

Journey of three words to three years of imprisonment

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The Muslim religion is one of the oldest religion to exists. Despite it being ranked second in the most followed religion of the world, it is criticised for doing legal discrimination in many forms, which includes the Tripal talak (talak- e- mughallazah). The holy Quran being the fundamental and foremost source of Muslim law doesn't supports talak - e- biddat. Triple talak is considered as a quick way for a man to divorce his wife without giving any valid reason for it and this goes against the gender justice which is the centre tenet of the holy Quran. Most of the Muslim and non-Muslim countries have made it illegal. Today's world is all about providing equality to all and the Muslim women were lacking behind in this area due to the legal discrimination done by the tripal talak. this article is going to deal with the background of Tripal talak, the discrimination faced by the women, the case that brought the ban on it, the passing of the bill, the support and opposition the bill faced, what impact did the bill had on the condition of the Muslim women and lastly its effect on the society as a whole, whether people have accepted it fully or not.

Keywords: tripal talak, Muslim women, legal discrimination, the holy Quran, gender justice and talak -e- Mughallazah.

Introduction

Triple talaq is a power in the hand of man to dominate their Muslim wives, and it is a sorrowful truth for Muslim women, it creates fear in the mind of the women soon after the marriage and becomes a mental fear for them. In the legal sense in Muslim law divorce means the dissolution of marriage by using approved words and it is done by the husband. In Muslim law there are two types of divorce, one is Talaq-ul-Sunnat and the other is Talaq-ul-Biddat. Biddat means any innovation¹. For this form of divorce, the requirements are that three pronouncements must be made during a single tuhr, it can be in one sentence or in separate sentences and it must be done by clearly

¹ Umair.ann333,triple talaq explained,
www.legalservicesindia.com/article/2466/Triple-Talaq-Expalined.html²
Aqil Ahmad,Text book of Mohammedan Law, 171(25thed, 2015).

indicating an intention irrevocable to dissolve the marriage.² The worst thing about it is that the divorce comes into effect if the word talaq is pronounced in one go, it can be written or oral and nowadays in the electronic forms. The man while divorcing his wife doesn't need to state any valid reason for the same and there is no requirement of the wife to be present when the pronouncement was being made. In all the other forms of divorce there is a waiting period, so that reconciliation could be done but herein the divorce becomes irrevocable after the pronouncements. If later on the husband wants to again remarry his former wife, he wife has to follow nikah halala², in which the wife has to marry another man, consummate the marriage and then divorce the man. Prophet Mohammad never accepted nor agreed this form of talaq. In the Holy Quran it is written that-

“A divorce is only permissible twice, after that, the parties should either hold together on equitable terms or separate with kindness”³.

This shows that even the Holy Quran has not ordained that the three divorces pronounced in a single breath would be a valid one⁴.

Origin of Talak-ul-Biddat

This form of talaq originated during the period of the second caliph Omar. In the second century of the Islamic era when the Arabs were conquering all the parts of the gulf, they used to bring male and female slaves with them after winning the battles to mecca and medina. The women that were brought were very beautiful, charming and attractive. The Arabs were captivated by them and wanted to marry them. But the women insisted the men that they give an irrevocable divorce to their former wives. To make these women happy the men used to say the word talak in one go and then they would pretend to have divorced their wives. Seeing this the second caliph Omar then enforced the Triple talaq divorce because of which no one will be able to take back his wife after giving three divorce in one go. It was a mere administrative measure of the caliph, not to make it a law permanently. But later on the Hanafi jurists at the strength of the order of the caliph made it valid and gave religious sanction to it⁵. The Muslims in India are governed by the Muslim Personal Law (Shariat) Act 1937. Another Act was passed called the Divorce of the Muslim Marriage Act 1939, the aim of this Act was to bring upliftment in the rights of the Muslim women. This act contains the process of divorce to be followed and the Triple talaq was also mentioned and the Muslim men

² Ahmad, supra,171.

³ Ahmad, supra, 175.

⁴ Ahmad, supra, 175.

⁵ Ahmad, supra, 174

were given the right to divorce their wives through Triple talak⁶. This form of divorce has been used by the Indian Muslims and especially by the followers of the Hanafi Sunni Schools⁸.

Support for the Talak-ul-Biddat

The All India Muslim Personal Law Board a non-governmental organisation, it's of the view that the sharia gives the muslim men the right to divorce his wife because the men have a greater power of decision making. The Triple talaq is supported by this board and it states that the state doesn't has any authority to intervene in the matters of religion. The board issued in April 2017 a code of conduct related to the talaq due to the controversy over the practice of the Triple talaq. The board warned those who would divorce for reasons that are not mentioned under the shariat will be socially boycotted⁹.

Opposition against the Talak-ul-Biddat

Many countries have declared it illegal or it is not in use. The few of those counties which have made it illegal under their respective laws are United Arab Emirates , Pakistan Bangladesh, Egypt, Algeria, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Sudan, Syria, Tunisia, Yemen, Indonesia, Malaysia, and Sri Lanka⁷.

The Triple talaq has negative effects on the subject of gender equality, human rights and justice. Thought this practice has been frowned upon but no one prohibited it⁸. In a case the validity of this divorce was questioned. It was held to be against the Quranic law. The court can't give effect to the rule and its opposed to the tradition of the prophet. It was held that the Quran verses have been differently interpreted by the schools¹². In a case it was held that it was an improper form of divorce from moral point of view⁹. In the case of Yusuf v. Sowramma¹⁰, Justice Krishna Iyer made an observation that it's a popular fallacy which the Muslim men enjoy. The holy Quran forbids a man

⁶ Umair.ann333, triple talaq explained www.legalservicesindia.com/article/2466/Triple-Talaq-Expalined.html ⁸ Hanafi Jurisprudence sanction triple talaq. ⁹ "Triple talaq: All India Muslim Personal Law Board code of conduct;heres's what it says". Penske Media Corporation.

⁷ UAE,Pakistan among 19 countries that have abolished Triple Talaq (Aug. 23, 2017, 8:46 PM)

<http://m.khaleejtimes.com/international/india/uae-pakistan-among-19-countries-that-have-abolished-triple-talaq>

⁸ Choudhry,(Mis) Appropriated liberty (2008),pg 55 ¹²

Fazlur Rahman v. Aisha,(1929) 8 Pat.690.

⁹ Sarabhai v. Rabia Bai, (1906) 30 Bom,537.

¹⁰ AIR 1971 Ker.261.

to divorce his wife as long as she remains faithful and obedient. In *Rahamt Ullah v. State of U.P*¹¹. and others, the Allahabad High Court clearly stated that an irrevocable talaq is unlawful as it goes against the dictates of the Holy Quran and the provisions of the Indian constitution.

The Triple talaq has a berating effect on the Muslim women. It creates a mental insecurity for the women as her marriage can be dissolved by the utterance of mere three words. As a consequence, she is many a times thrown out of the house and separated from her children. The ninety million Muslim women in India have to face the threat of an oral and an out of court divorce which is sudden in its nature. There have been many instances where the Muslim men have given Triple talaq via the messaging apps like the WhatsApp. Oral divorce is the most common and easiest method of having divorce. According to the data of the survey by the Bhartiya Muslim Mahila Andolan 95% of the divorced Muslim women don't even receive any maintenance from their husbands¹²¹³. There are many examples that show that how the Muslim men have been misusing this form of divorce.

The first example is of Afreen Rehman who was given Triple talaq via speed post, she moved to the Supreme Court against the provision of Triple Talaq. The second example is of a woman who received Triple talaq via WhatsApp only after a few days of her marriage, her husband went to Dubai and remained incommunicado for few weeks and then sent the message to her. Another example is of a 30-year-old woman whose husband wanted divorce over the phone as he wanted another son. She lodged a lot of complaints in the Howrah police but no action was taken¹⁷. Thus, this is the pain and torture that these Muslim women go through, and they are forced to accept this discriminate provision of Muslim law. The Muslim law board doesn't accept its abolition as it's a personal law and the centre doesn't has a right to intervene in it. Many Muslim women have filed PIL¹⁴ in the supreme court, treating the talaq as regressive¹⁵.

¹¹ 1994(12) Lucknow Civil Division, p. 463.

¹² Triple talaq: How it affects lives of India's 90 million Muslim women (March 30,2017, 03:24 AM)
<http://www.google.com/amp/s/www.indiatoday.in/amp/fyi/story/triple-talaq-muslim-women-supreme-court-sharia-lawislam-968630-2017-03-30>

¹³ triple talaq cases that woke the nation (Oct. 13, 2016, 13:51 PM)
www.google.com/amp/s/www.timesnow.com/amp/india/article/4-triple-talaq-cases-that-woke-the-nation/50358

¹⁴Public Interest Litigation

¹⁵ Muslim Personal Law Board to discuss Ayodhya dispute, triple talaq on Saturday, Hindustan Times, 14 April 2017.

²⁰ (2017) 9 SCC 1

Historic Judgment of Sharya Bano Case

The case that led to the declaration of Triple talaq as unconstitutional was the Sharya Bano v Union of India²⁰. The facts of the case in brief are that Sharya Bano was survivor of domestic violence, dowry harassment and she had been divorced through the Triple talaq. She filed a petition for seeking declaration that the practices of the Triple talaq, nikah halala, and the polygamy in the Muslim personal law were unconstitutional, illegal and in the violation of articles 14¹⁶, 15¹⁷, 21¹⁸ and 25¹⁹ of the Indian Constitution before the Supreme Court. The others who intervened in the case, the All Indian Muslim Personal Law Board and the Jamiat Ulema e Hind, they argued that the court didn't had the jurisdiction to entertain a constitutional challenge to the Muslim personal law. the organisations working with the Muslim women called the Bebaak Collective and The Centre for Study of Society supported the petition and they urged the court to declare that the personal law was subject to the fundamental rights²⁰.

The bench that heard the case consisted of five judges each from different communities. Chief justice JS Khehar, a Sikh, Justices Abdul Nazeer a Muslim, UU Lalit a Hindu, Kurian Joseph a Christian, and RF Nariman a Parsi²⁶. The issue before the court was to examine whether Triple talaq has the protection of the constitution under the article 25 of the Indian constitution. Whether or not the Triple talaq is an essential feature of the Islamic beliefs and practices or not²¹.

In the final judgment the decision was divided into the ratio of 3:2. The minority judgment upheld the validity of the instant Triple talaq and the majority judgment held that it was unconstitutional. The central government was to promulgate legislation within six months to govern marriage and divorce in the Muslim community by the bench²². The court said that till the government had formulated a law regarding the Triple talaq, there would be an injunction against the husbands who would pronounce Triple talak on their wives²³.

¹⁶ Equality before law.

¹⁷ Prohibition of discrimination on ground of religion, race, caste, sex, or place of birth.

¹⁸ Protection of life and personal liberty.

¹⁹ Freedom of conscience and free profession, practice and propagation of religion.

²⁰ Saptarshi Mandal, Triple Talaq judgment and continuing confusion about the constitutional status of personal law (Sept. 4, 2017) www.jgls.edu.in/article/triple-talaq-judgment-and-continuing-confusion-about-constitutional-status-personal-law²⁶ Triple talaq validity case: All you need to know. Times of India.

²¹ Triple talaq verdict has not gone the entire distance. Livemint.

²² "Supreme Court declares triple talaq unconstitutional, strikes it down by 3:2 majority". The Times of India.

²³ "this is what supreme court said in triple talaq judgment"/www.livelaw.in

Passing of the Muslim women (protection of right on marriage) bill, 2017

After hundreds cases of instant Triple talaq in country, since the judgment of supreme court in august 2017 the government formulated a bill and introduced it in parliament. The bill was passed by Lok Sabha in December 2017. According to this bill Talaq- e – Mughallazah in any form whether it be in writing or by electronic means or in spoken, it is illegal and void. The bill made it a criminal offence with imprisonment up to three years for Muslim husbands and Muslim woman will be entitled to financial assistance by the husband in instant talaq cases.

Lok Sabha passed the bill, but it failed to secure a majority in Rajya Sabha, then the bill was postponed till the winter session, following this, an ordinance was issued by government after the bill failed to get passed in Rajya Sabha. This will be reintroduced as an ordinance in December 2018 valid only for six months since it's promulgation²⁴.

The government also introduced three new amendments to ensure that the law is not misused, this was due to the opposition.

- Under the law an aggrieved women or a close relative can only file the complaint
 - Muslim women can drop the case if the couple reaches a compromise.
- The magistrate after hearing the wife can grant bail to husband.

Though the support for bill is genuine but there were and are many oppositions. AIMIM leader Asaduddin Owaisi questioned the government and asked the reason behind the criminalising the Talaq-e- biddat while taking side of decriminalisation of Adultery and Homosexuality. He also raised question on faith, that according to sabrimala judgment, faith of women was taken into consideration then what about the faith of Muslim and said this is violation of their right under Article 29 of Indian Constitution. He further added that intention of government in passing this bill is not clean. The leader of AIMIM also claimed that why Muslim being awarded three year of imprisonment in case of Triple talaq cases when for hit and run cases there is only two year of imprisonment and questioned that how can the person in jail can give allowance to his wife and children²⁵. Sushmita Dev MP of Congress from silver alleged that the bill was not for empowerment

²⁴ Express web Desk, Lok Sabha clears Triple Talaq bill : All you need to know (December 28 .2018 , 4:41:04pm), indianexpress-com.cdn.ampproject.org, The Indian express.

²⁵ Express web Desk, Lok Sabha clears Triple Talaq bill : All you need to know (December 28 .2018 , 4:41:04pm), indianexpress-com.cdn.ampproject.org, The Indian express.

of women but to penalize Muslim husbands. AIMPLB said this bill is dangerous which will convert civil issue to criminal offence²⁶. Asma Zehra said this bill is unconstitutional.

Government supported the bill and answered all the questions raised by the opposition's. The union law minister Ravi Shankar Prasad quoting various laws, research, and reports emphasised the need to put end to the sufferings of Muslim women. He said even Islamic countries have banned the illegal practice then why not India. He added that India is a secular country then why there is objections on the bill. On the demand to refer the bill to joint committee by the opposition. Ravi Shankar said no one objected the death penalty avoided to child rapist's, then why are people objecting to this bill. According to opposition this bill targeted at particular community on this the law minister gave the example of laws relating to domestic violence and dowry among other. The husband and mother- in – law can be charged imprisoned and with non-bailable an cognisable offence under dowry prohibition, irrespective of once religion. He also said that the bill , is neither targeted to particular community nor done for vote bank²⁷.

BJP leader Meenakshi Lekhi also supported to slam the opposition protest and said that the issue was not “he or she” but of Human rights. No woman want divorce without any cause. Hence, supreme right of divorce can't be given to man.

Smriti Irani pointed out that Triple talaq is criminal even in Islamic jurisprudence and said that according to different person marriage in Muslim is a contract then it has to be ended on equal term. Zakira Soman , member of the Bhartiya Muslim Mahila Andolan welcomed the bill³⁴. After the union cabinet approved the ordinance for Triple talaq bill, social media (Twitter, WhatsApp, Facebook, Instagram etc.) has been flooded with positive reaction from politicians, activists, and citizens²⁸.

²⁶ PTI, Muslim bodies divided over Triple Talaq bill (27, Dec.,2018, 20:30 IST), m-timesofindiacom.cdn.ampproject.org, Times of India.

²⁷ Bureau, Lok Sabha passes Triple Talaq bill (27 December,2018), www.thehindubusinessline.com/news/triple-talaq-bill-passed-by-lok-sabha/article25842596.ece/amp/³⁴

PTI, Muslim bodies divided over Triple Talaq bill (27, Dec.,2018, 20:30 IST), m-timesofindiacom.cdn.ampproject.org, Times of India.

²⁸ Bhasha , here's how Twitter reacted after union cabinet approved Triple Talaq ordinance (19th September 2018), www.timesnownews-com.cdn.ampproject.org, Timesnownews.com

The Muslim women (protection of rights on marriage) ordinance,2018:

The government issue an ordinance on ground that the instant Triple talaq was continuously unabated despite of the supreme court striking it out²⁹.

Certain provisions of the ordinance were made: -

- Triple talaq is cognizable with maximum imprisonment of three years and fine.
- Complaint will be filed by wife and her blood relatives and no other person's complaint will be recognised.
- This offence is non-bailable (after hearing to the wife only, magistrate will grant bail not by police.
- Mother will be given minor child custody.
- The magistrate will decide the maintenance allowance to the wife³⁷.

And this ordinance was cleared by the President on 19th September 2018.

The Muslim women (protection of rights on marriage) bill,2018:

As ordinance of 2018 was going to expire on 22nd January 2019, so government made fresh bill and introduced in Lok Sabha in December 2018 to place the ordinance³⁰.

The provisions of bill are: -

- All declaration of Triple talaq whether written or electronic form to be void and illegal.
- It will remain cognizable offence with maximum imprisonment of three years and fine decided by magistrate.
- The offence is non-bailable but magistrate after hearing wife and if satisfied with reasonable grounds for granting bail then bail can be granted.
- The wife is entitled to subsistence allowance and that amount will be decided by the magistrate.
- Wife is entitled the custody of her minor children from the marriage and magistrate will determine the manner of custody.

²⁹ The Muslim Women (Protection of Rights on Marriage) Ordinance, 2018.pdf

³⁷"Instant triple talaq ordinance". Live law.

³⁰ The Muslim Women (Protection of Rights on Marriage) Bill, 2018. ³⁹"2018 Bill Provisions". PRS India Website.

- By the request of women against whom talaq has been declared, magistrate can stop the proceeding and settle the dispute. That means offence may be compounded³⁹.
- And this fresh bill was passed in December 2018. The bill was struck in the Rajya Sabha, they demanded to send the bill to a joint committee³¹.

The Muslim women (protection of rights on marriage) ordinance,2019

The bill was still not passed in the parliament session. The Triple talaq ordinance of 2018 was going to expire on 22nd January 2019 so the government has repromulgated the ordinance³² and on 21st February 2019, president Ram Nath Kovind issued the ordinance and the law minister said that president of India has signed the Muslim women (protection of rights on marriage) second ordinance,2019 and fresh ordinance was issued since the bill could not get parliamentary approval³³.

Again some community leaders along with opposition parties have claimed that jail term for a man for divorcing his wife is legally untenable, but government said the bill is for providing justice and equality to Muslim women's.

Conclusion

This bill is like a candle in the dark room for Muslim women's and tunnel for the Muslim man's. After this bill Muslim woman have the tool to curb injustice done to them and man to be punishable for the criminal offence. Condition of society is like some people are happy about this change in personal law and some think it as violation of culture. Talaq-e-Mughallazah has been most debated issue of India in recent time which raised several questions over justice, gender equality, legal discrimination, Human rights and many more. By passing the bill government has provided gender justice but opposition regards it as a political decision, or game for vote and main point of objection on this bill is converting civil issue to criminal issue by giving punishment for three years of imprisonment and fine decided by magistrate. But the battle of passing the bill in parliament or say Rajya Sabha is still in continuation and most important the battle for justice is in hand of new government when this present ordinance will expire in June 2019.

³¹ "triple talaq bill stuck in Rajya Sabha - Times of India". The Times of India.

³² PTI, Triple Talaq ordinance repromulgated.(feb21,2019) m-economictimes-com.cdn.ampproject.org

³³ PTI, Triple Talaq ordinance repromulgated for the third time (21 Feb,2019, 5:27 pm),

<https://www.news18.com/news/india/triple-talaq-ordinance-re-promulgated-for-the-third-time-2044311.html>