



Triple Talaq in Islam

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Abstract

In this cohesive age, where religion decides your fate, triple talaq is a construed adversity on Muslim Women. My purpose of writing a research paper on triple talaq was to bring in notice the problems faced by the women of Muslim community, not only in the eyes of Islamic religionist but also, in the eyes of people belonging to other religions, I, myself being a Hindu. The research paper contains the extensive explanation of talaq in Muslim personal laws, and describes of instant triple talaq is considered as a wrong practice in Islam. Talaq should be given according to the Hanafi procedure which is also provided in the paper. I have researched variedly the view of instant talaq with accordance to the Indian Judiciary and maintenance is a constitutional and legal right of the wife and the children and is provided in the various legislations. The triple talaq ordinance as provided by the government, statutorily protect the Muslim women and imposes penal punishment on the husband for such a crime. In conclusion, I have gathered that instant triple talaq is a more constructive practise in the middle class and lower middle class strata of Muslims. Reconciliation methods are not adoptive in between the families as well as they should be. As a human, it is the duty of us, as one, to protect, nurture and cause process each other.

Keywords: nurture, dutym, Muslims, gathered

Introduction

Triple talaq in Islam

Triple Talaq or Instant Talaq in Islam means that a muslim husband can divorce his muslim wife by pronouncing 'talaq' three times. It has generated debates around the globe on the rights of muslim women when it comes to rights in the issue of divorce and the inheritance in purview of the muslim personal laws. Triple talaq is a practice which enables a muslim man to divorce his wife just by uttering 'talaq' thrice. It is very much prevalent in the Indian muslim community majority of whom are muslims of Hanafi School of Law. This mode of divorce is not universally accepted and many countries despise this form of breakage of a marital contract. Many Islamic schools of thought prefer to have a deferred process of divorce in a period of three months.

Islamic laws say that the right to divorce is given to the man because he has the financial responsibilities of the house, but a woman can also initiate a separation. The muslim laws always advice an arbitration meeting of the wife and husband wanting to separate from each other, with the elders of the family so that either reconciliation may be reached and talaq or triple talaq are not taken to be the only method of separation.

The Holy book of Quran despises the method of triple talaq and calls it the most sinful way of breaking a marital bond.

In India, Triple talaq has been ruled unconstitutional by the Supreme Court on 22nd of August, 2017. The Supreme Court had been rolling the unconstitutionality of Triple Talaq or Instant Talaq in a number of cases including the judgment of a case in February 2015.

Where the decision of Supreme Court was backed by plenty of NGOs and women all around the country, it had to face opposition from AIMPLB (All India Muslim Personal Law Board) by citing it as interference in the personal laws.

When the decision to ban triple talaq in India was taken,

many examples of predominantly muslim countries, including, Pakistan, Saudi Arabia, etc were quoted with had banned the use of triple talaq as mode of divorce.

What Is Talaq In Islam?

A man is considered to be the sole bread earner of the family and has to bear all the financial responsibilities. Thus, the right to divorce in islam is given to the husband. A muslim man who wishes to divorce his wife is advised to first sit for an arbitration meeting with the elders to seek for some hope for reconciliation. If the arbitration fails and the husband is still unwilling to live with his wife, he may divorce her in writing or by verbal means. In both the cases, islamic laws recommend the presence of two witnesses present at the time when the divorce is being pronounced. According to muslim laws, a man should divorce his wife:

- Only once,
- Only during the time his wife is not on her periods,
- And when there has been no sexual contact between them since the time of her last periods.

After the divorce in called by the husband, the wife must wait for three months, which is called the period of 'iddat'. The wife has to abstain from having sexual relations with anyone, including her husband, though the husband and wife live under the same roof during this period. The husband can take back the wife either by verbally saying that he wants to take her back or by making sexual relations with her during the period of iddat. If the husband fails to do so, the wife is completely divorced and it would be called 'haram' to live with her anymore and the wife must leave the matrimonial home immediately.

If the husband decided to take back his divorce, two witnesses should be present at that time as well, before the end of the iddat period.

If a man calls talaq to his wife three times on three different

occasions, the divorce finalises and he cannot take his wife back or remarry her in any case.

Types of Talaq in Islam

Talaq given by husband

“Talaq-e-Sunnat” or “Talaq-e-Raje” can be called in the form of Hasan or Ahsan. It is a revocable divorce.

1. “Talaq-e-Ahsan”

It is considered to be the most appropriate form of talaq in which husband pronounces divorce to his wife in a single sentence, ‘I have divorced you’, during the time when his wife is not menstruating. The husband has to wait till the period of iddat, which is 90 days, but in case the wife is pregnant, the iddat period is till she gives birth, and the husband and the wife can live together but not maintain any physical relations with each other. The wife, however, cannot have sexual relations with anyone during the period of iddat. If the husband, before the completion of iddat period, orally says to take back his wife, or makes sexual relationship with her, the divorce is revoked.

2. “Talaq-e-Hasan”

It is considered a bona fide form of divorce. In this type of talaq, the husband calls out ‘talaq’ to his wife in three successive tuhrs (when the wife is not menstruating). The pronouncements are made after an interval of a month or 30 days between each call out. This type of talaq can be revoked anytime as desired by the husband, before the pronouncement of the third ‘talaq’.

3. “Talaq-e-Biddat” or “Talaq-ul-Bain” - irrevocable form of divorce

It is also known as instant talaq, it is irrevocable form of talaq. It comes into effect as soon as the husband calls out talaq, thrice, to his wife at same instant during a single period of tuhr.

4. “Ila”

In this form of divorce, the husband takes an oath to not have physical relations with the wife and abstains from cohabitation with his wife for a minimum period of four months. After the period of four months, the marriage automatically dissolves.

5. “Zahir”

If the husband compares his wife to a relationship which is prohibited by Islam to get married into, like the relationship of mother or sister, then talaq is considered in Muslim law. But in this case, the wife has the rights to approach to the court.

Talaq given by wife

1. “Talaq-e-Tafweez”

Islam only allows the man the power to pronounce talaq on his wife, and vice versa is not allowed. But the husband has power to delegate this power to his wife or third person by an agreement which may be conditional, permanent or temporary. Thus, it is called delegated divorce.

2. “Lian”

In this case, the wife gets the right of divorce if the husband falsely accuses the wife of unchaste or adultery, as it amounts to assassination of the wife’s character. Therefore, the wife can pronounce or ask for divorce.

3. “Khula”

In this type of talaq, the woman initiates the divorce, and only she wants to separate from her husband. To get a divorce, she has to return the ‘mehr’ or the payment made by the husband on their wedding. The husband, may then, take the payment and let her go. The amount of mehr may exactly be the amount paid on the wedding or could be more or less than that, as accepted by the husband.

Divorce by mutual consent:

Divorce by mutual consent is called ‘Mubarrat’. Both the parties to the divorce are unwilling to live with each other and the desire of separating is absolutely mutual. The offer to divorce can be from either of the sides, be it wife or the husband. When the offer is accepted by either parties, the divorce becomes irrevocable. In this form of divorce also, the period of ‘iddat’ is necessary.

Judicial divorce

1. Until 1939, muslim wife could only seek divorce if her husband was an impotent or insane or had assassinated her character by blaming her for adultery.
2. In 1939, Muslim Marriage Act was introduced, which laid several grounds by means of which a muslim wife could procure divorce from her husband.
3. A muslim wife could seek divorce, under the Muslim Marriage Act, 1939, by means of the following grounds [1]:
 - a. If the whereabouts of husband are unknown for a period of four years.
 - b. If the husband neglects or fails to provide for her maintenance for a period of two years.
 - c. If the husband has failed to perform his marital obligations for a period of three years.
 - d. If the husband was impotent at the time of marriage.
 - e. If the husband has been insane for a period of two years.
 - f. If the husband is suffering from leprosy
 - g. If the husband is suffering from any venereal disease
 - h. If the husband is sentenced to jail for a period of seven years or more.
 - i. If the wife was given by her parents or guardian in marriage before she attained 15 years of age.
 - j. If the husband treats the wife with cruelty, be it physical or mental.
 - k. If the husband associates with women of bad reputation.
 - l. If the husband leads an infamous life.
 - m. If the husband forces the wife to lead an immoral life.
 - n. If the husband forces the wife to dispose of her property.
 - o. If the husband obstructs the wife to follow her religion properly
 - p. If the husband has more than one wife and does not treat her well.

Procedure of Talaq As given by Islamic sharia council

If the measures of reconciliation were ineffective, then the husband can use his right to give divorce or the wife can ask for ‘Khula’.

The husband should follow proper shariah rules to give divorce to his wife the rules of shariah are given below:

1. Divorce should be given to the wife when she is in the

state of purity or tuhr, thetas, when she is clean after her menstruation and the husband had not had sexual intercourse with her. Husband should not give direct during the time of tuhr as it forbidden in 'hadith', on the ground that during menstruation, husband is not attracted to the wife and in her state of cleanliness he might give up the idea of divorcing her.

2. Only one divorce shall be given at one instance. The husband may pronounce 'talaq'. The divorce is revocable till the period of iddat expires.
3. The divorce shall be given in the presence of two witnesses as states in Surah Talaq.
4. After pronouncement of the first talaq, the women shall abstain from any sexual contact with her husband or any other man for a duration of 90 days. The husband cannot turn his wife outside the house during iddat. Both of them may reside together but cannot maintain sexual habits towards each other. If the women id pregnant, then the prior of iddat will be till she gives birth.
5. During the period of iddat, the husband can take the wife back and the divorce can be revoked, but there should be two witnesses present in case of revocation of the divorce as well.
6. If the husband has not returned to his wife or taken her back, then on expiration of the period of iddat, the divorce shall be confirmed and women will be separated from her husband and she will be forced to leave her husband's house.

Validity of triple Talaq as according to the Hanafis

Talaq-e-Biddat is considered to be innovative form of divorce which is considered to be sinful by the Holy Book Of Quran. Hanafis believe that even though this form of divorce is sinful and innovative, it is very much valid and the divorce shall be sanctioned. Hanafis also say that when triple talaq is pronounced, the wife becomes completely alienated from the husband and the husband cannot remarry her, she becomes haram to him ^[2]. Neither can he take her back no can he go for fresh marriage with her ^[3]. If the husband wants to remarry his wife, the wife must go trough the process of 'halala'. Halala is the process in which the wife must marry another man, and consummate the marriage with him. When that man divorces her or she becomes a widow only then can the husband remarry her. All four muslim schools of thought accept the validity of instant talaq or triple talaq.

Many Imams have questioned the validity of this type of divorce and concluded to call it 'raj'i Talaq', i.e. The divorce in which the wife can be taken back . Imam Taymiyyah took to the position that even I someone pronounces triple talaq, it should be treated as one one only ^[4], the husband thus, will have the right to take he back within the period of iddat or for nikaah if the period of iddat expires.

"In the *Qur'an*, *nikah* is described as *misaqan ghaliza*, i.e., strong bond and has explained how and with whom one can enter into this strong bond and this strong bond cannot be dissolved without proper reason and method. It certainly cannot be dissolved whimsically. A man has to pass through different stages to bring about reconciliation either by persuading his wife to behave properly, or by appointing arbitrators as per *Qur'anic* injunctions (4:35). If all this fail only then recourse can be taken to divorce. Thus, according

to the *Qur'an*, divorce is not an arbitrary and whimsical thing. The method prescribed by the *Qur'an* for divorce is that one can give divorce twice only, i.e., on two different occasions and then either he has to keep the woman with kindness or leave her with benevolence ^[5].

Indian judiciary towards triple Talaq

Supreme Court of India, banned triple talaq on August 22nd, 2017. A five-judge bench ruled that the practice of triple talaq is unconstitutional and atrocious towards the muslim women as they have a sword of abandonment by their husbands hanging over their heads constantly. It was also found that this course of instant triple talaq is against the teachings of islam. A number of muslim women were divorced one phone calls, text messages, WhatsApp, which was agreed to be unlawful.

A petition was filed in the Supreme Court against triple Talaq by Shayara Bano. Four other petitioners' plea was tagged with Bano's petition. A bench of Chief Justice JS Khehar, Justice Kurian Joseph, Justice Rohinton Fali Nariman, Justice Uday Umesh Lalit and Justice Abdul Nazeer heard the arguments to the petition.

The petitioners in this case were the women affected by the concept of triple talaq. Their cases are given below:

Shayara Bano

Shayara Bano was 36 years old when her husband gave her triple talaq in October 2015 and he husband, Rizwan Ahmad, also, took away her two kids. Shayara Bano approached the Supreme Court a year later. She asked the Court to declare triple talaq, polygamy in islam and nicked halala as illegal and unconstitutional. She blamed her in-laws to have forced her to get abortion six times and was subjected to physical and mental cruelty

Rizwan Ahmad opposed her plea and said that divorce in Islam in India is protected by Muslim Personal laws and the practices of polygamy, triple talaq and nikkah halala are sanctioned muslim personal laws.

Prime Minister Narendra Modi's government filed an affidavit against triple talaq based on her petition.

Ishrat Jahan

Ishrat Jahan is a resident of Howrah in West Bengal. She was divorced by her husband, Murtaza, in April 2015, to whom she had been married for 15 years. Her husband called from Dubai and said talaq three times and disconnected the phone.

He married another woman and took away her four children with him.

Ishrat Jahan, went to the Supreme Court to seek maintenance from her husband and her children back.

She absolutely declined to accept talaq over phone.

Gulshan Parween

Gulshan Parween is from Rampur, Uttar Pradesh. She received a talaqnama or divorce notice on a ten rupees stamp paper when she was at her parents house in 2015. She claimed that this talaq allowed her husband to abandon her ad their 2 year old son, Ridan. They were rendered homeless.

Parween claimed that she was subjected to domestic violence for dowry.

Her husband approached the family court for dissolution of marriage but Parween outrightly denied to accept this notice

or talaqnama.

Aafreen Rehman

Aafreen Rehman was married to her husband in 2014 via a matrimonial portal. She said that just after two-three months of her marriage, her in-laws started harassing her mentally to seek dowry out of her. They started being her up and physically torturing her. In September 2015, she was asked by her in-laws and husband to leave the house.

When she went back to her parent's house, she received a letter through speed post which pronounced that the her husband has divorced her.

She filed a petition in the Supreme Court for intervention in such unjust matter and calls the practice of triple talaq wrong, unfair and unacceptable.

Atiya Sabri

Atiya Sabri was married in 2012. She had two daughters with her husband, one aged four and the other aged three. Her husband pronounced talaq to her on a piece of paper.

She and her daughters were abandoned by her husband. She says that the talaq was given to her cannot be justified. She has the burden to raise her daughters. She moved to Supreme Court for justice in January 2016.

Bharatiya Muslim Mahila Andolan (BMMA)

BMMA filed a petition in Supreme Court which was titled as 'Muslim Women's Quest for Equality'. BMMA said that Allah says both men and women are of equal stature.

Zakia Soman agreed by presenting verses from Quran about talaq, procedure of talaq, how it should happen over a minimum period of 90 days and what kind of arbitrations and negotiations must be presented during the course of a divorce.

Her second argument sided towards gender justice and how no women should be treated less than a man or given less rights than a man. She says that nowhere in the constitution of India there is any confusion with the equal rights of each and every citizen of this country no matter which gender, religion, caste, creed, etc he belongs to.

Maintenance under triple Talaq

Under muslim law, women are considered weaker than the men and therefore, the man is suppose to maintain the wife even if she is capable of doing so in her own.

Maintenance under muslim law is called "Nafqah", which primarily includes food, clothing and lodging.

The concept of triple talaq first came in limelight in the case of Ahmed Khan v. Shah Bano ^[6]. It was held in this case that, after triple talaq or divorce, a wife is rightfully entitled to maintenance under the Muslim Women's Act, 1986.

In the case of Daniel Latifi v. Union Of India ^[7], articles 14, 15 and 21 are violated if maintenance is not provided to the wife by her husband beyond the period of iddat as well, according to section 3(1) (a) of the Muslim Women's Protection Act, 1986. however, the Maintenance shall be granted to the wife till the time she has not remarried to any other person.

- Muslim men, under this act are not only entitled to maintain the wife until the period of iddat but are supposed to make arrangements for the maintenance of the wife within the period of iddat.
- Wife is entitled to maintenance from the relatives who will be entitled to her property after her death, as under

section 4 of the act

- If the relatives are not able to maintain the wife, then, the established Wakf Board will maintain the wife.

Supreme Court has held the constitutional validity if maintenance under the muslim law.

In the case of Shamia Ara v. State Of UP ^[8], it was stated that triple talaq is giving muslim men a higher strata over muslim women and is thus, discriminating. This judgment also relied on the case of Must. Rukia Khatun v. Abdul Khaliq Laskar ^[9]. In this case, the High court laid down the grounds on which triple talaq cantata place and will be valid ^[10].

Section 125 of Criminal Procedure Code ^[11] enables any women to claim maintenance and also serves the purpose of Uniform Civil Code so as to govern each and every citizen equally regardless of their religion.

Discrimination can be avoided through nikkahnama. It means, if the conditions of tall is mentioned in contract of marriage then triple talaq will not be valid divorce.

Triple talaq bill

Also, known as The Muslim Women (Protection Of Rights On Marriage) Bill, 2018.

Chapter II of the bill provides that declaration of talaq will be void and illegal ^[12].

- The bill explains that talaq declared in any form, verbal, written or by any electronics means shall be, by the effect of this bill, void and illegal.
- Any muslim husband who pronounces talaq shall be punishable with imprisonment for upto 3 years and shall also be liable for fine.

Chapter III of the bill contains

- The woman upon whom the talaq is pronounced shall be entitled for maintenance for her and her dependent children by her husband, as determined by the magistrate, without dismissing any other law in force.
- Notwithstanding anything contained in any other law at the time being in force, the woman son whom the talaq is pronounced shall be deemed to have the custody of her minor children, in a manner determined by the magistrate.
- Notwithstanding anything contained in Code Of Criminal Procedure, 1973, the offence punishable under this bill shall be cognizable, compoundable and non-bailable.

Conclusion

People have become very callous and incautious about divorce. Men tend to give divorces in rage, without even thinking for a moment. To avoid paying mehr or dower even after they pronounced talaq three times they resort to non-Shariah means such as halala, to remarry the the wife they divorced. Such defects need to reformed as son as they can be.

Reconciliation measures should be laid utter importance to before divorce as divorces breaks families and causes abandonment of women and children.

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