

Continuous Role of Judiciary and Legislation on Triple Talaq; An Analytical Study

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Abstract

Indian society represents unity in diversity. Person of different religion lives here and everybody follows their own traditions & customs. Every religion except Muslims follows the uniform civil code while Muslim community is still governed by their own personal laws but certain traditions of them are very debatable & against the spirit of fundamental rights provided by our constitution. Custom of triple talaq is one such controversial issue and is responsible for pathetic condition of Muslim women. Therefore, even Muslim women have come forward to raise their voice against it. Government and Supreme Court contemplated on this problem in detail and took into cognizance of pros and cons of this problem. They were of the opinion that there must be uniform civil code in the country. In this backdrop, triple talaq was declared unconstitutional in 2017. Supreme Court held that it violates the right of equality. Therefore, utterance of such triple talaq would be unconstitutional and legal action may be initiated for such disobedience of law. This article will throw the light on various factors which were responsible for enactment of this law.

INTRODUCTION

Our population is heterogeneous as people follow different caste, religion and sect. Muslim community follows by its personal law in matters like marriage, succession, guardianship, and adoption. This provision maintains peace and harmony and upholds the basic rights of the citizens to practice and propagate their religion enshrined under Articles 25 and 26 of the Constitution of India. Indian government is run by Constitution not by Shariyat or the other religious book. Earlier, many legislations

were made to remove social evils like Sati paratha and Child Marriage within the country. It is strongly advocated that religion has nothing to do with triple talaq by following this practice, we always endeavor in promoting gender equality. Some practices like arbitrary triple talaq, halala are social evil, in human, cruel and unconstitutional practice. Without giving second thought, verbally speaking three words of triple talaq is not legal. There have been several episodes where women were given Talaq through a letter, phone, or perhaps through message and WhatsApp. The Government was instructed by Prime Minister Modi Ji to make the law against triple talaq. On 18th May 2017 Triple talaq was held not constitutional by the Supreme Court. Rescinding the Triple talaq by the Modi Government has strengthened Muslim women's socio, economic, mental condition and also protected their indigenous rights.

AN OVERVIEW OF TRIPLE TALAQ¹

The Islamic Jurists thought about the different form of divorce as an innovation within the fold of the Shariat. It is not commanded by the Holy Quran or approved by the Holy Prophet (PBUH). The term triple talaq was not recognized even by the first Caliph Abu Bakar and neither within the two years of the second Caliph Umar. The Caliph Umar issued a verdict to stop the inappropriate use of the triple talaq by the husbands. When husband repeat the word talaq 3 times in one sitting then it ends the marriage immediately. This act is totally irreparable. Caliph Umar instructed to use this measure only in rare case to take action in emergency. Triple divorced is being used in most part of the India. Therefore, Muslim women were suffering a lot and they were not able to prevent this injustice by knocking at the door of court. Let us try to analyze the law of divorce in this background and in the light of the Quran and Hadith.

TALAQ-E-BIDDAT

Talaq-e-Biddat is the irregular mode of divorce, which was introduced in the second century of the Mohammadan era. Talaq-e-Biddat means a new or irregular talaq and it was introduced in the second century of the Hijri Era. It is considered by Hanafi jurists as the sinful mode of divorce. But earlier even law was in favor of it. In India, it is the most prevalent mode of talaq. Talaq-e-Biddat cannot be revoked immediately after it is pronounced. The significant characteristic of it is its irrevocability.

In the practice of Talaq-e-Biddat, when a husband utters three words of talaq in a sitting, or through the phone, or writes in a written message, the talaq come into practice immediately and there are no possibilities of taking it back, although if the man later regret and desire to re-conciliate. The only practice of Halala as an alternative method is left. This consists following steps

1. Woman has to get re-married with other men.

2. She must consummate with her husband of 2nd wedding.
3. After consummation she had to take divorce from her husband.
4. She has to undergo three-month iddat period.
5. Then she may be allowed to come back and remarry to her first husband.

The practice of talaq-e-biddat has been viewed as hideous in theology but upheld as valid by law. Pronouncing the divorce by talaq-e-diddat as “unconstitutional” may not remove the gender discrimination among Muslims, because Muslim men still have the right to talaq without facing a legal action against them.

The effect of Talaq-e-Biddat is that the marriage tie is dissolved at once;

- The mutual rights of inheritance immediately cease, except that if the talaq was uttered during the husband’s illness (talaq-ul-marz-ul-maut) and his death occurred before the expiry of the Iddat, the wife would inherit as a wife (widow);
- That if it is not a case of triple-divorce, parties may re-marry if they desire. But in the case of triple-divorce, the man cannot marry that woman unless she marries another man, and is divorced again after consummation of the marriage.²

JUDICIAL TREND

As far as the judicial system in India is concerned, it has so far, barring many exceptions, permitted the triadic triple divorce. In British India, as well as in independent India all the courts are declaring triadic pronouncements of divorce in one sitting lawful and effective. The triadic divorce is recognized and championed by the Indian Judiciary. Now the scenario is changed it can be seen by the different judgment of the court in this regard.

Sarabia vs. Rabiya Bai³ (State of Maharashtra) In this case, the Mumbai high court considers triple talaq as a final talaq.

Rashid Ahmad vs. Anisa Khatoon⁴ In this case the Privy Council, in its decision, propounded that the divorce granted at a time is the final divorce.

Shahid Azad vs. Union of India, this is a legal case in India related to the practice of triple talaq a form of instant divorce in Muslim Personal Law. Sahid Azad, the petitioner challenged the validity of triple talaq arguing that it brings down the dignity of the women and is against their rights given by constitution. Court decided that Muslim Women (Protection of Rights on Marriage) Ordinance, under constitution 2018 is constitutional and it does not violate the provisions of Article 14 of the constitution. The judgment was welcomed as a significant step towards gender justice and equality for Muslim women in India.

Shamim Ara vs. State of Uttar Pradesh⁵ In this case, court put the restriction on the right of Muslim men. Court ordered that they will not be able to utter triple talaq arbitrary. This case has proved to be beneficial

for married Muslim women as it tries to safeguard their matrimonial interest. Therefore, the respondent must pay maintenance until the marital responsibility ends under the law.

Firdaus Bano vs. Abdul Majeed⁶ The appellant file a petition for divorce before the Family Court, Kota. The case pleaded by the appellant was that the Nikah between the couple was held on 09.06. 2004. But they did not understand each other due to temperamental differences so the relationship did not develop over some time, and the couple separated. Under the circumstance, court has allowed the appeal and removed the impugned judgment dated 02.04.2018. The Appellant filed an appeal to seek a decree of divorce is allowed. The decree is passed annulling the marriage between the spouses which was solemnized on 09.06.2004.

Shayara Bano vs. Union of India,⁶ It is the most popular case in India on triple talaq. Hon'ble Supreme Court held the practice of this triple talaq should be stopped. In this case Shayara Bano got married in April 2022. Her husband demanded dowry repeatedly from her family. She had to go through domestic violence. In the end her husband divorced her by saying 3 words of triple talaq.

She filed the case before Supreme Court demanding that instantaneous triple talaq and practice of Halala must be declared unconstitutional as it violates the fundamental rights. Also, she asked to put a hold on the practice of Polygamy and Nikah halala because these practices are against the fundamental rights. She added that declaration of instant talaq without the consent of wife put them in unsecured and vulnerable situation. If she wants to remarry her husband, then first she has to marry another person and get a talaq from him only then she will be able to remarry with her previous husband.

A five-judge bench was formed to decide the case on 30th March 2017. On the 22nd August, 2017 the bench decided and passed judgment on triple talaq at a time unconstitutional by 3:2 majorities.

The Supreme Court announced its judgment and declared the practice of triple talaq unconstitutional by the majority of 3:2. After continuous arguments from both sides, the case was decided in the favor of Shayara Bano. It was also directed by Supreme Court to the Parliament to enact the law that will take criminal action against those people who will give triple talaq.

Honorable judges said that custom of triple talaq is against the spirit of natural justice so it cannot be held constitutional. **Justice Kurian Joseph** expressed that triple talaq is not as per principle of Quran and this lack legal sanction. He further added that ideology behind it is not good, so it is not good in eye of law as well.

Shao Bano Begun Case,⁷ The Shah Bano Begum case was about a Muslim woman who was divorced by her husband after 43 years of marriage. She demanded for financial support from her husband, but the law only allowed her to receive a small amount of money for three years. She went to court and court ordered her husband to pay her a monthly allowance. There was lot of protest against the court's decision, so the government passed a new law to change the court's ruling. The case raised important questions about the

rights of Muslim woman and the laws that applied to them. Supreme Court delivered a land mark judgment favoring maintenance given to an aggrieved divorced Muslim woman under Cr.P.C. 1973.

Case of Ishrat Jahan, Ishrat Jahan case refers to a controversy surrounding the issue of triple talaq. The facts of this case were:

1. Ishrat Jahan, a resident of West Bengal was married to Murtaza Ansari in 2002.
2. In 2014, Murtaza Ansari pronounced triple talaq to Ishrat Jahan through a call and later sent her a letter confirming the divorce.
3. Ishrat Jahan filed a petition in the Supreme Court of India.
4. The Supreme Court of India heard the case in May 2017 and reserved its verdict.
5. The Indian government also filed an affidavit in support of Ishrat Jahan's petition, arguing that triple talaq was unconstitutional and discriminatory.
6. In August 2017, the Supreme Court of India declared the practice of triple talaq unconstitutional and struck it down by 3:2 majorities.
7. The court held that triple talaq violated the right to equality under the Indian constitution and was not an essential religious practice in Islam. This decision was a landmark decision in Indian History.

REASONS FOR BANNING TRIPLE TALAQ⁸

1. **Address the grievances of victim women** – After marriage every woman wants to lead happy and dignified life. They feel economic security at their husband house. But when without any valid reason husband divorce them arbitrarily, they lose their self-confidence & at such critical time, society also do not support them. This unexpected situation ruins their life and they belong to nowhere. So, ban of triple talaq will help them in solving their grievances.
2. **Promote Empowerment of Women** – Women are showing their talent in every field of life. Now they are not just property for their husband. They deserve life of dignity and expect full respect from their husband. Banning the triple talaq will teach their husband a lesson that they can't have inclination in promoting gender injustice neither they can ignore dignity of their wife and exploit them in name of triple talaq.
3. **Prevent exploitation of Women** – If our society has to be developed from all aspect, we have to provide considerable attention to resolve matrimonial disputes in effective way. No guilty party should be permitted to drive benefit at the cost of victim. So, its ban is in the best interest of women so that they are not mistreated by their in-laws.

EFFECT OF TRIPLE TALAQ ON MUSLIM WOMEN⁹

We all know that the third largest population of Muslim resides in India and Muslim women are always facing this insecurity that they can be divorced any time by sudden, oral three words of talaq. Therefore, during their married life they are at the mercy of their husband. They will always try to appease their husband. They can't raise their opinion in front of them. They will give them no importance so women have to go through this ordeal every day.

A survey by Indian Muslim women movement indicates that 93% of divorced women were not able to obtain maintenance from their husbands. The position of divorced Muslim women is very worst, as they are left on the road to die. It is a very painful condition for Muslim women because they found themselves very unsecured and helpless. Even their relatives did not support them in such crucial condition and look away from them. Even the law is also silent and does not play its role to save them from such a position.

The Centre government told the Supreme Court that the tendency of triple talaq, nikah, Halala, and more than one marries play with the respect and honor of women. Even our constitution has given the right to live the life by dignity. But because of this horrible practice Muslim women are not enjoying peaceful and dignified life. A sword of uncertainty always hanging on the head

CONCLUSION

The most favorable point for women of Muslim community indicated by the Supreme Court is that the Muslim women are entitled to live with dignity & honor but Muslim women almost remains unsecured in their life. There has been a demand to ban triple talaq for a long time. The judiciary has also raised a question mark on it many times and stressed the need for the legislature to reform it. So, we can conclude that the judiciary and legislature both have taken a big step by making Triple talaq unconstitutional or void. The dream has come true for the women who were suffering from its misuse. The recent trends show that even after being declared unconstitutional and void, people are still using it illegally. Now, it becomes historic for women empowerment in the country granting equality to Muslim women. But this decision of the court has opened a golden window for all Muslim women, children, and other reforms like the Uniform Civil Code.

The Constitution of India is the Supreme and all laws apply to all religions equally. Therefore, we cannot expect any law against the parent law. Triple talaq is unconstitutional because Muslim law gives many inappropriate powers to Muslim men over Muslim women. They are allowed to have multiple wives at a single point in time while women do not have right of multiple husbands. Thus, it was important to stop such activities which are against the constitution and infringe any laws of the country.

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