

Triple Talaq-Legislative Trend with reference to Other Countries

Rajendra Prasad Verma

A research scholar (MPCT-2015), Dept. of Law, Maharaja Ganga Singh University, Bikaner, Raj. (India)

ARTICLE DETAILS

Article History

Published Online: 15 April 2019

Keywords

triple talaq, gender equality, uniform civil code, Muslim personal law, Hanafi school of Sunni sect

ABSTRACT

Talaq, Talaq, T..., i.e. triple talaq has been a burning issue in India. It seems to be against the right of gender equality guaranteed by the constitution of India under Article 14. But the existing position of Muslim women in India proves something which is against the constitutional parameters of gender equality. There are so many hitches to improve the status of Muslim women, and the issue of triple talaq is one of them. Triple talaq is a part of Muslim personal law, and the government of India feels hesitant to intervene. We have constitutionalism consisting of a spirit of secularism and equality of justice to all citizens of India. The notion of the Uniform Civil Code under Article 44, an essential directive principle, always requires due attention of the government to protect gender equality. The question as to the applicability of triple talaq among Muslims has been judged by the judiciary many times. But the issue is still unchanged, and the position of Muslim women is critical. Lack of proper legislation and social awareness, the status of Muslim women has become lousy. Even the whole Muslim community does not allow the practice of triple talaq only the Hanafi school of Sunni Muslims exercises it unrestrictedly. There is no recognition in favour of triple talaq found in the Holy Book Quran, and no evidence of such practice was given by The Prophet anywhere.

1. Introduction

No religion prohibits marriage. Marriage is the process by which two people make their relationship public, official, and permanent. It is the meeting of two hearts in a bond that lasts until death, but in practice, it is often cut short by separation or divorce. Niqah is an Arabic word to denote marriage in Muslims.¹The Prophet observed that Men marry for beauty, for ranks, for wealth, for piety, choose piety. He declared marriage is my Sunnat, and those who do not obey it are not my followers.²The Prophet addresses men asking them to try hard to keep the marriage, even if they dislike their wives: " live with them on a footing of kindness and equity. If they take a dislike to them, it may be that they dislike a thing, and God brings about through it a great deal of good."³According to The Prophet, divorce is the last choice. A divorce can be resorted to only when there is a strong, sufficient, and genuine reason for it and when the two parties have tried all possible means to establish a good relationship with each other but failed.⁴ In simple words, Islam permits divorce. There are various modes of divorce. Some of them may have specific and reasonable grounds and it becomes essential to untie a marriage but some are unreasonable and groundless. The researcher is trying to know about the reasons and effects of triple talaq, found in Hanafi Muslims, by taking a comparative study.

2. Origin of Triple Talaq

It is said in a Hadith (Prophet's saying):

'Of all the permitted things divorce is the most abominable with God.'⁵

In Islam there are various types of dissolution of marriage.⁶With a customary approach there are the following kinds of divorce:

(I) By the Husband

- Talaq (Repudiation)

- Ilaa (Vow of Contience)
- Zihar (Injurious Assimilation)

(II) By the Wife

- Tafweed (Delegation of Divorce)

(III) By Common Consent

- Khula (Redemption)
- Mubaarah (Mutual Freeing)

The forms of talaq according to mode of pronouncement may further be divided into two classes as follows:

(I) Talaq- al-Sunnah (In Conformity With the dictates of The Prophet) having two forms

- Ahsan (the most approved)
- Hasan (approved)

(II) Talaq-al-Bidah (Innovation, Therefore Not Approved)

❖ Talaq-al-biddah or talaq-al- biddat in form of instant divorce is called triple talaq.

Triple divorce is a recognised but disapproved form of divorce and is considered by the Islamic Jurists as an innovation within the fold of Shariat. It commands neither the sanction of Holy Quran nor the approval of the holy Prophet. It was also not in practice during the life time of first Caliph Abu Bakar and also for more than two years during the second Caliph Hazarat Umar's time. Later on, Hazrat Umar permitted it on account of certain peculiar situation' When the Arabs conquered Syria, Egypt, Persia etc, they found women there much better in appearance as compared to Arabian women and hence they wanted to marry them. But the Egyptian and Syrian Women insisted that in order to marry them, they should divorce to their existing wives. The condition was readily acceptable to the Arabs and they decided to pronounce instant

divorce in one sitting. They knew that in Islam divorce is permissible only twice in two separate period of tuhr and its repetition at one sitting is against Islam, void and shall not be effective but to achieve their beauty peacefully they did what was not within Islamic parameters. This fact was reported to the second Caliph Hazrat Umar. The Caliph Umar then in order to prevent the misuse of the religion by the crooked husbands decreed that even repetition of the word talaq, talaq, talaq at one sitting would dissolve the marriage irrevocably.⁷ It was, however a mere administrative measure of Caliph Umar to meet an emergency situation and not to make it a law permanently. But unfortunately, the Hanafi Jurists later on at the strength of this instant administrative order of second Caliph declared this form of divorce valid and also pave religious sanction to it.⁸

3. Triple Talaq: Indian Aspect

India is a secular State and 14.2 % of its total population belongs to Muslims, Sunni among them creates majority.⁹ Law relating to matrimonial disputes is generally governed by their traditions based on Holi Quran and Shariat. The Indian Muslims practice all modes of dissolution of marriage except Ilaa and Zihhar.¹⁰ The mode of talaq-ul-biddat or triple talaq or instant talaq is a big concern against the constitutional guarantee to protect gender equality. Article 44 mentions a constitutional requirement of Uniform Civil Code which is yet to be achieved. In Shamim Ara¹¹ and the Shayara Bano¹² cases, The Supreme Court of India held triple talaq unconstitutional and directed the government of India to restrict such practice by way of specific legislation. The government has filed Bills in December 2017 (Bill No. 247 of 2017), in December 2018 (Bill No. 181 of 2018) in this regard.¹³ As the triple talaq ordinance of 2018 was to expire on 22 January 2019 and also because The Muslim Women (Protection of Rights on Marriage) Bill, 2018 could not be passed, the government re-promulgated the ordinance on 10 January 2019. The provisions regarding prevention and control over triple talaq in the proposed Bill named "The Muslim Women (Protection of Rights on Marriage) Bill, 2018"¹⁴

Sec 3. Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

Sec 4. Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

4. Triple Talaq: An International Perspective

The world can be classified into three categories i.e. the Theocratic States, the secular states, and the secular states having the centralising tendency of the religious aspect. Algeria, Iraq, Libya, Tunisia, United Arab Emirates, Malaysia, Pakistan, Bangladesh, etc. are theocratic States having Muslim majority which declare Islam as their official religion. The Sunni sect of Muslims constitutes the majority in these countries except Iraq and UAE. The secular states having Sunni sects of Muslim majority are Egypt, Syria, Indonesia, Philippines. All these States have certain parameters to deal with circumstances arising due to matrimonial disputes. There are specific legal provisions under their family laws relating to triple

talaq. These provisions as per their legislative standards are as under

Algeria¹⁵

Code of Family Law 1984 (Law No.84-11 of 1984 as amended in 2005)

"Article 49. Divorce cannot be established except by a judgment of the court, preceded by an attempt at reconciliation for a period not exceeding three months."

Egypt¹⁶

Law of Personal Status 1929 (Law 25 of 1929 as amended by Law 100 of 1985)

Article 2. A conditional Talaq which is not meant to take effect immediately shall have no effect if it is used as an inducement to do some act or to abstain from it.

Article 3. A Talaq accompanied by a number, expressly or impliedly, shall not be effective except as a single revocable divorce.

Iraq¹⁷

Code of Personal Status 1959 (Law 188 of 1959 as amended by Law 90 of 1987)

Article 37. (1) Where a Talaq is coupled with a number, express or implied, not more than one divorce shall take place.

(2) If a woman is divorced thrice on three separate occasions by her husband, no revocation or remarriage would be permissible after that.

Article 39. (1) When a person intends to divorce his wife, he shall institute a suit in the Court of Personal Status requesting that it be affected and that an order be issued therefor. If a person cannot so approach the court, registration of the divorce in the court during the period of Iddat shall be binding on him.

Jordan¹⁸

Code of Personal Status 1976 (Law 61 of 1976)

Article 90. A divorce coupled with a number, expressly or impliedly, as also a divorce repeated in the same sitting, will not take effect except as a single divorce.

Article 94. Every divorce shall be revocable except the final third, one before consummation and one with consideration.

Libya¹⁹

Family Law 1984 (Law 10 of 1984 as amended by Law 15 of 1984)

"Article 28. Divorce is termination of the marriage bond. No divorce will become effective in any case except by a decree of a competent court and subject to the provision of Article 30.

Article 47. A divorce must be pronounced in a court and in the presence of the other party or his or her representative. The court shall before giving effect to a divorce exhaust all possibilities of reconciliation."

Syria²⁰

Code of Personal Status 1953 (Law 59 of 1953 as amended by Law 34 of 1975)

Article 117. Where a person divorces his wife the court may, if satisfied that he has arbitrarily done so without any reasonable cause and that as a result of the divorce the wife

shall suffer damage and become destitute, give a decision, with due regard to the husband's financial condition and the amount of wife's suffering, that he should pay her compensation not exceeding three years' maintenance, in addition to maintenance payable during the period of Iddat. It may be directed to be paid either in a lump sum or in instalments as the circumstances of a case may require.

Tunisia²¹

Code of Personal Status 1956 (Law 13-8 of 1956 as amended by Law 7 of 1981)

Article 32 (1) No divorce shall be decreed except after the court has made an overall inquiry into the causes of rift and failed to effect reconciliation.

(2) Where no reconciliation is possible the court shall provide, even if not asked to, for all important matters relating to the residence of the spouses, maintenance and custody of children and meeting the children, except when the parties specifically agree to forgo all or any of these rights. The court shall fix the maintenance on the basis of all those facts which it comes to know while attempting reconciliation. All important matters shall be provided for in the decree, which shall be non-appealable but can be reviewed for making additional provisions.

(3) The court of first instance shall pass orders in the matters of divorce and all concerning matters including the compensation money to which the divorced wife may be entitled after the expiry of Iddat. The portions of the decree relating to custody, maintenance, compensation, residence and right to visit children shall be executed immediately."

United Arab Emirates²²

Law of Personal Status 2005 (Federal Law No.28 of 2005)

"Article 140(1). If a husband divorces his wife after consummation of a valid marriage by his unilateral action and without any move for divorce from her side, she will be entitled to compensation besides maintenance for Iddat. The amount of compensation will be decided with due regard to the means of the husband and the hardship suffered by the wife, but it shall not exceed the amount of one year's maintenance payable in law to a woman of her status.

Indonesia²³

1. Law of Marriage 1974 (Law 1 of 1974)

"Article 38. A divorce shall be affected only in the court and the court shall not permit a divorce before attempting reconciliation between the parties. Divorce shall be permissible only for sufficient reasons indicating breakdown of marriage.

2. Marriage Regulations 1975 (Regulation 9 of 1975)

"Article 14. A man married under Islamic law wanting to divorce his wife shall by a letter notify his intention to the District Court seeking proceedings for that purpose.

Article 15. On receiving a letter, the court shall, within thirty days, summon the parties and gather from them all relevant facts.

Article 16. If the court is satisfied of the existence of any of the grounds mentioned in Article 19 below and is convinced that no reconciliation between the parties is possible it will allow a divorce.

Article 17. Immediately after allowing a divorce as laid down in Article 16 above the court shall issue a certificate of divorce and send it to the Registrar for

Malaysia²⁴

Islamic Family Law Act 1984 (Act 304 of 1984)

"Article 47. (1) A husband or a wife who desires a divorce shall present an application for divorce to the court in the prescribed form accompanied by a statutory declaration containing (a) particulars of the marriage and the name, ages and sex of the children, if any, of the marriage;

(2) If the other party consents to the divorce and the court is satisfied after due inquiry and investigation that the marriage has irretrievably broken down, the

Philippines²⁵

Code of Muslim Personal Law 1977 (Decree No.1083 of 1977)

"Article 46. (1) A divorce by Talaq may be affected by the husband in a single repudiation of his wife during her Tuhr [non-menstrual period] within which he has totally abstained from carnal relations with her.

(2) Any number of repudiations made during one Tuhr [non-menstrual period] shall constitute only one repudiation and shall become irrevocable after the expiration of the prescribed Iddat.

Pakistan & Bangladesh²⁶

(Muslim Family Laws Ordinance 1961)

Ordinance VIII of 1961 amended in Bangladesh by Ordinance 114 of 1985

(Bangladesh changes noted below relevant provisions)

"Section 7. (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of Talaq in any form whatsoever, give the Chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever contravenes the provision of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Save as provided in sub-section (5), a Talaq unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under subsection (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under subsection (1) the Chairman shall constitute an Arbitration Council for the purpose of bringing about reconciliation between the parties, and the Arbitration council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time Talaq is pronounced, Talaq shall not be effective until the period mentioned in subsection (3) or of pregnancy, whichever is later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by Talaq effective under this section from re-marrying the same husband without any intervening marriage with a third person, unless such termination is for the third time so effective."

5. Conclusion

Based on the above description it is summarised that practice of triple talaq is supported neither by Pious and Holy

Quran and nor by Shariat in its beginning era as a mode of dissolution of Muslim marriage. It was introduced as an administrative order in the time of the second Caliph Hazrat Umar to meet the specific circumstances. In ShayaraBano case the supreme court of India discussed international practice on triple divorce and observed that most of the Islamic country do not allow triple divorce as a mode of dissolution of Muslim marriage. The apex court insisted to restrict triple

divorce through a legislative ban. The researcher regards this judgment and wishes to suggest a specific law to protect Muslim women' right on dissolution of marriage. The researcher believes that traditions are part of one's inner-consciousness and must be respected if they are not in contravention of existing laws. Equity and Equality play vital role.

References

1. Ahamad Aqil, Mohammedan Law, 2010, revised by I.A. Khan, 23rd Edition, p 107
2. Quran 1, VII, Mohammed Ahmad Qureshi, Marriage and Matrimonial Remedies: A Uniform Civil Code for India, 1978, Concept publishing Company, Delhi.
3. Surah 4-Verse 19
4. Ajjjola, 1999:127-128
5. Ameer Ali Syed, Muhammadan Law, Reprint 2008 Vol. ii, P 432, Reported by Abu Daud; Comp. Radd-UI-Muthar, Vol. ii, P. 682.
6. Ahmad Furqan, Triple Talaq An Analytical Study, 2017, Regency Publication, New Delhi, pp 15-33
7. Ahamad Aqil, Mohammedan Law, 2010, Revised by I.A. Khan, 23rd Edition, p 174
8. *ibid*
9. Religion in India, Wikipedia, The Free Encyclopaedia
10. Ahamad Aqil, Mohammedan Law, 2010, revised by I.A. Khan, 23rd Edition, p 185
11. Shamim Ara V. Union Of India, AIR (2002) 7 SCC 518
12. ShayaraBano And Others V. Union of India And Others 2017 SCC Online SC 963
13. The Hindu, 27-Dec-2018
14. The Muslim Women (Protection of Rights on Marriage) Bill, 2018
15. ShayaraBano and others v. Union of India and others 2017 SCC Online SC 963, part 5, para (i) p34
16. *ibid* para (ii) p34
17. *ibid* para (iii) p 34
18. *ibid* para (iv) p 35
19. *ibid* para (vii) p 36
20. *ibid* para (x) p 38
21. *ibid* para (xi) p 39
22. *ibid* para (xii) p 39
23. *ibid* para (i) p 41
24. *ibid* para (ii) p 42
25. *ibid* para (iii) p44
26. *ibid* para (i) p 45