

TRIPPLE TALAQ BILL 2017 WITH SPECIAL EMPHASIS ON AMENDMENTS
WHICH NEEDS TO BE DONE

BY- PRASANNA KUMAR SHUKLA
FROM INDORE INSTITUTE OF LAW

Abstract

Today, the problems of ladies rights in Muslim personal Law is extremely polemical. Specially, a Muslim ladies right about triple talaq divorce, inheritance, maintenance possesses abundant attention currently a day. However, Indian Constitution has secure equality and freedom from discrimination supported gender or faith, however still there are a unit varied practices that area unit supported heartless conservative culture.¹

As per the liberal understanding of rights for authorization of girls we'd like to subordinate the category of faith and culture. But constitutional rights would stay a dead letter if we don't perceive the style within which identity politics unfolds particularly just in case of women. The entire triple talaq issue has become a field of honor for the culture versus modernity discussion. it's vital to comprehend that women's experiences can't be understood in these subtractive binaries as "she" is made from the terribly power relations that subordinate them. During this paper the author deals with the question of triple talaq within the light-weight of the recent petition filed within the Supreme Court for declaring such talaq invalid.

As we all know the journey of Muslim women of India from shah bano to shaira bano. Decision given by Supreme Court is something which says that justice can be delayed but not denied. After decision of SC bill name as triple talaq bill 2107 which was introduced in Loksabha and further it was passed ,but yet it is pending in upper house i.e. rajyasabha.bill have both sides positive as well as negative.

This research paper is consisting of many such provisions and suggestions which are important practice of such activities hampers humanity. Provisions of Islam like muta marriage, polygamy, halala etc. needs to be introduced in bill by amendments. There are many facts in Islamic law which hampers dignity of women and humanity.decision by supreme court is biggest mile stone but problems like halala, polygamy, muta marriage, other

¹Razia Patel, Indian Muslim Women, politics of Muslim personal Law and struggle for life with dignity, Economic and Political Weekly, page 44, Vol. 44, No 44 (Oct, 2009).

forms of talaq,iddat period, minimum age of marriage must be included in bill by amendments.

Key words-Halala, Muta Marriage, iddat, Bahuvivah

INDEX

1. Introduction.....	4-5
2. Women rights on marriage in Islam.....	6-7
3. Types of talaq in Islam.....	7-8
4. Tripple talaq.....	8
5. Shah bano to shaira bano.....	8-9
6. Judgement of Supreme Court.....	9-10
7. Tripple talaq bill 2017.....	10-11
8. Concepts which needs to be introduced in bill.....	12-14
9. Conclusion.....	15
10. References.....	16

Introduction -

Arguably the malady of triple talaq or, talaq-ul-biddat was solemnized ubiquitously within the male dominated Islamic society over the passage of your time apparently to deprive the weaker sex, though it failed to emanate at the conception of Islam. the foremost unfortunate side of the nemesis of triple talaq is that not solely this unilateral mode of divorce among Muslim men given in his hands the facility to repudiate the wedding and every which way traumatize the girl at his whims and caprices, however it's still recognized by the law within the twenty first century India. Not solely this manner of divorce is against all scruples of morality however inflicts severe blows to the spirit of womanhood the difficulty of ladies in Islam, is topic of nice misunderstanding and distortion due partially to a scarcity of understanding, however conjointly partially because of wrongdoing of some Muslims that has been taken to represent the teachings of Islam. We have a tendency to speak here concerning what Islam teaches, which is that customary in keeping with that Muslims square measure to be judged. As such, my basis and supply is that the Quran--the words of Supreme Being, and also the sayings of the Prophet, his deeds and his confirmation. Islamic laws square measure derived from these sources. To facilitate our discussion we will discuss the position of ladies from a non-secular, economic, social, and political viewpoint. Islam, in contrast to different religions may be a robust advocate of wedding. There's no place for celibacy like, as an example the Roman Catholic monks and nuns. The prophet (pbuh) has aforesaid "there is not any celibacy in Islam.

Marriage may be a spiritual duty and is consequently an ethical safeguard likewise as a social necessity. Islam doesn't equal celibacy with high "taqwa" / "Iman". The prophet has conjointly aforesaid, "Marriage is my tradition World Health Organization thus ever keeps away there from isn't from amongst me". Marriage acts as Associate in Nursing outlet for sexual desires and regulate it thus one doesn't become a slave to his/ her wishes.

It is a social necessity as a result of through wedding, families square measure established and also the family is that the basic unit of our society. Moreover, wedding is that the solely legitimate or halal thanks to relishes intimacy between a person and a girl.


Islam takes a middle of the road position to sexual relations, it neither condemns it like sure religions, nor will it permit it freely. Islam urges America to regulate and regulate our wishes,

No matter they'll be so we have a tendency to stay dignified and not become like animals.

Women's right on marriage in islam-

Marriage is one in every of the strongest relationships that Islam stresses, encourages and considers mutually of the prophets' practices. Indeed, Islam attaches a lot of importance to wedding rulings, rule and therefore the spouses' rights in such how on guarantee married stability and permanency and build a flourishing family within which kids area unit mentioned enjoying psychological stability, observant religiousness and ethical integrity, and displaying excellence in numerous aspects of life²

Financial rights

- 
- (a) The mahr (dowry). This is often the money to that the spouse is entitled from her husband once the wedding contract is completed or once the wedding is consummated.
- (b) Defrayment. The students of Islam square measure united that it's obligatory for husbands to pay on their wives, on the condition that the spouse create herself accessible to her husband. If she refuses him or rebels, then she isn't entitled to it defrayment.³
- (c) Accommodation. This is often conjointly one amongst the wife's rights, means that which suggests which implies that her husband ought to inure her accommodation in keeping with his means and skill.

2. Non-financial rights-

- (a) Truthful treatment of co-wives. one amongst the rights that a spouse has over her husband is that she and her co-wives ought to be treated equally, if the husband has different wives, with reference to nights spent with them, defrayment and article of clothing.
- (b) Kind treatment. The husband should have a decent angle towards his spouse and be kind to her, and supply her everything that will soften her heart towards him,

² Ahmad Furqan, "Triple talaq : An Analytical Study with Emphasis on Socio-Legal Aspects", Regency Publications, 1994.

³ Amit Dave. "Muslim women's rights is missing out on some crucial facts" May 25, 2016.

(c) Not harming one's spouse. This is often one amongst the essential principles of Islam. as a result of harming others is haraam within the case of strangers, it's even additional thus within the case of harming one's spouse⁴.

Types of Talaq in Islam-

(a) Talaq's-Sunna:

Talaq's-Sunna is that the approved style of dissolution as per the dictates of the Prophet. it's any been divided into (i) Talaq ahsan and (ii) Talaq hasan.

(b) Talaq 'Bida':

These are the censured varieties of divorce among the Muslims-

It is of 2 types:

- (1) Triple declaration, and
- (2) Single irrevocable declaration⁵

1. Tripple Talaq-

The issue of the 'triple divorce' is considered sensitive among the Muslims, not solely in Bharat however elsewhere. The Holy Qur'an is incredibly cautious in matters of divorce. 3 talaqs need to be spaced over a amount of three months to provide husband and married woman time for reconciliation through the intervention of relatives and friends. Moreover, talaq may be pronounced only the married woman is in a very state of tuhur, id est purity when menses.⁶

Yet, despite clear Qur'anic injunctions to the contrary, immediate triple divorce is permissible, destroying matrimonial life in one breath, the observe of immediate triple divorce is widespread among Sunni Muslims and has legal validity. Even then the jurists decision it a talaq-e-Bidat (innovative style of divorce). The dispute has been highlighted by reports of some Muslims instantly divorcing their wives by mail, over the phone, and even through mobile text messages. this text explains the various theories of divorce

⁴ Amit Dave. "Muslim women's rights is missing out on some crucial facts" May 25, 2016.

⁵.Ahmad Furqan, " Triple talaq : An Analytical Study with Emphasis on Socio-Legal Aspects", Regency Publications, 1994

⁶ Ahmad Aqil, " Mohammedan Law ", Central Law Agency Publications , 24 Edition, 2013

prevailing within the modern Muslim world and what checks and restraints are obligatory by Islam over the exercise of husband's power of talaq. The article critically appraises the 'innovative triple divorce' by examining whether or not it's sanctioned by the Holy sacred writing or the way and if there's a agreement of opinion (ijma) on the effectiveness.⁷

1. Shah bano case- (Mohd. Ahmed Khan vs. ShahBano Begum)

April, 1978: Mahomet Ahmad Khan divorces Shah Bano when his second wedding and refuses to supply her secure maintenance of Rs two hundred. Bano files a plea in a very native court against her husband beneath Section one hundred twenty five (Code of Criminal Procedure) asking him to supply the cash for her and her kids.

November, 1978: Mahomet Ahmad Khan offers Shah Bano associate degree irrevokable talaq and says since she isn't his adult female beneath law, he's not obligated to pay her the upkeep.

August, 1979: Shah Bano wins maintenance case with the native court ordering Khan to supply her with maintenance of Rs twenty five per month.

July, 1980: Shah Bano files another plea soliciting for a revised maintenance. The Madhya Pradesh tribunal offers order in her favour with a revised maintenance of Rs 179.20.

February, 1981: The two-judge Bench reverts the Shah Bano case to a bigger Bench.

April, 1985: in a very landmark judgment, the Supreme Court rules in favour of Shah Bano and upholds the choice by the tribunal.⁸

1986: Rajiv Gandhi involves power in 1984 when the assassination of his mother Indira Gandhi. In what's seen as caving in fraught type Muslim hardliners, PM Rajiv Gandhi enacts a law in Parliament and overturns the Supreme Court judgment within the Shah Bano case. The 1986 Muslim ladies (Protection on Rights of Divorce) Act diluted the

⁷ . Vrinda Narain, "Women's rights and the accommodation of "difference:" Muslim Women in India", 8 S. Cal. Rev. L. & Women's Stud. 43 1998-1999

⁸ The Muslim Women's (Protection of Rights on Divorce) Act, 1986

Supreme Court judgment and allowed maintenance to a unmarried lady solely throughout the amount of iddat, or until ninety days when the divorce.⁹

2. Shayara Bano vs Union Of India And Ors. Ministry Of ... on 22 August, 2017

The Judgement on Tripple Talaq by Supreme court. The Judgement On Tripple Talaq by Supreme court.

In Oct 2015, a Supreme Court bench managing a case associated with the Hindu Succession Act requested the jurist of Asian nation to line up a separate bench to look at if Muslim girls face gender discrimination in cases of divorce. lawyer General Mukul Rohatgi was asked to help the court in pleas difficult the validity of Triple Talaq and spousal relationship. the govt. had vehemently opposed the apply within the court.

A five-judge Constitution bench was originated to listen to the plea in could 2017. The court at first consulted with the All Asian nation Muslim Personal Law Board (AIMPLB) whether or not it absolutely was doable to introduce the choice for ladies to mention 'no' to Triple Talaq.

Justices Kurian Joseph, UU Lalit and RF Nariman delivered the bulk Judgment. jurist Khehar and Justice Abdul Nazeer dissented. Separate Judgments were delivered by jurist Khehar , Justices Kurian Joseph and RF Nariman..¹⁰

Jurist Khehar And Justice Abdul Nazeer

Till such time as legislation within the matter is taken into account, we have a tendency to square measure glad in injuncting Muslim husbands, from saying 'talaq-e-biddat' as a method for cutting their marital relationship. the moment injunction, shall within the 1st instance

Be operative for a amount of six months. If the legislative method commences before the termination of the amount of six months, and a positive call emerges towards redefining 'talaq-ebiddat' (three pronouncements of 'talaq', at one and also the same time jointly, or as an alternative, if it's set that the apply of 'talaq-e-biddat' be done away with altogether, the

⁹ Razia Patel, Indian Muslim Women, politics of Muslim personal Law and struggle for life with dignity, Economic and Political Weekly, page 44, Vol. 44, No 44 (Oct, 2009).

¹⁰ [Krishnadas Rajagopal](#) 'Supreme Court sets aside instant 'talaq' August 22, 2017.

injunction would continue, until legislation is finally enacted. Failing that, the injunction shall stop to control

Justice Kurian Joseph [Majority]...

There cannot be any Constitutional protection to such a apply and therefore, he disagreement with the learned jurist for the constitutional protection given to triple talaq.it is snot integral a part of faith. It's offensive of elementary rights of Indian constitution.

Justices RF Nariman and UU Lalit –

This form of talaq is offensive of article fourteen of Indian constitution.

Five-judge bench of the Supreme Court, by a slender 3:2 majority, affected down the apply of talaq-e-biddat – 'instantaneous triple talaq' – as unconstitutional. Women's movements across the country, among others, have lauded the judgment for putting down this regressive and patriarchic apply.¹¹

About The Muslim women (Protection Of Rights On Marriage) Bill, 2017

In August 2017, the Supreme Court had given a 397 finding of fact on Instant Triple Talqq and command that this apply is unconstitutional, arbitrary and desecrated Islamic law whereas getting used as a tool to oppress the ladies. Within the same finding of fact, the Supreme Court conjointly asked the Central Government to enact a law / legislation in next six months to manipulate wedding and divorce within the Muslim community. Until the govt. formulates a law, there would be Associate in nursing injunction against husbands saying Instant triple talaq on their wives. Thus, the Supreme judicial writ illegal the moment talaq whereas not touching different modes of divorce.¹²

The bill was developed by Central Government and introduced in Parliament in Gregorian calendar month, 2017.

- The Muslim girls (Protection of Rights on Marriage) Bill, 2017 was introduced in Lok Sabha by the Minister of Law and Justice, Mr. Ravi Shankar Prasad on Gregorian calendar month twenty eight, 2017.

¹¹ [Krishnadas Rajagopal](#) 'Supreme Court sets aside instant 'talaq' August 22, 2017.

¹² Ms Priya "Need For Reconsideration Of Triple Talaq Bill", February 18, 2018 .

• The Bill makes all declaration of talaq, together with in written or electronic type, to be void (i.e. not enforceable in law) and extralegal. It defines talaq as talaq-e-biddat or the other similar style of talaq pronounced by a Muslim man leading to instant and sealed divorce. Talaq-e-biddat refers to the apply underneath Muslim personal laws wherever say-so of the word ‘talaq’ thrice in one sitting by a Muslim man to his spouse leads to a second and sealed divorce.¹³

• **Offence and penalty:** The Bill makes declaration of talaq a knowable and non-bailable offence. (A knowable offence is one that a policeman could arrest Associate in nursing defendant person while not warrant.) A husband declaring talaq is captive for up to a few years at the side of a fine.

• **Allowance:** A Muslim girl, against whom talaq has been declared, is entitled to hunt subsistence allowance from her husband for herself and for her dependent kids. The numbers of the allowance are going to be set by a primary category justice.

• **Custody of minor children:** A Muslim girl, against whom such talaq has been declared, is entitled to hunt custody of her minor kids. The determination of custody is going to be created by the justice.¹⁴

Major criticisms of the bill square measure as follows:

• It is officious with the spiritual tenets of the Muslims. However, since Muslims themselves have totally different interpretations and Talaq-e-bidat are a few things frowned upon by everybody, there's no substantial weight during this opposition.¹⁵

• Criminalizing talaq-e-biddat doesn't address the problem of unilateral talaq, that men will still pronounce over a amount OF 3 months underneath the private law. Therefore the argument place forth to cater to the current anomaly is that rather than transferal in a very new legislation that just criminalizes instant talaq, the govt. ought to amend the present Dissolution of Muslim Marriages Act, 1939¹⁶.

¹³ The Muslim Women (Protection of Rights On Marriage) Bill 2017.

¹⁴ A. Faizur Rahman “A case to withdraw the triple talaq Bill “, 09 April 2018.

¹⁵ By Salman Khurshid” Why the triple talaq bill is not about empowerment of women at all”, Jan 23, 2018,

¹⁶ By Salman Khurshid” Why the triple talaq bill is not about empowerment of women at all”, Jan 23, 2018,

The Act needs girls to approach the court for divorce. It ought to be created gender-neutral so even men have to be compelled to approach the court for a divorce. Though the criticism is well based however transferal legislation to a minimum of ban instant triple talaq may be a welcome move and shows the disposition and endeavor of presidency to maneuver ahead within the direction of interference of harassment of girls.¹⁷

Other Points Which Needs To Introduced In Bill By Amendments

If we talk about Islamic law there are many provision related to rights and marriage of women which are self-contradictory...

Some of them are-

1. Muta marriage-

- Muta is a distinct kind of marriage recognised only by the Ithna Asharia Shias. Muta may be defined as a temporary union of male and female for specified duration, on payment of some consideration. As against the permanent or a regular marriage (Nikah), the Muta may be regarded as a temporary marriage.¹⁸
- Literal meaning of the Arabic word 'Muta' is 'enjoyment'; therefore, it may also be regarded as 'marriage for pleasure'. In the earlier days of Islam, when the Arabs had to live away from their homes for a considerably long period either on account of wars or on trade-journeys, they used to satisfy their sex-desires through prostitutes.
- In order to avoid the development of prostitution in the society and to confer legitimacy upon children of such unions, temporary marriage was recognised and permitted by the Prophet for some time.¹⁹

2. Polygamy-

Islam allows the practice of "polygyny", not necessarily "polygamy". The two terms are easily confused. Polygamy is most often understood to be a practice that allows any male or female to be married to an unlimited number of spouses at the same time. Polygyny

¹⁷.Anshuman Chaudhry' The Triple Talaq Judgment And Gender Emancipation As Vote-Bank Politics', 22/08/2017.

¹⁸ Amit Dave. "Muslim women's rights is missing out on some crucial facts" May 25, 2016.

¹⁹ Amit Dave. "Muslim women's rights is missing out on some crucial facts" May 25, 2016.

specifically allows only the male to have more than one wife at the same time, as we find to be the case within the laws of Islam.

Another confusion we find in the modern world is the belief that the laws of polygyny are no longer valid or important. This line of thought is an absolute blemish on our perfect religion. No law in Islam was revealed for only one specific time. The laws of Allah (swt) are for the past, present, and future. They are constant. What changes is the Dunya's perception (Shaytaan's influence) of what is it good and bad, necessary and evil. The laws of polygyny were revealed at a time when corruptness and severe mistreatment of women ruled Arabia. The women of Arabia had zero rights and were certainly not given any respect. A man could marry as many wives as he wanted and treat them in any way he desired. Women were considered disposable property.²⁰

3. Iddat period-

Iddat is an Arabic word and its literal meaning is 'counting'. 'Counting' here means counting the days of possible conception to ascertain whether a woman is pregnant or not, under Muslim law, it is that period during which a woman is prohibited from re-marrying after the dissolution of her marriage.²¹

-During this period the widow or a divorced wife is required to live a pure and simple life and she cannot marry again. The object of Iddat is to ascertain the paternity of a possible conception by her former husband.

-After divorce or death of the husband, if the woman re-marries immediately and a child is born within normal course, then there is every likely-hood that the conception could be by the former husband and not by the present.²²

-It would be difficult, therefore, to establish as to who may be regarded as the father of such a child. To overcome this difficulty, Muslim law provides that where a marriage is dissolved (by divorce or death of the husband), the woman cannot re-marry before the expiry of a specified period called Iddat. After this period, the possible conception by the former husband would naturally become apparent and visible.

²⁰ Ahmad Aqil, "Mohammedan Law", Central Law Agency Publications, 24 Edition, 2013.

²¹ The Muslim Personal Law Application Act, 1937.

²² The Muslim Personal Law Application Act, 1937.

Marriage with a woman who is observing Iddat is irregular under Sunni law. Under Shia law the marriage contracted with woman observing Iddat is void.²³

4. Minimum age of marriage-

The personal law allows marriage of Muslim girls between the age of 15 and 18. but in a case he Madras High Court has held that the act prohibiting child marriages was not against the Muslim Personal Law and would prevail over the latter as it had been enacted for the welfare of girl children. But in our country still many complain comes about premature marriage of Muslim girl. So we needs a strong law to stop it.²⁴

5. Halala-

Nikah halala is a law that requires a woman to marry and sleep with another man in order to return to her first husband. There have been instances where the husband regrets divorcing his wife through triple talaq and in the hope of reconciliation, hands over his divorced wife to another man for marriage, under the condition that the latter would divorce the woman the next day. *Muta* (conditional marriage), however, is considered to be a sin in Islam and the Sharia law does not permit it. The husband is therefore considered a sinner. The second caliph of the Rashidun Caliphate, Umar (579-644 AD) considered such husbands to be sinners and said, "I will stone to death such persons". In Islam, 'halala' is a term that finds its roots in 'halal' that translates to something that is permissible, and therefore 'lawful'. In context of marriage then, it means that a divorced woman can become 'halal' (lawful) for her husband again after nikah halala is complete.²⁵

Islam dictates that a Muslim man has the liberty to divorce and remarry the same woman twice. However, if he decides to dissolve the marriage for the third time, he can only remarry the same woman if she first marries another man, consummates the marriage and only if the man dies or willingly asks for divorce, can the woman go back to her first husband and remarry him.²⁶

²³ Vrinda Narain, "Women's rights and the accommodation of "difference:" Muslim Women in India", 8 S. Cal. Rev. L. & Women's Stud. 43 1998-1999.

²⁴ .Amit Dave. "Muslim women's rights is missing out on some crucial facts" May 25, 2016.

²⁵ .Ahmad Aqil, "Mohammedan Law ", Central Law Agency Publications , 24 Edition, 2013

²⁶ Anshuman Chaudhry' The Triple Talaq Judgment And Gender Emancipation As Vote-Bank Politics', 22/08/2017.

Conclusion

Nikah is represented within the Holy al-Qur'an as a procedure through that not solely a sacred family bond between a man and a girl is established however conjointly makes the wedding bond terribly sturdy to last for the remaining half of their lives. The sturdy bond cannot be unacknowledged fancifully while not correct reasons and applicable technique. Before implementing divorce the couple is needed to keep severally to feel the pain of style (Zudai) when separation below the observation of a Qazi. When temporary separation efforts area unit to be created for reconciliation between the husband and woman, divorce is that the last most unpleasant step within the al-Qur'an once all different efforts for unification particle move into vein when long pursuance.

No different custom or observe will kind the part of Muslim rituals as well as the matter of imposing divorce to the weaker sex. So, divorce will be registered solely once each husband and mate realize it tough to remain in the bond of wedding and wish mutual separation with honour from the core of their hearts, and the un-Islamic custom of triple talaq be treated as null & void.

We have seen the entire journey of Muslim women from shah bano to shaira bano, and we have also seen how the whole agenda is plocitised for vote bank. But humanity is above all things. Decision given by Supreme Court is in welfare of society. But the bill introduced by government is weak many evils like muta marriage, nikah halala, minimum age of marriage, polygamy need to be criminalized had introduced the bill.

References

Statutes Referred-

1. The Constitution of India
2. The Muslim Personal Law Application Act, 1937
3. The Muslim Women's (Protection of Rights on Divorce) Act, 1986.
4. The Muslim Women (Protection of Rights On Marriage) Bill 2017.

Books Referred-

1. Ahmad Furqan, "Triple talaq: An Analytical Study with Emphasis on Socio-Legal Aspects", Regency Publications, 1994.
2. Ahmad Aqil, "Mohammedan Law", Central Law Agency Publications, 24 Editions, 2013.

Journal Referred-

1. Vrinda Narain, "Women's rights and the accommodation of "difference:" Muslim Women In India", 8 S. Cal. Rev. L. & Women's Stud. 43 1998-1999.
2. Razia Patel, Indian Muslim Women, politics of Muslim personal Law and struggle for life with dignity, Economic and Political Weekly, page 44, Vol. 44, No 44 (Oct, 2009).

Article Referred-

1. Zakia Soman and Noorjehan Niaz, "Why triple talaq needs to be abolished", 17 June, 2016.
2. Faizur Rahman "A case to withdraw the triple talaq Bill ",09 April 2018.
3. Ms Priya "Need For Reconsideration Of Triple Talaq Bill", February 18, 2018 .
4. **By Salman Khurshid** " Why the triple talaq bill is not about empowerment of women at all", Jan 23, 2018.
5. Krishnadas Rajagopal 'Supreme Court sets aside instant 'talaq' August 22, 2017.
6. Amit Dave. "Muslim women's rights is missing out on some crucial facts" May 25, 2016.
7. Anshuman Chaudhry' the Triple Talaq Judgment And Gender Emancipation As Vote-Bank Politics', 22/08/2017