

TRIPLE TALAQ OR INSTANT DIVORCE

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ABSTRACT: Personal laws advance from religious practices and custom, which shape a piece of the legal framework. These personal laws ought to be in consistence with the Constitution and most critically with the fundamental rights. The act of Triple Talaq has been in presence in the Muslim community for hundreds of years. Muslim men separate their spouses in one sitting with or without the presence of the wife. India is a nation where there is solidarity in decent variety. There are diverse religion, culture, and practices. Individuals follow various religions and beliefs. These religions lay out distinctive sets of personal laws, which represent marriage, divorce, succession, and so forth. Personal laws play an important role in the society as well as in the religious community. In any case, these old foundations created under various social ethos can't work today. The women are making quick walks in various fields of life. The degree of education and awareness of their rights is much broader today than ever before. This paper will include introduction to the topic and deal with terms like personal laws, Triple Talaq, fundamental rights, etc. It will deal with the judgments and laws related to Triple Talaq and recommendations.

Keywords: Personal Laws, Muslim Community, Talaq, Fundamental Rights, Constitutional Law.

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TRIPLE TALAQ

Triple Talaq was neither perceived nor authorized by The Holy Book "Quran" and The Holy Prophet. It was not in practice during the term of first Caliph yet the second Caliph brought this idea of divorce. It appeared to meet some crisis circumstance and was not made a law for all time. Tragically, the Hanaf is legal scholars on the quality of this authoritative request of second caliph proclaimed this type of divorce as substantial.

Triple-Talaq is otherwise called Talaq-Ul Biddat which gives a privilege to a man that at whatever point he supposes fit, he may give separation to his better half whenever and which winds up noticeably void and irreversible. This not just damages Muslim ladies rights however this likewise makes them inferior according to society and in addition according to men.

In post-Islamic Arab World, when Holy Prophet hood was gave to the Prophet of Islam (PBUH) who looked upon these sensual traditions of divorce with adverse despise and disapproval. Prophet of Islam (PBUH) viewed debase rehearse as ruthlessly ascertained to hamstring the establishment of society. Prophet (PBUH) needed to impeccably inculcate Islamic directives and lesson in the horrifying personalities of Arabs who were assented in brutalization, dehumanization and enslavement of ladies from support to incineration. They revelled in polygamy and polyandry, and misogyny and polygyny with no submission to the matchless quality of the Supreme Being; The Almighty Allah. Preceding Islam a husband could forsake his significant other immediately. His denial (Talaq) of his significant other worked as an moment and last conclusion of the marital

contract. This privilege of denial practiced by the spouse originated from his magnified position as a buyer of wife since the foundation of subjection and manumission was prevalent.

The Holy Quran, obviously, for all intents and purposes suspended the impacts of sufferance of severance of marriage until the expiry of the "await period" (Idda) which was to last until the point that the spouse had finished three menstrual cycles or if there should be an occurrence of her being pregnant, until delivery of the child. This period is, principally, planned and emplaced to give a chance to compromise between the companions according to the Quranic injunctions, meanwhile spouse is qualified for alimony from the husband. However, it ought to be recollected that the Prophet pronounced "Talaq to be the most abhorrent before God of all allowed things". Consequently, divorce being a shrewd; it must be shunned beyond what many would consider possible.

There are Quranic types of Talaq, which are most good with gender orientation justice, medical profound quality, human respect, and individual equality. Talaq is an Arabic word its strict importance is "to discharge" or "removing any tie or limitation" or "evacuation of the confinements of Nikah" and in Islamic law it implies the renouncement of marriage or disintegration of marriage i.e. divorce. There are diverse methods of Talaq appointed in the Holy Quran.

The three different types of Talaq:

Talaq-e-Raj'i: Revocable Divorce

Talaq-e-Ba'in: Irrevocable Divorce

Talaq-e-Mughallazah: Irrevocable Divorce

Talaq-e-Raj'i – Revocable divorce:

This kind of Talaq falls when Talaq is given by the husband and he either avails or says "Talaq" once and twice. He can do this in composing too. Perusers will take note of that the expression of Talaq require just be articulated by the husband for it to be valid.

Talaq-e-Raj'i is a revocable form of Talaq. It is revocable because if after pronouncement the couple wish to reconcile, they can do so as long as reconciliation occurs before the expiration of what is known as the Iddah period or waiting/cooling-off period.

Talaq-e-Ba'in – Irrevocable divorce:

This type of Talaq falls when the husband utters the words, "I give you Talaq-e-Ba'in" or the words that are uttered in giving divorce are unclear.

It also occurs if the separation is by way of Khula ('Khula – The Islamic Non-Fault Divorce') or the marriage has been dissolved by a Shariah Court (in countries where there is an Islamic legal system) or by a Shariah Council (in non-Muslim countries).

There is also an Islamic principle, Khalwat-e-Saheeha, which means having valid privacy with a spouse. What this means in practice is any duration of time when the married couple have been alone together. If Talaq is pronounced by the husband prior to this (which is very rare and can usually only occur at the beginning of marriages), the type of Talaq that falls is immediately Talaq-e-Ba'in. The effect of Talaq-e-Ba'in is that the marriage comes to an immediate end once it is pronounced. It is not like Raj'i for instance where a cooling-off period is initiated. The couple can, however, re-marry any time during or after the Iddah by simply performing the Nikah ceremony again.

Talaq-e-Biddat – Irrevocable divorce:

This type of talaq is irrevocable and pronounced thrice in one sitting and operates with immediate effect and better known as "Triple Talaq".

Triple Talaq is the most opposed, contemptible, and brutal type of disintegration of Muslim marriage. It was not there amid the life time of Prophet Muhammad (PBUH). It was a post-prophet advancement of Umayyad Oligarchs in second century of the Hijri time and in this way approved by the legal scholars of Hanafi Law, the most strong and leading school of Islamic statute obvious on the solicitation of Sunni faction of Muslims over the world. Triple Talaq is a union with oppression, which is imaginatively impregnated with torture, injury and tormentation. Triple Talaq is a weapon of exploitation of women in the hands of Muslim men without any morals, intervention, and compromise. Triple Talaq annihilates a woman inwardly, socially and financially. In spite of the reality, Islam is the first religion that perceived and legitimized the indivisibility nature of distinction of a woman. She has been enriched with certain inherent human rights. In any case, Triple Talaq symbolizes the subordination, subjugation and concealment of human privileges of woman, which have just been made accessible to them by the Holy Quran. Besides, Islam regarded privileges of women as human rights.

CRIPPLING AFFLICTION OF TRIPLE TALAQ

The majority of the Muslim men mostly in rural areas treat their spouses as chattel, they believe that they can marry them whenever they want and in addition, they can dispose off the marriage just by uttering the word "Talaq" three times. It was once stated by Justice Krishna Iyer, "It is a false notion that Muslim men appreciate under the Muslim-Quranic law" (Yusuf Vs. Sowramma, AIR 1971 Ker 261). The reasons, which demonstrate that Triple Talaq was emotionally and physically destructive as given under:

1. The constant threat:

Even though the Quran does not recognize the concept of dowry, the Muslim men used to threaten their wives by using Triple Talaq as the medium in order to procure dowry.

2. Denial of maintenance:

After pronouncing the word talaq thrice, they abandon their wives and furthermore deny providing them with Maintenance or they flee themselves from their obligations.

3. Divorce in absence:

In the majority of the cases, triple talaq is given without the presence of the wife which is absolutely subjective like it happened in the case of Aisha Bibi v. Qadir Ibrahim ((1910) 3, Madras 22) in which complainant's husband gave her instant divorce in her absence with no sensible reason.

4. Mental agony:

In specific cases, a separated Muslim woman is not permitted to see and associate with her kids and furthermore not permitted to give compassion and care to her children as occurred in Shayara Bano's case (Mohd. Ahmed Khan Vs. Shah Bano Begum, 1985 SCR (3) 844), where she was not in any case allowed to have a telephonic conversation with her children.

5. Financial hurdles:

On the off chance that the husband drives out his wife out of the house promptly after the divorce and declines to look after her is the infringement of Islamic-Law. In a large portion of the cases, it is noticed that Muslim husbands don't give any kind of monetary help to their wives as they just give the least amount of mahr (dower) to them.

6. Societal barriers:

The husbands, at whatever point they need can pronounce to their wives talaq thrice and abandon them. Ladies at this instance are left alone to carry on with her up and coming life. It would likewise not be simple for a divorced lady to get married again in light of the fact that the general public does not acknowledge a divorced lady. There are numerous different hardships that must be confronted by the divorced women. It is all a direct result of this system of divorce by triple talaq.

7. The Halala practice:

Certain divorced women were made to go through the Halala procedure in order to remarry her husband. The Halala procedure is a barbaric procedure used to harass the divorced women. Under the Halala procedure the women were made to marry some other man, consummate the marriage and then take a divorce in order to make it allowable to remarry her previous husband.

Triple Talaq – Constitutional perspective:

Quran describes marriage as a very strong and sacred bond and states that with whom the person can come into this bond and what are the procedures prescribed for it. It also states that this strong bond cannot be ended or dissolved without any proper reasoning and method.

Article 14:

“The state shall not deny any person equality before the law or equal protection of the laws within the territory of India (Article 14 of The Constitution of India, 1950). This principal right acquires the Rule of Law, explained by A.V. Sketchy, as indicated by which-No individual is exempt from the laws that apply to everyone else, it is the law which is supreme and each individual is equivalent according to law independent of sex or religion. The most abhorrent part of triple talaq is its disparity, which gives all rights to offer divorce to the man only. The Muslim wife needs to go to the Qazi and need to demonstrate the atrocities submitted by her husband keeping in mind the end goal to get a divorce where a husband can articulate talaq with no sensible rationale.

The learned bench in the case *Chotu Pathan Latur Vs. Rahimbi Dagdu Pathan*, (2003) BomCR (Cri) 251, stated that the muslim man had the right to divorce him in case the wife does not loves him, does not cares for him. If incompatibility arises he can divorce him. The other grounds can be that she refuses to cohabit with him or shows some cruel and ignorant behavior towards him. But the option of triple talaq gives him an unquestionable authority to divorce his wife whenever he wants, harass her without any reasonable ground.

Article 15(1):

“The state shall not discriminate against any citizen on grounds only of religion,race, cast, sex place of birth or any of them” (Article 15(1) of The Constitution of India).

Triple talaq contorts the major right revered in article 15 of the constitution in which any type of segregation is denied. Be that as it may, triple talaq being an unsavory practice has given every one of the privileges of divorce to men and women has left being the mannequins in the hands of the male. Muslim ladies endure a "triple punishment" by virtue of their gender.

Article 21:

In order to get away from the strictness of law, nobody has the right to encroach the essential human rights or idea to life and individual freedom, which is the most, consecrated principal right given by the law. The act of talaq-ul-Biddat and divorce of a woman without legitimate endeavor at compromise damages the essential appropriate to live with respect to each Muslim woman. Hence, this practice is repugnant to the basic dignity of a woman enshrined under Article-21. Even the Quran teaches to respect a woman and not to abandon her without any reason or for nothing.

THE UNFORGETTABLE – SHAH BANO CASE

In April 1978, *Shah Bano* (Mohd Ahmed Khan Vs. Shah Bano Begum (1985 SCR (3) 844), a 62-year-old Muslim lady, approached the court with an application claiming maintenance from her previous husband, Mohammed Ahmed Khan who had separated her by methods for an irrevocable talaq in November around the same time. The two had been married in 1932 and had 3 children and two little girls. Shah Bano had been living with her husband and his second spouse before she was made to move to a different home in 1975. Having been left with no financial help for herself and her 5 kids, Shah Bano's looked for alleviation from the courts and her case depended on the provisions under Section 123 of the Code of Criminal Procedure, 1973 which imposes a commitment on a spouse to accommodate his wife, including a divorced wife, in the event that she can't accommodate herself. Mohammed Khan, an advocate by profession, on the ground, challenged the case that, the subject of maintenance of spouse related to issues of marriage and would thus be represented by personal law. In this manner, according to Muslim Personal Law, he was liable to keep up Shah Bano just for the time of iddat following the divorce.

The judgment in Shah Bano's case was given by Justice Y.V. Chandrachud, the then Chief Justice of India on April 25th, 1985. The decision upheld the High Court's decision to concede maintenance for Shah Bano under the arrangements of the Cr.PC, however expanding the quantum of support. The choice observed a few easily proven wrong angles encompassing the training/administration of unmistakable individual laws, including the requirement for execution of a Uniform Civil Code as accommodated under Article 44 of the Constitution, and saw a takeoff from the Apex Court's conventional translation of individual laws, perceiving the contention between the requirement for sex correspondence and diligence of religious standards, and adjusting a more comprehensive and libertarian elucidation of Muslim Personal Law.

TRIPLE TALAQ- CONSTITUTIONAL OR UNCONSTITUTIONAL

In a recent landmark judgment the constitutional bench of the Supreme Court on 22nd August 2017 declared the practice of triple talaq unconstitutional. A five judge bench of Chief Justice of India JK Khehar, Kurian Joseph, Rohinton Fali Norman, Uday Umesh Lalit and Abdul Nazeer struck down the practice on the grounds that it goes against the Shariat and the basic tenants of the Quran.

There was a huge debate and arguments regarding the triple talaq concept. On the first day the argument that arose was that whether triple talaq was fundamental to Islam? If yes, then the court cannot interfere. On the second day the argument arose on the fact that we can change the law but not the habits of the society. On the third day the discussion was that the government can bring in a law if the practice of triple talaq is struck down. On day four Kapil Sibal, the counsel for All India Muslim Personal Law Board stated that I have a faith that Lord Ram was born in Ayodhya then it is a matter of faith and there is no question of constitutional morality and equity. Hence triple talaq is a matter of faith. After all six days long argument triple talaq was declared unconstitutional.

CONCLUSION

Marriage is an divine relationship and it ought to be broken up in extremely holy way regardless of religion however this evil routine with regards to Talaq-ul-Biddat damages the essential human rights which are regarded to every single human. This training makes Muslim men superior and Muslim women inferior. This is absolutely being practiced at the impulses and fancies of Muslim men.

Muslim men are abusing this training subjectively. Muslim ladies are given separation through speed post or message or telephonic discussion or even without wife and the most brutal thing is and still, after all that it is substantial and permanent. Women are tossed out from the house as she progresses toward becoming Haram for him. In case, in the event that they need to remarry then additionally woman needs to endure as she is the person who needs to experience nikah-halala.

In the Muslims, marriage is an authoritative connection between the male and female and its get finished when both the gatherings articulate "Qubool Hai, Qubool Hai, Qubool Hai", at that point why it gets broke down when the spouse articulate "Talaq, ,Talaq" by husband.

Article 14 is that which explicitly provides equality before the law and equal protection of laws. Equality before the law means –every person is equal in the eyes of law irrespective of religion, sex etc. and equal protection of laws which means every person shall be treated equally. This training does not treat Muslim men and women similarly as this power are just given to males and besides, he can utilize this power whenever and without sensible reason. Since this grouping is not done on the premise of understandable differentia, henceforth this practice is violative of article 14 of the constitution of India.

Article 15 gives protection against any kind of discrimination but this practice discrimination the basis of gender. But Muslim women have to suffer just because they are Muslim. Hence, it is also violative of Article 15.

The most supreme right i.e. Right to life and personal liberty prohibits every person to do any act or practice which takes away their right to live a dignified life under Article 21.

Article 25 advances protection to all the religious practices which are subjected to public order, morality and health. Since this practice is not in favour of public order, morality and health, therefore this religious practice is not protected under this article.

This is truly amusing that the majority of the Islamic nations including Sri Lanka, Tunisia, Egypt , Pakistan and so forth have restricted or nullified this type of Talaq and those nations too accommodate compromise endeavor then why wouldn't us be able to receive another type of Talaq what are Quranic as well as sacred in nature like Talaq-ul-Ahasan.