



## SOCIO-LEGAL CHALLENGES UNDER MUSLIM DIVORCE

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### **Abstract :**

This paper was focused on Triple Talaq. It deals with Islamic rules. This paper was focused on the meaning of Muslim marriage and also focused on divorce on Muslim law. It deals with types of Muslim divorce and whether Triple Talaq is valid or not. It also deals with that whether there is equality among people and Muslim personal law also this paper also deals with the position of women after marriage. It also deals the cases related to Triple Talaq and Muslim community. This paper cover all the topics related to Triple Talaq.

### **Meaning of Muslim Marriage:**

Muslim marriage is an Arabic word called as Nikah. It is not a sacrament is a contract between two people. There is an agreement between two person at the time of marriage. There were some considerations known as Mehr. It is done between man and woman under the consideration. It is paid by the family of man to the family of woman at the time of marriage. In Muslim marriage there must be an agreement between both man and woman that after marriage they take the rights and responsibility towards each others. There must be two witnesses of the marriage contract.

### **Meaning of Divorce:**

Prophet was the head of Muslim community. He treats as a evil and suggest everyone to avoid it as far as

possible. The literal meaning of talaq is simple divorce. Both man and woman have a right to take divorce to each other at any time as they think may fit. After taking divorce both live separately but in Islam only a man has a right to take divorce from his wife. There are two form of divorce in Muslim law.

1. Talaq-i-Sunnat.
2. Talaq-i-Biddat.

### **Talaq-i-sunnat:**

Talaq-i-sunnat is also known as revocable talq. According to this talaq the decision is taken by prophet and it should be the final decision. People should follow the decision of prophet. This talaq is a form of evil. Talaq-i-Sunnat is also known as Talaq-ul-Raje. Only this type of talaq should be practiced during the life of prophet. It is recognised by both Sunni and Shia's law. .talaq-i-sunnat is pronounced by either by Ahsan(most proper) or Hasan(proper).

In Talaq Ashan(most proper):- In this form of talaq the husband should pronounce talaq as a single form in the period of tuhur. Tuhur is a period in which cohabitation is possible. and after the single pronouncement the wife is observed as three an Iddat of three montly course. During this period there is no revocation of talaq by husband.

In Talaq Hasan(proper):- this is also regarded to be proper and approved form of talaq. In this form of talaq there is a provision of revocation of talaq. In this the husband has to make single declaration of talaq in the period of tuhur. After this there is a possibility of second time for talaq.the important feature in this



form of talaq is that there is a possibility of revocation of talaq before pronouncing third talaq and irrevocability after third talaq.

**Talaq-i-Biddat:**

Talaq-i-Biddat is also known as irrevocable talaq. It is also known as triple talaq. In this form of talaq husband and wife should separate each other after divorce. In this husband say divorce by pronouncing three times in one sentence. In this form of talaq there should be no possibility of compromise and reconciliation between husband and wife. When husband take divorce from his wife by saying i divorce thrice it should be final decision from both the side and both live separately. Their rights and responsibility towards each other will stop at that time. It is disapproved mode of divorce. it is also known as Talaq-ul-Bain. This mode of talaq practise in Sunni Law. It does not recognized Shia Law. Husband can't gave Talaq to his wife during the period of Iddat i.e. 4 months and 10 days.

**Concept of Triple Talaq:**

Triple Talaq is nether recongnised by the Holy Book of Quran and Holy Prophet. It was not practise in the first caliph while it was not practise in second caliph also. It was practise during the time of emergency situation and it was not a permanent law. Triple Talaq is also known as Talaq-i-Biddat in which man has a right to take divorce from his wife at any time and it should become void. It is also known as irrevocable talaq.

According to Hanafi's when wife take divorce from her husband then they will

separate with each other and wife cannot marry remarry with him. She become totally prohibited by her husband. She cannot go back through her husband neither she can remarry with her husband again. After taking divorce from her husband she is free to remarry with another man only on that situation when other have divorcy only she can remarry with another man and she have and rights and responsibility towards them. And that man should give divorce to his wife when she is widow.

**Concerning regarding Triple Talaq:**

In Muslim Law man treated his wife like a chatte. They think that they can take divorce from his wife at any time by saying talaq three time but while we are thinking those woman who are being deserted but their husband just by the way of instant divorce without any justification and reasonable cause. If one's talaq is pronounced by husband to his wife then they get separate from each other. They don't have any rights and responsibility towards each other. Talaq can be given in any form like through Telegram, Telephone, Letters or it can be through SMS.

In case of Rashid Ahmed V.Anisha Kathoon:-

There was a man who pronounced Triple Talaq in the presence of witnesses but in the absence of his wife. But Four days later it is noted that TalaqNama was executed in which it is stated that Triple Talaq is allowed for both man and woman both can get divorce from each other. In spite of this Recently we have seen that there has be big issue Bharatiya Muslim Mahila Andolan launched to ban triple



talaq where they said that after divorce they want to go back first husband and then they consummate the second marriage.

**Reasons of Triple Talaq:**

According to Muslim law there are various reason which whom husband took divorce from his wife:-

1. After marriage there must be pressure on parents or the parents should instigate him to take divorce from his wife.
1. Relative instigates him to take divorce from his wife.
2. Wife failure to fulfil the dowry demands.
3. Husband have affair with other women.
4. If both don't have any child and they want to take divorce then they take divorce from each other.

Above all are the reasons if the husband wants to take divorce from his wife they can take divorce from each other.

**Banned on Triple Talaq in various countries:**

The All India Muslim Personal Law Board has been opposed to abolish Triple Talaq in various Countries in which a man to take divorce from his wife by pronouncing Talaq three times in one sitting. Triple Talaq should be abolish in various countries including Pakistan, Shrilanka, Bangladesh ,Egypt, Iran and Arab Countries.

- Egypt was the first country in which triple talaq should be declared as invalid and it provide 90 days procedure to take Muslim divorce.

- Pakistan was also a country in which Triple Talaq was banned on 1951 and they also have a validity of Triple Talaq after the period of 90 days.
- In 1959, Iraq and Iran Was a country in which Triple Talaq should be banned.
- In 2006 SriLanka amended Muslim and divorce act in 1951, in which there is no grant validity of the concept of Triple Talaq. When a man wants to take divorce from his wife then they send the notice to his to the Qasi. and Qasi gave time to both husband and wife to resolve their matter within 30 days otherwise they both want divorce from each other.

Above is the list of the countries where triple talaq should be banned.

**Constitutionality of Triple Talaq:**

According to Art.15 (1) of Indian Constitution of India state that there shall be no discrimination against any citizen, religion, race, caste, place of birth or any of them.

But in Triple Talaq men and women has a right to take divorce from each other and Muslim women has suffer of Triple Talaq on account of gender and equality. Muslim men have a right to take divorce from his wife on his own will.

According to Article21 of Indian constitution states that protection of right and personal liberty to every citizen of India. No one has a right to infringed others basic right and right to life and personal liberty in fundamental right which is conferred by law.



The practice of Triple Talaq in this article violates the Muslim women his right, life and personal liberty. It violates women right that known why she has been giving divorce and not to be deprived to be her right on children and her matrimonial house. She become helpless after divorce. The most important content which make a Triple Talaq violation of Article 21 is this concept of arbitrary of women and is totally unfair and unconstitutional.

Article 25 state that every citizen and women have free form their religion and no one can forced to adopt any particular religion. Women have freedom to choose their own religion. It also provided that state shall have not to interfere any religion practise of the citizen.

Constitution of law and other law has rightly said and it is mentioned in Holy Quran that Triple Talaq should be practiced to dissolve Muslim marriage the Quran says that husband can divorce from his wife on that situation when both have valid reason for taking divorce. If there are no valid reason they cannot take divorce. There will be no doubt that Triple Talaq should be violated on women's rights and equality and it should be violated on women's freedom also. Like freedom of marriage is violated by Supreme Court.

TRIPLE Talaq is known as disapproved form of divorce as it is violated on fundamental rights and it is considered as unconstitution and invalid. It is repugnant to our natural justice also. Triple Talaq which promotes gender in equality is also liable as unconstitutional and invalid.

Triple Talaq is also considered as unessential part of Islamic law.

So, it can be said from above instant that Triple Talaq is violation of constitution. Therefore, it violates the basic structure of constitution which provides justice Equal to both man and women because it violates our fundamental rights in constitution and it is unconstitutionality.

**Case law:**

Shayara Bano V. Union of India:

**Facts of the Case:**

There was a man whose name was Rizwan Ahmed he pronounced talaq three times to his wife shayara bano in presence of two witnesses and gave talaq Nama on 10-10-15. then shayara bano filed for a writ to be issue in supreme court declaring that triple talaq is violated on her fundamental rights.

It was held by Supreme Court that Triple Talaq in Muslim community was declared as unconstitutional and it is void. It infringed art. 14, 21 & 25 of Indian constitution. It infringed the Muslim women his basic rights and personal liberty of Muslim women. According to article 14 of Indian constitution all citizens have equal rights and live together equally.

Mohd. Ahmed Khan V. Shah Bano:

In this case there was a women who claimed the Maintenance under section 125 of Crpc. After taking divorce from his husband. According to Muslim personal law The Muslim women petition a file on Maintenance after getting



divorce she claim maintenance during the period of iddat.

It was held that Supreme Court was in the favour of shah Bano and gave judgement that claiming under Muslim personal law should gave maintenance to shah Bano and Shah Bano also received various interest. According to legislation there must be fair and just on Muslim the husband gave liability to women during Iddah period.

**Conclusion:**

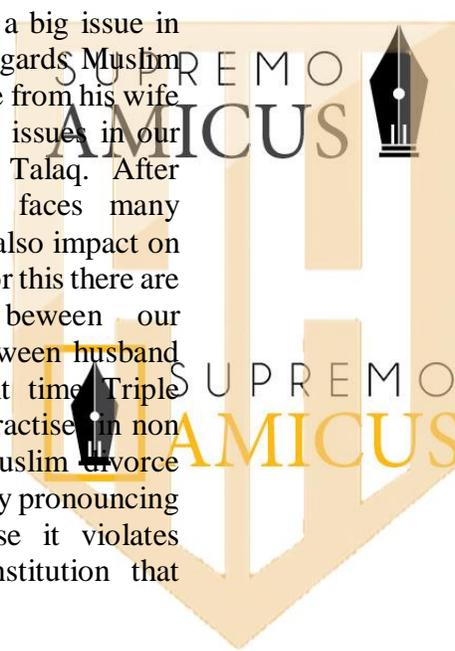
Divorce is Islamic Law is a big issue in our society and on that regards Muslim man can easily take divorce from his wife and for this there is a big issues in our society regarding Triple Talaq. After divorce Muslim women faces many struggles in her life and it also impact on her gender equality also. For this there are many disputes arises between our community as well as between husband and wife also. At present time Triple Talaq has widely spread practise in non Islamic countries also. Muslim divorce can be taken only by men by pronouncing Talaq three times because it violates article 14 of Indian constitution that everyone treat equally.

**Suggestion:**

Triple Talaq cannot give to the women if there must be divorce between husband and wife then the husband could not remaary with them they both separate from each other husband can gave maintenance to the wife after getting divorce. Once talaq should be prounced then women facing many problem. There must be valid reason for giving divorce to his wife. Talaq should be giving presence

of Qasi. And it violates our fundamental rights also and there is a big issue towards muslim community and towards society also. For this many disputes arises and women wants to face on that.

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