic practices that image of Islam has suffered and the demand for Uniform Civil Code surfaces.

Now it is for Muslim women to acquaint themselves thoroughly with Islamic law and launch a movement for reform and change. Women in all Muslim countries have struggled for change and succeeded. Now, as referred to above, even women in the most conservative Saudi society have begun to assert themselves. It is therefore, high time that Muslim women in democratic society like that of India struggle for reform within the Qur'anic frame-work and win their rights guaranteed by the scripture.

That seems to be the only way left for them. Progressive and believing Muslim men should also come forward and support such movement for reform.

SLOW PROCESS OF REFORM

Personal law being religious law cannot be reformed in one go. We started the process of Hindu Law Reform in 1941, with the appointment of Hindu Law Reform Committee. After several compromises with the Hindu right, the Hindu Code Bill could be passed in 1955 with bifurcation into three separate Bills. A Hindu daughter could be made a coparcener with a right to inherit ancestral property only in 2005. The reform process is not yet over even after 76 years. Thus we must appreciate the AIMPLB in taking the first positive step in the direction of reforms. There is light at the end of tunnel.

The reform process will indeed be painfully slow. When reforms come from within, there will be greater acceptability of reforms. We must realise that if the people in the family and neighbours consider that divorce has taken place, mere declaration by the Supreme Court that it has not taken place would not drastically change the ground situation.

Law is not a great agent of social control and we must accept its limitations in bringing about social change. Things which society considers illegal, law on its own cannot easily make them legal. Similarly, what society considers legal, law cannot make illegal. Poor implementation of dowry laws is a case in point.

Moreover, at times the wife herself may believe that triple divorce has irrevocably dissolved her marriage. In the Masroor Ahmad case, the wife had filed the case of rape against the husband who continued to have sexual relations with her even after giving her triple divorce. Of course, the Delhi High Court held that since three pronouncements are to be counted as one, she continued to be his wife and thus there was no rape. It is disgusting to note that India still does not recognise marital rape as rape.

AIMPLB has a major role to play in internal law reforms. If religious leaders, ulema and imams under the control of the Board proactively preach in their Friday sermons the correct way of divorce as per the latest resolution, triple divorce will die a natural death. Divorce should neither be too difficult nor too easy. In fact, if married life has become hell, there is no point in forcing incompatible partners to bear everyday torture.

In number of cases of Hindu law, the Supreme Court had to use its extraordinary power of doing complete justice under Article 142 to permit divorce even prior to the end of the statutorily mandated period of separation.

CONCLUSION

Talaq is a highly sensitive issue under Muslim Personal law. There are several benefits of it as it draws balance between the marital obligations of wife. It serves as a check against the acts of the wife. It is a myth to say that only men possess the right to the dissolution of marriage. Way back in 1939 The Dissolution of Muslim Women Act had come into operation which had recognized the right of the Muslim Women as well to dissolve the marital tie under certain conditions. Prior to the passing of Dissolution of Muslim Marriage Act, 1939, the British

Courts had denied to Muslim woman the rights to dissolution available to then under the Shariat. The wife could apply for the dissolution of her marriage only on the following grounds:

- a) Impotency of the husband
- b) Lian
- c) Opinion of puberty (Khyar-ul-bulugh)

Later, in 1939 Dissolution of Muslim Marriage Act was passed. it is applicable to all Muslims irrespective of their school to which they belong.

Section 2 of Dissolution of Muslim Marriage Act, 1939 provides nine grounds under which a Muslim wife can obtain a decree for the dissolution of her marriage.

So, it would be pertinent to highlight here that under Hindu religion the grounds for divorce were recognized under section 13 of the Hindu Marriage Act was back in 1955 but under Muslim Personal Law such right or divorce was given to Muslim women in 1939 itself. So it would be absurd to say that Muslim law is static with respect to the rights of Muslim Women rather it is much more progressive than Hindu law when it comes to recognize the rights of women of their religion. Initiatives are being taken by the personal Boards and the time is not far away when much more equality and certainty would be brought to these personal laws.

The eight-step code of conduct for talaq as given by AIMPLB

- Firstly, if there are differences between spouses, they will try to resolve them amicably by talking to each other in the spirit of forgiveness and accommodation. The resolution said that if there are shortcomings in one person, the other person should overlook them as there must be several good or plus points as well.
- Secondly, if above conversation does not give desired results, there may be temporary withdrawal of the company of the spouse while continuing to live in the same house.
- Thirdly, in case of failure of first two steps if differences continue to persist, parties should try sincere reconciliation within family or by appointing one arbitrator from each side. No stone should be left unturned in making parties agree to reconciliation.
- Fourthly, if arbitration does not yield positive results and there is no possibility of patch up and "irretrievable breakdown of marriage" has really taken place, only one divorce is to be pronounced by the husband.

- Fifthly, this single pronouncement is to be compulsorily followed by the waiting period of three months or if the wife is pregnant till the delivery of the child.
- Sixthly, if during this waiting period, parties change their mind and see value in living together, they need not do anything more and the divorce would automatically stand revoked.
- Seventhly, if no express or implied revocation of divorce takes place within the waiting period, divorce would become complete at the end of three months or extended period due to pregnancy.
- Finally, if after some time, parties again realize out of their free will that they want to yet again reunite, they need not do any intervening marriage (halala), just a fresh nikah with new terms and conditions and fresh meher (dower payment to wife) would suffice to revive their relationship.

Indeed, one of the reasons triple talaq has remained legal so long is the fear, propounded by Muslim community leaders, that if the government is allowed to tamper with Islamic personal laws, it might one day scrap them completely, “and the majority will swallow you up”, says Seema Mustafa, a Muslim journalist and author.

Sure enough, as the supreme court has examined triple talaq these past weeks, members of the ruling Hindu nationalist party have raised the prospect of replacing all religious personal laws with a uniform civil code, which some Muslims fear might be Hindu-inflected, and ride roughshod over their beliefs.

It is adamant: “The Qu’ran insists that if and when divorce happens it has to be just and fair to both parties.”.

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