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TRIPLE TALAQ: SHORT NOTE ON TRACING THE LEGAL JOURNEY OF A 21st CENTURY PROTEST

Context

The issue of Triple Talaq first caught the public eye in the year 1985 in *Mohd. Ahmad Khan vs. Shah Bano Begum & Ors.*¹ case, which is seen as one of the milestones in Muslim women's fight for rights in India, as it laid the ground for them to make legitimate claims which, were prohibited owing to Islamic sanctions.

Long standing practices of *Nikah Halala* and polygamy were also challenged and the matter came to a closure with the passing of the *Muslim Women (Protection of Rights on Divorce Act)*, which made it necessary for the husband to pay alimony to his wife ninety days after the divorce is pronounced.

Judicial precedent in pursuance of Triple Talaq

Following the footsteps of the revolutionary judgement of *Mohd. Ahmad Khan vs. Shah Bano Begum & Ors.*, the first notable judicial pronouncement came in 2002 in the *Shamim Ara vs. State of UP*² case, where Justice Lahoti said that “*talaq must be pronounced on cogent plausible and reasonable grounds.*”

This verdict also entailed that prior to talaq, the spouses must appoint two arbitrators, who would make all efforts towards effective reconciliation and resolution, failing which, talaq shall come into effect upon. It did not annul the practice of Triple Talaq but attempted to regulate this practice.

¹AIR 1985 SC 945.

² 2002 (7) SCC 518.

In the same year 2002 only, the Aurangabad bench of Bombay High Court invalidated triple talaq by giving reference from Quranic texts in *Dagdu Pathan vs. Rahimbi*³, where the court declared that a Muslim husband cannot sever the matrimonial ties at will and has to prove that all stages - conveying the reasons for divorce, appointment of arbitrators and conciliation proceedings between the spouses were followed. In a ruling in December 2016, the Allahabad High Court observed in a rule that this practice of instant triple talaq was unconstitutional.

Tracing the protests and the Historic 2017 ruling

The development pertaining to the issue of triple talaq in the legal realm was however, quite slow following these rulings (as mentioned under the previous heading), but that did not mean that the practice had been done away with as even more intensifying cases were being reported with the advent of smartphones and widespread internet access as talaqs were being pronounced through Facebook, Skype, email and even through WhatsApp text messages and telephonic calls. This unfettering abuse of a Personal Law erupted large scale protests by the opposers of such an unjustified and manifestly biased manner instant dissolution of marriage - the issue slowly and gradually started catching up the attention of the masses at a massive scale with the *Bhartiya Muslim Mahila Andolan (BMMA)* being on the forefront of these campaigns. In 2016, for realizing the plight of these women, a high level committee was established under the government to look into the matter which then submitted a report to the Ministry of Women and Child Development on the subject, '*Women and the law: An assessment of family laws with focus on laws relating to marriage, divorce, custody, inheritance and succession*'⁴(which was also cited in the landmark case of *Shayara Bano vs. UOI*⁵, covered later in this article).

Undeterred by strong opposition from influential Muslim bodies regarding the power of the Supreme Court pertaining to judicial scrutiny of Muslim personal law sanctions and practices, a five judge constitutional bench of the apex court was created to examine the legality of Triple Talaq by entertaining a Muslim woman's petition that this mode of instant divorce be declared unconstitutional as it allowed Muslim men to treat women like "*chattel*".

³ II (2002), DMC 315 Bom FB.

⁴**Explainer: Triple Talaq Bill and everything you need to know about it** June 21, 2019 16:39 IST. As retrieved from: (<https://www.theweek.in/news/india/2019/06/21/explainer-triple-talaq-bill-and-everything-you-need-know-about-it.html>)

⁵ WRIT PETITION (CIVIL) of 2016.

“Muslim women have been given talaq over Skype, Facebook and even text messages. There is no protection against such arbitrary divorce. They have their hands tied while the guillotine of divorce dangles perpetually ready to drop at the whims of their husbands who enjoy undisputed power,”

Shayara Bano’s petition said. The petitioners pleaded for scrapping Section 2 of the *Muslim Personal Law (Shariat) Application Act, 1937*, describing it as being against **Article 14 of the Constitution** (equality before law).

The five-judge bench of the Supreme Court examined the case *Shayara Bano vs. Union of India*⁶ with two specific questions:

- Does the practice of Triple talaq enjoy protection of the constitution and is safeguarded by Article 25(1) in the constitution that guarantees all, the fundamental right to “profess, practice and propagate religion”?
- Is the practice of Triple Talaq is an essential feature of Islamic belief and practice?

On 13 May 2017, during the course of the hearings, the Supreme Court described instant triple talaq as the "*worst form of marriage dissolution*". It noted that the custom is banned in the Muslim-majority countries of Saudi Arabia, Morocco, Afghanistan and Pakistan.

In a historic judgment, by a 3-2 majority the Supreme Court ruled the following (the essence of the judgement):

- Instant Triple Talaq is unconstitutional and arbitrary.
- It violated Islamic law while being used as a tool to oppress women.
- The Central government was also asked by the bench to enact a new legislation within the next six months entailing to this ruling.

⁶*Supra* note 5.

Thus, Triple Talaq that is Talaq-e-Biddat was effectively declared to be banned while not going against the basic sacrament of Quranic teachings. The historic stand of the apex court was further cemented through the passing of the *Muslim Women (Protection of Rights on Marriage Bill)*.

The bill was first passed in December 2017 in the Lok Sabha but due to lack of support in the Rajya Sabha it was stalled. The amendments to the Triple Talaq Bill were cleared on 9th August, 2018 which introduced provisions like, bail to those men who are found guilty of giving Triple Talaq instantly; it also directed that complaints in such cases may only be filed by the victim (wife) or a kin, and the magistrate has the power to grant bail under some terms and conditions. The bill was then tabled the next day in the Upper House during the monsoon session, but due to lack of consensus the bill was further postponed till winter session.

In September 2018 the cabinet cleared the ordinance, the promulgation of which followed the declaration of instant triple talaq as unconstitutional and invalid as per the original ruling by the Supreme Court in 2017. The court had held that instant triple talaq given by a Muslim man “*capriciously and whimsically*”, without an attempt at reconciliation, was “*manifestly arbitrary*” and “*violative of Article 14 of the Constitution*” and hence Triple Talaq was made a punishable offence along with a three-year prison term.

During the winter session when the Bill was brought for perusal before the Upper House, the opposition stalled it before finally demanding for its scrutiny by a select panel. With the bill not being made into a law with immediate effect, an ordinance was promulgated by President Kovind, that is the second ordinance of February 2019, which declares the practice of instant triple talaq to be void and illegal and also to make it an offence punishable with imprisonment up to three years and a fine.

On 20th of June 2019, the President addressed a joint session of the Parliament, and called upon all the parties to unite for enacting the legislation making instant Triple Talaq into a punishable offence. The **Muslim Women (Protection of Rights on Marriage) Bill, 2019** was introduced in the Rajya Sabha on 20th June, and in the Lok Sabha on 21st of June. The bill was finally passed by the latter on 25th of July 2019 amid walkout by the opposition and the former too passed it on 30th July 2019, hence bringing an end to sufferings of millions of Muslim women of India.

Conclusion

And thus a legally insulated end was brought towards the plight of millions of Muslim women whose lives were filled with the void of unscrupulous interpretation of the Quranic sanctions and an even greater ignorance towards basic rules of equality and minimal conjugal rights, empowering them to be able to ensure their own protection against such unilateral practices hence bringing greater mobility to the entire Muslim community as a whole as the entire nation celebrated this outcome which marks an end to subjugation of women and places them on equal footing with their spouses in purview of their matrimonial linkages.