

“TRIPLE TALAQ” CRITICAL ANALYSIS OF TRIPLE TALAQ

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ABSTRACT

Today, the issues of women rights in Muslim personal Law is highly controversial. Specially, Muslim women rights relating to triple Talaq divorce, inheritance, maintenance has got much attention now a days. However, Indian Constitution has guaranteed equality and freedom from discrimination based on gender or religion, but still there are various practices which are based on heartless conservative culture.

This research paper unfolds all the grievances a women would have as a victim of such injustice and also throw light on how such form of abominable divorce vitiates three of most prime fundamental rights enshrined in the constitution of India article 14 which speaks of equality, article 15 which speaks against discrimination and article 21 proclaiming the right of life and liberty are reduced to ashes with the courts including the supreme court, the protector of the Indian constitution have not declared this form of triple void and unconstitutional till date.

The natural question of deprived soul is how long the facade of Muslim Personal Law will shroud such blatant injustice. How can this form of talaq remain in line with the Right to Equality? Are human relationships so fragile and cheap? This research paper thus attempts to question not only the validity of triple talaq as a mode of divorce but also to study the Judiciary's attitude with respect to this unilateral mode of divorce and throw light on the question whether this form of divorce is 'truly bad in theology but good in law'?

KEY WORDS

Triple talaq, talaq-ul-biddat, tuhr, sunni sect (hanafi school), shia sect, Halala , Fatwas , shariat laW

INTRODUCTION

A Muslim man can divorce his wife by pronouncing the word “talaq” clearly three times in a row for the talaq (divorce) to be finalized. In case the husband does not so, or utters the word in a muddled and unclear manner it is essential that he clearly mentions that he wishes to end the marriage. When done clearly it is called express talaq. After that, the husband and wife cannot get back together until the wife marries someone else. There are three types of talaq namely; unlike other religions where marriage has been traditionally viewed as a sacrament, under Muslim law, marriage is a civil and social contract. Talaq-ul-sunnat of the divorce sanctioned by prophet is sub divided into: (1) Talaq-e-Ahsan (2) Talaq Hasan (3) Talaq-e-Biddat. Triple Talaq, also known as talaq-e-biddat, instant divorce and talaq-e-mughallazah (irrevocable divorce) is a form of Islamic divorce which has been used by Muslims in India. It allows any Muslim man to legally divorce his wife by stating the word talaq (the Arabic word for “divorce”) three times in oral, written, or more recently electronic form. The use and status of triple talaq in India has been a subject of controversy and debate. Those questioning the practice have raised issue of justice, gender equality, human rights and secularism. The debate has involved the government of India. On 22 August 2017, the Indian Supreme Court deemed instant triple talaq (talaq-e-biddat) unconstitutional. Three judges of the five judge panel decided that the practice of instant triple was unconstitutional while two judges ruled that practice is constitutional, but simultaneously asking the government to ban the practice by enacting a law. Islam is a natural religion. Such a situation has not developed in Muslim communities because Islamic law on marriage and divorce provides for all, or almost all, eventualities. For example, when a woman wishes to divorce her husband, she has to put her case before a religious scholar, or a body of religious scholars, they then give consideration to her circumstances in the light of the Quran and the Hadith, and, if they find that there are reasonable grounds for separation, they decide in her favor. The reason that the woman must have scholars to act on her behalf is that women are more emotional than men as has been proved by scientific research and it is to prevent hasty and ill considered divorces taking place that she is thus advised. If we seldom hear of Muslim women committing suicide, or being murdered by their in laws, it is because they have the alternative separation, of course, is strongly advised against in the case of minor provocations. Are we not commanded by god to be tolerant and forgiving? It is meant only as a last resort, when it has become truly unavoidable. Islamic law is thus fair to both husband and wife, unlike occidental law, which places an undue burden on the man, while Hindu society forces the woman into familial rejection, destitution and social ostracism.

HISTORICAL BACKGROUND OF TRIPLE TALAQ

The history and origin of triple talaq and how this innovative mode of divorce came into existence and practice and whether this mode is in consonance with the Quranic injunctions. Legend has it that during the reign of the second 6 Caliph of Islam, Hazrat Umar, there was a sudden rise in the incidence of talaqs in Arab. During those days the Arabs conquered many Middle Eastern countries including Syria, Iraq, Egypt, etc. Many people were brought as prisoners to Mecca and Medina which included women prisoners as well. These women were very beautiful and attractive and the Arabs were charmed with their beauty and wanted to marry them immediately. However, these women put forth a condition before the men that in order to marry them, the men had to divorce their existing wives instantaneously by pronouncing the word talaq thrice in a single sitting. The men readily accepted the condition because they knew that under Islamic law a divorce can only take place when talaq is given thrice in three separate period of tuhr and mere instant repetition in one sitting is void and against Islamic law. In this way, these men could not only marry these women prisoners but also retain their existing wives. However, the matter was immediately reported to the Caliph Hazrat Umar who in order to prevent such misuse of the Shariat law decreed that even mere repetition of the word talaq thrice would irrevocably annul the marriage. This order of the Caliph was a mere administrative measure to curb the malpractice of instant divorce as carried out by the Arabs and not a law which was later made into one by the Hanafi jurists and was unfortunately given religious sanction and recognition of law.¹ After analyzing this article, the researcher is of the opinion that the origin of triple talaq has a fanatic twist to it. This innovative mode of divorce is nowhere mentioned in Quran which is the guiding force of the Shariat law. This mode of divorce has unfortunately been interpreted by some Hanafi jurists in an arbitrary manner and it has been given religious sanction without considering the ill consequences that is attached to it. The author has also mentioned that Quran insists on all possible attempts for reconciliation before a divorce actually takes place unlike the practice of triple talaq which does not provide any possible scope for reconciliation as it is an instantaneous mode of divorce.

MEANING AND DEFINITION OF TRIPLE TALAQ

Muslim man can divorce his wife by speaking the word 'talaq' clearly three times for the triple talaq (divorce) to be finalized. In case the husband utters the word in a muddled and unclear manner it is essential that he clearly mentions that he wishes to end the marriage. After pronouncing Talaq either once or twice or thrice, the man has to wait for 3 menstrual periods before finally letting his wife leave. This waiting period is called *iddah* and depends on the state of the woman (usually three menstrual cycles).

The couple can reunite in this *iddah* without having to have a new marriage contract or after this period has ended and the ex-couple want to reunite then there will be a new marriage contract and new mahr' (dowry

given by groom to the bride). If the husband don't wants his wife back then after this iddah, woman can marry another person.

The two different sects of the Muslim community i.e. Shias and Sunnis have different rules and procedure to engage in talaq. However, talaq has the following three steps which are common to both the sects. They are:-

1) **Initiation-**

The process of divorce is initiated with the husband pronouncing the word "talaq". A talaq may be affected either orally or by a written document known as talaqnama.

2) **Reconciliation-**

Under the Muslim law jurisprudence, divorce is affected when the husband pronounces the word talaq thrice. But the couple is supposed to make an attempt to reconcile during the waiting period in between first pronouncement and second pronouncement with the help of mediators and family members. If during this period the husband engages in sexual intercourse with the wife, the divorce is negated.

3) **Completion-**

The procedure of talaq is completed with the third pronouncement and the divorce becomes irrevocable. Thereafter, the wife becomes haram for the husband¹.

Triple talaq or Talaq-ul-biddat is an innovated mode of divorce not sanctioned by the Holy Quran which is considered as sinful nevertheless is legal and practiced by majority of Muslim population in India. The concept of triple talaq is nowhere mentioned or provided in Quran which is the ultimate basis of the Shariat law, due to which there is a lack of clear cut definitions. However, Aqil Ahmed has attempted to define triple talaq as – "a divorce which is pronounced thrice in one sitting when the wife is in the state of purity (tuhr), i.e., when man says: "I divorce you, I divorce you, I divorce you."² This mode of talaq is prevalent among Sunni Muslims only which comprises of 70% to 80% of the Muslim population in India. The Hanafi School of the Sunni sect indulge in such mode of divorce in spite of knowing it to be sinful. Once a divorce is effectuated, the wife becomes haram for the husband and he is prohibited to undergo a fresh nikah with her until and unless halala is performed. He can perform nikah with her only if she marries another person and the marriage is consummated and thereafter the person willingly divorces her. Triple talaq is the most common mode of divorce prevalent in India.

¹ Furqan ahmad, "triple talaq: An Analytical study with emphasis on socio- legal Aspects", visit [http:// books. Google. Co. in/ books](http://books.Google.Co.in/books)

² Ibrahim B. Syed, "Triple talaq", Islamic Research Foundation International, Inc., visit www.irfi.org/articles/articles_151_200/triple_talaq.htm

NATURE OF TRIPLE TALAQ

There is a great controversy regarding the effect of triple pronouncement of the divorce at one and the same time. The difference in the opinion of jurists is due to the difference in their interpretation and application of the law. One class of the jurists is of the opinion that no leniency is to be shown in the application of laws so that people should not take undue advantage on that account. Abu Hanifa and Malik, therefore, hold the three repetitions of divorce to be final. The other jurists explained that Allah wants to treat people leniently so that they may not be put to hardship, and also to minimize the chances of separation. Hence, they hold three repetitions to amount to one only. Ibn Rushd has explained that Islam believes in golden mean.

Triple talaq further has two forms: Three declarations at one time, and one irrevocable declaration. 1. Triple Declaration- It consists of three pronouncements in a single tuhr either in one sentence ("I divorce thee thrice") or in three separate sentences ("I divorce thee, I divorce thee, I divorce thee"). Talaq becomes irrevocable immediately it is pronounced, irrespective of the Iddat. As the talaq becomes irrevocable at once, it is called Talaq-i-bain i.e., irrevocable talaq. This form of divorce is condemned. It is considered heretical (irreligious) because of its irrevocability. It is "good in law though bad in theology". 2. Single Irrevocable Declaration- It consists of a single pronouncement made during a tuhr clearly indicating an intention irrevocably to dissolve the marriage e.g. "I divorce thee irrevocably" or "I had divorced thee in Talaq-ul-biddat or Talaq-i-bain". Here the use of expression "bain" (irrevocable) manifests of itself the intention to affect an irrevocable divorce.³

EFFECTS OF TRIPLE TALAQ ON SOCIETY AND MUSLIM WOMEN

In Islam marriage has been regarded as an important function which an ideal Muslim whether male or female should perform firstly in order to save the society from unchastity and to build up a healthy society. This practice of talaq has deleterious effect on women; breaking of a marriage contract has emotional and financial concerns. Often it is not interest of women, which are at stake, but those of their children as well the trauma of triple-talaq is rife in the reality of women. present social set up religion has been relegated to such an extent that religious values have become eclipsed. It has ceased to be a way life, a guiding source and an inspiration. The Centre has told the Supreme Court that the practices of 'triple talaq', 'nikah The scholars of Muslim law, who consider three divorces at a time as one, argue that in our

³ Dr. A.K. Jain, "Law Guide for LL.M Entrance", Ascent Publications, 5th Edition, page 67

halala' and polygamy impact the social status and dignity of Muslim women and deny them fundamental rights guaranteed by the Constitution. In a fresh written submission filed before the apex court, the government has reiterated its earlier stand and said these practices render Muslim women "unequal and vulnerable" as compared to men of their community as well as women belonging to other communities. "The practices which are under challenge, namely, triple talaq, nikah halala and polygamy are practices which impact the social status and dignity of Muslim women and render them unequal and vulnerable qua men belonging to their own community, women belonging to other communities and also Muslim women outside India," the Centre said. "There are unreasonable classifications which arise from practices such as those under challenge in the present petition, which deny to Muslim women the full enjoyment of fundamental rights guaranteed under the Constitution," it said. Polygamy among Muslims were important issues involving "sentiments" and a Constitution bench would hear the pleas challenging these from May 11. The Centre, in its written submission, has termed these practices as "patriarchal values and traditional notions about the role of women in society" and said that "the right of a woman to human dignity, social esteem and self-worth are vital facets of her Right to Life under Article 21". "Gender inequity has ripple effect on the rest of the community, preventing it from partaking in full, liberties guaranteed by a modern Constitution," it said. Seeking to declare these practices as unconstitutional, the government has said reforms in Muslim personal law have not taken place for over six decades in the past and Muslim women, who comprises eight per cent of the population, have remained "extremely vulnerable" due to fear of instant divorce.

CRITICAL ANALYSIS OF TRIPLE TALAQ

SOCIAL IMPLICATIONS OF TRIPLE TALAQ

Nothing has been more derogatory in discriminating weaker sex in any religion than pronouncing triple talaq which is practiced by Muslim men in a few countries including India. By uttering the word talaq thrice a Muslim man can unilaterally divorce his wife without giving any monetary compensation or taking any responsibility for even their children. Religiously, Muslims in India are governed by a pre-independence era Shariat law i.e. Muslim Personal Law Application (MPLA) Act, 1937 which remained silent on this unilateral mode of divorce. Over the years the instrument of triple talaq has given sweeping powers to Muslim men to divorce their wives even on flimsy grounds to enable them to satisfy vested desires. Since MPLA has not been codified, it is open to any kind of interpretation by local clergy depending on their whims, which makes the circumstance all the more

difficult to deal with.⁴ As a matter of fact, triple talaq has emanated as a socio religious bane to the Muslim womenfolk in India due to its inherent devastating effect which are as follows:-

(A) EXTENT OF VICTIMISATION

While triple talaq is used as a shotgun to ruin the married life of a woman, a Muslim man easily escapes from his responsibility of taking economic liability whatsoever, consequent to imposing such type of divorce in India. Even the wife cannot return to her husband soon after receiving the triple talaq message due to its irrevocable nature. Thus, Muslim women are highly vulnerable to this whimsical mode of unilateral divorce. The suffering becomes more aggravating and painful for the vast majority of illiterate/ less educated women who are dependent along with kids on their husband's earnings only. Clearly, they are directly victimized because, no provision was made by any Law, Act or, Court of India to protect these women from the blatant discrimination, economic deprivation and social stigma inflicted on them through triple talaq. It may not be out of place to mention here that India has the second largest Muslim population in the world. After having the hurricane experience of government interference at the initiative of Late Rajiv Gandhi, the then Prime Minister of India in the Shah Banu case⁵ and its political aftermath no political party has the guts to raise the issue in an appropriate forum for fear of political backlash and probability of losing potential Muslim vote banks.⁶

(B) DEED OF COMMUNITY LEADERS

The helpless status of Muslim women got prominently exposed in the amazing case of Nagma Biwi vs. State of Orissa. Begum Nagma⁷ was pronounced triple talaq by her husband in a drunken state. When he realized his grave mistake next day, he immediately called her back for reunification and she also desired to return to her husband. But this time their community leaders stood as a wall between their marriage bondage. They forcibly sent Nagma Bibi and her three children to her father's house with the suggestion to marry somebody else in expectation of getting a triple talaq from the second one. She could remarry her first husband if she could manage another triple talaq from her second husband. This system of targeted discrimination towards women is called by them as Halala in Islam.

(C) QURANIC STAND

The Holy Quran prescribed equal right for both men and women without any sort of unethical or intentional discrimination to either of them. Neither The Prophet nor The Holy Quran approves this

⁴ Zakia Soman and Noorjehan Niaz, "Why Triple talaq Needs to Be Abolished", 17/06/2016, visit <http://thewire.in/43481/why-triple-talaq-needs-to-be-abolished>

⁵ Mohd. Ahmed Khan v. Shah Bano Begum And Ors, 1985 SCR (3) 844

⁶ Anusha Rizvi, "The Indian Media's Focus on Shayara Bano Betrays an Ignorance of Important Precedents", 11/06/2016, visit <http://thewire.in/42276/the-indian-medias-focus-on-shayara-bano-betrays-an-ignorance-of-important-precedents/>

⁷ (2014) 5 SCC 567

unilateral, disgraceful and irreversible form of triple talaq which is synonymously known as Talaq-ul-biddat. Before thinking of divorce the couple should explore all remedial procedures like involving parental sides from both partners for an honourable compromise, involving Qazi for dispute resolutions, initial separation for three to six months and then taking the opinion of husband and wife etc. After exhausting all routes if the separation appears unavoidable for the interest of both partners, divorce may be enforced as a last sort after having the concurrence of separating partners just like the concurrence for marriage during Nikah. Therefore, triple talaq or talaq-ul-biddat in its present version of women oriented discriminatory and unilateral form is in contravention of the spirit of The Holy Quran and hence, un-Islamic

(D) SCOPE FOR REMEDY IN THE PERSONAL LAW

Although not in conformity with the spirit of The Holy Quran, a Muslim man can enjoy the unlimited power of going for marriage after marriage just by breaking old marriages one by one through the privilege of triple talaq without taking the consent of his wife, if he intends to do so. On the contrary, a Muslim woman cannot have the similar liberty like her husband as she cannot break the clutch of marriage without the consent of her husband. Therefore, she is considered like a commodity of her husband in the Islamic society of India. On the other hand, it is not only a woman, sometimes a Muslim man also suffers when triple talaq uttered by him in an inebriated condition or, heat of the moment during a family squabble and he temporarily loses his self-control, may force him to loose wife as talaq-ulbiddat is irreversible that snatches the scope of marital reunion even after the things cool down. Thus it snatches the liberty from both of them, which goes against their actual honest and cohesive intentions. So a liberal, honest and impartial interpretation of this critical aspect is required to cure the malady in Personal Law.⁸

(E) NEED OF UNIFORM CIVIL CODE

Such injustice provokes the need of Article 44 of the Indian Constitution which proclaims for Uniform Civil Code.⁹ In the multi-religious Indian society where the rights of people from almost all religions are protected including that of religious minorities however small they may be e.g. Parsis comprising a population of merely sixty thousand then, a massive Muslim population spreading across every nooks and corner in India cannot be left in lurch for the betterment of society. Even though categorized as the religious minority, Muslim population counts second i.e. next to Hindu majority here and therefore, may not be left in seclusion for being governed by Moulavis.

⁸ Danial Latifi v. Union of India, AIR (2001)7 SCC 740

⁹ Article 44 of The Constitution of India, 1950 reads as “Uniform civil code for the citizens: The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”.

(F) INCONSISTENCY OF MUSLIM PERSONAL LAW

Muslim Personal Law Application Act, 1937 was passed in British era while Indian Constitution was framed in Independent India. With its inherent unilateral nature talaq-ulbiddat mars the essence of Article 21 that ensures, irrespective of sex, religion, caste, creed, the right to life and personal liberty which are considered essential for healthy development of a unit of Indian society. The obsolete law falls outside the ambit of the Article 13¹⁰ of Indian Constitution due to its inherent incompatibility and resultant inconsistency. Therefore, the point of imposing any part of Muslim Personal Law Application Act, 1937 on any section of Indian society logically proves to be untenable and hence may be considered as null and void.

(2) CONTROVERSIAL ISSUES ON TRIPLE TALAQ

With the advent of modern technologies, it has been observed that negative tendencies crop up in many spheres of Indian society, which are becoming more difficult for the government to tackle with. One such tendency by a section of men is to utilize the technology in giving triple talaq to their wives. Now, a man can divorce his wife electronically viz. by sending triple talaq through email, Skype, Whatsapp, Facebook, SMS or, even saying triple talaq telephonically without the presence of a witness, no matter if she is in a position to receive the message for network problems or, whether she is in the coverage area at that moment or not.¹¹ This system was solemnized ago in the year 2010 by the Darul Uloom Deoband (DUD) a Sunni Islamic Seminary amongst strong protests from women's groups. DUD even ruled that triple talaq uttered in intoxicated or, heated moment during arguments will remain effective and irreversible, thereby conferring Muslim husbands the easiest mode of ending marriage bonds. Once divorced the hapless woman has very little option to get justice, other than accepting it to be a fate in her life. Very interestingly Muslim Personal Law Board (MPLB) does not accept the validity of digital mode of divorce, which has, however, no standing in the court. Nevertheless, Muslim women groups differ with the stand of MPLB because affected women claim that MPLB's stand is not true in their practice. Many other nations have outlawed this un-Islamic system of triple talaq for divorce.¹²

¹⁰ Article 13 of The Constitution of India, 1950 reads as "Laws inconsistent with or in derogation of the fundamental rights : All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void".

¹¹ Gagandeep Kaur, "Talaq by WhatsApp: why Muslim divorce laws in India need an overhaul", November 2014, visit www.contributoria.com/issue/2014-11/54117a4bce8de2c86a00016f/

¹² Hena Farhat, "Muslim women group demands ban on Triple talaq in one sitting", October 22, 2013, ummid.com, visit <http://www.ummid.com/news/2013/October/22.10.2013/triple-talaq-should-be-banned.html>

(3) JUDICIAL APPROACH TOWARDS TRIPLE TALAQ UNDER MUSLIM LAW

In the case of *A.S. Praveen Akhtar v. the Union of India*,¹³ the Hon'ble Madras High Court proclaimed that notwithstanding the absence of a cause or, efforts to reconcile the couple, triple talaq was valid and not going against the constitution of India and dismissed the writ petition. The ramifications of the above decision were as follows:-

(A) BIG BLOW ON FUNDAMENTAL RIGHTS

The judgment of Madras High court not only fuelled atrocities on Muslim women but also gave momentum to the arbitrary triple talaq school of thoughts maintained by local clergy in India. The court ruling knocked a big punch on the core issues of fundamental human rights which form the basic structure of the Indian Constitution. It also emboldened Muslim fundamentalists to capitalize on the issue and encourage prospective Muslim husbands particularly those without moral values to commit such heinous acts to trample women desires as per their own customs. Whereas in other Islamic nations similar rogue elements are kept restrained by amended laws of the respective land framed in line with Quranic teachings. In the case of *Praveen Akhtar*, her liberty of staying within the marriage bondage was snatched away and bestowed to the wish of divorcing the errant husband, which is a burning case of robbing the women liberty that was validated by the judiciary of a country. Nothing more shameful consequence can happen from such a great land out of the un-Islamic practice. Triple talaq in its present form is based on the theme of inequality which is in violation of the Article 14 enshrining the spirit of equality¹⁴, while talaq-ul-biddat distorts fundamental rights against any kind of discrimination as enshrined in the Article 15 of the Indian Constitution.¹⁵ Finally, by deviating from the normal format of divorce talaq-ul-biddat spoils the essence of the Article 21 which proclaims the right to life and personal liberty¹⁶.

(B) DISCRIMINATIONS IN TRIPLE TALAQ AGAINST CONSTITUTIONAL SPIRIT

The most horrendous aspect of triple talaq is its *prima facie* inequality which is heavily tilted in favor of men. While a Muslim man can unilaterally inflict divorce his wife and children without approaching anybody, she cannot invoke the same to her husband for triple talaq does not bestow the right to women. More strangely, the wife has to approach a Qazi and prove the atrocities committed

¹³ MANU/TN/2472/2002

¹⁴ Article 14 of The Constitution of India, 1950 reads as "Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth"

¹⁵ Article 15 of The Constitution of India, 1950 reads as "Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth".

¹⁶ Article 21 of The Constitution of India, 1950 reads as "Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law".

by her husband to seek a legitimate divorce, but the husband is free to inflict triple talaq as and when he wishes to do so without proving any reason or, taking the help of a Qazi or anybody else.¹⁷

(C) INDIFFERENT STAND OF JUDICIARY

The pathetic irony is that Indian courts not only deny interfering in affairs falling in the domain of Muslim Personal Law but also shun their responsibility to rectify any constitutional problem arising in the verdict of Muslim Personal Law. Courts were instituted to enforce constitutional values of India. Their avoidance to do so is regarded as an abdication of function and moral duties. The unfortunate part of this issue is that even after recognizing the agony and social perils of victims ahead, the Supreme court of India passively allows continuation of such discriminations citing ground that it is the issue of a particular religion and not of all minorities, which may be true, but appears to be in violation of the Article 15 of Indian Constitution. Chronology of events in similar cases suggests that the apex court is rather reluctant on the issue now and expects the Union Government to take initiatives first either by Ordinance or, constitutional amendments/ promulgation to pave the way for courts to deal the matter further.

(D) NEED FOR BOLD STEPS

It is a well-known fact that such form of cultural and emotional abuse to discriminate Muslim women is not the contributions of The Quran but, a product of ancient and contemporary practices which separates Muslim women from claiming their self-right and protection from deprivations as enjoyed by their counterparts of other religions in India as per laid out norms in various Articles of Indian constitution.. So there is an urgent need for delivery of equal justice in the conformation of the Articles as described in the foregoing paragraphs. Simultaneously, different women activists/ Muslim women organizations should be united and come up to launch concerted protests to press concerned authorities including the government to make bold steps in this matter to redress the issue.¹⁸

(4) CONSTITUTIONAL VALIDITY OF TRIPLE TALAQ

As far as judiciary is concerned, it has shown its disfavour towards the unilateral mode of talaq but found itself helpless to pronounce verdict as it did not want to interfere with the Quranic injunctions and Muslim Personal Laws. The Privy Council in *Agah Mohommad Vs. Koolsoom Bi*¹⁹, has held that - "It would be wrong for Courts on a point of this kind to put their own construction on the Quran in opposition to express ruling of commentators of such great antiquity and high authority." In

¹⁷ *Zohara Khatoon v. Mohd. Ibrahim*, (1981) 2 Cri. L.J. 754 S.C. 509

¹⁸ 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

¹⁹ (1897)24 I A.196.

Rahmatullah v State of U.P. and others²⁰, Justice H.N. Tilhari of Allahabad High Court (Lucknow Bench) however, declared Triple talaq invalid and observed:

““Talaq-ul-biddat or Talaq-i-bidai, that is , giving the irrevocable divorce at once or at one sitting or by pronouncing it in a tuhr once in an irrevocable manner without allowing the period of waiting for reconciliation or without allowing the will of Allah to bring about reunion, by removing differences or cause, of differences and helping the two in solving the differences, runs counter to the mandate of holy Quran and has been regarded as, while all under Islam-Sunnat, to be sinful.””

The Learned Judge further observed that this innovated mode of talaq which gives unrestrained power to the husband shall not be deemed operative on the ground that it perpetuates the patriarchal tyranny and is discriminating the rights of a woman merely on the ground of sex which further promotes gender injustice.

(5) RECOMMENDATION COMMITTEE ON TRIPLE TALAQ

The Government of Maharashtra constituted a committee in 2008 led by Dr. Mehamoodur Rehman to enquire into various aspects of minority society like educational, economic and social backwardness of the Muslims in the state of Maharashtra in order to streamline delivery of the government resources for the betterment of the targeted groups. The committee after inquiry and studies submitted its detail reports elaborating existing status of the Muslim people, shortfalls from government side with recommendations for appropriate remedial measures. One of the recommendations was to prevent arbitrary triple talaq and a compulsory inclusion of alimony for the divorced Muslim women.²¹

(6) STATUS OF TRIPLE TALAQ IN INDIA AND OTHER COUNTRIES

INDIA

India is a secular state, where each and everyone have a right to worship or follow their own religion. According to the 2017 list there is 14.20% muslim population. It is ubiquitous among India's muslim community majority of whom follow the Hanafi Islamic school of law. The muslim lived in India also practice the triple talaq. It allows any muslim man to lawfully divorce his female partner by uttering the word talaq three times in oral, written or currently in electronic form. In this a man did not need to cite any reason for the separation and the wife need not have been present at the time of promulgation. On 22 August 2017, the Indian Supreme court held instant divorce or triple talaq unconstitutional. The triple talaq was not abolished in India before March 2017, on this date over one million of Indian muslim population took step against triple talaq majority of whom were women, they signed a petition to end the triple talaq, which was started by Muslim Rashtriya Manch, this Muslim Rashtriya Manch

²⁰ 1994(12) Lucknow Civil Decision, p.463

²¹ 8 Hena Farhat, “Muslim women group demands ban on Triple talaq in one sitting”, October 22, 2013, ummid.com, visit <http://www.ummid.com/news/2013/October/22.10.2013/triple-talaq-should-be-banned.html>

is an Islamic organization federate to the rights wing hindu nationalist association Rashtriya Swayamsevak Sangh. At last a bench of judges was set up and they the controversial related to triple talaq in 2017. So, after all the hearing, the court said that until the government composes a law regarding triple talaq, there would be an injunction against husbands pronouncing triple talaq on their wives. Triple talaq may be admissible custom but it deteriorating and unworthy, since, triple talaq I instant it is changeless and then marital tie gets broken, it violates the right to equality. The judgment of court only banned triple talaq not the other forms of muslim divorce.

SRI LANKA

In Sri Lanka there is a freedom of religion as there are 9.7% of population belongs to Muslim community. So, According to Sri Lanka's Muslim Marriage and divorce Act, 1951, amended up to 2006, as the "most ideal codification on triple talaq". According to this act a husband aspire to divorce his wife has to give a notice to the Qadi (Muslim judge) who, with the help of the relative of spouse or the closed one they attempt for the reconciliation between the spouses. The Qadi shall not record any reason for the proclamation of talaq.

ALGERIA

Algeria is a hierocracy state, which declares Islam to be its provincial religion. Sunni Islam is the preponderant religious belief system in Algeria, while Ibadi Muslims are Christians comprise significant religious minority groups. Algeria is dominated by muslims at about 94% of the population. Therefore, Islam the religion of almost all of the people lived in Algeria. In Algeria the divorce allows only through court of law where effort are first made for cooperation. Decision for divorce confirmation is granted only after the pre investigation and in a appropriate procedure. In code of family law 1984, law no. 84-11 of 1984 amended in 2005, Under Article 49- " Divorce cannot be established except by a judgment of the court preceded by an attempt for a period not exceeding three months". Before the abolishment of triple talaq, Divorce was much easier for men then for women. According to Algerian law article 142 and article 144 of the family code, women cannot claim the same part of an inheritance as men, since they have the right to only of what men are entitled to. But in Algeria the triple talaq or instant divorce by uttering talaq thrice is not authorized.

IRAQ

Iraq a theocratic state, which constitute Islam to be its official religion, the majority population of Iraq is shia muslim. The shia muslim population in Iraq is around 60 to 65% while there are 15 to 20 % are Arab sunni and 17% are sunni Kurdish. According to Iraq law Under Article Article 37 - 1) the husband performs the divorce by pronouncing three repudiations. 2) Three verbal or gestural repudiation pronounced at once will count on only one divorce. And in its 1987 amendment of the code of Personal Status, 1959 provides that a talaq, couple with a number, express or implied will not

be regarded as more than on divorce, the law also authorized that a person purport to divorce his wife must bring a suit in the court of personal status requesting that it be effected. The certificate of marriage shall remain valid till it is cancelled by the court Under Article 39(2). If a person doesn't approach court, the marriage will remain valid until cancelled by a court. If the registration of the divorce in court, during the iddat period is not filed or bring in the court, Under Article 39(1) - when a person intends to divorce his wife, he shall institute a suit in the court of personal status requesting that it be effected and that an order be issued therefore, if a person a cannot so approach the court, registration of the divorce in the court during the period of iddat shall be binding on him.

CASE LAWS

In 2005 the Supreme Court in *Rameshchandra Daga v. Rameshwari Daga*²² while dealing with the problem with maintenance of Hindu women brought to forth the development in Muslim law which ameliorated the position of women. However such developments have been ignored in the recent debates around triple talaq creating an imagery of a victimized Muslim subject who is need of protectionist reforms. The problems which are common between the women of both the communities have been ignored. It seems as though domestic violence and desertion are unique problems faced by Muslim women. The violence Muslim women endured itself is not important; it is her Muslim-ness and the projection that she is the victim of archaic and oppressive personal laws which alone can give her that special status and set her apart from all other victims of domestic violence.²³ In this paper the author shall deal with the question of triple talaq in the light of the recent petition filed in the Supreme Court for declaring such talaq invalid. The author shall argue that there is an already existing legal precedent established by the apex court with respect to triple talaq which should be followed instead of resorting to a confrontational approach which may become hegemonic to the Muslim women herself. The author shall advocate that taking cue from third wave feminism the identity of Muslim women must be understood at the intersection of gender and religion. The first part of the paper shall analyse the *Shayara Banov. Union of India*²⁴ petition and the argument put forward by the same. The second part of the paper shall deal with the alternative legal remedies available to the Muslim women in the current legal set-up. The third part of the paper shall deal with a case study of *Mohd. Ahmad Khan v. Shah Bano Begum*²⁵ whereby the court pitched women rights against the Muslim identity which proved to be detrimental to the victimized women as inter-sectionality was not taken seriously.

²² (2005)2SCC33

²³ Flavia agnes, "Muslim Women's Rights and Media Coverage" 15 EPW 22 (2016)

²⁴ WRIT PETITION (CIVIL) of 2016.

²⁵ AIR 1985 SC 945.

CONCLUSION

Nikah is described in the Holy Quran as a procedure through which not only a sacred family bond between a man and a woman is established but also makes the marriage bond very strong to last for the remaining part of their lives. The strong bond cannot be repudiated whimsically without proper reasons and appropriate method. Before enforcing divorce the couple is required to stay separately to feel the pain of eloquence (Zudai) after separation under the monitoring of a Qazi. After temporary separation efforts are to be made for reconciliation between the husband and wife. Divorce is the last most undesirable step in the Quran when all other efforts for unification go in vein after long pursuance. Nevertheless, the custom of unilateral triple talaq by a husband to divorce his wife, though not sanctioned in the Quran, has been in vogue since the enactment of Muslim Personal Law Act in India ever since the British era. Even after independence, the custom of triple talaq has been very common and prevalent, especially among Muslim men of the Sunni sect. Some believe it to be a pre-Islamic custom. Whatever the fact may be, Muslim men taking the advantage of unlimited freedom of power in terminating marriage through triple talaq bestowed to them by Muslim Personal Law bypassing any court, want to stick to the unIslamic discriminatory custom much to the frustrations and distress of their wives. Although some efforts were made in past to eradicate triple talaq in India, weak government policy, inadequate legislative frameworks and massive politico-religious protests involving illiterate Muslims for vested interests by some Muslim quarters in the secular structure of this large democracy, did not encourage the successive governments to take further steps in this matter. As the essence of the Holy Quran and teachings of the Prophet are the only source which constitutes the very basis of Islam, Quranic spirit for equality must be inculcated in making the frameworks of legislation for enforcing divorce within the Muslim community. No other custom or practice can form the part of Muslim rituals including the matter of imposing divorce to the weaker sex. So, divorce can be registered only when both husband and wife find it difficult to remain in the bond of marriage and want mutual separation with honour from the core of their hearts, and the un-Islamic custom of triple talaq be treated as null & void.