

## Triple Talaq Bill and the Muslim Voice: Is a law necessary?

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### ABSTRACT

Generally human rights are equated with more freedom and progress. However, it becomes pertinent to note that conferring rights do not always result in emancipation. The darker side of human rights most apparently manifests itself in case of women as they are caught at the intersection of community identity and the narrative of modernity. One such highlighted subject is the identity and status of “Muslim women” who are victimised and needs a protection through more liberal rights. It is a known fact that most of the Muslim Personal Laws are still unmodified and many legal decisions pronounced by the courts are based on the norms mentioned in Quran and hadith. Some authors has supported that, Muslim personal laws has given various rights to Muslim women such as choice in marriage, inheritance etc. Whereas, some are of the opinion that, there are provisions in Muslim Personal Laws which is against the spirit of Indian Constitution. In this research paper, the researcher analyses the highly controversial topic of Triple talaq and certain aspects relating to Islamic Personal Laws which are centred on the SharayaBano case and several other petitioners entertained by Supreme Court which amounts to gender discrimination and hence violates the constitution.

### Keywords

Indian Constitution, Muslim Personal Law, Triple Talaq and Women Rights

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### Introduction

Talaq in its original sense means repudiation or rejection. Under Muslim law, it means a release from marriage, eventually or immediately. Although Muslim marriage is a civil contract, the husband enjoys special privileges over wife. Husband may divorce his wife at any time he likes but wife cannot. Thus, the talaq has been described as “a one-sided engine of oppression”, in the hands of the Muslim husband. There are number of ways by which divorce can take place under Muslim law, one such way is by “triple talaq”.

“Triple Talaq” is an instant divorce process being practiced among the Muslim fraternity, conceding the balance of ending the matrimonial alliance, in the favour of their husbands, by simply pronouncing the word three times “TALAAQ”. Triple Talaq also known as “Talaq-ul-Biddat” which is used under “Hanafi law”. The most common method of talaq-ul-biddat is the triple pronouncement of talaq al-hasan which is to be brought together in a single sitting. “No evidence is required to prove the talaq pronounced by husband, the presence of third person is also not necessary, and the wife is left with no option to challenge Talaq”

The relevant verses under Chapter LXV of Holy Quran say, “Divorce is only permissible twice; after that, the parties can hold up together or proceed with separation”. Sunni law gives effect to talaq-ul-Biddat through its traditional interpreters, even if it violates the Quranic law procedures. According to interpreters, talaq-ul-Biddat is “Sinful but effective” proposition, in English “Bad in theology but good in law”. This irregular mode of talaq was introduced by “Omeyyad” in order to evade the stringency of law. A triple talaq or talaq-ul-Biddat becomes irrevocable immediately after it is pronounced by husband and children born after the dissolution of marriage by triple talaq are illegitimate. It is pertinent to note that interpreters often interpret the laws for

their personal benefits and not for the benefit of society as whole and often give a religious reasoning for the same.

Many social practices which reflect social inequalities hide behind the cover of religion and the Personal laws, under British Administrators which were drawn from diverse sources reflects the gender prejudices of its times since the interpreters of “religion” have mostly been men. There were many reforms conducted against these ill practices but conservative sections in the society opposed these reforms and insisted that these can be preserved in the name of “defense” of religion. One such reforming movement was to get rid of “triple talaq”. The “Bharatiya Muslim Mahila Andolan” (BMMA), a group at the forefront of this campaign for equality, surveyed almost 5,000 women who were victims of triple talaq and wanted this practice to be banned.

All-India Muslim Personal Law Board is, one of the main influential body in Muslim community that looks after the rights of Muslims. There were lots of supports as well as criticism about this board. Many times this board rejected the proposal to change the Muslim personal law as they believed it will infringe the basic principles of Islam. Further, there were many male members domination in that particular board. Whereas Quran does not support a system that is only managed by the patriarchy system. Muslim women rights of marriage, divorce, inheritance has encouraged many Muslim women activists to fight for their rights.

### Discussion

#### 1. Origin of triple talaq:

No verse in the Holy Quran can be interpreted which give authenticity to so called triple talaq. Triple talaq is recognized but it is disapproved form of dissolution of marriage. Prophet condemned triple talaq as “playing with the book of God while I am still alive”

After the death of Prophet, the second Caliph, Umar started giving effect to triple talaq in order to prevent the misuse and abuse of religion. When Arabs conquered Egypt, Persia, Syria and other States, they found women over there better in appearance in comparison with Arabian woman. Women from Syria and Egypt insisted that if they want to marry them, they should divorce their existing wives by pronouncing triple talaq in one sitting. And, this condition was duly accepted by Arab men because they knew that under Islam divorce is only permissible twice in two separate periods of tuhr, and pronouncing triple talaq in one sitting is void, un-Islamic and shall not be effective. Arabs had a bad intention that in this way they cannot only marry these women but also retain their wives. When it comes to the knowledge of Caliph Umar, he decreed to give validity of dissolution of marriage by triple talaq irrevocably. It was mere an Administrative measure to meet emergency situations and not to make law. But, unfortunately Hanafi Jurist declared practice of triple talaq valid and cover religious sanction to it which is now a horrifying precedent

## 2. supreme court rulings:

In the Shah Bano Case (1985), SC gave the right to alimony from her husband to invoke a provision in the Criminal Procedure Code, 1973, a legislation for compensation that is to be given by the husband as maintenance to his divorced wife. However, The Muslim Women (Protection of Rights on Divorce) Act, 1986 was passed was then, Central government which was seen as an attempt to dilute the effect of Shah Bano Case judgement. In, ShamimAra v State of U.P &ors , the Appellant-wife filed an application under section 125 of Criminal Procedure Code complaining about “cruelty to her”, her children and of desertion. In reply husband mercilessly said he had divorced her earlier, and therefore he is not entitled to maintenance. No evidence provided regarding the statement of circumstances, no proof to balance and no witness were in support of talaq. The family court rejected the plea of wife for maintenance. Wife appealed in Allahabad High Court and again failed to seek any relief. In Supreme Court also rejected the arbitrary triple talaq and held, the liability of husband to maintain his wife shall not come to an end based on just mere communication that, she has been divorced. Justice Lahoti further held that, “the talaq must pronounced in support of Quranic Injunction. The term ‘pronounce’ shall not be used as meaning of dictionary it denotes “to utter formally, to declare, to proclaim, to articulate”. In, Riaz Fatima v Mohd Sharif , husband pleaded that wife is disentitled to maintenance since, he had already divorced her. He also challenged the paternity of child by alleging his wife of bad character. Husband also produced the copy of fatwa to proof the real validity of talaq. Magistrate Court rejects the contention of the husband and awarded maintenance to the wife and child. Where The Court of Sessions set aside the order of maintenance. The court held that before Muslim husband divorce his wife, he must fulfil all the pre-requisites in order to give validity to triple talaq pronounced by him. In 2001, in the case of DanialLatifi&Anr vs. Union of India, SC reiterated the validity of the Shah Bano case judgement upholding right of Muslim women. In June 2016 SC decided “to examine, if Islamic laws governing marriage, and

inheritance violated the fundamental rights of women and take a call on how far it can intervene to modify the existing laws”.

## 3. Brief analysis on judgement of triple talaq case:

It all starts with the Petition by ShayaraBano along with other petitioners as well as Supreme Courts own suo-moto PIL to consider whether certain aspects of Islamic personal laws amount to gender discrimination and violate the constitution.

On 22nd August 2017, larger bench of the Supreme Court in a split verdict ruled that the practice of instant triple talaq in the Muslim community is unconstitutional. The bench set aside the practice by a majority of 3:2.

This petition challenged the validity of triple talaq on the touchstone of article 14, article 15, article 21 and article 25. It states: “It submits that religious officers and priests like Imams, Maulvis , etc. who propagate, support and authorise practices like Talaq-e-Biddat, nikah- halala, and polygamy are grossly misusing their position, influence and power to subject Muslim women to such gross practices which treats them as chattel, thereby violation of their fundamental rights enshrined in Articles 14, 15, 21 and 25 of the Constitution”

Then the Petition went on to explain the plight of the Muslim women who is suffering due to the abhorrent practice of triple talaq. Further it avers that :“The Muslim personal laws of India permit the practice of Talaq-e-Biddat or Talaq-i-Badai, which includes a Muslim man divorcing his wife by pronouncing more than one talaq in a single tuhr (the period between two menstruations), or in a tuhr after coitus, or pronouncing an irrevocable instantaneous divorce at one go. This practice of talaq-e-bidat (unilateral triple-talaq) which practically treats women like chattel is neither harmonious with the modern principles of human rights and gender equality, nor an integral part of Islamic faith, according to various noted scholars. The practice also wreaks havoc to the lives of many divorced women and their children, especially those belonging to the weaker economic sections of the society”

It is important to note that, though the petition mentions several judgments which have dealt with the triple talaq; it does not rely on the ratio of any of the judgements but rather challenges the constitutional validity of the triple talaq. Further the petition discussed that as triple talaq is not an essential tenet of the religious belief of the Muslims it is not saved by article 25 of the Constitution of India. However, the petition nowhere questions the inherent discretion given to the Muslim husband to pronounce talaq to the wife, rather it only challenges the practice of triple talaq. Hence, the ShayaraBano petition does not bring out the ills of triple talaq it stands today.

Further in the public interest litigation, there is no mention of Protection of Women from Domestic Violence Act, 2005 when it was clear that “the woman had been subjected to worst kind of cruelty ranging from dowry demands to abandonment”. There are several stipulations in the said act which provide for easier dispensation of justice especially considering the facts and circumstances of this case.

The above results in a predictable reaction from the Muslim Personal Board which saw this move as a question on their

Muslim identity. The counter-affidavit by the All India Muslim Personal Law Board (AIMPLB) to plead that the Supreme Court has no jurisdiction to adjudicate over Muslim Personal Law since it is inextricably interwoven with the religion of Islam, which is based on Quranic injunctions and is not a law enacted by Parliament, it only serves to render the proceedings contentious and add to the controversy. However such an argument does not hold good as the Supreme Court has in innumerable cases intervened in personal laws. Be it either *ShamimAra vs. State of U.P* or *Mohd. Ahmad Khan vs. Shah Bano Begum* or *DanialLatifi v. Union of India* the Supreme Court has been instrumental in reforming the personal legal position.

From the above discussion, it is clear that the petition create a discourse whereby rights of the Muslim women can be only guaranteed by confrontation with the Muslim identity. It is important to note that both the ignorance of the legal development in the Muslim personal laws by the lawyers as well as the illogical intervention by the Muslim Personal Law Board has gone on to construct this divide of 'us' versus 'them'. Such a divide has always proved to be detrimental to women as somewhere in this meta-truth of good and evil, oppressive and civilized the experiential realities of women are obliterated. It is important to understand that the Muslim women subject is formed from the very community which allegedly subjugates her. It is important for the courts to understand that constitutional rights would remain a dead letter if we do not understand the manner in which identity politics unfolds especially in case of women.

#### 4. Earlier case relating to talaq and maintainance:

*Mohd. Ahmed Khan v. Shah Bano Begum* commonly referred to as the *Shah Bano case*, was a controversial maintenance lawsuit in India, in which the Supreme Court delivered a judgment favouring maintenance given to an aggrieved divorced Muslim woman. Then the Congress government, panicky in an election year, gave in to the pressure of Muslim orthodoxy and enacted a law with its most controversial aspect being the right to maintenance for the period of iddat after the divorce, and shifting the onus of maintaining her to her relatives or the Waqf Board. It was seen as discriminatory as it denied right to basic maintenance available to non-Muslim women under secular law.

##### 4.1. Background of the case:

In 1932, Shah Bano, a Muslim woman, was married to Mohammed Ahmad Khan, an affluent and well-known advocate in Indore, Madhya Pradesh, and had five children from the marriage. After 14 years, Khan took a younger woman as second wife and after years of living with both wives, he divorced Shah Bano, who was aged 62 years. In April 1978, when Khan stopped giving her the ₹ 200 per month he had apparently promised, claiming that she had no means to support herself and her children, she filed a petition at a local court in Indore, against her husband under section 125 of the Code of Criminal Procedure, asking him for a maintenance amount of ₹ 500 for herself and her children. In November 1978 her husband gave an irrevocable talaq (divorce) to her who was his prerogative

under Islamic law and took up the defence that, hence Shah Bano had ceased to be his wife and therefore he was under no obligation to provide maintenance for her as except prescribed under the Islamic law which was in total ₹ 5,400. In August 1979, the local court directed Khan to pay a sum of ₹ 25 per month to Bano by way of maintenance. On 1 July 1980, on a revision application of Bano, the High Court of Madhya Pradesh enhanced the amount of maintenance to ₹ 179.20 per month. Khan then filed a petition to appeal before the Supreme Court claiming that Shah Bano is not his responsibility anymore because, Mr. Khan had a second marriage which is also permitted under Islamic Law.

##### 4.2. Judgement:

On 3 February 1981, the division bench of Justice MurtazaFazal Ali and A. Varadarajan who first heard the matter, in light of the earlier decisions of the court which had held that section 125 of the Code applies to Muslims also, referred Khan's appeal to a larger Bench. Muslim bodies All India Muslim Personal Law Board and JamiatUlema-e-Hind joined the case as intervenor. The matter was then heard by a five-judge bench composed of Justice Chandrachud, J. RangnathMisra, J. D. A. Desai, J. O. Chinnappa Reddy, and J. E. S. Venkataramiah. On 23 April 1985, Supreme Court in a unanimous decision, dismissed the appeal and confirmed the judgment of the High Court. Supreme Court concluded that "there is no conflict between the provisions of section 125 and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself." After referring to the Quran, holding it to the greatest authority on the subject, it held that there was no doubt that the Quran imposes an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife. Shah Bano approached the courts for securing maintenance from her husband. When the case reached the Supreme Court of India, seven years had elapsed. The Supreme Court invoked Section 125 of Code of Criminal Procedure, which applies to everyone regardless of caste, creed, or religion. It ruled that Shah Bano be given maintenance money, similar to alimony.

##### 4.3. Cases even after there has been a ban on Triple Talaq

- A case of triple talaq has been registered at Savadatti police station, the first in Karnataka since the Parliament passed the Muslim Women (Protection of Rights on Marriage) Act 2019, which bans divorce by triple talaq.
- On 24th August 2019, a man has been arrested in Uttar Pradesh's Muzaffarnagar district for allegedly divorcing his wife by pronouncing the word 'talaq' thrice, a practice which has been criminalised, police said on Saturday.
- Maharashtra registered its first case, with Mumbra police booking a Vikhroli resident for allegedly sending his wife a triple talaq message on WhatsApp.

#### 5. The Muslim women (protection of rights on marriage bill), 2017:

The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was introduced in Lok Sabha by the Minister of Law and Justice, Mr. Ravi Shankar Prasad on December 28, 2017. The Bill makes all presentation of talaq, incorporating into composed or electronic shape, to be void (i.e. not enforceable in law) and illicit. The Bill makes declaration of talaq a cognizable and nonbailable offence. (A cognizable offence is one for which a police officer may arrest an accused person without warrant.) A husband declaring talaq can be imprisoned for up to three years along with a fine. A Muslim woman against whom talaq has been declared, is entitled to seek subsistence allowance from her husband for herself and for her dependent children. The amount of the allowance will be decided by a First Class Magistrate.

### Conclusion

The Judgment delivered by the apex court in the case of "ShayaraBano" is historic for women empowerment in the country granting equality to Muslim women. However, the question remains that whether declaring the practice of triple talaq unconstitutional would ameliorate the condition of Muslim women or not. It has to be understood that gender friendly personal laws in the form of Uniform Civil Code is required with the passage and change of time in a secular state like India. It was a dream come true for the poor women of its mismanagement. It was used as a toy by people and used to type the word "talaq" 3 times without some whether oral, written or electronic, this means that they have converted customs into their own without having women's rights taken into account. As in Hindu law, "Talaq" or "Divorce" is to be the last resort and cannot be taken simply on a trivial wear and tear of marriage. The recent trends also show that people still use it illegally, even after being found unconstitutional and void.

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