

A Conceptual Study on Indian Muslim Women Protection of Rights on Marriage Act 2019

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ABSTRACT

A Muslim man might legally divorce his wife by saying the Arabic word for divorce, talaq, three times. This practice was known as triple talaq. The announcement may be made orally, in writing, electronically—via phone, SMS, email, or social media—in recent years, or all three. The husband did not have to give a reason for the divorce, and she was not need to be present when it was announced. After a time of iddat the divorce becomes final, during which the wife should not be pregnant. Before to each proclamation of talaq, in the prescribed practice, a waiting period was necessary, during which reconciliation was sought. However, it had become customary to make all three declarations at once. Although the practice was despised, it was not against the law. If a divorced woman wants to remarry her former-husband; she has to marry another man first; this procedure is known as nikah halala. According to some sources, talaq-e-biddat has been in use since the time of Caliph Umar, or more than 1400 years ago. It is ‘manifestly arbitrary’, according to the Supreme Court, and it ‘permits a man to break a marriage whimsically and capriciously,’ according to the court’s ruling. This research paper focuses on the conceptual study on triple talaq. The researcher obtained secondary sources of data from journals, thesis, books and websites related to the topic. It tries to assess research questions like: What is Triple Talaq? Why Demand for Banning Triple Talaq; What are the Supreme Court Verdict; Why Demand for Reform; Why Legislative Reform; What are the Act & Provision for Imprisonment; Are there Quantifying Benefits; Will there be Qualitative Changes; What are the Current Achievements. At the end the researcher tries to findout the opposition and support related to triple talaq and through a light in this regard.

Key Words: Triple Talaq; Islamic divorce; Divorce; Nikah; Nikah halala

INTRODUCTION

Until they were outlawed, the Islamic divorce procedures known as triple talaq (an instant divorce) and talaq-e-mughallazah (an irrevocable divorce) were available to Muslims in India, particularly those who followed the Hanafi Sunni school of thought. By uttering the Arabic word for "divorce," talaq, three times in a row, a Muslim man might legally divorce his wife (in spoken, written or, more recently, electronic form).

Triple talaq usage and legal status have been hotly contested issues in India. Justice, gender equality, human rights, and secularism are some of the arguments brought forward by those who disagree with the practice. The dispute, which is related to the discussion regarding an universal civil code (Article 44) in India, has involved both the Indian government and the Supreme Court.

The Indian Supreme Court declared the instant triple talaq (talaq-e-biddah) to be unlawful on August 22, 2017. The triple talaq custom is unconstitutional, according to three of the five judges on the panel. The remaining two ruled that the practice was legal. The Triple Talaq practice was deemed unlawful and unconstitutional by the Indian Parliament on July 30, 2019, and it will be punished as effective August 1. The 23 nations worldwide that forbid triple talaq include three of India's neighbours: Pakistan, Bangladesh, and Sri Lanka. The Quran prescribes two waiting periods of three months before the divorce is final to give the husband opportunity to change his mind. This is one of the techniques the Quran uses to prevent hasty divorces.

According to a Supreme Court of India bench, Muslim women can also divorce their husbands through ‘khula (mutually accepted divorce),’ while Muslim men may divorce their wives through the ‘Talaq-e-Hasan’ tradition, which is performed once per month over a period of three months. Muslim males can still have many wives, and they can still get a divorce quickly by paying small amounts.

BACKGROUND

The Muslim Personal Law (Shariat) Application Act, 1937, is the legislation that controls Muslim family matters in India (often called the ‘Muslim Personal Law’). One of the first laws to be passed after the Government of India

Act of 1935 went into effect, it established federal dyarchy and provincial autonomy. It took the place of the so-called 'Anglo-Mohammedan Law,' which had previously applied to Muslims, and it became enforceable for all Muslims in India.

The ulama have the right to interpret the sharia (class of Muslim legal scholars). Hanafi Sunni ulama regarded this type of divorce as legal as long as it was made in front of Muslim witnesses and later upheld by a sharia court. The Ahl-i Hadith, Twelver, and Musta'li ulama, on the other hand, did not deem it appropriate. According to academic Aparna Rao, there was a lively discussion among the ulama in 2003.

Triple talaq is viewed as a severely undesirable yet legitimate kind of divorce in classical Islamic law. During the early 20th century, growing societal change has resulted in a growing unhappiness with the old Islamic divorce law, and numerous revisions have been made in various nations. In India, Muslim spouses are not compelled to register their marriage with civil authorities, in contrast to the norms implemented by the majority of Muslim-dominated nations. Unless the couple decides to register their marriage under the Special Marriage Act of 1954, Muslim marriages in India are regarded as a private matter.

Due to these historical circumstances, India did not enact the restrictions that other nations had imposed on the husband's exclusive right to divorce and the ban on triple talaq.

RESEARCH QUESTIONS

1. What is Triple Talaq?
2. Why Demand for Banning Triple Talaq.
3. What are the Supreme Court Verdict.
4. Why Demand for Reform.
5. Why Legislative Reform.
6. What are the Act & Provision for Imprisonment.
7. Are there Quantifying Benefits.
8. Will there be Qualitative Changes:
9. What are the Current Achievements:

Objectives

1. To do a conceptual study on 'The Muslim Women (Protection of Rights on Marriage) Act, 2019'
2. To assess the opposition and support related to triple talaq.

FINDINGS

Triple Talaq

In Islam, a man might divorce his wife by saying the word talaq three times. This kind of divorce is known as talaq-e-Biddat or Triple Talaq. The man does not have to give a cause for the divorce, and the woman is not need to be present when the talaq is spoken.

Demand for Banning Triple Talaq:

Muslim women have long called for the evil Triple Talaq practice to be outlawed. Shayara Bano, a woman from Uttarakhand who had endured mental and physical abuse at the hands of her husband and his family for refusing to pay the demanded dowry, received an instant Triple Talaq through a letter from her husband, ending their 14-year marriage. Also, her husband refused to give her custody of her two kids. Shayara Bano argued that this practice is discriminatory and disrespectful to women's dignity when she challenged it before the Supreme Court.

Supreme Court Verdict:

The Supreme Court determined that the practice of divorce in question was plainly arbitrary in the sense that a Muslim husband could dissolve the marriage capriciously and arbitrarily without making any attempt to mend fences.

The Supreme Court upheld the government's position that talaq-e-biddat is against constitutional morality, women's dignity, and the principles of gender equality, as well as against gender equity guaranteed by the Constitution of India in a majority judgment issued on August 22, 2017, which declared instant triple talaq to be in violation of Article 14 of the Constitution.

Demand for Reform:

Why Triple talaq practice persisted despite the Supreme Court's ruling that it was unlawful. About 100 incidents of Triple Talaq were reported throughout the nation between the date of the Supreme Court's ruling, or from August 22, 2017, and the introduction of the Bill in Parliament, or from December 28, 2017.

The need to pass a law for the effective implementation of the Supreme Court's ruling arose because there was no existing legislation to punish those who continued to practice 'Triple Talaq' or to offer legal recourse to those who had been harmed by it. The government, led by Prime Minister Shri. Narendra Modicommittment 's to granting Muslim women gender justice, dignity, and equality was a major driving force behind this reform.

Legislative Reform:

On September 19, 2018, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 and two other Ordinances were promulgated in order to give immediate effect to the Supreme Court's decision.

On July 25, 2019, the Lok Parliament passed the Muslim Women (Protection of Rights on Marriage) Bill, 2019, and on July 30, 2019, the Rajya Sabha did as well. The Muslim Women (Protection of Rights on Marriage) Act, 2019, which had been approved by the President of India, went into effect retroactively on September 19, 2018, maintaining the initial ordinance that had been issued on that date.

Act & Provision for Imprisonment:

If the husband engages in instant Triple Talaq, he faces up to three years in prison and a fine. Muslim women now have legal protection against the frivolous and irrational pronouncement of Triple Talaq. The Act also acts as a deterrent for husbands who intend to divorce their wives in this way. Muslim women upon whom Talaq was pronounced also granted custody of children and subsistence allowance to be paid by the husband.

Quantifying Benefits:

According to many sources, including State police agencies, there has been a significant drop in Triple Talaq instances as a result of legislative action taken by the administration of India's Honourable Prime Minister, Shri. Narendra Modi.

Qualitative Changes:

The Act will enhance Muslim women's current circumstances and assist them in overcoming domestic abuse and societal discrimination.

Achievements:

The government has strengthened 'self-reliance'; 'self-respect & self-confidence' of the Muslim women of India & protected their constitutional; fundamental & democratic rights by abolition of the Triple Talaq. Triple Talaq cases have dropped by 82% in 1 year of the Act's passing. 'Muslim Women Rights Day' was observed on March 8.

CONCLUSION

Opposition

The practice received controversy from Muslim women, some of whom filed a public interest litigation in the Supreme Court against the practice, terming it 'regressive'. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, was requested to be repealed by the petitioners because they believed it violated Article 14 of the Constitution (equality before the law).

Instant triple talaq was referred to as the 'worst kind of marriage breakup' by the Supreme Court on May 13, 2017, during the hearings that preceded its final ruling. It was mentioned that the practice is outlawed in Saudi Arabia, Morocco, Afghanistan, and Pakistan, all of which have a mainly Muslim population.

In a decision issued on December 8, 2016, the Allahabad High Court noted that the immediate triple talaq practice was unlawful and infringed on Muslim women's rights.

Around 1 million Indian Muslims, mostly women, signed a petition in March 2017 calling for the end of immediate triple talaq. The Muslim Rashtriya Manch, an Islamic group connected to the Rashtriya Swayamsevak Sangh, sponsored the petition. The petitioners who are opposed to instant triple talaq have provided evidence demonstrating how instant triple talaq is merely a modernization with little connection to Quranic teachings. This is supported by historical data, legal precedent, and the interpretation of the Quranic text by numerous Islamic experts.

Senior cleric Maulana Syed Shahabuddin Salafi Firdausi criticized triple talaq and nikah halala on May 10, 2017, calling them against Islamic law and tools of oppression for women. Liberal Muslims and Hindu nationalists both denounced the practice. Kapil Sibal, a congressman, tweeted: 'Building consensus within communities is more challenging when there isn't agreement in court. I'm happy the court rejected a 'sinful' practice.' Sibal, however, also made remarks endorsing triple talaq (see the following section).

Women's organizations have protested this practice in particular during the course of the year and have called for greater changes to be made to Muslim personal laws, including Bharatiya Muslim Mahila Andolan and others.

Support

The All-India Muslim Personal Law Board (AIMPLB), a non-governmental organization that oversees the application of Muslim personal law, has endorsed triple talaq. It holds that the State does not have the authority to get involved in questions of religion. Although immediate talaq may be viewed as a sin by some, determining the legality of a community's norms and practices is a precarious slope, according to AIMPLB attorney Kapil Sibal. According to Kapil Sibal, who referenced Article 371A, the Constitution itself did intend to protect community practices, traditions, and customs. Sibal, though, has also made remarks criticizing the practice.

The practice is supported by the All-India Muslim Personal Law Board (AIMPLB). AIMPLB asserted in April 2017 that Muslims have a lower divorce rate than other religious groups, refuting the claim that Muslims have the highest number of divorces in the nation as a result of the practice of triple talaq. The report was produced by the Muslim Mahila Research Kendra in coordination with the Shariah Committee for Women.

Additionally, it stated that it obtained documents supporting triple talaq and shariat from 35 million Muslim women across the nation.

AIMPLB released a rule of conduct addressing talaq in April 2017 in response to the debate over the use of triple talaq. In addition to urging a boycott of those who use triple talaq carelessly and without explanation, it issued a warning that individuals who divorce for reasons other than those permitted by shariah will suffer social repercussions.

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