

Study on Legal Implementations of Triple Talaq in India

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Abstract: *This research paper delves into the landmark decision of the Indian Parliament to declare triple talaq unconstitutional, marking a significant moment in legal history. While human rights are often perceived as symbols of progress and freedom, their application may not always translate into liberation, especially for marginalized groups such as women. This paper sheds light on the intersectionality of gender discrimination within the framework of Islamic personal laws, focusing particularly on the contentious issue of triple talaq.*

The study provides an in-depth examination of triple talaq, elucidating its definition according to Muslim marriage and divorce law, as well as its evolution leading to its judicial invalidation. Legal intricacies surrounding triple talaq, including its compatibility with constitutional articles such as Article 25 (freedom of religion) and Article 14 (equality before law), are meticulously analyzed.

Furthermore, the paper discusses the legislative hurdles encountered in safeguarding the rights of Muslim women, emphasizing the challenges faced in garnering consent and enacting protective measures in both the Lok Sabha and Rajya Sabha. It also explores the Islamic perspective on triple talaq, questioning its alignment with religious principles and its constitutional protection.

Legislative amendments aimed at enhancing the rights of Muslim women are scrutinized, alongside ongoing debates within political factions and the Muslim community. The seminal Shah Bano case and its aftermath, including subsequent amendments and the prohibition of triple talaq, are examined in detail.

Moreover, the paper addresses enforcement challenges surrounding the ban on triple talaq, highlighting instances of illegal pronouncements and measures adopted by law enforcement agencies and the judiciary. The constitutional validity of legislative actions against triple talaq is rigorously evaluated.

Finally, through a nuanced analysis, the paper endeavors to assess whether the declaration of triple talaq as unconstitutional serves as a boon or bane for Muslim women, considering diverse perspectives and societal ramifications.

This research paper aims to offer a comprehensive understanding of the legal, social, and religious dimensions of triple talaq in India, providing valuable insights into its historical trajectory, legal implications, and impact on women's rights.

Keywords: Triple talaq, fundamental rights and unconstitutional, irrevocable talaq, and Islamic law

I. INTRODUCTION

Our Triple talaq (instant divorce) and talaq-e-mughallazah (irrevocable divorce) are now-banned means of Islamic divorce previously available to Muslims in India, especially adherents of Hanafi Sunni Islamic schools of jurisprudence. A Muslim man could legally divorce his wife by proclaiming three times consecutively the word talaq (the Arabic word for "divorce") (in spoken, written or, more recently, electronic form).

The use and status of triple talaq in India has been a subject of controversy and debate. Those questioning the practice have raised issues of justice, gender equality, human rights and secularism. The debate has involved the Government of India and the Supreme Court of India, and is connected to the debate about a uniform civil code (Article 44) in India. On 22 August 2017, the Indian Supreme Court deemed instant triple talaq (talaq-e-biddah) unconstitutional. Three of the five judges in the panel concurred that the practice of triple talaq is unconstitutional. The remaining two declared

the practice to be constitutional. On 30 July 2019, the Parliament of India declared the practice of Triple Talaq illegal and unconstitutional and made it a punishable act from 1 August 2019. Three of India's neighbouring countries — Pakistan, Bangladesh and Sri Lanka — are among the 23 countries worldwide that have banned triple talaq. The Quran describes mechanisms for avoiding hasty divorces, prescribing two waiting periods of three months before the divorce is final in order to give the husband time to reconsider his decision. A bench of the Supreme Court of India has stated that the practice of divorce for Muslim men through, "Talaq-e-Hasan" which is pronounced once a month over a period of three months is allowed and a Muslim woman can also part ways with her husband through "khula (mutually agreed divorce)".

However, Muslim men are still allowed to be polygamous and can also give a divorce easily by paying paltry sums. The Muslim Women (Protection of Rights on Marriage) Act, 2019 passed on 30 July 2019 after a very long discussion and opposition finally got the verdict (the Indian Supreme Court judgement of August 2017 described below) to all women. It made triple talaq illegal in India on 1 August 2019, replacing the triple talaq ordinance promulgated in February 2019. It stipulates that instant triple talaq (talaq-e-biddat) in any form – spoken, written, or by electronic means such as email or SMS – is illegal and void, with up to three years in jail for the husband. Under the new law, an aggrieved woman is entitled to demand maintenance for her dependent children. The Government first introduced the bill to Parliament on 22 August 2017.[18] MPs from Rashtriya Janata Dal, All India Majlis-e-Ittehadul Muslimeen, Biju Janata Dal, All India Anna Dravida Munnetra Kazhagam, Indian National Congress and All India Muslim League opposed the bill. Several Opposition lawmakers called for it to be sent to a select committee for scrutiny. It was passed on 28 December 2017 by the Lok Sabha, or lower house of the Indian Parliament, where the decision found support from majority members of the House. In a major political win for the BJP government, the Rajya Sabha, or upper house of Parliament, where the ruling NDA did not have a majority, approved the bill (99–84) on 30 July 2019 after a lengthy debate.

The bill followed a 2017 Supreme Court ruling that the practice of instant triple talaq is unconstitutional and a divorce pronounced by uttering talaq three times in one sitting is void and illegal. Muslim triple talaq petitioner Ishrat Jahan welcomed the Bill when it was presented. Also Arif Mohammad Khan welcomed and appreciated the decision taken by Government and Parliament of India. The triple talaq bill proposed by the previous Modi government lapsed when an election was called and the Lok Sabha was dissolved before the bill was sent to the Rajya Sabha for approval.

In re Abdul Ali (1883) 7 Bom. 180; Amir-ud-din v. Khatun Bibi (1917) 39 All. 371. 39 I.C. 513.

Sarabhai v. Rabiabai (1905) 30 Bom. 537; Sheikh Fazlur v. Musammat Aisha (1929) 8 Pat: 69 115 I.C. 546. (29) A.P. 81.

https://en.m.wikipedia.org/wiki/Triple_talaq_in_India#

II. METHODOLOGY

This paper theoretical, hence data is collected from various secondary resources such as, internet, journal, books, websites, articles . the study gives simple framework which give detail study of “triple talaq” a type of divorce in Muslim community.

Triple Talaq violates fundamental rights of Muslim women

Right to Equality (Article 14): The practice of Triple Talaq discriminates against women by allowing husbands the unilateral power to divorce their wives while denying the same right to women. This unequal treatment based on gender goes against the principle of equality under Article 14 of the Indian Constitution, which guarantees equal protection of the law to all citizens.

Right to Life and Personal Liberty (Article 21): Triple Talaq can have severe emotional, psychological, and financial implications on women who are suddenly divorced without their consent. This violates their right to live with dignity and personal liberty, as guaranteed by Article 21.

Right to Freedom of Religion (Article 25): While individuals have the right to follow their religion and its practices, the practice of Triple Talaq was found to not be an essential part of Islamic religious practice by the Supreme Court. Therefore, banning it does not infringe upon the right to religious freedom guaranteed under Article 25.

Right to Freedom of Expression (Article 19): The power to divorce a spouse through Triple Talaq is exercised through verbal communication. However, this right to expression should be balanced with other fundamental rights. When Triple Talaq is used to divorce a woman without her consent, it can infringe on her fundamental rights.

Right to Non-Discrimination (Article 15): Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Triple Talaq, which primarily affects women, constitutes discrimination based on gender, violating this provision.

Right to Protect the Dignity of Women (Article 15(3)): Article 15(3) empowers the state to make special provisions for the protection of women and children. By declaring Triple Talaq unconstitutional, the Supreme Court upheld the dignity and rights of Muslim women.

<https://timesofindia.indiatimes.com/india/on-this-day-supreme-court-of-india-deemed-triple-talaq-unconstitutional/articleshow/102936454.cms>

Legal Ban on Triple Talaq :The muslim women (Protection of Rights on Marriage Act, 2019

Declaration of Talaq to be void and illegal.

Section 3 - Any pronouncement of talaq by words either spoken or written or in electronic form or any other manner by a Muslim husband upon his wife should be void and illegal

Section 4- deals with punishment for pronouncement of talaq. It says any husband who pronounces talaq upon his wife as it is referred to in section 3 of this act then he will be punished for a period with imprisonment which may extend to three years and will also be liable for a fine.

Section 5- deals with Subsistence allowance for the married Muslim women on whom talaq is pronounced. It says, that a married Muslim woman who is divorced (talaq) by her husband is entitled to get an amount of subsistence allowance from her husband for herself and her dependent children as may be determined by the Magistrate.

Section 6- deal with the Act speaks of the Custody of the Minor children This section says that in case the divorced is pronounced by the husband then the married Muslim woman shall be entitled to have the right to have custody of her minor children, in such manner as may be determined by the Magistrate.

Section 7 of the Act, under the Code of Criminal Procedure, 1973, elucidates that:

a) It says that if any information related to an offense punishable under this act is given to the officer-in-charge of the police station by the married Muslim woman upon whom the talaq is pronounced or any person related to her by blood or marriage, then such offense shall be considered as a cognizable offense.

b) It says that an offense punishable under this act shall be considered as a compoundable offense at the instance of the married Muslim women upon whom talaq is pronounced with the permission of the Magistrate on the terms and conditions that he may determine.

c) This section says that if a person is accused of an offense under this Act, then he shall not be released on bail unless the magistrate after hearing, the married Muslim woman upon whom talaq is pronounced, is satisfied that there are reasonable grounds for granting bail to the accused on an application filed by the accused.

<https://www.lawyersclubindia.com/articles/the-muslim-women-protection-of-rights-on-marriage-act-2019-13917.asp>

III. DISCUSSION

*Triple Talaq is articulated by different ways like instant message, WhatsApp and so forth and at some point the triple talaq articulated without spouse so it is proposed but there ought to be legitimate technique of talaq and it must be within the sight of observers.

*Polygamy and Nikahhalala ought to be disallowed on the grounds that it is against the privilege to value

*There ought to be a few mdkavurs for compromise by the incivichal from ban gatherings for example a couple before the proclamation of

*To ensure the enthusiasm of Muslim laches and to spare them from being stifled, there is have to classify Muslim law and codification of Muslim law as rodicated by heading of Holy book (Quran

*The Supreme Court pronounced the Triple talaq to be illegal by Supreme Court, it must be executed appropriately.

IV. CONCLUSION

The topic of divorce, especially within the context of Muslim personal law, remains contentious due to evolving notions of gender equality and emancipation in Western societies. This study undertakes an academic exploration of the mechanisms governing the dissolution of Muslim marriages initiated by wives. Through an extensive examination of relevant Quranic verses, hadith literature, and jurisprudential texts, it is argued that just as Muslim husbands possess the right to divorce their wives for valid reasons, Muslim wives also have the privilege to initiate divorce when adherence to Allah's and the Prophet's teachings becomes untenable. A detailed analysis of the practice of triple talaq reveals its inconsistency with Quranic injunctions, including verses from Surah Al-Baqarah and Surah Al-Talaq, as well as the Prophet Muhammad's teachings. Instantly divorcing a woman through the pronouncement of three divorces is not only deemed sinful but also contradicts Islamic principles.

It is suggested that courts discourage this practice and treat triple talaq as a single, revocable divorce within the iddat period. Islam grants both spouses the right to terminate a marriage that has become incompatible or burdensome. Within Islamic law, wives can exercise their right to dissolve marriages unilaterally through talaq-e-Tafwid, a delegated form of divorce. This provision empowers Muslim women to obtain freedom from marital bonds without court intervention, and its utilization is increasingly observed in India.

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