

**“Triple Talaq”:The battle to ban the three words****\* Dr. Deepika Bhatnagar****Abstract**

*Talaq is an Arabic text in Muslim Laws, which means freedom from the bondage of marriage by the husband in accordance with the procedure laid down by the Sharia law in Sunni Islam. The question of abolishing triple talaq is not just a movement against patriarchy, but a call for justice, for women's rights. But for a majority of Muslims, this isn't only a clear interference on the part of Supreme Court in personal and religious laws of the community, but it is also a violation of the religious freedom given to the people of India by the Constitution. The issue of triple talaq isn't an easy call and requires major political will. Although Muslim personal laws, like other minorities, are constitutionally sanctified, they are not as absolute as many court judgments suggest.*

**Key Words: Repudiation, Pronouncement, Halala, Revocable****Introduction: Meaning and Definitions**

Talaq Talaq Talaq .....These three words are most hated, undesirable, and also against the Islam. Triple Talaq is totally based on interpretation because Muslim law is fortified in India. Fortified means that there is no law which anybody can interpret accordingly. The word Talaq is translated as “Repudiation of Marriage.” This word came from Arabic language which means ‘I divorce u’. In Muslim classical Islamic law it refers to the right of the husband to dissolve his marriage by simply announcing to his wife to repudiate her. Islam is spiritually against divorce and considers marriage a sacred relationship. In Quran it is considered as a spiritual offence. It is the methodology to signify the Talaq.

Nikah stands for marriage in Islam. Nikahnama is drawn between the husband and wife. Basically, Nikahnama is a contract for Islamic marriage. In this contractual marriage consideration is given as ‘Meher’. This ‘Meher’ is paid by husband to his wife at the time of marriage or the time decided by the wife. In Islam everything is followed as per Sunnah that is deed of the Prophet Mohammed sahib.

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Basically, Talaq is an Arabic text and it means freedom from bondage of marriage. According to Sharia law it will be pronounced orally. Triple Talaq means a husband pronounces word talaq three times in a single sitting.

According to Quran and Hadith, Talaq is considered as an undesirable act in the sight of Allah. If things don't work out well in between the wife and husband for a long time then they may go for divorce. Although, according to Quran and Hadith, divorce is not the ideal way to deal with marriage issues and is the most hated act in the sight of ALLAH.

Holy Book of Quran does not recognise Triple Talaq or Talaq –ul-Biddat. Talaq-ul-Biddat is an irregular talaq. This talaq was introduced by the Omeyyade Monarche in the second Hijri era. This is sinful mode of divorce. In India it is the most common and prevalent mode of Talaq. Triple talaq becomes irrevocable immediately when it is pronounced. Holy Quran is very much cautious in matters of divorce. Three Talaq have to be spaced over a period of three months. These three months give reconciliation time for husband and wife through the intervention of their relatives.

Triple Talaq destroys marital status of the couple immediately. The practice of immediate divorce is widespread among Sunni Muslims but has no legal validity.

Triple Talaq is not permissible in Quran and also nowadays it's an ongoing debate about the Muslim personal law on the concept of Triple Talaq. The constitutional validity of Triple Talaq has also been challenged on many occasions. Legalizing the practice of Triple Talaq only surmounts to an impediment in the right of a Muslim woman to practice and profess her religion, by unleashing a spiritual offence upon her and violating Article 25 of the Constitution which states that

“Another pre-requisite to any divorce is that it must not be whimsical and must be preceded by several attempts to reconcile. It must be the last resort in a failing marital relationship, which Talaq-ul-Biddat does not allow. Also, it can only be used by the husband and the wife has no say in the process.”

This makes this practice a gross atrocity towards Muslim women and their fundamental rights.

1. When the triple Talaq in one sitting has no sanction in the major Islamic countries, why and how long will it remain valid for the Indian Muslims, even on the societal level?

2. It is banned all over the Muslim world. Why should India be sticking to this 7th-century law?"

### **History of Triple Talaq**

The year 1930s, the codification of Anglo-Mohammedan law - the Shariat Application Act of 1937 and Dissolution of Muslims Marriages Act of 1939 - had preceded the initiatives for Hindu law reform. Immediately after the Hindu law was amended, Nehru had attempted a similar feat for the Muslim and Christian Personal laws through the Second Law Commission (1958-1961), which produced reports on Christian Marriage laws and Laws on rights of spouses in case one of the partners converted from one religion to another during a marriage. The latter triggered further the formation of a Committee on Muslim Personal Law in 1961. During the revision of the CrPC in 1973, the Board requested exemption from Section 125 relating to maintenance of wives, parents and children to suggest that for Muslims, this should not include divorced wives. However, in the early 1980s, the courts refused to accept such an exemption. In August 2016, an activist-turned-politician of the Congress Party, Husain Dalwai introduced a private members bill in Parliament specifically challenging triple-talaq. Thus, whether we are advocates of uniformity, equality or plurality, there appears to be an undeniable desire for change among all political parties and most social movements. A uniform civil code or a review of personal law will therefore serve a similar end through two distinct routes. The issue is now under consideration by the Law Commission of India which has, in its consultations so far has shown remarkable sensitivity towards cultural diversity endeavouring to ensure that the cultural practices of no one community sets the template for family law reform.

For the first time since its inception in 1972, the AIMPLB resolved in its meeting of July 4, 2004 to take some concrete, if highly inadequate, steps to give justice to Muslim women. The Board resolved:

- (1) To launch a nation-wide campaign to create awareness in the Muslim community that the prevalent practice of triple *talaq* was wrongful and to educate them on the Islamic way of divorce.
- (2) To Prepare and popularise a model nikahnama tha both husband and wife be asked to sign at the time of marriage , committing them not to seek a divorce except in the correct Islamic way as spelt out in the model nikahnama.

(3) To ensure that Muslim women get a share in agricultural property.

(4) To establish *Darul Qaza* (Islamic courts) in different parts of the country to settle marital disputes and to strive for constitutional status to these courts (so that its orders become legally enforceable).

### **The Process of Triple Talaq**

The process of Talaq should not be spontaneous and immediate. Husband should pronounce word Talaq according to this process

1. The pronouncement must be in the presence of the KAZI and two witnesses.
2. This will be followed by three months period. In this period couple are supposed to try for reconciliation with the help of mediator.
3. If every effort of reconciliation goes wrong in the previous months then the husband has to pronounce the word Talaq in front of the KAZI and minimum 2-3 witnesses followed by the paperwork and get the divorce.

After the pronouncement of the Triple Talaq the divorced couple can remarry again after the process followed by Halala. In Halala women who are divorced should marry another man and this man subsequently divorces her that is she consummates her marriage with another man is called Halala.

Egypt, Kuwait, Morocco, Iraq, Jordan, UAE, Sudan, Yemen, Phillipines, Syria have already derecognised the concept of Triple Talaq then why All India Muslim Personal Board allows to continue Triple Talaq and oral Talaq. In India many times Triple Talaq is challenged on the basis of constitutional validity. In Pakistan, Muslim Family Law Ordinance, 1961 was introduced and in that it is mandatory for the husband to give notice to the Chairman of the Union Council regarding his intention of divorce.

### **The Fight against Triple Talaq in India**

In recent decades, the idea of uniformity and individual rights has been captured by Hindu nationalist groups such as the Vishwa Hindu Parishad and the RSS; the defence of

personal law and group rights has been heralded by Muslim conservatives, consolidated under the All India Muslim Personal Law Board.

In India, nowadays different groups are fighting and arguing on Triple Talaq especially women's group organisations. Several organizations- especially women's groups- within our country have been fighting for the abolition of Triple Talaq, calling it an "un-Quranic" practice, which is used as a tool to exploit women.

The Muslim Personal Law (Shariat) Application Act' 1937 governs personal laws of Muslims in our country. This personal law is unmodified and open to interpretation by the local clergy, thus adding to the agony of the women.

The Bharatiya Muslim Mahila Andolan (BMMA), has been giving open support to the National Commission for Women to abolish the practice of Triple Talaq being prevalent among the Muslims

The Muslim Personal Law Board has said that elimination of Triple Talaq is akin to rewriting the Quran and forcing Muslims to commit a crime owing to its widespread misuse.

There now seems to be a near consensus among the upper echelons of the judiciary that unless it is for a reasonable cause and is preceded by efforts at reconciliation, talaq is un-Islamic and unlawful.

### **Legal Sphere**

Case 01: Mrs. A.S. Parveen Akhtar vs. Union of India Divorced by her husband in the way of Triple Talaq. In this legal matter the violation of the Human Rights and also the violation of Natural Justice took place. Following constitutional provisions were violated. These are as under:

(i) Article 14: Equality before law – The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India.

(ii) Article 15: Discrimination on grounds of religion, race, caste, sex or place of birth – The state shall not discriminate against any citizen on grounds only of religion, race, sex, place of birth in any of them.

(iii) Article 21: Protection of Life and Personal Liberty – No person shall be deprived of his life or personal liberty except according to the procedure established by law

Case 02: Famous case of Saira Banu: Saira Banu was divorced by her husband through a letter at her parents' house where she had been staying for almost one year. On a piece of paper three words were written "Talaq,Talaq,Talaq". She decided to fight against this type of Talaq. Bano had boldly challenged the validity of her husband's actions of kicking her out of his life. She filed a petition in the Supreme Court seeking the illegal status of Triple Talaq as well as Halala.

### **What is the validity of Talaq -ul- Bidaat?**

The validity of Triple Talaq has been established many times by the judgements of different courts and also set some definite requirements for its validity.

1. Masroor Ahmed v. State (NCT of Delhi) [2008 (103) DRJ 137 (Del.)
  - Triple Talaq was held to be one revocable Talaq
  - Triple Talaq can be revoked at any time before the completion of a waiting period of 90 days
  - Talaq must be for a reasonable cause. Talaq given in anger is not valid.
  
2. Riaz Fatima vs Mohd. Sharif [(2007) DMC 26]
  - Reason and evidence must be given by the husband to seek divorce.
  - A proof that talaq was proclaimed thrice in the presence of witnesses.
  - The letter must be provided indicating an attempt of reconciliation has been made.
  - There has to be proof of payment of Meher (dowry) amount.

### **Conclusion**

Recently, Asaduddin Owaisi, President of All India Majlis-e-Ittehadul Muslimeen and a member of AIMPLB spoke to The Times of India on the issue and stated: "Muslim man divorcing (his) wife without reason must be socially boycotted. Triple Talaq is not the best way, but it happens in Muslim society."

The case relates to a batch of petitions filed in the Supreme court - including by the Centre - regarding whether divorce by saying 'Talaq' three times is legal or whether it impinges on equal

rights or in this case, women's rights, and whether freedom to practice religion - via the Muslim Personal Law for Islam - takes precedence over basic freedoms, among other things.

Triple Talaq is challenged many times and also gives bad impact on Muslim women's dignified life. In India, Bharatiya Muslim Mahila Andolan conducted a survey of about 5000 Muslim women and found that over 90% women wanted an end to the practice of Triple Talaq. Under this survey 525 divorced women were surveyed, in that 78% had been given Triple Talaq.

Many Muslims used Triple Talaq in a very negative way and that is not allowed in Islam. Those who are using this practice of Triple Talaq has misunderstood the Islamic Law. It is not understood that if divorce is the hateful act in the sight of Allah then why some people are making the divorce process so easy. Because the Islamic Method of divorce is perfect this is highly beneficial to protect the right of both the man and woman. Religious leaders are busy prescribing their own easy ways to make a divorce.

The most crucial debate is going on since many years that is of Uniform Civil Code. The article 44 of the Indian constitution is a Directive Principle which reads: "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India." It is not known why the Governments are reluctant to bring Muslim Personal laws under UCC. Even, when Hindu laws were codified, there were strong oppositions from the religious leaders. In view of the progressive measures taken by majority Muslim countries in protecting the rights of women, the Supreme Court should declare the pernicious practice of triple talaq as illegal and unconstitutional. The court should also direct the Government to amend the Muslim Marriages Act accordingly.

India is a secular state. No particular religion or the religion of the overwhelming majority has been made the religion of the state. Articles 29 and 30 of the constitution also ensure religious and linguistic minorities the right to establish and manage educational institutions of their choice.

It is to the credit of Muslim female activists that more and more women are raising their voice against injustice, gender inequality, and subjugation. It is time for reforms to protect the rights of Muslim women in view of changing societal values.

Despite the large number of positive court judgements in favour of Muslim women in India, the media prefers to endorse the view that once the husband pronounces Talaq, the wife is stripped of all her rights

Let us not allow fundamentalist forces to hold the country hostage. Moving a step ahead towards finding a solution for the Triple-Talaq issue, the Supreme Court has decided that a five-judge constitution bench will give its decision on the constitutional validity of the practice of triple Talaq, 'Nikah Halala' and Polygamy among Muslims. Presently Supreme Court is focussing on triple Talaq and the whole country is waiting eagerly to listen to the Supreme Court's judgement on Triple Talaq.

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