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## **A CRITICAL STUDY OF TRIPLE TALAQ IN INDIA**

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### **ABSTRACT**

Our research paper is about a critical study of Triple Talaq in India. It is nothing but divorce according to Muslim law. This article also deals with the critical analysis of triple talaq and issues related to Muslim family law. From the beginning when Caliph, Umar decreed to give validity to talaq-e-biddat till the abolishment of this practice in India. This paper also ascertain various interpretation since Muslim law is not codified and subject to Sharia law. Covering the move of Judiciary from Shah Bano to Shayara Bano and exhibiting the transformations/Up & downs in the development of Muslim personal law in India. This paper also highlights “The Muslim Women (Protection of Rights on Marriage) Bill, 2017” along with aim and objectives of the bill and concludes with some interesting analyses.

Key words: triple talaq, irrevocable talaq, talaq-e-biddat, protection of Muslim women.

## **1. Introduction:**

### **1.1 Introduction:**

Triple talaq is a form of divorce in Muslim law where husband when says the word talaq three times in oral, written or in electronic form. Triple talaq, also known as talaq-e-biddat, instant divorce and talaq-e-mughallazah (irrevocable divorce), is a form of Islamic divorce which has been used by Muslims in India, especially adherents of Hanafi Sunni Islamic schools of jurisprudence. <sup>1</sup>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. Article 44 states:

*44. Uniform civil code for the citizens The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.*

Triple talaq became illegal in India on 1 August 2019, replacing the triple talaq ordinance promulgated in February 2019. The Muslim Women (Protection of Rights on Marriage) Bill, 2019 passed on 26 July 2019 after a very long discussion and opposition finally got the verdict ‘the Indian Supreme Court judgment of August 2017 described below’ to all women. It makes instant triple talaq (talaq-e-biddah) in any form spoken, written, or by electronic means such as email or SMS, illegal and void, with up to three years in jail for the husband.

### **1.2 Research problem:**

We are in India treat women as god but we are very back in protecting them and their rights, still there is a feeling that women are inferior in society where law is also not able to protect their rights due to religious issue like Triple Talaq.

### **1.3 Research question:**

1. Judicial analysis of Muslim husbands pronouncement of Triple Talaq?

### **1.4 Research objectives:**

1. To analyze the Triple Talaq issue in judicial scenario and to protect the fundamental rights of Muslim women guaranteed by the Constitution of India.

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<sup>1</sup>Law audience,talaq-ul-bain (triple talaq) – an overview.Lawaudience.com. <https://www.lawaudience.com/talaq-ul-bain-triple-talaq-an-overview/>, Accessed 18 Mar 2020.

### 1.5 Literature review:

- Danial Latifi, “*Triple Talaq: An analytical study with emphasis on sociological aspects*”, Vol. 37, 1995, Pg.no 121-123.

In this article the author says about the view expressed by Mulla is neither supported by any Quranic injunction nor by any other authentic source of Islamic law. Here the learned author seems, with respect, to have erred. Mulla has followed and cited Baillie.

- Furqan Ahmad, “*Understanding the Islamic law of divorce*”, Vol. 45, 2003, Pg.no 484-508.

In this article the author says that the plurality of Indian society has had themes and institutions set out in Indian legal history. Islamic law can well be said to be rooted in the early regulations of seventeenth century wherein the law required that in the matter of marriage, inheritance and succession. The personal law of Hindus and Muslims respectively will govern the individuals.

- Syed Shahabuddin, “*Triple Talaq*”, Vol. 30, 1995, Pg.no 846.

In this article the author says about as far as the Triple talaq is concerned. The Tilhari Judgment, whatever is its motivation has reopened a long standing debate on the validity of Triple Talaq. For this we need to be thank full to the judge. An opinion is emerging that the customary triple talaq as exercised in Muslim community in India.

### 1.6 Scope:

1. Our research paper focus on the Muslim women, protections of rights on marriage bill with respect to the shayara bano case.

### 1.7 Hypothesis:

1. Wheathe the condition of Triple Talaq bill prevails in the current scenario or not.

### 1.8 Methodology:

The research has been made in the doctrinal method. This research paper makes use of secondary sources for collecting the data.

## 2. Concept of Triple Talaq:

Talaq is an Islamic word for divorce and it literally means separating and breaking of marriage. In essence, 'the talaq is a unilateral repudiation or cutting off the marital tie'.<sup>2</sup> Since, the Muslim marriage is a civil contract and not a sacrament. Muslim law imposes obligation upon the husband to pay consideration of the marriage to the wife as a mark of respect. As per Sharia perspective, there are more ways to end a marriage and talaq is just one of them. Under the Hanafi School, founded by Abu Hanifa. It is to be said that the divorce is only at the instance of the husband is prominent rather than simple.

In Hanafi law, the talaq-ul-biddat or triple talaq may be used by husband. Although it is not accepted by classical jurisprudence, husband has the advantage of simplicity and finality. Says it 'is usually done by ignorant Muslims to satisfy their selfish motives'. However, such divorce has full validity in the eyes of law. The most common method of talaq-ul-biddat is for the triple pronouncement of talaq al-hasan to be brought together in a single sitting. No evidence is required to prove the talaq pronounced by husband, the presence of third person is also not necessary and the wife left with no option to challenge talaq.

The relevant verses under Chapter LXV of Holy Quran say, "Divorce is only permissible twice; after that, the parties can hold up together or proceed with separation". Sunni law gives effect to talaq-ul-Biddat through its traditional interpreters, even if it violates the Quranic law procedures. According to interpreters talaq-ul-Biddat is 'Sinful but effective' proposition in English "Bad in theology but good in law". This irregular mode of talaq was introduced by Omeyyads in order to evade the stringency of law. A specified above triple talaq or talaq-ul-Biddat becomes irrevocable immediately pronounced by husband and children born after the dissolution of marriage by triple talaq will be illegitimate.

### **3. The Muslim women (protections of rights on marriage) bill, 2017:**

- The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was introduced in Lok Sabha by the Minister of Law and Justice, Mr. Ravi Shankar Prasad on June 21, 2017. It replaces an Ordinance promulgated on February 21, 2017.
- The Bill makes all declaration of talaq, including in written or electronic form, to be void (i.e. not enforceable in law) and illegal. It defines talaq as talaq-e-biddat or any other similar form of talaq pronounced by a Muslim man resulting in instant and

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<sup>2</sup>D.f Mulla, Principles of Mahomedan Law, (20th ed., 2013).

irrevocable divorce. Talaq-e-biddat refers to the practice under Muslim personal laws where pronouncement of the word 'talaq' thrice in one sitting by a Muslim man to his wife results in an instant and irrevocable divorce.

- Offence and penalty: The Bill makes declaration of talaq a cognizable offence, attracting up to three years' imprisonment with a fine. (A cognizable offence is one for which a police officer may arrest an accused person without warrant.) The offence will be cognizable only if information relating to the offence is given by:
  - i. The married woman (against whom talaq has been declared), or
  - ii. Any person related to her by blood.<sup>3</sup>
- The Bill provides that the Magistrate may grant bail to the accused. The bail may be granted only after hearing the woman (against whom talaq has been pronounced), and if the Magistrate is satisfied that there are reasonable grounds for granting bail.
- The offence may be compounded by the Magistrate upon the request of the woman (against whom talaq has been declared). Compounding refers to the procedure where the two sides agree to stop legal proceedings, and settle the dispute. The terms and conditions of the compounding of the offence will be determined by the Magistrate.
- Allowance: A Muslim woman, against whom talaq has been declared, is entitled to seek subsistence allowance from her husband for herself and for her dependent children. The amount of the allowance will be determined by the Magistrate.
- Custody: A Muslim woman, against whom such talaq has been declared, is entitled to seek custody of her minor children. The manner of custody will be determined by the Magistrate.
- After getting passed in both houses of Parliament, President has given assent to the triple talaq bill passed by Parliament, turning it into a law which makes the practice of

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<sup>3</sup> The Muslim women (protections of rights on marriage) bill, 2017, parliament.com.<https://www.iasparliament.com/current-affairs/muslim-women-protection-of-rights-on-marriage-bill-2017> Accessed 17 Mar 2020.

instant divorce among Muslims a punishable offence. The Act will replace an ordinance promulgated on February 21 this year to the same effect.

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|------------------------------|---------------|
| Introduction in Lok Shaba    | June 21, 2017 |
| Passed Lok Shaba             | June 25, 2017 |
| Passed Rajya Shaba           | July 30, 2017 |
| Received presidential Assent | July 31, 2017 |

#### 4. <sup>4</sup>Shayara Bano case:

The bench that heard the controversial triple talaq case in 2017 was made up of multifaith members. The five judges from five different communities are Chief Justice JS Khehar (a Sikh), and Justices Kurian Joseph (a Christian), RF Nariman (a Parsi), UU Lalit (a Hindu) and Abdul Nazeer (a Muslim).

#### **Judgment:**

The Supreme Court examined whether Triple talaq has the protection of the constitution if this practice is safeguarded by Article 25(1) in the constitution that guarantees all the fundamental right to profess, practice and propagate religion. The Court wanted to establish whether or not triple talaq is an essential feature of Islamic belief and practice.

In a 397-page ruling, though two judges upheld validity of instant triple talaq (talaq-e-biddat), the three other judges held that it was unconstitutional, thus barring the practice by a 3-2 majority. One judge argued that instant triple talaq violated Islamic law. The bench asked the central government to promulgate legislation within six months to govern marriage and divorce

<sup>4</sup> Shayara Bano vs Union of India and Ors. WP(C) NO. 118 of 2016. [http://supremecourtindia.nic.in/supremecourt/2016/6716/6716\\_2016](http://supremecourtindia.nic.in/supremecourt/2016/6716/6716_2016), Accessed on 20 Mar 2020.

in the Muslim community. The court said that until the government formulates a law regarding instant triple talaq, there would be an injunction against husbands pronouncing instant triple talaq on their wives.

#### 5. <sup>5</sup>Sarla Mudgal Case

In this case, the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnize a second marriage. The court held that the Hindu marriage solemnized under Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act 1955. Conversion to Islam and marrying again would not by itself dissolve the Hindu marriage under the act and thus, a second marriage solemnized after converting to Islam would be an offence under section 494 of the Indian Penal Code.

#### 6. <sup>6</sup>Daniel Latifi case

Muslim Women's Act (MWA) was challenged on the grounds that it violated the right to equality under Articles 14 & 15 as well as the right to life under Article 21.

The Supreme Court while holding the law as constitutional harmonized it with section 125 of CrPC and held that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her future. Thus under the law of the land, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.

#### 7. <sup>7</sup>Shah Bano case (1985)

The Supreme Court ruled in her favor in 1985 under the maintenance of wives, children and parents" provision (Section 125) of the All India Criminal Code, which applied to all citizens irrespective of religion. Further, it recommended that a uniform civil code be set up.

#### Facts of the case:

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<sup>5</sup>Sarla Mudgal V. Union of India [1995 SC], <https://www.delhilawacademy.com/sarla-mudgal-v-union-of-india-1995-sc/>. Accessed 14 Mar 2020.

<sup>6</sup>The Daniel Latifi Case, Islamic Law Blog. <https://islamiclaw.blog/2017/01/23/the-daniel-latifi-case-and-the-indian-supreme-courts>. Accessed 13 Mar 2020.

<sup>7</sup> legal service. Mohd. Ahmed Khan V. Shah Bano Begum. [https://legalservice/Mohd.\\_Ahmed\\_Khan\\_v.\\_Shah\\_Bano\\_Begum](https://legalservice/Mohd._Ahmed_Khan_v._Shah_Bano_Begum). Accessed 10 Mar 2020.

- Under Muslim personal law, maintenance was to be paid only till the period of iddat. (Three lunar months-roughly 90 days).
- Section 125 of CrPC (criminal procedure code) that applied to all citizens, provided for maintenance of the wife.

**Impact-** After this historic decision, nationwide discussions, meetings and agitations were held. The then government under pressure passed The Muslim Women's (Right to protection on divorce) Act (MWA) in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.

## **8. The on-going conflict of opinions:**

### **1. The opposition to triple talaq:**

<sup>8</sup>The practice faced opposition from Muslim women, some of whom filed public interest litigation in the Supreme Court against the practice, terming it 'regressive'. The petitioners asked for section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, to be scrapped, describing it as being against Article 14 of the Constitution equality before the law. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, states:

### **2. Application of Personal law to Muslims**

Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).

### **Article 14 of the Indian constitution states:**

14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

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<sup>8</sup> The Hindu.Ongoing Conflict Of Triple Talaq. <https://www.thehindu.com/opinion/editorial/Personal-laws-and-the-Constitution/article16074921>. Accessed 9 Mar 2020.



### **3. Support on triple talaq:**

Triple talaq has been supported by the All India Muslim Personal Law Board (AIMPLB), a non-governmental body that supervises the application of Muslim personal law. It believes that the State does not have the right to intervene in religious matters.

AIMPLB issued a code of conduct in April 2017 regarding talaq in response to the controversy over the practice of triple talaq. It also warned that those who divorce for reasons not prescribed under shariat will be socially boycotted in addition to calling for boycott of those who use triple talaq recklessly and without justification<sup>9</sup>. In addition, it also stated that it should be delivered in three sittings with a gap of at least one month each.

### **9. Challenges in banning Triple Talaq:**

- Religious groups infer the banning of a traditional practice sanctified by Sharia as interfering in the religious aspects of minorities.
- <sup>9</sup>Low literacy rate among Muslim Women's and knowledge about their rights.
- It might be possible that Women's will not get support from her parents/relatives during legal proceedings.

The act is a right step to put an end to the suffering of Muslim women who have been at the receiving end of instant talaq for several years. But still there are certain provisions like criminalization of Triple Talaq which need careful thought and should be debated. On the same lines, steps should be taken to end evil practices or discriminations against women in the other religions or society as a whole.

### **10. Conclusion:**

Thus, it can be concluded that making of Triple Talaq as unconstitutional or void was a big step taken by both legislature and judiciary. It was a dream come of true for the women who were sufferer of its misuse. It was used by people as a toy and used to type "talaq" word 3 times through any means be it oral, written or electronic form and thus turned they customs according to themselves without taking into consideration the rights of women. "Talaq" or "Divorce" as in Hindu law is to be the last resort and cannot be taken merely on a trivial wear and tear of the

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<sup>9</sup>Triple Talaq: Muslim Group Take Supreme Court Challenge Against Indian Law Banning 'Instant Divorce'. <https://www.rt.com/news/471553-india-muslim-instant-divorce-supreme-court/>. Accessed 10 Mar 2020.

marriage. Also, the recent trends show that even after being declared as unconstitutional and void people are still using it illegally.

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