

TRIPLE TALAQ: EFFECT AND LAWS

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ABSTARCT

In these modern times breaking a strong bond like marriage could be so easy is possible in Muslims only. A Muslim man can divorce his wife by merely pronouncing TALAQ three times clearly if vocally, and even through writing a letter or on social media like Facebook, mail and so.

This is called express TALAQ and when done does not allow both to rejoin, somehow, until unless wife gets married to some other person and thereafter the new husband once again divorces her giving rise to polygamy. Other religions treat marriage as a sacrament whereas under Muslim law marriage is a civil and social contract.

Approved by a prophet, express TALAQ, also known as TALAQ-UL-SUNNAT is further subdivided into i) TALAQ-E-AHSAN ii) TALAQ HASAN iii) TALAQ-E-BIDDAT.

INTRODUCTION

TRIPLE TALAQ is a typical way of being of doing divorce among Muslims. It does not require any legal formalities. This itself has been approved by Muslim law. The practice is, Muslim man annoyed with his wife simply gets rid of her by saying “TALAQ” clearly thrice in a row. TALAQ is an ‘ARABIC’ word. In India the practice of this concept is unfortunately constitutional. TALAQ or divorce as described above can be performed orally, through letter and now days even through social media, like Facebook, Skype, Email and so on.

The husband need not require any cause for the divorce and wife need not have been present at the time of pronouncement. The pronouncement should be clear and not muddled and should clearly mention that he wishes to end the marriage. There are three types of TALAQ

- i. TALAQ-E-AHSAN
- ii. TALAQ HASAN
- iii. TALAQ-E-BIDDAT.

It is the third one which is TRIPLE TALAQ. Practice of TRIPLE TALAQ or TALAQ-E-BIDDAT started around 1400 years ago since the period of Caliph Umar.

The Supreme Court described it as distinctly willful and said that it allows a man to break down marriage hardly and unpredictable. With the changing time orthodox tradition everywhere started meeting. This law in many, even, Muslim counties were declared unconstitutional. Same wave flourished in India questioning the practice in view of justice, gender equality, human rights and secularism.

The debate between government of India and supreme Court for a uniform civil code (Article 44) in India. Article 44 states that to declare Muslim personal law which enables a Muslim male to give a unilateral TALAQ to husband’s wife without her consent and without resort to judicial process of courts as void, offending articles 13,14 and 15 of the constitution. On 22nd August, 2017 the Indian

Supreme Court deemed instant TRIPLE TALAQ unconstitutional as out of the bench of five judges three of them ruled unconstitutional while the other two ruled as unconstitutional.

However all of them simultaneously asked the government to ban the practice by enacting a law. Although Islam is a natural religion and provides solutions on marriage and divorce for all, or almost all eventualities. As when a Woman wishes a divorce she has to consult a religious scholar, or a body of scholars, who decides in the light of Quran and permits in favor on reasonable grounds. This way has been chosen for women as they are more emotional and chances of hasty and ill-considered divorces are more.

THE EFFECTS OF TRIPLE TALAQ ON MUSLIM WOMAN

In India over the years Muslim women have complaining of living in a constant fear of being thrown out of their conjugal homes in way more faster because of a Muslim man where he chooses to end the years of marriage by word “TALAQ” three times. The effect that gave an huge impact on Muslim women as they filed a ‘public interest litigation’ in the Supreme court against this practice of TALAQ-E-BIDDAT.

The Muslim woman has termed this practice to be “regressive”. The petitioners asked for section 2 of Muslim personal law that is the Sharia application act 1937, to be discard specify as it being against article 14 of constitution that is “Equality before the law”. In march 2017, over 1 million Indian Muslims a majority of whom were women signed a petition to duly end pressing TRIPLE TALAQ. The petition was started by THE MUSLIM RASHTRIYA MANCH, an Islamic organization united to the right wing Hindu nationalist organization RASHTRIYA SWAYAMSEVAK SANGH also named as RSS.

The petitioners have showed that the instant divorce has nothing to do with QURANIC faith and instead it was being supported by many QURANIC texts by many Islamic intellectual historical confirmation and legal precedent.

Muslim women in India have been facing and living in a dilemma of constant fear of getting thrown away from their conjugal home and life of a person whom she married, by the action of his husband narrating TALAQ thrice. Initially it used to be rare but with time it became intense and so immense that in year 2016, 35 year old lady named SHAYARA BANO, who had children, approached the Supreme Court for the justice. She complained that during her visit to her parent's house in UTTRAKHAND for some medical reason. One day receives a TALAQNAMA (a letter of divorce) from her husband to end her 15 years marriage. Moreover she was not even allowed to meet her children's, thus suddenly shattering her life. She pleaded the court of barring this practice which ruins one's life. She also added that under this regime Muslim man treats a Muslim women or assumes a women "SLAVE". As per the case

SHAYARA BANO V. UNION OF INDIA, 2017

SHAYARA BANO got married to a person named RIZWAN AHMED in the year 2001, a property dealer in ALLAHABAD. She told the court that since beginning she went through mental and physical torture, often beaten and kept hungry in lone room for several days by her husband and in laws. They (in laws and husband) demanded additional dowry and a car from her parents, as her father was a low earning government employee they could not afford the additional demand. The letter of TRIPLE TALAQ or pronouncement received by speed post was the final milestone. Her two children aged 11 and 13 were given in husbands custody. All this havoc gave her a good cause in thinking to go to court, and let this practice be thought by them too whether it is justified or not. It is submitted that religious leaders and priests like imams, maulvis for their personal importance, influence these practices in the society, which treats a Muslim women as slave, thereby violating their fundamental rights mentioned in articles 14, 15, 21 and 25 of the constitution. It has been banned in more than 44 countries like Pakistan, Afghanistan and so on. In India this practice has been

permitted by Muslim personal law which is neither harmonious with the modern principles of human rights and gender equality, nor an integral part of Islamic faith.

The government had draft the bill claiming 100 cases of TRIPLE TALAQ and by clearly objecting the JUDGEMENT of Supreme Court in August 2017, banning the TRIPLE TALAQ. On 28th December, 2017 the Lok Sabha had passed the Muslim (protection of rights on marriage) bill, 2017. The bill clarifies to banned TRIPLE TALAQ that happened in many forms like through speaking in writing or by any electronic means with the punishment for up to three years imprisonment. But many parties disagreed with bill like communist party of India (Marxist), Rashtriya janata dal, Biju janata dal, Indian union Muslim league and so on by calling it erratic and invalid, while Indian national congress supported the bill.

On 19th September 2018 by observing the practice of TRIPLE TALAQ had been continued in contempt of 2017 Judicial decree the government announced the Muslim women (protection of rights on marriage) ordinance (enactment), 2018. As an enactment made known into the Indian parliament oversight if either the parliament does not accept it within six weeks of reassembly, or if denounce resolutions are passed by both houses.

Later on the Muslim women bill was introduced which made to protect Muslim women. That's why a new bill was made known in Lok Sabha by the Union Law Minister Ravi Shankar Prasad. As the

ordinance of 2018 was going to be expired in 22nd January, 2019 the government reinstated the enactment on 10th January, 2019.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) BILL, 2019

On 10th January, 2019 the Muslim protection of rights on marriage enactment was abolish on 31st July, 2019 when it got passed by both of the houses and approved or duly signed by President officially it became an act of Parliament. It is an act of parliament of India to illegalize it. It was passed on 26th July, 2019 by Ravi Shankar Prasad (Minister of Law and Justice). This act made TRIPLE TALAQ unconstitutional in India. The Supreme Court decision came on August, 2017 after a very long debate and finally got the decree. It impose that this practice of instantly divorcing the wives is to be declared null and void. The punishment set for this practice is up to three years of imprisonment. The Act also provide maintenance for women's children. This act contains seven sections:

- 1) Any pronouncement of TALAQ by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.
- 2) Any Muslim husband who pronounces TALAQ upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

- 3) A married Muslim woman upon whom TALAQ is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.
- 4) A married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement TALAQ by her husband, in such manner as may be determined by the Magistrate.
- 5) An offence punishable under this act shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon TALAQ is pronounced or any person related to her by blood or marriage;
- 6) An offence punishable under this act shall be compoundable, at the instance of the married Muslim woman upon whom TALAQ is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;
- 7) No person accused of an offence punishable under this act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim Woman upon whom TALAQ is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

Note- “This matter has been taken from the site which has been mentioned below in the reference column as the sections cannot be changed and written as it is”.

CASE LAWS RELATED TO TRIPLE TALAQ

RUHIA KHATUN V. ABDUL KHALIQUE LASHKAR, 1979

There had been plenty of cases in Supreme Court as well as in High Court for instant TRIPLE TALAQ to be banned. In this case the court finds a way of doing TALAQ by the holy Quran is that i) TALAQ must be for a legitimate cause. ii) And be anticipate by attempts at settlement between husband and wife by two mediator that is one from maternal side and other from paternal side of the

family, if the understanding fails then TALAQ may get changed. TALAQ in whatever form must be for genuine cause and has to anticipate by an attempt for agreement and if undertaken otherwise, is a willful wrong act. The court further said that TALAQ to be active has to be decided. The term decided means to affirm, to say formally, and to speak. No such message has been bear to court's notice that provides a rehearsal in any document associating a statement by husband that he (husband) has divorced his wife could be an active divorce on date in which wife review of such statement contained in an oath served on her. None of holy books has mentioned any such type of divorce in any kind of document.

MOHD. AHMED KHAN V. SHAH BANO BEGUM, 1985

Back in the year 1978 there was a very controversial lawsuit related to maintenance known as Mohd. Ahmed Khan V Shah Bano Begum from now on as Shah Bano case. Supreme Court, in this case, delivered a JUDGEMENT favouring maintenance given to an aggrieved divorced Muslim woman. But congress government in rule enacted a law in which the right to maintenance was for the period of iddat and responsibility shifted to her relatives or Waqf board. This was discriminatory as it denied the right to basic maintenance available to no Muslim woman under secular law. Shah Bano a 62 year old Muslim mother of five children was divorced by her husband in 1978. She filed a criminal suit in the Supreme Court and won the right to alimony from her husband. But Muslim politicians started a campaign for the verdicts nullification. Some Muslims even cited that the Judgement was in conflict with the Islamic law as per the Quran. They even presented that India having different civil codes for different religions. This made congress with the full majority in the parliament to pass Muslim Woman Act, 1986 (Protection of rights in divorce). This law diluted the Supreme Court verdict and restricted form their husbands for the period of 90 days from the divorce (the period of Iddah). However in their later Judgements including Daniel Latifi case and Shamima Farooqui v. Shahid Khan Supreme Court upheld shah Bano verdict and the protection of rights

on divorce, 1986 was nullified which was further supported by All India Shia personal board and majority of Muslims.

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CONCLUSION

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Although Islam religion seems practical in, grave situations of married life when sometimes it becomes impossible to continue it. But the harshness of it should be channelized through the various mental status of both husband and wife. More of it should be in accordance to the modern world. As we have been in many cases where controversy always prevails, this practice mostly affects the social status of Muslim woman and their acceptance for the family. The subject should be lawfully handled, and the distinction between woman and men should be brought much closer, as per the modern times. Thus in the view of above old practice of divorce should be converted into more liberal JUDGEMENTS and certain uniform. Systematized laws should come which helps to invalidate to some degree the disparities in the current individual Muslim laws.

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