TRIPLE TALAQ - LAW : AN ANALYSIS

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ABSTRACT

This article talks about one of the biggest socio-legal issue that India faced till 27 august 2017 that was “Instant talaq or talaq-e-biddat”. This article firstly talks about the various types of talaq available in Islam which are talaq-e-unnat, talaq-e-hasan, talaq-e-ahsan and talaq-e-biddat. Thereafter it talks about the Supreme court verdict that declared triple talaq unconstitutional. Then it talks about the law that parliament made on triple talaq that is “The Muslim Women (Protection of Rights on Marriage) Act 2019”. After that this article also provides an analysis as to what are those countries where triple talaq is un-Islamic and at the end of the article it has the conclusion.
INTRODUCTION

There are two forms of talaq (divorce) in Islam:

(1) Talaq-ul-Sunnat

"Talaq-e-Sunnat" or "Talaq-ul-Hasan" could be a voidable divorce that may be pronounced in Hasan or Ahsan.

"Talaq-e-Ahsan" is that the 'most proper' type of talaq within which the husband expresses divorce in single sentence - "I have divorced thee" – within the period of tuhr (when the married wife isn't menstruating) and so must wait until the iddat period gets finished. Iddat period for a lady who has been divorced by her husband is generally 3 monthly periods and throughout this period, she cannot marry another man. If before the completion of iddat, the husband resumes co-habitation along with his married lady or says that "I have retained thee", the divorce is revoked.

"Talaq-e-Hasan" is 'proper' form of talaq. In this type of talaq, 3 successive pronouncements of talaq are given by the husband in 3 ordered tuhrs (when the lady isn't menstruating). In the case of a non-menstruating lady after the interval of a month or thirty days between the successive pronouncements, its pronouncements may be made. Before the third pronouncement this type of talaq can be revoked.

(2) Talaq-ul-Biddat

Allows men to pronounce talaq thrice in one sitting generally in a written talaqnama, or maybe by phone or text message. Thereafter, notwithstanding the person himself perceives his call to possess been hasty in apprehension, the divorce remains sealed. This mode of divorce is disapproved. The Talaq-ul-Biddat has its origin within the second century of the Islamic-era. According to Islamic jurist and schola Ameer Ali, (1849–1928), this mode of Talaq was introduced by the Omayad Kings.
LEGAL FRAMEWORK

(1) JUDICIAL APPROACH

A Constitution Bench has declared that the follow of instant Triple Talaq is unconstitutional. On twenty second August 2017, the 5 judges Bench of the Supreme Court pronounced its call within the Triple Talaq Case, declaring that the practice was unconstitutional by a 3:2 majority.

Majority: Justice Rohinton Nariman and Justice U.U. Lalit

Concurring: Justice Kurian Joseph

Dissenting: CJI J.S. Khehar and Justice Abdul Nazeer

ShayaraBano was married to Rizwan Ahmed for the period 15 years. In 2016, she got divorced through triple talaq that is also known as (talaq-e-biddat). She filed an instrument Petition within the Supreme Court asking it to carry 3 practices – talaq-e-biddat, polygamy, nikah-halala – unconstitutional as they violate Articles 14, 15, 21, 25 of Constitution.

Talaq-e-biddat may is a practice which provides a person the power to divorce his mate by uttering ‘talaq’ thrice in one sitting with not his wife’s consent. NikahHalala may be a practice where a unmarried lady who desires to again marry with her previous husband will have to marry and procure a divorce, from a second husband before she will be able to return to her 1st husband. Polygamy permits Muslim men to have more than one wife.

On sixteenth February 2017, the Court asked ShayaraBano, the Union of India, varied women’ rights bodies, and therefore the All Indian Muslim Personal Law Board (AIMPLB) to provide written submissions on the difficulty of talaq-e-bidat and other two habit. The Union of India and therefore the lady’s rights organizations like Bebaak Collective and Bhartiya Muslim Mahila Andolan showed support to Ms. Bano's plea that these practices are un-Islamic and un constitutional. The AIMPLB has argued that uncodified Muslim personal law isn't subject to
constitutional review and that these essential practices of the Islamic religion are protected under the constitution by Article 25.

After accepting the ShayaraBano’s petition, a five-judge constitutional bench was formulated by the apex court on 13/03/2017. Primary hearing was on 11/05/2017. On 27/08/2017, the 5-judge bench declared the practice of talaq-e-biddat unconstitutional by a 3:2 majority.

(2) INDIAN PERSPECTIVE

The Muslim Women (Protection of Rights on Marriage) Bill 2019 was passed by parliament, on 30-07-2019. The follow of instant triple talaq by Muslim men are going to be punishable by a jail term of up to 3 years. This Bill can defend the rights of married Muslim ladies and interdict divorce by saying talaq by their husbands and to supply for matters connected with it.

Main elements of the bill:

(1) Talaq to be void and illegal Section 3

Any dictum of talaq by a Muslim husband upon his better half, by words, either spoken or written or in electronic type or in the other manner some shall be Void and also Illegal.

(2) Punishment for pronouncing talaq Section 4

Any Muslim husband that pronounces talaq mentioned in section 3 upon his better half shall be punished with imprisonment for a term which can reach 3 years, and shall even be vulnerable to fine.

(3) Subsistence allowance Section 5

A married Muslim lady upon whom talaq is pronounced shall be entitled to receive from her husband such quantity of subsistence allowance, for her and dependent kids, as the administrator (Magistrate) determine.

(4) Custody of minor children Section 6
A married Muslim lady shall be entitled to custody of her minor children within the event of dictum of talaq by her husband, in such manner as may be determined by the administrator that is the Magistrate.

(5) Offence to be cognizable, compoundable etc. Section 7

Offence punishable in this Act shall be cognizable, if info about the commission of the offence is given to the officer in charge of a police station by the married Muslim lady upon whom talaq is pronounced or anybody associated with her by blood or wedding

Offence punishable in this Act shall be compoundable, at the instance of the married Muslim lady upon whom talaq is announced.

No person accused of the offence punishable in this Act shall be discharged on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim lady upon whom talaq is pronounced, is satisfied that there are reasonable grounds for granting bail.

President gave assent to Muslim Women (Protection of Rights on Marriage) Act, 2019 on 31-07-2019.

INTERNATIONAL PERSPECTIVE

List of nations where triple talaq is un-Islamic:

(1) India (2) Pakistan (3) Egypt (4) Tunisia (5) Sri Lanka (6) Bangladesh (7) Turkey (8) Indonesia (9) Iraq (10) Cyprus (11) Algeria (12) Sudan (13) Iran (14) Afghanistan (15) Morocco (16) United Arab Emirates (17) Jordan (18) Qatar (19) Brunei (20) Libya (21) Malaysia (22) Kuwait (23) Lebanon

1. **INDIA**—A Constitution Bench has declared that the follow of instant Triple Talaq is unconstitutional.

On twenty second August 2017, the 5 judges Bench of the Supreme Court pronounced its call within the Triple Talaq Case, declaring that the practice was unconstitutional by a clear 3:2 majority. Majority: Justice Rohinton Nariman and Justice U.U. Lalit, Concurring: Justice Kurian Joseph, Dissenting: CJI J.S. Khehar & Justice Abdul Nazeer.
2. **Pakistan**- It was abolished after recommendations by a 7-member commission on marriage and family laws in 1956 and framed the legislation of marriage and divorce almost like to Egypt, the husband must pronounce Talaq in three successive menstrual periods.

3. **Egypt**- It was the primary country to reform its divorce system in 1929 consistent with the Quranic interpretation. In Egypt pronouncing talaq three times isn’t acceptable but it must be guided by three process steps.

4. **Tunisia**- According to the Tunisian Code of Personal Status 1956, it enshrines that the institution of the wedding comes under the scope of state and judiciary which cannot allow husband unilaterally to verbal divorce his wife without explanation of the reason for it.

5. **Sri Lanka**- Although, it’s not Muslim majority country but some Islamic scholars consider the Srilankan Marriage and Divorce (Muslim) Act, 1951 as one of the ‘most ideal legislation on divorce (Triple Talaq)’. This act envisages that if husband wants separation from his wife then he hasto have given notice of his intention to Qazi (Muslim Judge) alongside with the relatives of the partners, elders and other influential Muslims of the concerned area, to attempt the provision of rethink, reconsider and reconcile.

6. **Bangladesh**- The process of divorce is extremely simple in Bangladesh just in three steps to divorce for both Husband and Wife (When power of giving Divorce has been delegated within the Kabin) wanting separation: Give Notice in writing, Face the Arbitration Board (Appeared or not don’t matter); and after expiry of 90 days take a registration certificate from a registered Nikah Registrar.

7. **Turkey**- The process of Talaq in Turkey can begin as soon as the marriage was registered at the Vital Statistics Office. Then the whole process of Talaq will be done in the civil court.
8. **Indonesia**—Every divorce can be only executed by decision of the court. An agreement to divorce between the husband & wife won't be considered as a divorce, only a court decision may constitute the divorce. It's regulated under Law No. 1 of the 1974 concerning to Marriage (“Marriage Law”) which also further regulated under the Government Regulation No. 9 of the 1975 concerning the application of Law No. 1 of the 1974 concerning Marriage (“Marriage Regulation”).

9. **Iraq**—It was the first Arab country to exchange Sharia court from the government-run personal status court. Simultaneously 3 times pronounce of talaq are going to be counted together. Man, and ladies have equal right to invite separation when a dissension arises. Investigation is conducted by court into the rationale for dissension. Appointment of arbitrator by court for reconciliation and court eventually decides the result.

10. **CYPRUS**—In 1926, Turkey adopted Swiss Civil Code that immediately negated any religious laws on family and private affairs. Cyprus adopted the Turkish Civil Code within the 1980s and was insulated from these religious laws too.

11. **Algeria**—Divorce can only be finalized by the court which too, after a reconciliation attempt. The reconciliation period is up to a period of three months.

12. **SUDAN**—Sudan followed in Egypt’s wake with a couple of additional provisions. After talaq is followed by an iddat period, the court prepares the official documents and therefore the government formally recognizes the divorce.

13. **Iran**—Article 1134 of Iranian Family Law Divorce are often granted by the Qazi and/or court only after the reconciliation efforts have failed. This must be within the presence of a minimum of two ‘just’ men who hear the particular sort of divorce. For most Islamic countries three pronouncements of the word ‘talaq’ in a one session that is equals to just one talaq. There’s a compulsory waiting period after every such pronouncement, with the divorce only granted at the third one.

14. **Afghanistan**—Sections 145 of Civil Law of the 4 January 1977, Afghanistan Divorce, where three pronouncements are made in just one sitting, is considered to be null in Afghanistan.
15. **Morocco**-Code of private Status, 2004 In order for a person to divorce his wife through talaq, he must seek permission from court after registering it with the public endorser. Multiple expressions of divorce, oral or may be written, will have the effect of only one divorce.

16. **United Arab Emirates**-Law of private Status of 2005, The Federal Law No.28 of 2005: Article 140 (1). If a husband divorces his wife after consummation of a legitimate marriage by his unilateral action and with none move for divorce from her side, she is going to be entitled to compensation besides maintenance for Iddat.

17. **Jordan**-A “triple talaq” as in talaq amid variety in word or sign or- significantly- repeated during a single session has the effect of one revocable talaq only. to offer rise to the greater finality of irrevocable talaq, three talaqs must be pronounced not only separately but in three separate sessions.

18. **QATAR**-Qatar adopted the sayings of ISLAMIC scholars Ibn Taymiyyah which were: an oath of divorce counted as a full divorce and that they were also of the view that three oaths of divorce taken under one occasion counted as three distinct divorces. the importance of this was, that a person who divorces an equivalent partner 3 times is not any longer allowed to remarry that person until and if that person marries and divorces another person. Only then could the man, who took the oath, remarry his previous wife. Ibn Taymiyyah accepted this but on the other hand rejected the validity of three oaths taken under one sitting to count as three separate divorces as long because the intention wasn't to divorce. Moreover, Ibn Taymiyyah was of the view that one oath of divorce uttered but not intended, also doesn't count as an actual divorce.

19. **BRUNIE**-In Brunietalaq is governed by LAWS OF BRUNEI, CHAPTER 217, ISLAMIC FAMILY LAW. consistent with which no husband can pronounce talaq without permission of court in Brunie. In other words, every pronouncement should be communication to court and will plan proper review.

20. **LIBYA**-Libya follows this law for talaq which is under Islamic family law of Libya. consistent with Article 28 states “[i]n all cases divorce shall not be established except by a decree by the relevant court” whether by talaq or by mutual consent or by judicial divorce; talaq uttered by the minor, insane, demented or coerced husband or without deliberate intent is invalid, as is suspended or conditional talaq; talaq to which variety is attached considered single revocable (except third of
three); wife can also obtain khul from husband for appropriate compensation, which can include deferred dower or custody over child.

21. **MALAYSIA**-In Malaysia, any divorce pronounced without court permission may be a matrimonial offence and shall be punished with a fine not exceeding RM 1 000- or 6-months imprisonment or may be both.

22. **Kuwait**-According to family law Kuwait: Both Sunni and Shia law allows the husband to divorce his wife 3 times. The husband may take back his wife within 90 days of the divorce, nullifying the divorce. If the wife disagrees thereto, she has to attend court and receive a proper divorce. It is easier to urge divorce, either initiated by husband or by wife, under Sunni law compared to Shia law. A divorce which is initiated by the wife is final. A Sunni woman can take various grounds for divorce, viz, mental or physical impairment of the husband, abuse, lack of performance of marital obligations, non-payment of monetary maintenance, desertion and others.

23. **LEBANON**_Talaq:_ invalidity of talaq uttered while intoxicated or under coercion; husband who repudiates his wife obligated to tell Sharia Court of his exercise of talaq within 15 days then Department of private Status for registration of divorce; failure to register with Department of private Status doesn't invalidate repudiation, but husband is subject to criminal penalty; for Sharia, classical rules concerning specific formula and prerequisites apply.
CONCLUSION

First of all I would like to say that this social legal issue triple talaq which was declared illegal by the honorable Supreme Court on 30/7/2019 was never an acceptable practice under muslim law. The reason why I am saying this is because of the follow reason:

The correct law of talaq is:

(1) There must be a reasonable cause.

(2) It must be preceded by an attempt of reconciliation between the husband and the wife by two arbiters (one from each of the side).

If all the attempts fail then the talaq may be affected and it is revocable till that time. Because of the reason that there is no attempt of reconciliation between the parties, this practice of triple talaq (Talaq-ul-Biddat) is not acceptable under Islam.

Then the question arises that how can a practice that is already illegal according to the holy quran or Islamic law can be declared illegal by supreme court? The answer for this question is that triple talaq is an innovation by all the jurists and schools of jurisprudence in Islam. It is a deviation, politicization and violation of Islamic law. Despite being illegal according to Islamic law it was being practiced that is why Supreme Court declared it illegal. The declaration of triple talaq as illegal decreased gender injustice and disparity in our country. The women and all those who are fighting for gender injustice would be supported by this law. To conclude this I would like to say that we live in a country where law is equal for everybody therefore it was a wise decision taken in my view.
REFERENCES

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