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Triple Talaq

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ABSTRACT

India's ethnic diversity which is quite remarkable is divided into many regions, religions, caste and creed and many more which have their own distinct culture, language custom and norms. Indian constitution ensures freedom of conscience and free profession, practice, and propagation of religion in Article 25 which should not violate the fundamental rights. Practice of Triple Talaq by Muslims violates Art 14 of Indian constitution, where Men are given unilateral power to divorce his wife/ wives but women are not given the same right to divorce her husband by talaq. Triple Talaq is not mentioned under Quran, which is opposed by Muslim scholars. To divorce the wife by Triple Talaq, the husband must be qualified under shia /Sunni. The Researcher has been interested in researching about its types, evolution, constitutionally validity and case laws with relevant legal provisions.

Keywords: Talaq, Quran, shia, Sunni, Talaq ul sunnat ,Talaq ul biddat , Ila , Zihar,Talaq e tafweez, khula, mubarat, lian, fask.

I. INTRODUCTION

Triple Talaq is followed in Muslim religion. Triple means three and talaq in Muslim religion means 'repudiation' or 'rejection'. In muslim religion the husband divorces his word by uttering the term 'talaq' three times to his wife, whereby the marriage is dissolved. As per Islamic law only husband has the right to talaq his wife. Islamic law prophet showed his hatred towards triple Talaq in no uncertain terms. Prophet said that **"with Allah the most detestable of all things permitted is divorce"**. Talaq can be expressed or implied. If talaq is effected through expressive terms it should be clear, precise and understandable. No proof is required for it, but intention is necessary. If the words are not clear and ambiguous proof and intention to divorce is necessary. As per Islamic law only husband has right to pronounce talaq. Under Talaq-e-tafweez, husband has right to delegate authority to pronounce talaq by wife also.

II. HISTORY

Historically, Sharia governed the rules of divorce/ talaq under Islamic jurisprudence, although it varies upon different triple talaq is 1400 years old practice under Sunni law. As per Quran every decisions regarding marriage should be in consent with both parties. This practice gained

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attention in recent times due to its concern on impact of women rights and male domination. The supreme court in 2014 held this practice as manifestly arbitrary and allows a man to breakdown a marriage whimsically and capriciously. In 2018 The Muslim Women Protection Act was passed which held that triple talaq is invalid and is against gender equality. Triple Talaq was made illegal on 1st August 2019. It stipulated that practice of triple talaq is illegal and void and would lead to three years of imprisonment, which shall be in any form express, implied or through electronic means such as E mail or SMS. The bill was first introduced by government in parliament on 22 August 2017. MPs from Rashtriya Janata Dal, All India Majlis-e-Ittehadul Muslimeen, Biju Janata Dal, All India Anna Dravida Munnetra Kazhagam, Indian National Congress and All India Muslim League opposed the bill. The bill was passed by Lok Sabha on 28 December 2017. The bill was passed by Rajya Sabha on 30 July 2019 after a long debate. On the other hand in 2017 supreme court held triple talaq to be unconstitutional and invalid.

III. QUALIFICATIONS TO PRONOUNCE TALAQ

SHIA

- Husband must be of sound mind
- Both parties should have attained puberty
- Talaq must be pronounced under 2 witness unless he is unable to speak
- Talaq must Not be pronounced under compulsion
- It must be spoken in Arabic terms in accordance with sunat

SUNNI

- Sound mind
- Parties should have been attained majority
- Talaq pronounced under compulsion or intoxication is also effective

IV. TYPES OF TALAQ

(A) By Husband

1. Talaq ul sunnat
2. Talaq ul biddat
3. Ila
4. Zihar

(B) By wife

1. Talaq e tafweez

(C) By Mutual Agreement

1. Khula
2. Mubarat

(D) By judicial separation

1. lian
2. Fask

1. Talaq ul sunnat

Talaq ul sunnat is a type of pronouncement of talaq to his wife which is effected in accordance with traditions of prophet. It is of two types

(A) Ahasan

It is the most approved and accepted form of talaq. The word Ahasan in Arabic terms means proper. To Divorce through wife

- 1) Husband must talaq his wife in single sentence
- 2) Wife must be in the form of purity. talaq should not be pronounced when wife is in state of menses
- 3) Husband must restrain from intercourse during the period of iddat. (iddat period is 3 months, if the wife is pregnant, after delivery)
- 4) When marriage is not consummated talaq can be pronounced even when the wife is in the form of menstruation.
- 5) Pronouncement of talaq after the expiry of iddat Period in the form of Ahasan is invalid and becomes irrecoverable. such revocation may be expressed or implied

(B) Hasan

Hasan in Arabic terms means good. It is also a good form of talaq but not as much of Ahasan.

- 1) Talaq must be pronounced three times made during three successive tuhrs. There should be no intercourse in between those three pronouncements. If the wife crossed the age of menstruation, talaq can be pronounced with interval of 30 days with successive pronouncements

- 2) Each pronouncement should be made during the period of tuhr. During the third pronouncement it becomes final and irrevocable.
- 3) There should exist no sexual intercourse during three pronouncements
- 4) Talaq can be revoked within three pronouncements and becomes irrecoverable once three successive pronouncements are made.

(C) Shia law

- 1) Talaq must be expressed (oral) unless the husband is unable to speak
- 2) 2 male witness is necessary
- 3) Intention to divorce wife is essential

(D) Sunni law

- 1) Written talaq is accepted
- 2) No witness necessary
- 3) No intention is essential to divorce

(E) Talaq ul biddat

- 1) Talaq ul biddat is the most sinful, irregular and disapproved form of talaq. Even though it is lawful
- 2) It is a form of divorce introduced by omeyyade monarchs in the 2nd century of Muslim era
- 3) It is the pronouncement of talaq continuously in single sentence/ pronouncement (or) in three sentences/ pronouncements. pronouncement of talaq must be continuous.
- 4) It can be applied even during the period of iddat
- 5) It is the most disapproved form of talaq in Islamic theology

(F) Ila

- 1) Ila is a form of divorce where the husband restrains from having sexual intercourse with the wife for 4 months irrespective of period of iddat
- 2) If the husband continues to have sexual intercourse in those 4 months it is revocable
- 3) This practice is not followed in India

- 4) To divorce by ulla husband must be of sound mind
- 5) Husband must take a vow that he will not have sexual intercourse with his wife for next 4 months

(G)Zihar

- 1) Zihar is a right to women where a wife can divorce her husband if he had compared her to his sister or mother or anyone else and has right to restrain herself to him until he has performed penance.
- 2) The wife has right to apply for judicial separate
- 3) The husband must be adult and sound mind
- 4) Zihar neither dissolves a marriage nor terminates the right of women to claim maintenance from husband
- 5) By this husband becomes liable for penance
- 6) Sexual intercourse with wife becomes impossible
- 7) Comparison must be done intentionally to hurt or create mental agony to wife

By wife Talaq E tafweez

- 1) It is right to divorce husband granted by husband before or after marriage to wife or to any third party with certain conditions
- 2) Such power should not be absolute or unconditional
- 3) The conditions must be reasonable and not opposed to public policy

By Mutual consent Khula

- 1) Khula refers to right of a woman to divorce her husband
- 2) It is the divorce at the request of wife requesting release from marriage
- 3) There must be offer from the wife
- 4) Offer must be accepted with consideration from the wife
- 5) Offer must be accepted by husband
- 6) If the consideration is not given the divorce does not become invalid but the husband has right to claim maintenance from wife.

Mubarat

- 1) Mubarat is a form of divorce by Mutual consent in the form of contract
- 2) Either the husband or wife must make a offer
- 3) Offer must be accepted by other party
- 4) Once accepted divorce is given and iddat is necessary

By Judicial Decree**Lian:**

1. Where the wife is charged with adultery and the charge is false.
2. She can file a regular suit for dissolution of marriage as a mere application to the court is not the proper procedure.

Fask:

1. The cancellation, abolition, revocation, annulment.
2. Before the passing of the dissolution of Marriage Act, Muslim women could only apply for the dissolution of their marriage under the doctrine of Fask.

V. DIVORCE BY JUDICIAL PROCESS

According to The Dissolution of Muslim Marriages Act, 1939. This Act is applicable to all Muslims in India irrespective of their schools or subschools. This Act under section 2, lays down the following grounds of divorce:

1. Husband is not known
2. Failure to take care of spouse & children
3. imprisonment of husband
4. Insanity, leprosy or venereal disease
5. impotence of husband
6. failure of marital obligations
7. cruelty of husband
8. effect of change of religion

Politics in triple talaq

1. Prime Minister warned other Leaders not to complicate about the issue of Triple talaq but Swami Prasad Maurya from BJP Told that Muslims use Triple Talak for their needs And conveniences.

2. Rashtriya Swayamsevak Sangh gave voice over these issues prevailing in India

3. Flavia Agnes, a women lawyer told that Triple Talak has become low lying concept that everyone can write on

VI. CHALLENGES FACED IN TRIPLE TALAQ

1. Right to equality is violated. Mens' Domination is prevailing in Islamic culture Due to triple talaq.
2. 92% of Muslim women stand in favour of Abolition of triple talaq.
3. Men were given power to arbitrarily divorce Their wife without any valid reason.
4. Talak can be done through new age Technology such as sending mail, message Etc.
5. It is unconstitutional as it violates Art 14 and Art 15.
6. The supreme court also held that it is not Protected by article 25.

VII. CONSTITUTIONAL VALIDITY

1) Article 14

The practice of Triple Talaq has been criticized for violating principles of gender equality enshrined in the Indian Constitution, specifically under Article 14, Where men are given unilateral power to divorce his wife by triple talaq whereas women are not given the same right. Right to equality is violated by restricting the freedom of women to talaq her husband

2) Article 21

Right to Life and Personal Liberty (Article 21): Triple Talaq can have severe emotional, psychological, and financial implications on women who are suddenly divorced without their consent. This violates their right to live with dignity and personal liberty, as guaranteed by Article 21.

3) Article 25

Art 25 propogates right to practice their own religion. triple talaq is not essential feature in Muslim/Islami religion.so It is not necessary that Muslim/Islamic people should follow triple as their religion itself says it is not essential.

4) Article 19

Right to Freedom of Expression (Article 19): The right to express their divorce should be balanced with other fundamental rights. When Triple Talaq is used to divorce a woman without her consent, it can infringe on her fundamental rights

5) Article 15

Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Triple Talaq, which primarily affects women, constitutes discrimination based on gender, violating this provision. Further Art 15(3) ensures the protection of women and children. Triple talaq violates Art 15(3) by not ensuring the safety and security of women.

VIII. CASE LAWS

1. Shamim Ara v State of UP

The husband divorced his wife through written Statement without even communicating to her. It was held That the written statement will not amount to divorce as Per the islamic procedure i.e triple therefore it was held That it will be considered divorce only when the wife Knows about the written statement and not when husband Communicates about the divorce to his wife. Further, the Allahabad high court in favour of Muslim Women, has adjudged many cases on triple talak, where 19% of the Indian Muslim population were benefited.

2. Amid v AIMPILB

It was held that even though the practice of triple Talak is 1,400 years old it is considered to be void and Illegal.

3. Shayaro Bano v. Union of India

Triple talak is against article 14 of Indian Constitution which is considered to be Unconstitutional. The 1937 Act, insofar as it seeks to Recognize and enforce Triple Talaq, is within the Meaning of the expression “laws in force” in Article 13(1) and must be struck down as being void to the Extent that it recognizes and enforces Triple Talaq. Since sec 2 of Shariat is considered to be void and Illegal it is not necessary to go in the case of grounds Of discrimination. All forms of triple talaq is recognised and enforced Muslim personal law by 1937 Act and this Act is made Before constitution came into force.

According to art-13(3)(b) “laws in force” is hit by art-13(1) “any law which is inconsistent with Part III of the Constitution becomes void to the extent of such Inconsistency”. Therefore triple talaq has been declared as void and Unconstitutional.

4. Parveen Akthar v. Union of India

In this case it was held that triple talak was Valid, which became a great sensation in the Society, since it clearly violates Art 14,15,21 of Constitution. Right to equality plays a significant role In the democracy.

5. Jiauddin Ahmed v. Anwara Begum

Triple talak was held unconditional, which was Considered a major reason abolition of for triple talak.

6. Saleem Basha vs. Mumtaz Begam

It was held that as per the Holy Quran talaq must be for a reasonable cause and be preceded by Attempts at reconciliation by two relations, one each of the Parties, is an essential condition precedent to talaq. The Holy Quran expressly forbids a man to seek pretext for Divorcing his wife, so long as she remains faithful and Obedient to the husband

IX. CONCLUSION

People's interest towards social justice has been growing Since last decade including the ban of triple talaq. Through the access of social media and technology people came to Know about each other religious way and their functions And the injustice prevailing in Islamic culture. one such Practice is triple talaq which has been followed for nearly 1400 years in India among Islams. Though the practice has Been criticized by government, NGOs and judiciary it is Promoted by ALL INDIAN MUSLIM PERSONAL LAW which Is governed under SHARIAT LAW since the existence of British colonial period. But it is declared constitutionally invalid and against women rights and empowerment. By abandoning Triple Talaq , the government improved the "self-reliance, self-respect, and self-confidence" of Muslim women in the nation and safeguarded their constitutional, fundamental, and democratic rights.

X. REFERENCES

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