

# LEGALFOXES LAW TIMES

## TRIPLE-TALAQ

By Krasti Singh Chauhan

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Al Quran surah attalaq 65 :2

DO NOT TURN THEM OUT OF THEIR [HUSBANDS'] HOUSES,

NOR SHOULD THEY [THEMSELVES] LEAVE [DURING THAT PERIOD] UNLESS THEY ARE COMMITTING A CLEAR IMMORALITY. AND THOSE ARE THE LIMITS [SET BY] ALLAH, AND WHOEVER

TRANSGRESSES THE LIMITS OF ALLAH HAS CERTAINLY WRONGED HIMSELF.

You know not: perhaps Allah will bring about after that a [different] matter

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Triple Talaq or Talaq-e-biddat or Talaq-e-mughallazah is the practice under which a Muslim man can divorce his wife by uttering "talaq" (the Arabic word for Divorce) three times.

**"Talaq means *instant divorce* and Talaq-e-mughallazah means *irrevocable divorce*."**

Triple Talaq is a 1400-year-old practice among Sunni Muslims.<sup>1</sup> The altercation around talaq is in the way in which it is practiced in modern day society. The concern of triple talaq is considered as highly discreet among muslims, not only sticking to India but also elsewhere. The

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<sup>1</sup>Harshita Sharma, triple talaq bill in Rajya Sabha: Know the main facts and the controversies, my India, Jan 9, 2019

strings of controversy began when **Caliph Umar** pronounced the validity of talaq-e-biddat and since then this word remains under-defined.

My writing will be based on my very strong perception that –

*“Sacred Quran is very cautious in matter of divorce”*

and it is wrongly interpreted in terms of talaq in today’s society leading to injustice towards woman. This essay moreover ascertains various elucidation since Muslim law isn’t codified and subject to shariat law.<sup>2</sup> This essay deals with the question of triple talaq within the light of the appeal filed in the Supreme Court tending to announce such talaq invalid. This paper also underlines “The Muslim Women (Protection of Rights on Marriage) Bill, 2017” with aim and objectives to conclude with a few curious analyses.

Today, we are living in 21<sup>st</sup> century and it is called The Modern Era. Every individual, person, group of people possess some fundamental rights enshrined for them in The Constitution of India. Everybody has a right to raise their voices against any kind of exploitation under the name of traditions that are causing distress to them. Few examples of the same are: *Child Marriage, Sati Pratha, Abolition of Widow Remarriage etc*, all these were very strongly followed as traditions but as the time changed they became the basis of sorrow, exploitations and caused many social evils in the society and then the people who suffered came forward to fight against these evils and succeeded upon them. In the same chain one more tradition has emerged as a major issue i.e. Triple Talaq. India is drastically facing Triple Talaq issue in the Muslim community. Especially Muslim religion women are so much worsely effected by triple talaq problem. Just consecutive pronunciation of a word thrice finishes the relationship between husband and wife. This has been an issue of concern for over 65 years for Muslim woman in India, who comprise approximately 8% of the population as per 2011 census. This pronouncement can be oral or written by electronic means such as email, SMS and WhatsApp. With the advent of technology, the concept of triple talaq has become easier to execute. There were several cases reported about husbands sending messages on voice notes or even pictures over Snapchat to utter talaq and divorce their wives. The right of such a divorce was without any reasonable grounds, and was vested only with the husband which made the wives silent victims.

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<sup>2</sup>Muslim Personal Law (Shariat) Application Act, 1937, No.26, Act of Parliament, 1937 (India)

Youth is misusing this law, within a blink of eye, the life of a woman and her children gets destroyed. A divorced woman may not remarry her divorced husband unless she first marries another man called NikahHalala. This weird and sinful culture adversely affects the life of Muslim women as it creates mental insecurity, threats of sudden divorce, and also encourages polygamy. Hence, puts a question mark on the Gender Equality, the dignity of women, justice, human rights and women empowerment.

*Basic Terminologies have been discussed below to give the reader a clear understanding of this issue:*

- 1. Mode of Divorce-** Triple Talaq is the practice in Islam under which a Muslim man could legally divorce his wife by pronouncing “talaq” three times. The pronouncement could be oral or written, or, in recent times, delivered by electronic means such as telephone, SMS, email or social media and the same could be done on his whimsy.
- 2. Revocability of Divorce-** Under this system, it was not necessary or required of him to cite any reason for divorcing his wife. The revocability or irrevocability of divorce was decided based on the period of iddat where it was ascertained whether the wife is pregnant or not.
- 3. Waiting Period-** In the recommended practice, a waiting practice was required before each pronouncement of talaq, during which reconciliation was attempted. However, it had become common to make all three pronouncements in one sitting.
- 4. NikahHalala-** This is also known as Tahleel marriage. It is a practice in which a woman, after being divorced by triple talaq, marries another man, consummates the marriage, and gets divorced again in order to be able to remarry her former husband. According to me, Nikahhalala is akin to rape, its worse than the concept of Agni-Pareeksha, here a wife has to prove that she is not *haram* for her husband by having sex or we may say by importing her soul with another man. I mean how can we accept it in a country where Goddess is

worshipped and Woman empowerment is advocated so strongly. This is not only an injustice towards the women but it is also giving rise to other sorts of criminal practices. In one of the articles of India Today, I read how maulvis take money for one-night stand with divorced women trying to save their marriage and how a Tantrik “Rapes” 21-year-old for NikahHalala after husband gives triple talaq.

When our present Prime Minister, Mr. Narendra Modi started a campaign for Uttar Pradesh election 2017, Muslim women raised this issue asking the government to find some solution against it. In fact, many Muslim countries like Iraq, Saudi Arabia and Pakistan completely banned this unethical law years ago. The other countries that have abolished instant triple talaq include Cyprus and Turkey because they have adopted secular family laws. Some countries have abolished instant Triple Talaq because they do not recognize divorce outside the court such as Tunisia and Algeria. Iran has also abolished Instant triple talaq as it follows Shia Law and Instant Triple Talaq is a practice under the Sunni Law. The scenario, in India, is a bit different though, religious sentiments play a great role in decision making here and the absence of a Uniform Civil Code is one of the major disadvantages in the way of striking out certain practices that are a part of the system from time immemorial but nobody feels it that particular practice and instant Triple Talaq is one such example. Although our government has also taken stern step against this on 22<sup>nd</sup> August 2017, Indian Supreme Court deemed triple talaq unconstitutional and also formulated a bill called *The Muslim Women (protection of rights on marriage) bill, 2017* by which Triple Talaq in any form will be illegal and void with upto 3 years' jail for the husband. One thing is undeniable that once this bill will become a law, no more Muslim women will face such adversity in future. But for that this situation should not be seen by religious eye and society should also come forward to act against this social evil without any prejudice. Because no nation can progress without active and equal participation of women.

In India, the issue of triple talaq raised to fire when **ShayaraBano** of age 36 years old native of Uttarakhand knocked the doors of Supreme Court in 2016 asking for justice and requested that the talaq-e-biddat articulated by her spouse be settled as void, after her 14 years marriage ended unexpectedly in 2015. She regularly faced domestic harassment, after 13 years of marriage and two children, Ms. Bano's life was shattered in October 2015 when she received a speed post from her husband, Rizwan Ahmed, a property dealer based in Allahabad. The letter contained a pronouncement of instant triple divorce—Talaq, Talaq, Talaq. She moreover fought that such one-sided, unexpected and irreversible form of divorce be pronounced unlawful, contending that the practice of triple talaq abused the elemental rights of Muslim women.<sup>3</sup> The appeal subsequently challenges the legitimacy of triple talaq on the touch stone of Article 15, Article 25, Article 21 and Article 14.

It is stated that:

*“It is submitted that devout officers and clerics like Imams, Maulvis, etc. who proliferate, bolster and approve practices like talaq-e-biddat, nikahhalala and polygamy are terribly abusing their position, impact and control to subject Muslim ladies to such gross practices which treats them as chattel, thereby damaging their essential rights reverend in Article 14,15,21 and 25 of the constitution.”*



#### **Article 14 in The Constitution of India 1949**

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**14. Equality before law:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

- This form of law is manifestly arbitrary in the sense that the material tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it and such practice clearly the right of equality as the Muslim man holds the ultimate power in this regard whereas woman has no say in it.

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<sup>3</sup> Omar Rashid, Who is ShayaraBano, the triple talaq crusader?, The Hindu, April 7, 2018

## **Article 15 in The Constitution of India 1949**

### **15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

- While a husband married under Muslim Law can unilaterally obtain a divorce without any court proceedings by resorting to Talak, a wife married under that law cannot unilaterally get rid of the marital tie. She can have a unilateral extra-judicial divorce by Talak-i-Tawfeez only when such power has been conferred on her by the husband. She can have extra-judicial divorce by the Khula or Mubaraat mode, but that again only when her husband consents thereto. Therefore, in the main, the position in law is that while a husband to a Muslim marriage can untie the marital tie at anytime and anywhere, a wife to such a marriage has been denied any such power and cannot have the marriage dissolved except through Court and that too only on one or more of the grounds specified in the legislation. Hence, the discrimination is obviously grounded on sex alone and therefore it clearly violates Article 15.

## **Article 25 in The Constitution of India 1949**

### **25. Freedom of conscience and free profession, practice and propogation of religion**

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

- The fact that Muslim wives alone are so adversely discriminated against is a good ground for amending the law for their welfare and as a socially reformative measure under Article 25(2). An additional reason for statutory intervention is that talak-ul-biddat is also contrary to morality under Article 25(1)

In **Yusuf v. Sowramma**, showed that the male has more power than woman in terms of dissolution of marriage.

Justice **Krishna Iyer** observed that: -

*“Since reliability isn’t the characteristic of the judiciary, the view has been wandered by Muslim legal advisors that the Indo-Anglian legal work of the Islamic law of Judicial Separation has not actually been simply to the Holy Prophet or the Holy Book. They see that the Muslim spouse appreciates a subjective, one sided capacity to cause instant divorce does not accord with Islamic directives.”*

In the landmark judgement of **ShamimAra v. State of U.P.**<sup>4</sup>

The SC Judgement, categorically laid down that for any talaq to become effective under the tenets of Quran, two conditions must be met. One, that talaq must be for a reasonable cause and second, that it must be preceded by any attempt of reconciliation between the husband and the wife by arbiters.

In **ShayaraBano and Ors. V. Union of India (UOI) and Ors Case**<sup>5</sup>

The 5 Judge bench that heard the case consists of multifaith religious members. The five judges from five distinctive communities are Chief Justice **JS Khehar**, a Sikh, **Abdul Nazeer**, a Muslim, **RF Nariman**, a parsi, **Judge Kurien Joseph**, a Christian and **UU Lalit**, a Hindu.

In a larger part 3:2 judgements, a five judge seat of the Supreme Court set aside talaq-e-biddat or instant or irreversible talaq as a “clearly subjective” practice, which isn’t secured by Article 25 (freedom of religion) of the Constitution. Justices **Kurien Joseph and Rohintan Fali Nariman** each gave separate judgement over the validity of instant triple talaq, whereas Justice **UU Lalit** bolstered the judgement of Justice Nariman. This makes the trinity of judges who ruled against triple talaq.

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<sup>4</sup>AIR 2002 SC 3551

<sup>5</sup> 2017 9 SCC 1

*The final order of the court at the conclusion of the judgement pronouncement session, Chief Justice Khehar tended to the court and concluded that “by majority of 3:2, talaq-e-biddat is set aside.”<sup>6</sup>*

For ShayaraBano, the original petitioner in triple talaq case, the Supreme Court’s verdict setting aside the unilateral practice was nothing short of a personal triumph. “I have felt the pain of having my home broken. I don’t want other women to feel that way. It is a historic day for Muslim women.” Exclaimed Ms. Bano, moments after the Court declared its judgement on triple talaq. Ms. Bano welcomed the SC’s verdict with the belief that it would bring justice to Muslim women, married or unmarried, who either bore the pain of triple talaq or lived in constant fear of it.

Concludingly, I would say that considering the social and historical background of India, a bitter truth to be accepted is that women are always considered as the inferior gender. A woman’s opinions were never given importance and instant triple talaq is an example of one such practice. Divorce is a very important and hardest decision of two spouses then also the so-called inferior gender is not given any right to have a say on such an important topic. Imagine a situation in which your whole world breaks down in front of you just by saying a word repeatedly three times, you are left with God knows how many children, no education, no future, no maintenance, and eventually no means to live. We talk about equality, we talk about women empowerment, we say that women are no less than a man but is it actually a reality? It may be a bit easy for people who are well educated, who know their rights and remedies, if not given fair chances but what about those women who never went to school, who were married at the age of, maybe 9, who is a mother of 4 kids at the age of just 18 and now her only dream is to live happily and suddenly she has no clue that for what mistake is she thrown out of her house to face a more difficult world. This is not a universal reality there are exceptions, it is not the man who is always on the wrong side but all that we are asking for is equality, whatever the situation may be equality is the basis of all. Atleast one deserves a reason; everyone has a chance to know- the right to be answered.

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<sup>6</sup>KrishnadasRajagopala, Supreme Court sets aside instant ‘talaq’, The HINDU, August 22, 2017

I now pen down, summing up my views in a line-

*“Triple Talaq is in practice from centuries but injustice from centuries can never become a justice, a full stop is always required.”*

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