

# LEGALFOXES LAW TIMES

## TALAQ-E-BIDDAT: A SOCIAL EVIL

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### ABSTRACT

A Muslim marriage is a legal contract between a bride and a groom. It is also known as a nikah, which means a contract; in the Quran, Marriage is considered "mithaqunGhalithun, which means a firm agreement. The reason behind calling Muslim Marriage a contract is that its essentials are parimateria to a contract's essentials. A valid Muslim marriage (Sahih) consists of an offer (ijab) and acceptance (qubul). There should be one male and two female witnesses. The age of marriage is puberty and should be of sound mind with wilful consent. The acceptance must be conditional with consideration (dower) provided. A Muslim marriage is covered by the Muslim personal law (Shariat) application act 1937.

Unlike Hindu marriage, repetition of the word 'Talaq' three times can dissolve a Muslim marriage. Talaq is an Arabic word that means to release and to divorce. Under Muslim law, only a husband can divorce his wife by using Triple Talaq, but the wife does not share the same right. The legislation has now expanded the wife of divorce's right, and now they can seek divorce under the dissolution of the Muslim marriage act 1939. consequently, now divorce is categorized under two categories. They are Extra Judicial Divorce or Talaq under Muslim Personal Law and Judicial Divorce or Talaq under Statutory Law.

TripleTalaq is unconstitutional because it has done wrong to Muslim women. For Muslim women's dignity, it is necessary to make this act of instant triple Talaq a Criminal offense. So that Muslim Husband will think twice while saying three repetitions of the word "Talaq." There is no settlement concept in such a dissolution of marriage, and the husband can quickly pronounce triple Talaq on either WhatsApp, email, or other media. All the reasons, as mentioned above, are enough to considered triple Talaq a social evil.

### INTRODUCTION

Muslim personal (Shariat) act covers Muslim marriage. The repetition of the word 'talaq' can dissolve Muslim marriage. Talaq is an Islamic word that releases and dissolves the marriage. It releases the Muslim women from all her matrimonial obligations and ties. Under Muslim law, triple Talaq means independence from the bond of marriage, eventually or instantly, where the husband, by repeating the word 'talaq' three times, end the wedlock. This instant divorce is called Triple Talaq, also acknowledged as 'talaq-e-biddat.' The Muslim Personal Law (Shariat) Application Act of 1937 had authorized and approved the practice of Triple Talaq, which gave a Muslim husband exclusive immunity over his wife.

Talaq-e-biddat has been considered evil because it creates fear in a women's mind that when her husband, in anger, will divorce and leave her. Indian cinema, in some of its iconic movies like "Talaq" and "Nikah," has explained how harsh triple Talaq has been on women. A Muslim woman is not someone's property that can be stranded at any time.

Many Muslim women confronted triple Talaq in the supreme court many times, some were able to seek relief, but some, unfortunately, remain the victim of this social evil. Another reason Triple Talaq is considered evil is that wife has to undergo "Halala." Shariat provision Halala is a method where the divorced woman enters into wedlock with another man and consummate the marriage before returning to her first husband. In Bareilly<sup>1</sup>, on February 7, 2019, there came a judgment where the husband and other in-laws were punished for the heinous crime of halala. The wife got divorced by triple Talaq because she could not bear a child, husband realizing his mistake, decided to remarry. The wife did nikah halal with her husband's father. When she refused to undergo halala was given a sedative injection and was raped for ten days in the name of halala. In 2017 husband again divorced her and asked her to undergo halala with his brother. She then approached the family court, where her husband and other in-laws were contested.

### **TYPES OF TALAQ IN ISLAM**

There are three types of Divorce under Islam:-

1) Talaq-e-Ahsan

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<sup>1</sup><https://timesofindia.indiatimes.com/india/bareilly-woman-claims-serial-halala/articleshow/67876738.cms>

It is contemplated as the right way to dissolve a marriage. "Ahsan" means best or most decent. The husband must pronounce divorce in a single sentence when the wife is in a state of 'purity,' which means not menstruating. If the couple resumes cohabitation within the Iddat period, the divorce is treated as revoked. Therefore, 'talaq-e-Ahsan' is revocable. If there is no cohabitation during the Iddat period, then the divorce becomes irrevocable.

## 2) Talaq-e-Hasan

It is a 'proper' way to divorce but not as good as Ahsan; the husband declares Talaq three times divided over three monthly ways.

The distinction between 'talaq-e-ashan' and 'talaq-e-Hasan' is that in the Ahsan, there is a single pronouncement of 'talaq' followed by abstinence during the period of 'iddat,' whereas, in the Hasan, there are three declarations of 'talaq,' distributed with abstinence.

## 3) Talaq-e-Biddat

It is outlawed by the Supreme Court, is recognized as undesirable and immoral in Islam, but it is deemed to be valid under Sharia law. This instant divorce is not the standard within Islam, but a rareness. Biddat means sinful innovation – Ommeyyad kings injected this form in order to escape the law. Under biddat, the husband declares Talaq thrice. Divorce is instantaneous and becomes irrevocable immediately when it is pronounced, irrespective of iddat. Talaq-e-Biddat is also called Triple Talaq. There are three types of Divorce under Islam:-

### **CRIMINALIZING TALAQ-E-BIDDAT**

In 2019, the Muslim Women (Protection of Rights on Marriage) Act came into force in which the law criminalizes triple talaq or talaq-e-biddat. The tradition of talaq-e-biddat is questioned among Muslim scholars and said that Biddat is void of any religious decree. It was a practice by Sunni Muslims, but countries like Pakistan, Bangladesh, Afghanistan, Iran, Saudi Arabia, and Malaysia have eliminated Talaq-e-Biddat. It was adjudged and evaded worldwide because it is instant, irrevocable, and provides no reconciliation opportunity.

The excellent way to dissolve a marriage is talaq-e-Ahsan because, after divorce, women need not undergo halala and can remarry again. In contradiction, triple talaq makes women undergo halala to remarry.

Halala was anticipated to be a punishment for the man who would divorce his wife by triple talaq. The woman would be restrained for him and not available to marry unless she married another man and consummated the marriage divorced by him and then undergo iddat period. Nevertheless, it has turned out to be a crime. Husband now divorce their wife without any reasonable reason. In many cases like *Shamim Ara v. the State of UP*<sup>2</sup>, the Supreme Court upheld that "the correct law of divorce as concluded by the Holy Quran is that Talaq must be for reasonable cause." In the case of *Masroor Ahmad v. State (N.C.T. of Delhi) & Another*<sup>3</sup>, the High Court concluded that "Reconciliation before the divorce procedure is of utmost importance and is in concurrence with the Holy Quran. It is of utmost necessity to follow divorce's procedure as written in the Quran and proper reasoning to be given before the commencement of the divorce." Talaq-e-biddat neither allowed any possibility for Reconciliation nor expected the husband to cite any reasonable cause. Consequently, it was opposed to the principles of Islam.

### **ShayaraBano: A way to the criminalization**

The battle for triple talaq criminalization and enactment of the triple talaq law started with *ShayaraBano vs. Union of India*<sup>4</sup> one of the most famous case.

The issue raised in the case were:-

1. whether triple Talaq is valid?
2. Whether Triple Talaq is a religious custom?

The SC set out the judgment on August 22, 2017, in 3:2 on behalf of Triple Talaq unconstitutionality. Justice Nariman tended to the dominant part judgment for himself and in the interest of Justice Lalit. Simultaneously, Justice Joseph favored the majority Chief Justice Kehar for himself, and Justice Nazeer tended to the minority judgment. Simultaneously, upon

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<sup>2</sup>AIR 2002 SC 619

<sup>3</sup>2008 (103) DRJ 137

<sup>4</sup>(2017) 9 SCC 1

protracted conversation, the majority concluded that Triple Talaq is not a religious practice whereas, the minority concluded it is religious.

Under Article 25 of the Constitution, the country cannot eliminate an individual's fundamental right. According to the majority, it was held that the Triple Talaq or Talaq-e-biddat is not guarded by the exception set down in Article 25, i.e., the court found the said practice is not a fundamental custom of the Islamic religion. The court upheld its viewpoint because even though the Hanafi School performs it, it is seen as evil.

Triple Talaq is against the fundamental principles of the Quran and Quoranis despite Shariat; along these lines, what is malicious in philosophy cannot be directly in the law. Consequently, such practice is pronounced illegal. Article 25 conveys the privilege of each individual to exercise any religion of practice. Such practice is just limited with regards to the accompanying exceptional cases:

1. Public Order
2. Health
3. righteousness
4. Different terms of Part III of the Constitution

Even though this practice has no importance to the first three exceptions, it is sure against other Part III arrangements, especially Article 14. They have nothing to do with the assertion of separation, dissimilar to in different religions. Nariman and Lalit, J.J. Held that the denounced practice is an instrument by which conjugal ties can be broken on Husband's impulses with no endeavor of compromise to spare it. Accordingly, this type of Talaq infringes upon Article 14 and is obligated to be stuck somewhere around the courts.

What is a religious custom? It relies upon the foundation, past, and religion. It does not mean that such practice is a religious practice if some exercise is not limited. Fundamental strict practices are those on which the religion is established. Primary religions are those which are central to the calling and proliferation of the religion. On the off chance that removing practice creates a significant change in religion, at that point, such practice can be called 'a religious custom.' Only such practices are secured in Article 25(1). The encroachment of strict practices through state intervention will abuse the rights referenced in Article 25(1) and not with the encroachment of

accidental and unnecessary practices. Most Islamic nations have dismissed the said practice; likewise, mirrors that the said practice is not one that will be called an essential strict practice.

Notwithstanding, Justice Khehar, composing the minority judgment, maintained that such custom is a fundamental Islam component. The Minority seat legitimized this position on the ground that an enormous populace of individuals follows this training. Since this training has endorsed a strict category and is trailed by most Muslim populace, the said practice is announced as a sacred and essential practice.

Justice Kehar was, to the extent that the exemptions referenced in Article 25(1) of the constitution, of the assessment, that the denounced practice is no a violation of any of these rare cases

### **PUNISHMENT FOR SOCIAL EVIL**

Muslim Women (Protection of Rights on Marriage) Bill, 2019, was enacted by the Indian Parliament as a law on July 30, 2019, which addressed talaq-e-biddat, a criminal offense.

The Rajya Sabha enacted the Bill, with 99 votes in their support and 84 against them. The Triple Talaq law executes the talaq-e-biddat, a criminal offense, and provides three years of imprisonment for the performance of this horrendous crime.

### **CONCLUSION**

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In the shayaraBano case, a stepping stone was set which criminalized the triple Talaq. The husband cannot now leave his wife by ending marital ties on his ideas and wishes. The idea of equality, especially gender equality, is not a mere philosophical idea. Nevertheless, the theory of the minority judges worries the nation. India's Chief Justice is giving supremacy to such practices, ignoring the widespread inhumanity. In that case, there is some critical thinking required by the Judges of the apex court.

India has criminalized talaq-e-biddat. There have been about an 82% drop in triple talaq cases as the law on "social evil" was established.