



iJRASET

International Journal For Research in
Applied Science and Engineering Technology



INTERNATIONAL JOURNAL FOR RESEARCH

IN APPLIED SCIENCE & ENGINEERING TECHNOLOGY

Volume: 9 Issue: III Month of publication: March 2021

DOI: <https://doi.org/10.22214/ijraset.2021.33155>

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Triple Talaq: A Feminist Point of View

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I. INTRODUCTION

Marriage under the Muslim law is not only a contract but also a sacred covenant¹. It is an institution which has maintained its sanctity since the earliest time as it is an act of ibadat

(worship) or piety². Since marriage is considered to be sacred, its breakdown is considered to be socially unacceptable.

In SHAYARA BANO v. UOI³, the supreme court of India has pronounced a verdict which sets aside the practice of triple talaq or talaq-e-biddat which had been often misused by Muslim husbands to break their marital ties with their wives instantaneously and irrevocably. The following judgement has received huge applause, particularly from women's right groups, on the basis that it is a decisive step towards attaining a gender just society⁴. In this judgement courts limited concern was whether triple talaq is constitutional or

not; but with this there are many other questions which are attached with it that is "whether it is protected under the ambit of personal laws?", "how to bring in reform in the personal laws?" these questions are becoming increasingly pressing and sensitive. Presently the most

important question which has been raised is whether the current bill passed by the parliament regarding triple talaq upholds the constitutional aim or not. As in THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) BILL, 2019⁵ criminalizes the said practice and has made giving triple talaq cognizable offence in which one cannot take bail and the punishment extends up to 3 years with fine. Also, it provides that the husband has to give maintenance to his wife and for his children.

Many Sunni Muslim activists have raised their voice against it as they say that if the government was truly concerned about the well-being of Muslim women, then it would have made some provisions in the said bill for arbitration or reconciliation giving the Muslim women, who are real victims of the practice, greater say in the matter⁶. The number of irregular and logical loopholes in the recent legislation passed by the parliament makes its purpose ambiguous. As the bill says that triple talaq is void so it means that there has been no divorce, so if the dissolution of marriage has not taken place then what are they criminalizing? Are they criminalizing the intention of dissolution which amounts to oppression as it violates article 21,14,15 of constitution of India,1949⁷ or it is just criminalizing mere utterance of word 'talaq' which after the judgement has literally no meaning and no legal value?

Therefore, in this research the researcher is going to examine the rights in the light of fundamental and constitutional rights which are granted under the constitution of India. It also analyzes whether criminalization of triple talaq a gender justice or invasion of privacy? Hence the current research explores all the alternative schemes, solutions and loopholes that lies in the best interest of the topic.

II. RESEARCH QUESTIONS

The researcher addresses the following questions in the due course of this research-

- A. Whether there is a requirement of criminal consequences for a civil wrong?
- B. Whether the bill has been made in consideration to the laws made by the other Muslim majority countries?
- C. Does imprisonment of husband the only solution which can control the injustice to women or is there any other form of punishment which can be considered more valid?
- D. How is the new bill violating the constitutional and fundamental right?
- E. Does criminalization of triple talaq aims at gender equality or breach of one's seclusion?

III. STATEMENT OF RESEARCH PROBLEM

This paper would mainly like to focus on the broader area of understanding the concept of ban on triple talaq as a basic introduction to the topic. It will further analyze and identify how is ban on triple talaq important for the society as a whole and what are the various factors that have been overlooked by ban on triple talaq with the help of various case laws.

IV. OBJECTIVES OF THE STUDY

The objectives of the research are as follows-

- 1) To evaluate whether the imprisonment of husband would result in the protection of the rights of the afflicted wife or would it result in the reduction of the possibility of reimbursement.
- 2) To examine the effects of the practice of polygamy, which further allows the husband to get married again even after the disapproval of his first wife.
- 3) To develop and suggest plan in order to achieve just and fairness for Muslim women so that they can live their life like that of other women of different religion and prevent the continual persecution caused by this practice.

This research could be resourceful as it would guide the reader on what aspect of law is in conflict and suggest what actions could be taken.

V. SIGNIFICANCE OF THE STUDY

Triple talaq has been an issue of concern for over 65 years for Muslim women, who comprise approximately 8% of the population as per the 2011 census. (rajagopal, 2017)

Triple talaq as unconstitutional or void was a big step taken by both legislative and judiciary. It was dream come of true for women who were sufferer of its misuse. It further helped Muslim women to have an equal and respectable life to that of another woman.

This research helped in understanding both the significance and loopholes of the study. The major drawback in the bill was that there has been no provision for reconciliation and mediation where both the party to the marriage can come together and express their respective problems to each other. As in the bill there has been no alternative given to reconcile in the marriage only the direct punishment has been given to the husband.

The research would help the judiciary to take their valued decisions in such matters.

The research would also help academicians in their understanding about laws and its relevance.

Hence, this research is significant on present day to comprehend and act accordingly on contemporary aforementioned conflict of interests.

VI. SCOPE OF STUDY

This research paper aims to analyze all the problems that are associated with the process of divorcing among Muslim women and the consequences that are associated with divorce in terms of social, economic and psychological aspects.

VII. LIMITATIONS OF STUDY

However, the legislation on ban on triple talaq is being hailed as a great victory for Muslim women. Therefore, what is overlooked is that"-

- 1) Polygamy is still legally permitted to Muslim men;
- 2) Oral talaq in the form of talaq al Ahsan is still legally permitted to Muslim men and
- 3) Muta marriage is permitted among Shias. Unless these are abolished, along with the barbaric practice of nikah halala, it will be an incomplete victory.

VIII. RESEARCH METHODOLOGY

The current study is primarily based on doctrinal research. The idea of referring and analyzing the existing data such as laws and statistics connote a doctrinal research. The research believes that the present research is majorly depended on existing laws and how they have an impact on each other. To perform an effective research on this topic it is suggested to prefer a doctrinal research and analyze various relevant laws in place.

IX. SOURCES OF DATA

The researcher for the purpose of the current research depends on primary and secondary data.

Primary data referred by the researcher includes the constitution, Acts, National policies, judicial decisions, parliamentary debates and other non- interpreted content.

With view to have a wider and unbiased perspective on the research topic, the researcher depends on secondary material such as national and international journals, articles, books by prominent authors and commentaries available on various databases on internet.

X. REVIEW OF LITERATURE

The current research is case specific and hence the review of literature enunciates that there are no direct sources existing on the current topic. The researcher has performed a background check as to what laws and provisions are relevant to such cases. The journals, research article and reports referred by the researcher are not conclusive intrinsically but the researcher had to analyze the data with respect to other relevant factors to form a conclusion. The research mainly depends on the analysis of constitutional, fundamental and democratic rights of Muslim women.

According to the article written by Prakash Javadekar the criminalization of triple talaq has resulted in women empowerment and has given them dignity they deserve in our society⁸. Due to the enforcement of this law the cases of triple talaq has reduced drastically further ending the social evil, inhuman, cruel, and unconstitutional practice. Such incidents are unacceptable to a sensitive country and to a government committed to inclusive development. It was therefore deemed necessary for this research to refer to Shayara Bano v. Uoi⁹ as it laid as the foundation on Muslim women (protection of rights on marriage) act¹⁰. This act forms a legal framework to protect the interest and rights of Muslim women in order to live with dignity and respect.

“The article written by Ravi Shankar Prasad (union minister of communication and information technology) in Indian express, talks about the significant decline in number of cases of triple talaq after the enactment of this law, as compared to the number reported earlier”¹¹.

“Another article mentioned in legal services India talks about the famous case of 'Shamim Ara v. State of U.P and A.N.R(2002), declares triple talaq invalid n banned. The article primarily talks about how can a ban thing be banned? It says the problem is not about to talaq but of men honoring the rights of women. However, banning will not change the reality of Muslim women at all. Therefore, the difficulty that Muslim women are facing are not a result of triple talaq but of un-Islamic customs”.

“Another article mentioned on the analysis of International Conference and Workshop on Gender: Women's Leadership and Democratization in the 21st Century Asia talks about the practice of triple talaq in Indian Muslim community. According to this article this practice has been misused unilaterally by many Indian Muslim husbands to irrevocably divorce their wives. As results, many widows' post-marital rights such as maintenance fund, child custody, and parts of community properties are neglected. Moreover, further research found that other factors such as cultural violence (e.g.: patriarchal distortion within Islamic teaching and the rise of Islamic conservatism) and structural violence (e.g.: discriminatory legal basis and patriarchal political system) also play some important roles behind the Islamic marital discourse as a whole. There are at least two consequences for these widows. First, their post-divorce welfare become threatened as Indian patriarchal society barely spoils Indian women. Second, they are unable to speak or even act for their own rights because the institutionalization of Islamic marital institution in India positioned them as gendered subaltern”.

“One another important source that the researcher referred says triple talaq as invalid according to Islam. The article reveals how cruel men misrepresent the religion for self-interest and take advantage of women's lack of knowledge.

All these sources referred provided wide range of information about the topic and helped me understanding and analyzing the concept in a broader way”.

XI. PARTS

A. Part-1 - Introduction

It focuses on detail analysis of the study and the case law associated with it. It includes research questions and objectives that helped in a better understanding of the topic. It further investigates the sources of data and the research methodology adopted while making the research paper. It has further drawn its analysis from various national and international journal, magazines, newspapers and other renowned books.

B. Part-2 - Analysis

It draws analysis of the whole research paper with the detailed analysis of following subheads-

- 1) Why do we need to ban triple talaq?
- 2) Arguments in favor of banning triple talaq
- 3) Challenges in banning triple talaq
- 4) Muslim women's right for dissolution of marriage
- 5) Solutions and suggestions to bring about reform in muslim personal law

C. Part-3 - Conclusion

Rights should be analyzed in the light of fundamental and constitutional right which are granted under the constitution of India. No act should be violative of the constitutional framework of India. Rights if granted then it should not discriminate whether male or female. The Muslim women (protection of right on marriage) bill 2019, should have some of changes, amendments in it which is far to both men and women. Under this bill the room for reconciliation between husband and wife should be there so that the decision which they have been onto does not let them regret what they had in their marriage. Imprisonment of husband because of giving of divorce to his wife does not sought thing rather it complicates more and more as whatever space which would have been there for them to reconcile in their marriage would be gone.

XII. DATA ANALYSIS

“We are the nation which proudly professes about it being the largest democracy and ensures to both men and women equal rights meanwhile it claims itself to be a secular state. However, under all these pretty claims there lies heinous and discriminatory laws which jeopardize the lives of many people who are in most cases unable to earn a living for themselves. The different courts in India have passed various judgements in the cases of Triple Talaq which is not helping the Muslim women as well. Triple Talaq, a patriarchal practice should be banned because first, it is unconstitutional; secondly, it leave the women who are divorced and dependent in acute poverty; thirdly, it is un-Quranic.

Furthermore, according to The Sachar Committee report which established that Indian Muslims live in poverty, socio-economic backwardness and are marginalized. The condition of Muslim women is declining rapidly with the growing matters of polygamy, halala, inheritance and custody of their children. The women’s approaching the court to seek justice is itself a challenge. A broad reflection is crucial, and there’s abundant evidence that Muslim women rank below the national average when it comes to literacy, schooling and the workforce. For example, 48% of all Muslim women are illiterate, higher than the national average of 44%; the enrolment rate of Muslim girls in schools is 40.6% compared to 63.2% for caste Hindus; work participation of Muslim women in 2011 was just 14.8%, well below the already low 27% for all women. This marginalization is compounded by the fact that Muslim women’s issues are often only discussed as religious ones. This doesn’t just reinforce the centrality of personal laws, but glosses over the economic, political, and social problems that define the everyday experiences of Muslim women. This shows that Muslim women are not independent enough to maintain themselves, and Triple Talaq by which women are instantly divorced leaves them destitute making their condition more pitiable”¹².

A. Prodigious Judgments under Muslim Personal Law Relating to Divorce

“In *Marium v. Md. Shamsi Alam*, the wife left her husband’s place and went to her parent’s house because she found that the husband was negligent of her health. When the husband went to take her back, she refused to go with him. The husband became agitated and in anger he uttered talaq three times in one breath. But later on, realizing his mistake, he revoked the talaq within the period of iddat. It was held by the Allahabad High Court that although the word "talaq" was uttered thrice, but since they were pronounced in one breath it is to be interpreted as one single pronouncement. It was observed by the court that in this case the talaq was in the "Ahsan" form which was revocable. As the husband expressly revoked the talaq before the iddat he cannot be said to have intended the divorce seriously. The marriage was, therefore, not dissolved and the wife had to accompany the husband. In this case the court has interpreted the rules of Muslim law liberally in order to discourage hasty and unconsidered divorces”¹³.

“In *Rahmat Ullah v. State of U.P.*, the Allahabad High Court clearly stated, that an irrevocable talaq (talaq-e-biddat) is unlawful because this kind of talaq is against the dictates of the Holy Quran and is also against the provisions of the Constitution of India”¹⁴.

“In *Dagdu S/O Chotu Pathan, Latur v. Rahimbi Dagdu Pathan*, *Fahimbi* filed a case under Section 125 of the Criminal Procedure Code (herein after referred to as the Cr.P.C.) for maintenance for herself and for her three children. *Dagdu Chote* married another woman *Kamrunbee* and had children with her too. He neglected the first wife, *Fahimbi*, and her children and did not pay any maintenance. On receipt of summons from the Court *Dagdu Chote* appeared before the court and filed a reply saying he does not owe any maintenance as he divorced her (*Fahimbi*). He also claimed that he divorced his wife in the presence of a Qazi and two witnesses one of who was Muslim and another one Hindu. He, therefore, prayed before the court that application for maintenance under Section 125 of Cr.P.C. by *Fahimbi* be dismissed but this plea was rejected by the court and the maintenance application filed by *Fahimbi* and her three children was allowed. The Magistrate maintained that the fact of talaq must be proved, as it cannot be accepted merely on grounds of pleadings. *Fahimbi* maintained that she was unaware that talaq has been given to her as it was not communicated to her by registered post.

However, a presumption was made by Dagdu Chote that pronouncement of talaq was communicated to the wife. The reasons stated in the talaqnama executed were that she insulted the husband and mother-in-law and there were also differences of opinion, as a result of which they cannot run a family"¹⁵. "However, the case of Shah Bano was a milestone in the Muslim women's search for justice and the beginning of the political battle over personal law. A 60-year-old woman went to court asking maintenance from her husband who had divorced her. The Apex Court ruled in her favor. Shah Bano was entitled to maintenance from her ex-husband under Section 125 of the Cr.P.C. (with an upper limit of Rs. 500 a month) like any other Indian woman. The judgment was not the first granting a divorced Muslim woman maintenance under Section 125. But a voluble orthodoxy deemed the verdict an attack on Islam"¹⁶.

XIII. SOLUTIONS / SUGGESTIONS

The time has come for major steps to be taken to bring about reform and change in the Muslim Personal Law in India.

In order to accomplish these following steps must be taken: -

- 1) *"Codification Of The Muslim Personal Law"*: "The process of codification of Muslim Law is an imperative and now must be seriously undertaken by a group of legal experts, liberal ulema and scholars in the field. Gender-just laws must be the common denominator. Alongside Muslim women, Muslim men's organizations must push for change".
- 2) *"Role Of The State"*: "Parliament should step in with measures not for a Hindu code or a Muslim Code but a secular code, drawn from basic principles of personal freedom, human rights and justice in the country. Strict measures must be taken against if the Muslim Personal Law (Shariat) Application Act violates democratic rights guaranteed to the individuals by the Constitution."
- 3) *"Encouraging The Idea Of A Uniform Civil Code"*: "It will help the cause of national integration by removing the contradictions based on ideologies and traditions. It will also help in eradicating many evils, unjust and irrational practices prevalent across the communities, and will also strengthen the unity and integrity of the country. These norms have to be observed in all human transactions in any civilized society".
- 4) *"Introduction Of Gender Just Personal Laws"*: "Since most personal laws reflect the hierarchical notions of society and thereby accord secondary status to women. So, what we need are gender just personal laws. The gender just code in turn has to be the same for all the communities and hence, it will be uniform. Gender justice has to be the basis of uniformity; blind uniformity may turn out to be most unjust for women".
- 5) *"Prioritisation of Gender Equality"*: "Priority must be given to the equality between men and women in terms of their fundamental rights over conservative interpretations of religious scholars. This can be done by saying a big no to triple talaq and polygamy. The personal law question needs to be understood in the context of patriarchy and laws that accord secondary status to women need to be reformed".
- 6) *"Supporting All Reform Movements That Challenge Patriarchy"*: "Every citizen should join hands with the government to eradicate the injustice against women which will lead to the overall growth and development of entire nation. We have to try to lead traditions out of darkness into light and not allow them to lead us into darkness".

"Thus, the rights of women should be respected across nations which are denied through power structures and social customs like Triple Talaq and polygamy. The women should not be deprived of their basic dignity of life which they deserve. Introduction of a secular code drawn from the principles of personal freedom, human rights and justice will not only strengthen secularism but will reinforce women empowerment"¹⁷.

XIV. CONCLUSION

"In the famous case of 'Shamim Ara V state of U.P. & A.N.R. (2002)', the Supreme Court declared triple talaq invalid and banned. So how can you ban a banned thing? The problem is not talaq but of men honoring the rights of women. That banning it will not change the reality of Muslim women at all. However, the difficulties that Muslim women are facing are not a result of talaq (triple or not) but of the Un-Islamic customs. Triple talaq is itself a violation of the Sharia and so it is forbidden and innovation by all the jurists and schools of jurisprudence in Islam. Islam prohibits dowry. People demand it and it is paid. Islam puts the entire responsibility of incurring all expenses for the marriage on the men but people insist on dumping them on the woman and she and her family accept this. Islam mandates that marriages must be simple and inexpensive but people insist on expensive, ostentatious weddings? Islam prohibits any kind of harassment at the time of divorce if that becomes necessary but men do the opposite. All these and more are the real reasons why Muslim women are left high and dry and are the victims of the oppression of their men. How is banning triple talaq going to solve these problems? "Among divorced Indian women, 68 per cent are Hindus whereas just 23.3 per cent are Muslims", says the Census 2011 data on the marital status of Indians. So, it exposes the fact that Hindu women deserve more attention than Muslims if "rampant divorce" is really a hurdle for women empowerment and gender equality?"¹⁸

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