

**TRIPLE TALAQ: AN OBSTACLE IN THE PATH OF  
GENDER**

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**Introduction**

India is a land of Diversity. We have people of numerous races, castes, creeds, religions and languages. The people are bound by the law of the land which ties them in one thread. All of us are governed by equal laws irrespective of religion, race, caste, sex or place of birth. But this is not true in matters of personal laws. Personal laws are such laws which govern the personal aspects of a person's life, like matters relating to marriage, divorce, maintenance, adoption and guardianship. All religions are guided by their own specific personal laws.

People following Muslim religion are guided by the quranic provisions of Islam. Islam religion is divided into two sects; Shia and Sunni. People coming under Shia sect are considered direct descendents of Prophet. Whereas the people following the Sunni sect are those who preferred to elect their caliph. Marriage in Islam is a civil contract. There is offer, acceptance as well as consideration in the form of mehr. There are also various provisions of divorce in Islam. Divorce, also known as dissolution of marriage, is the cancellation of a marriage or marital union, the canceling of the legal duties, responsibilities and obligations of marriage between the married parties under the rule of law of the particular country or state. Islam insists upon the keeping of a marriage and said that dissolution of marriage contract i.e. divorce should be avoided, but some circumstances evolved where this matrimonial relationship need to be broken. Islamic people considered divorce as an exception to the status of marriage. The bond between husband and wife should be firm enough to live happily in a family. In the Quran, nikah is described as 'misaqanqhaliza', i.e., strong bond and has explained how and

with whom one can enter into this strong bond and this strong tie cannot be easily dissolved without any proper reason and method. The prophet said that there are certain things which are permitted by the law one of them is divorce which is worst of its own kind. He also said that divorce being an evil it must be avoided as far as possible. But sometimes such circumstances necessitate the occurrence of this evil, because in such circumstances the marital relationship and obligations is hard to carry on. So it would be better to move apart than to compel to live together in a situation of hate and dissatisfaction. The basis of the divorce in the Islamic law is the incapacity of the spouse to live together not any other particular cause (or guilt of a party) on account of which the parties cannot cohabit together. In Islam a divorce may be either by the act of the husband or by the act of wife. There are several methods of divorce in Islam- talak-i-sunnat, talak-i-biddaat, talak-i-tafweez, etc. one of them is triple talaq.

### ***Divorce in islam***

In Islam the marriage is a social contract. It can be dissolved when it ceases to serve the value of the marital relationship and purpose of living and dwelling together. It is believed in Islam that marriage should be respected and continued to the possible extent. For keeping the matrimonial ties undamaged, there should be adjustment and sufferance among the parties to the marriage. It is expected from the parties to the marriage that they should not leave any stone unturned to keep their matrimonial relations in subsistence. All efforts should be there by parties, their well-wisher and courts to solve the matrimonial problems. The divorce or dissolution of marriage is the last resort. Divorce was in existence even before the arrival of the Prophet Mohammad. But divorces at that time were used as an instrument for torture. Men divorced their wife on their whims and fancies. The husband was granted with the absolute power of divorce. They could divorce their wife for end number of times without any valid reason. Even the power of

rescinding the divorce was vested in them. This social and moral injustice dragged the attention of the prophet. He introduced some reforms and put certain restrictions on it. Now the husband in Islam cannot divorce his wife and take her back as he pleases. Various rules and regulations guide the procedures and timing of the divorce. Now husband has to pay dower and maintenance in the case of divorce. In practice, these obligations check the unilateral power of husband. Every Muslim husband who is sane and attained the age of puberty is competent to proclaim talaq. A minor or unsound person cannot pronounce talaq, it is considered as void and ineffective. The guardian cannot pronounce talaq on behalf of minor husband, but they can do so if the divorce is for the welfare or benefit of the husband. The consent of husband while pronouncing talaq must be free. But in Sunni sect under the Hanifi law, talaq proclaimed under coercion, compulsion, fraud, voluntary intoxication and undue influence etc., is valid and it dissolves the marriage. Neither the presence, nor the notice given to her is necessary. And also intention is not necessary under this law. According to Shia school, talaq pronounced under compulsion, intoxication is not valid. A talaq may be given either orally or in written, known as talaqnama. In Islam a person who is not able to speak can also rescind his marriage by positive signs.<sup>1</sup> It is believed that divorce in Islam is not accepted and is permitted in only some exceptional cases. Under Shia law a prescribed formula for divorce is must and it should be said orally in the presence of two competent witnesses in order to effect the talaq. In Islam wife cannot give the divorce to the husband. She can do it only, when the husband has delegated certain powers to her under an agreement. There are two types of divorce in Muslim law; one is extra judicial divorce and the other

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<sup>1</sup>“The changes in the Law of Divorce” available

at:[http://shodhganga.inflibnet.ac.in/bitstream/10603/8109/13/13\\_chapter%206.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/8109/13/13_chapter%206.pdf) (visited on 12<sup>th</sup> Oct, 2016)

one is judicial divorce. The former one may further subdivided into three- divorce by husband-talaq, ila and zihar; by wife- talaq-e-tafweed, khula; by mutual agreement-Khula and mubarat. The word “talaq” is an Arabic word which means undoing of or release from a knot. In Hanifi law, special form and presence of wife is not necessary. In Ithnaasaria law of Shia sect, a strict adherence to a certain form is necessary which include the pronouncement of talaq, in the Arabic tongue uttered orally in the presence of two male witnesses, who are Muslim. The pronouncement of talaq in Muslim may be revocable or irrevocable. The revocable form is known as approved and the irrevocable one is known as unapproved form. Beside these the law recognizes talaq-al-Sunna (i.e. in conformity with the dictates of the prophet) and talaq-al-bidaat (i.e. not in conformity with the dictates of the prophet). Talaq-al-sunna further divided into the ahsan (the most approved) and the hasan (approved) form of talaq. Talak-i-bidaat may also be divided in the form of three declarations at one time (the triple talaq) or one irrevocable declaration, generally in writing (talaq-i-bain). The Muslim laws relating to the divorce raise two questions for consideration; one relates to the method of divorce, i.e., triple pronouncement of divorce and other to the problem of inequality and injustice between the two sexes in respect of the right to divorce.

### ***Concept of triple talaq***

Muslim laws in India are not codified. Hence followers of Islamic faith are subject to varied interpretations of Shariat. The talaq-ul-biddat in any of its form is not recognized by the Shias and Malikis. The Triple talaq is the worst form of talaq. The practice of triple talaq gives Muslim men unilateral and absolute power to give irrevocable talaq, depriving women of all protection, economic security, marital status, etc. In this kind of Talaq three simultaneous proclamations are made in a single tuhr in one sentence, e.g., I divorce thee thrice, or in three sentences, e.g., ‘I divorce you, I divorce you, I divorce you’.

Triple talaq is considered as sinful in Hanifi law, even though it is accepted. But under the IthnaAsaria School of law this kind of divorce is not approved. It is the irregular mode of talaq introduced by Omayyad in order to escape the strictness of law. Triple talaq was allowed by second caliph of Islam, Omar. It commands neither the sanction of Holy Quran nor the approval of the holy prophet. It is not only a unholy act but a blatant violation of Quranic mandates contained in verses 19; 34; 35; 128; 228; 229 of Sura Al-Baqar as well as verses 1;2;5;7; of Sura Al Talaq and the well known and clear approach of holy Prophet of Islam. This was not in practice during the life time of first caliph Abu Bakar and also for more than two years during the second caliph Omar's time. Later on, Hazrat Omar permitted it on account of certain peculiar situation. It is said that when the Arabs conquered Syria, Egypt, Persia, etc., they found that the women there are more beautiful than the Arabian women. The Arab men were attracted to those beautiful women and wanted to marry them.<sup>2</sup> But those women insisted that in order to marry them the men had to divorce their existing wives instantaneously by pronouncing three divorces in one sitting. The men agreed to their conditions, because they knew that, in Islam divorce is permissible only twice in two different periods of tuhr and its repetition at one sitting is unislamic, void and shall not be successful. In this way they could not only marry to those women but also retain their existing wives. Caliph Hazrat Omar came to know about the evil intentions of the men. He ordered that even the repetition of the word 'talaq' thrice in one sitting would dissolve the marriage irrevocably. It was merely an administrative measure of Caliph Omar to meet an emergency situation and not to make it a law permanently. But unfortunately, the Hanifi jurists later on at the strength of this administrative order of second Caliph, declared

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<sup>2</sup>Furqan Ahmad, "Understanding the Islamic Law of Divorce" available at: [http://14.139.60.114:8080/jspui/bitstream/123456789/12599/1/020\\_Understanding%20the%20Islamic%20Law%20of%20Divorce%20\(484-508\).pdf](http://14.139.60.114:8080/jspui/bitstream/123456789/12599/1/020_Understanding%20the%20Islamic%20Law%20of%20Divorce%20(484-508).pdf) ( visited on 13 Nov, 2016)

this form of divorce valid and also paved religious sanction to it. Following essentials must be fulfilled to exercise the right of triple form of talaq:

- Marriage must be consummated
- Triple pronouncement of talaq must be made
- Such pronouncement may be made any time, either in a period of tuhr or even during menstruation
- Such pronouncement may be made even if the husband had sexual intercourse with her since the last menstruation.
- Marriage is dissolved immediately on the irrevocable pronouncement of talaq.

But nowadays triple talaq is frequently practiced in India. At present lot of problems is being felt by the Muslim Community. It is not practiced in any Muslim country, not even in Pakistan. It is only practiced in India. Triple talaq should be condemned as it is against the equality rights of women. It is arbitrary in nature.

#### ***Problem of women with triple talaq***

The concept of talaq in Islam is a valid concept as it would be unwise to force two people to live together who are wide apart from heart. But it could be performed through proper channels without infringing the rights of either party. Every effort must be made to protect the marriage. Triple talaq is unjust and inhumane and goes against the constitutional spirit as it is un-Quranic and illegal in most Muslim countries. It happens because of patriarchy not because of religion and it is very important that every Muslim men and women should know about the principles given in Quran to get justice and fairness in divorce. In case of triple talaq women suffer very unfavorable Quranic injunctions. Even uniform civil code does not provide adequate answer to the issue of inequality and injustice against female. The only way to get justice is by doing comprehensive reform in Muslim personal

law which is based on Quranic framework. It is the violation of rights of women citizens. Men and women should be at equal footing in the matters of the personal laws. As per the national study 525 have been divorced out of 4,710 women and of these 346 women were divorced orally and 40 women were sent a letter of divorce by their husband, 18 women were divorced on phone, one via SMS, three through email and 117 through other methods.<sup>3</sup> It was found by study that more than 88 per cent of women who have given interview wanted the legal divorce method to be the “talaq-e-ahsan” method which spreads over 90 days and involving negotiation. Triple talaq has brought a major injustice to Indian Muslim women through decades. A large number of Muslim women demand to reform Muslim personal law which is said in statement in BMMA.<sup>4</sup> They wanted a codified Islamic law which is based on the Quranic justice framework, to cover the matters such as age of marriage, divorce procedures, polygamy, maintenance and custody of children. India’s religious minorities, including its 155 million Muslims, are governed by personal laws that are meant to enshrine their religious freedom in Hindu-majority India. In our society women are generally treated as second class citizen and discriminated against by those misinterpreting religion. Muslim women in India are now campaigning for outlawing the practice of triple talaq. The method is banned in many Muslim countries, including India's neighboring Muslim-majority nations Pakistan and Bangladesh.

### **Triple talaq controversies in India**

The controversial practice of “triple talaq” is now facing a hard challenge and the Supreme Court is now taking into consideration whether to declare it

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<sup>3</sup>Dr Noorjehan Safia Niaz & Zakia Soman, ‘No more "Talaq Talaq Talaq", on November 21, 2015, at <https://bmmaindia.com/2015/11/21/bmma-publications-no-more-talaq-talaq-talaq-muslim-women-call-for-a-ban-on-an-unislamic-practice/>

<sup>4</sup> Ibid.

unconstitutional. We have already seen that India is the only country in the world where a Muslim man is allowed to divorce his wife by just reciting the word Talaq three times. Petitions have been filed in the Supreme court by (Bhartiya Muslim Mahila Andolan) BMMA after they wrote a letter to Prime minister demanding a reform for Muslim divorce and polygamy laws as India is the only country in the world where these Un-Quranic practices exist and are totally barbaric and unacceptable. In India, Muslim personal law is governed independently and there is no codified law for all Muslim citizens.

Recently a case which challenges the practice of Triple talaq is under consideration in the apex court of India that is Supreme Court. This case takes issue with the barbaric practice of Triple Talaq. This petition is filed by a 35 years old woman Shayara Banu, who is trying to challenge the validity of triple talaq. She was divorced in this manner via a letter by her husband while she was visiting her parents. She had demanded a total ban on this practice. Her case in question was seen as an example whereby Muslim women's fundamental right to live was being compromised. In India petitions have been signed by more than 50,000 Indian Muslim women and men, demanding a total ban on the 'Unquranic' practice of the unilateral Triple Talaq or divorce, under the covering of the BMMA. The BMMA has been working with hundreds of women who have been suffering as a result of a unilateral divorce and according to the findings of a BMMA study; more than 90 percent of the 4,710 women interviewed who wanted a ban on unilateral divorce. One of the prominent Muslim organizations, Jamaat-e-Islami Hind (JIH) is strongly opposing the government's stand on triple talaq insisting that there should be no interference with the religious practices of any citizens. The center had opposed the practice of Triple Talaq in the Supreme Court, stating that it cannot be regarded as an essential part of religion. The center is likely to combat with the practice of Triple Talaq for protecting the rights of the women. Several individuals and NGOs have also sought a ban on the

practices of Triple Talaq. Recently a case came into light where an 18- year old Muslim girl who is fighting a battle against triple talaq has urged the PM to take an immediate step to bring Uniform Civil Code. At 16, Arshiya was married off to a rich vegetable trader, Mohammad Kazim Bagean. But hardly two years later, he had discontinued the relationship by writing ‘talaq’ thrice on a paper. She was asked to leave her home with an eight-months-old child. She said that she had received the notice of triple talaq from her husband but has not accepted the same and have decided to challenge it in the family court. She also wants to continue her education. She said that she urge PM to help women like her and stop this tradition of triple talaq which has destroyed the life of innumerable women.<sup>5</sup>

### ***Conclusion***

India being a secular country does not follow one religion. India recognizes all the religions and keeps them at equal footing. In the constitution of India Article 14 is the basic feature, which cannot be amended. Its main objective is to secure everyone’s equality of status and opportunity. Every state’s action should be according to this article and any deviation from it is regarded as violation of the fundamental rights. The fundamental rights speak of equality before law irrespective of religion, race, caste, sex and place of birth. Also, Article 25 of the Indian constitution confers Right to freedom of conscience and free profession, practice and propagation of religion. It also extends to protect the rituals, ceremonies, modes of worship etc. which are integral to the religion.

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<sup>5</sup> Darshana Daga, *I do not accept this Triple talaq system*, Pune Mirror, October 22, 2016, at <http://punemirror.indiatimes.com/pune/civic/i-do-not-accept-this-triple-Talaq-system/articleshow/54984754.cms>

Hence the question here arises, whether inequality on grounds of sex and religion in personal law is acceptable? Are not some provisions of personal laws ultra vires and unconstitutional? Triple talaq is kind of practice which discourages the concept of gender equality. It gives absolute power in the hand of husband to decide the fate of marriage without taking any effort of reconciliation. In Triple talaq the marriage is dissolved in one go on the whims and fancies of husband. Under this a husband can give talaq to his wife by merely pronouncing the word 'talaq' three times at once. Whereas a Muslim woman cannot give talaq until the power has been delegated to her by the husband. So the concept of triple talaq is arbitrary in nature as it does not give the equal status to the Muslim women. Triple talaq is discriminatory for the Muslim women as it brings uncertainty in their life. The provisions like triple talaq show the conservative, orthodox and male dominant mentality of our society. These provisions set up the identity of women as a commodity rather than a human being. The concept of triple talaq is detrimental to the dignity of women. Triple form of divorce is regarded as morally censurable and those who exercise it are considered as sinners. It tarnishes the noble relationship of marriage in the heat of the moment.

So, can the cultural diversity of India accommodate the concept of gender justice? Can we ensure women's equality along with multiculturalism? Whether personal laws other than that of Islam ensure gender equality? Any existing personal law till date does not ensure total justice for women in marriage, divorce and inheritance. Under every law women is subject to various kinds of discrimination as compared to their male counterpart. Any law cannot be transformed in a single day. Each law has their own share of loopholes, be it the Hindu law or any other. The Hindu law consists of various provisions which show the inclination of society towards male dominance. As we can see in the Hindu Adoption and Maintenance act, the law gives more privilege to man as compared to woman in matters of adoption. The in-

depth study of the chapters on Khula and Mubarat in the Islamic law have made it clear that Islamic matrimonial law maintains a balance between the rights of man and women by treating them on equal footing from cradle to grave. We cannot blatantly state that entire Islamic principles harm the interest of woman. And also we cannot say that other personal laws entirely do gender justice. The need of hour is to formulate laws keeping in mind the best interest of each and every individual without any discrimination on ground of sex. Triple talaq must be balanced on the scales of equality and right to life with dignity. The backing religion behind any personal law is immaterial. What matters is the legal provision which ensures reverence of woman with equivalence and esteem.

The matter of concern is not whether triple talaq is valid or not, but whether breaking of marriage without any effort of reconciliation or adjustment is logical. The practice of capricious triple talaq must be condemned with utmost force and persuasion. It is still not too late for our right thinking Muslim jurists to come forward with firm and convincing arguments that the prevalent customs of triple divorce is wrong, iniquitous, unislamic, arbitrary and whimsical.

