

Triple Talaq: A Brief Study on the Muslim Women (Protection of Rights on Marriage) Act, 2019

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Abstract

The study aims to convey that Triple Talaq is not to be considered as a criminal offence, rather a civil offence. Triple Talaq is a form of divorce practiced in Muslim community in which instant divorce is granted when the male pronounces the word talaq three times. This article includes the way of Talaq in different countries across Asia and also highlights the take of Quran in this issue where it becomes evident that Triple Talaq is something which is nowhere a part of Muslim Shariat. Article also mentions few movies and documentaries where Triple Talaq becomes a subject.

Moreover, the famous ShayaraBano case and the supreme court verdict regarding the same is also included in the article. The study concluded that Triple Talaq should not be considered as a criminal offence.

Keywords: Triple Talaq, Muslim Women, Nikkah Halala, Talaq in Muslim Countries, Quran and Triple Talaq

Introduction

In today's world, the issues with women rights in the Muslim personal law is becoming highly controversial. It intensifies, when it comes to triple talaq divorce and women's rights. But Indian Constitution has promised women the virtues of equality and freedom on the grounds of discrimination based on gender and religion. But the situation prevails in many corners of the society. There is a huge chunk of Muslim Personal law, which is not updated and most of the verdicts come as a result of the points mentioned in the Quran.

What is Triple Talaq and How is it Done?

'Triple talaq', is a form of divorce practiced among the Muslim community. It allows a husband to divorce his wife when he repeats the word 'Talaq under Sharia act 1937. The word will be repeated by the husband three times, and it can be of any form, even through email or a text message, and the wife is divorced instantly. Triple talaq is a custom followed within the Muslim community which grants instant divorce. This is only beneficial for the male counterparts in a marriage as they are the ones who initiate the words. This unfair approach to womanhood and the whole institution of marriage is also against the right to equality. As time progressed, the talaq got a new technical approach. The talaqs started to be practiced over electronic media. Such a pathetic and misogynist approach is a sheer infringement of the right to equality and a fruit of gender-inequality. There are totally three types of talaq in Islam- Ahsan,

Hasan and Talaq-e-Biddat. The first two talaqs are reconcilable but once the third talaq is uttered then the marriage is considered invalid. The triple talaq divorce has never occupied a place in the Sharia Islamic Law or the Quran, but the practice has existed for decades.

Outrage from the Society

As we all know, a coin has both sides, similarly Talaq is also welcomed by a sector of women also detested by another. 'Nikkah Halala', is another subject the lawmakers always kept silent. It means, a woman needs to marry another man in order to remarry the already divorced husband, who divorced her thrice. The main agenda behind this act is to avoid triple talaq in one time or three times in accordance with the Islamic jurisprudence. In the past and present, Muslim women are fighting battles against such regressive attitudes. Gender equality plays a major role when it comes to marriage, divorce and property rights. The All-India Muslim Personal Law Board is one of the most influential organization in the Muslim community. The board has always faced support and hatred.

Quran's Take on Talaq

Quran, the holy book of the Muslims never has supported such a regressive and patriarchal attitude towards women. The right to marry, divorce and inherit, has motivated many Muslim women to fight for their right. The ever-controversial act of Islamic divorce which practice instant triple talaq has been considered as irrational and against the principles of Islam. Such a heinous act prohibits Article 14, which assures the right to equality. Quran is often misinterpreted and the rules and regulations given are twisted and presented by people which is mistaken as the rules of Islam by public. In fact triple talaq is not even a part of Islamic Shariyat. Quran has a set of rules and regulations for the divorce procedures, and triple talaq is not a practice of Shariyat but a practice which was developed conventionally among certain Muslims and is mistaken as an Islamic practice.

Talaq in Muslim Countries

The triple talaq system was practiced in many Muslim countries like Pakistan, Bangladesh, Indonesia etc. The birthplace of Islam, Saudi Arabia, known for being an extremely a so-called conservative country has banned the practice of Triple Talaq. Even Pakistan, which is another Islamic country, has banned it. Other Islamic countries like Bangladesh, Malaysia, Algeria, Jordan, Iraq, Brunei, UAE, Indonesia, Kuwait and Morocco are also the countries to ban this practice. The fact unknown by many is, Egypt was the first country to ban the practice of Triple Talaq. It was banned in 1929 and when it comes to Afghanistan, the practice is null and void if in only one sitting. Let's have a look at the status of other Muslim majority countries:

Arabic Countries

Algeria: A theocratic state which declares Islam as its official religion where Muslims of the Sunni sect make the majority. On triple talaq, it ruled in 1984, that "divorce cannot be established except by a judgment of the court, preceded by an attempt at reconciliation for a period not exceeding three months".

Egypt: A secular state where Sunni Muslims are a majority. Egypt's Law of Personal Status, 1929, ruled that "Talaq pronounced under the effect of intoxication or compulsion shall not be effective; A conditional talaq which is not meant to take effect immediately shall have no effect if it is used as an inducement to do some act or to abstain from it; A talaq accompanied by a number, expressly or impliedly, shall not be effective except as a single revocable divorce; Symbolic expressions of talaq, i.e., words which may or may not bear the implication of a divorce, shall not effect a divorce unless the husband actually intended it".

Iraq: A theocratic state with Islam as the official religion and a majority Shia population. It has enacted the following legislation: Code of Personal Status 1959, as amended in 1987. It declares, "No divorce shall be effective when pronounced by (a) one who is intoxicated, insane or imbecile, under duress, or

not in his senses due to anger, sudden calamity, old age or sickness; (b) a person in death-sickness or in a condition which in all probabilities is fatal and of which he actually dies, survived by his wife.”

Morocco: Is a theocratic state. Sunni Muslims form the majority. It states, “Whoever divorces his wife by Talaq must petition the court for permission to register it with the Public Notaries of the area where the matrimonial home is situate, or where the wife resides, or where the marriage took place”.

United Arab Emirates: “If a husband divorces his wife after consummation of a valid marriage by his unilateral action and without any move for divorce from her side, she will be entitled to compensation besides maintenance for Iddat. The Qadi may decree the compensation”.

South Asian Countries

Pakistan and Bangladesh: Are both theocratic States, wherein Islam is the official religion. In both countries Muslims of the Sunni sect constitute the majority. On the issue at hand Pakistan legislated in 1961, which was emulated by Bangladesh, that: “Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of Talaq in any form whatsoever, give the Chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife; Whoever contravenes the provision shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.”

South East Asian Nations

Indonesia: Sunni Muslims form a majority, but the Constitution guarantees freedom of religion. On talaq-e-bidda't it says: “A divorce shall be effected only in the court and the court shall not permit a divorce before attempting reconciliation between the parties. Divorce shall be permissible only for sufficient reasons indicating breakdown of marriage.”

Malaysia: Islam is the official religion of the country, but other religions are permitted to be practiced in peace and harmony. On instant triple talaq the law states, “A husband or a wife who desires a divorce shall present an application for divorce to the court in the prescribed form accompanied by a statutory declaration. Where the other party does not consent to the divorce or it appears to the court that there is reasonable possibility of reconciliation between the parties, the court shall as soon as possible appoint a Conciliatory Committee.”

Recently in popular culture, talaq has been portrayed in divergent forms through novels, cinemas and social media. Even though triple talaq is against Islamic Shariyat, these platforms portray as if the toxicity behind triple talaq is a part of Islamic culture thereby giving wrong information to the general public regarding Islamic Jurisprudence. There is nothing astonishing to see Islam being misinterpreted, as the religion has always been misunderstood by public through the misleading done by these platforms and certain Islamophobists.

Talaq in Movies:

Talaq has been a plot to many movies regardless of language. Here are some movies which was developed in this subject:

1. **Nikaah (Renamed from Talaq, talaq, talaq):** One of the famous movies in the 80's, directed by BR Chopra, is a movie which deals with the communal stigma of Talaq. In this movie, Wasim who is a Nawab and is married to Nilofar, divorces her instantly by saying talaq thrice. The reason behind Wasim's talaq was that Wasim threw his wedding anniversary party and couldn't arrive on time. Wasim is portrayed as a workaholic and has often left Nilofar in haste and agony. This time, as it is a party where both should be present and Wasim couldn't show up in time, Nilofar retired to her room, unable to face the questions of the guests and sunk in the thoughts of Wasim. This

led the guests to feel insulted and they left, this has infuriated Wasim on many levels and they argue and lead to Wasim utter Talaq thrice. According to Sharia law, a man who had divorced his wife through talaq, will only win her back if she is married to another man and he divorces her. The movie ends with Nilofar pointing her fingers towards Wasim and Haider for objectifying her. And finally she decides on her life and with whom she should be spending her life with.

2. **KilichundanMambazham:** A Malayalam rom-com, released in 2003 deals with the conservational mindset within the community and the practice of talaq. The story of the movie is, Moidukutty Haji, an old yet revered person in the village marries for the third time, a woman who is half his age. His new wife Amina, was in love with Abdu. Her father, infuriated by this, gets her married to the old man. Moidukutty who was married twice early was an eyesore of his friend. Moidukutty was married for the second time to his friend's wife, who got divorced for not putting enough salt in the biryani. Angered by this he divorces and Moidukutty agrees to marry her and promises he will give his wife back by undergoing triple talaq, but he cunningly did not comply to that. The story comes with many plot twists and finally he grants his third wife triple talaq and she reunites with Abdu.
3. **3 Seconds Divorce:** This documentary which can be watched on the OTT platform Netflix, is an informative one which explores both sides of the issue. It explores the perspectives of women who have suffered from this age-old practice. Directed by Canadian filmmaker, ShaziaJaved, this documentary is an eye-opener to those devastated wives who got shattered by the utterance of the evil word 'talaq'. This plunges into the pool of issues regarding politics and pressures from the Muslim community. The 54 minute documentary powerfully portrays the problems like petty and unbelievable interpretations of talaq while it also covers the state of women after the divorce. The protagonist of the movie Lubna, who herself is a victim of triple talaq gets educated and enlightened and passes on the motivation to the fellow divorced women and inspires them on many levels. Apart from the repercussions of talaq, the movie also deals with the enforcement of 'halala', which means, if a man wants to marry his ex-wife, his wife needs to marry another man, consummate that marriage, get divorced and then only can be with the first husband.

Other movies which dealt with the subject are Zubeidaa, Chaudhvin Ka Chand, Deedar-E-Yaar, Mere Huzoor, Bewafa se Wafa, Secret Superstar, etc.

ShayaraBano VS others on Triple Talaq

ShayaraBano, who was married to Rizwan Ahmed for 15 years, was divorced through Triple Talaq in 2016. She approached the court with a written petition asking it to hold The three practises associated with it:

1. Talaq-e-biddat
2. Nikkah Halala
3. Polygamy

Talaq-e-biddat is the right for a Muslim man to divorce his wife through uttering Talaq for three times in one sitting with or without his wife's consent. Nikkah Halala is a practice where a divorced woman should undergo marriage and divorce to remarry the first husband. Then comes polygamy, which means a man can have multiple wives.

On 16th February 2017, Supreme court asked Mrs.Bano, the Union of India and several other women's rights bodies and all Indian Muslim personal law board to give a writ plea on the issue of triple talaq. The AIMPLB had argued that this practice is essential and need to be protected under article 25 of the constitution. Post accepting Bano's plea, the Apex court formed a five-judge bench on 30th March 2017. After a lot of sessions and hearings, the Supreme Court had declared triple talaq is unconstitutional by a 3:2 majority.

Supreme court verdict

The Hon'ble Supreme Courts of India, in the judgement of ShayaraBano Vs. Union of India have announced the ban of the practice of triple talaq. But the judgement by the minority bench directed the government of India to put a correct action in order to regularize the process of talaq as per the Sharia Law.

The Supreme Court heard the plea and assigned a bench of 5 judges from different religious backgrounds -Chief Justice Khehar, Justice Kurian Joseph , Justice UU Lalit, Justice RF Nariman and Justice Abdul Nazeer. On the advent of August 22, 2017, the bench pronounced triple talaq as unconstitutional by a majority of 3:2.

The minority bench observed that:

"We are satisfied that this is a case which presents a situation where this Court should exercise its discretion to issue appropriate directions under Article 142 of the Constitution. We therefore hereby direct the Union of India to consider appropriate legislation, particularly with reference to 'Talaq-e-Biddat'. We hope and expect that the contemplated legislation will also take into consideration advances in Muslim 'personal law' – 'Shariat', as have been corrected by legislation the world over, even by theocratic Islamic States. When the British rulers in India provided succor to Muslims by legislation, and when remedial measures have been adopted by the Muslim world, we find no reason, for an independent India, to lag behind".

While dissenting the majority view the Minority bench observed as following

"Till such time as legislation in the matter is considered, we are satisfied in injuncting Muslim husbands, from pronouncing 'talaq-e-biddat' as a means for severing their matrimonial relationship.

The instant injunction, shall in the first instance, be operative for a period of six months. If the legislative process commences before the expiry of the period of six months, and a positive decision emerges towards redefining 'talaq-e-biddat' (three pronouncements of 'talaq', at one and the same time) – as one, or alternatively, if it is decided that the practice of 'talaq-e-biddat' be done away with altogether, the injunction would continue, till legislation is finally enacted. Failing which, the injunction shall cease to operate

Rajya Sabha and the Triple Talaq Bill

The bill, already controversial by nature, had faced an unexpected twist when it was sent to Rajya Sabha. The bill which was placed before the Hon. Rajya Sabha on January 2, 2018 was passed with majority and was sent for approval to the Hon. President of India and once he approved of it, it will come into force as the Muslim Women (Protection of Rights on Marriage) Act. The National Democratic Alliance (NDA) successfully acquired the Muslim Women Protection Bill in the year 2019 and voted through the process. The attempt of the opposing party to send it to a selection committee was put down by 100 - 84.

President Ram Nath Kovind quoted that the successful passage of the bill by the parliament was a major milestone in the fight against gender inequality. It was a moment of satisfaction for the entire country and one of the most historical moments of India. The reason why NDA reaped the success is when the AIADMK and Janata Dal decided to walk out of the case rather than opt for voting. The two parties who united in the process of walking out of the bill accounted for a total of 19 votes, which eventually helped NDA succeed in the smooth passage of the bill.

"India is a secular country. In 2013, triple talaq victims moved Supreme Court and the Supreme Court decided it is arbitrary and unconstitutional. What is declared wrong in the Quran cannot be valid in our law," law minister Ravi Shankar Prasad told Parliament. (source: <https://www.livemint.com/politics/news/in-victory-for-nda-rajya-sabha-passes-bill-to-ban-instant-triple-talaq-1564492574995.html>)

Triple Talaq: Is it a Criminal Offence or a Civil Offence?

The Muslim Personal Law in India considers marriage as a treaty between two parties. So the divorce procedures do have to jump many legal hurdles in order to reach the finishing point of divorce. But also, divorce through verbal, unilateral conditions in the form of triple talaq was also approved until the Supreme Court pronounced it as unconstitutional and void, which means, no divorce at all.

Bharatiya Janata Party, which was ruling at the time of this legal battle, had labeled anyone who opposed the verdict as an advocate of the talaq system. Even though it needs to be held invalid, should it be considered a criminal offense or a civil one? The following will put a light to that argument. Precisely, these are valid and agreeable points. But the ruling government has opted to process through Parliament and instill an ordinance. What the media is doing in regards to the argument is not validating such arguments, diluting the main points and failing to educate their audience what it originally means.

As a result of the misinformation given, it is believed that the ordinance is a step towards making a Uniform Civil Code – for forming distinct laws for different religions and to put an end to the injustice faced by the Muslim women alone. But in reality, the unilateral divorce has the same amount of aftermath for all women in every community. Study shows almost 20 lakh Hindu women were left by their partners without a proper divorce procedure.

Triple Talaq is mainly prevalent amongst lower strata of Muslim community who earn their livelihood by daily wages. By sending him to jail, we may create more difficulties for the divorcee and her children. The new law provided for the three years imprisonment on pronouncing three divorces in one go is based on the punishment scheme of IPC- the general criminal law of the country. Under IPC the 3 year imprisonment is given for Section 124A, Section 148, Section 153A, Section 233, Section 237 and Section 295A which are Sedition, one of the punishments is imprisonment for three years, to which a fine may be added; for rioting armed with deadly weapon – imprisonment for three years or fine or both (Section 148), for promoting enmity between classes of people – imprisonment for three years or fine or both (Section 153A), for making, buying or selling instruments for the purpose of counterfeiting of Indian coins – imprisonment for three years and fine import and export of counterfeit coin – imprisonment for three years and fine; for malicious insulting of religion or religious beliefs of any class – imprisonment for three or fine or both (Section 295) respectively. These are serious heinous crimes and cannot be imposed on an individual who divorced his wife on one go by using 3 verses instead of 3 months. The problem is worse for Muslim women compared to women of other communities because the unilateral divorce was allowed and legalised by the Muslim Personal Law. But things changed after the verdict from the Supreme Court. The ordinance passed by the court makes the instant divorce a non-bailable offense where the punishment can go up to a time span of three years. But the question is still unanswered, how does it become a criminal offence for a Muslim man when he deserts his wife while it is a civil offence for a Hindu man?

When such selective criminalisation became a debate and portrays as not something to be considered a Uniform Civil Code, this ordinance simply violates the country's Uniform Civil Code by targeting solely on the Muslim men. But the difference is, Hindu Personal Law considers marriage as a sacrament while Muslim Personal Law considers marriage as a contract. Adding to that, Hindu men can simply desert their wives without uttering the words, "I divorce thee", while a Muslim man should initiate these words to pass the instant divorce.

The All-India Progressive Women's Association believes that every form of unilateral divorce should be cancelled and should be treated as a civil matrimonial offense, which means it need not be considered a criminal offense at all.

Obstruction of the Ordinance: According to the blind supporters of this act, the ordinance is to safeguard women. But is it really the case? What if the ex-husband is put behind the bars and is unable to earn and is unable to support his ex-wife financially? Because, seeking financial help is allowed and the ex-husband should support the deserted family if the wife approaches for a subsistence allowance. So in order to safeguard women's rights and their dignity, there should be enough legal tools to make sure those who are unilaterally divorced get financial help. This should be provided equally to women of all communities.

Conclusion

Muslim community, which falls under the minor-ethnic group has been a centre of attraction by all wrong reasons for many years. Be it religious atrocities, rigid mindset, child marriage, talaq, inequality, bigotry or even education, Muslims have faced the wrath of the society and their fellow people. In the article we discussed talaq and its consequences - socio, economic, educational and even awareness in public.

Triple Talaq can be treated as a civil offense rather than a criminal offense. Civil Law also permits sending people to jail for giving triple talaq and lawmakers should consider that they can also be imprisoned. Triple Talaq is certainly something which is to be abolished from society as it is being difficult for women who are the victims as they are treated as objects and are left out with nothing in society after this heinous activity. It's sad that this activity is done under the name of Islam but it's in fact not in Islam's principles. We should certainly take actions against the atrocities and violence done against women in the name of Triple Talaq.

But the question to be highlighted here is that that is triple talaq to be included as a criminal offence in India at the same time for people in other religions it is treated as a civil offence. Is this discrimination ethical in a secular country like India, where our constitution demands Equality to all its citizens despite of caste, creed and religion? Moreover it makes the family of the individual in a tough state as it's prevalent among community's lower strata and the individual will be the only bread winner in the family and with his imprisonment, divorcee and children will be in difficulty.

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