



TRIPLE TALAQ: A CRITICAL ANALYSIS

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SYNOPSIS

‘What is bad in theology was once good in law’ but after Shariat has been declared as personal law, whether what is Quranically wrong can be legally right is the issue which will be discussed in this paper .It will also reflect the gender biasness towards the Muslim women in our society. Today, the issues of women rights in Muslim Personal Law is highly debatable. Specially, Muslim women rights relating to Triple Talaq, 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 have never come into light in spite of guarantee of the Constitution still Muslim women are subjected to discrimination. There is no safeguard on arbitrary divorce and second marriage by her husband during currency of the first marriage resulting in denial of dignity and security to her. As we know a large part of Muslim Personal Law is still uncodified and most of the legal decision pronounced by the courts are based on the norms mentioned in Quran and Hadith. The central debate on interpretation of Muslim personal laws has both positive as well as negative aspects. Some people has supported that, Muslim personal laws has given various rights to Muslim women such as choice in marriage, inheritance etc. In Hinduism and Christianity marriage has been traditionally

viewed as a sacrament, under Muslim law, marriage is a civil contract based on consent as spelt out in the utterance of Qabul. Whereas, some are of the opinion that, there are various practices which is against the spirit of Indian Constitution like Polygamy, Halala, Maintenance, Triple Talaq.

In this line this research paper attempts to analyse the on-going debate on the implications of Muslim Personal Law in India and suggests various solution to empower Muslim women.

INTRODUCTION

The matter of triple Talaq found its way to the Constitution bench because of certain newspaper articles which a division bench of the court in *Prakash v.Phulavati* (2016)2 SCC 36 adverted stating an important issue though not related to this case but has been raised by some learned counsel about rights of Muslim women. Discussion of gender discrimination led to this issue also.¹ It is said Shariat was enacted to put an end to the unholy, oppressive and discriminatory customs and usage in the Muslim community. Section 2 is most relevant in the face of the present controversy. Shariat have been declared to be Muslim personal law by 1937 Act.²

¹Laws on equal rights of daughters over property is prospective:live law

² Application of Personal law to Muslims.— Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and



Then what is Shariat?

It has been explained by a renowned author Asaf A.A.Fyzee in the book *Outlines of Muhammadan law* 5th edition 2008 'We have Quran which is the very word of god. Supplementary to it we have Hadith which is the traditions of Prophet the records of his action and his sayings from which we must derive help and inspiration in arriving legal decisions. If there is nothing either in Quran or Hadith answer the particular question which is before us we have to follow the dictates of secular reason in accordance with certain definite principles. These principles constitute the basic of sacred law or Shariat as the 'Muslim doctors understand it'. There are four sources of law of Islamic law:-

1. Quran
2. Hadith
3. Ijma
4. Qiyas

Quran is first source of law. This means other sources other than Quran are only supplement to be supplied with what is not given in the Quran. Islam cannot be Anti-Quran. Talaq is mentioned in three Suras(chapters):-

1. In Sura 2 it deals with social life of the community.
 2. In Sura 4 it deals with decencies of family life and,
 3. In Sura 15 it deals explicitly with Talaq.
- They are clear as far as Talaq is concerned. The Holy Quran has attributed sanctity and permanence to matrimony. However in

wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).

extremely unavoidable situations Talaq is permissible but with an attempt for reconciliation and if it succeeds the revocation are the Quranic essential steps before Talaq attains finality. In Triple Talaq doors are closed hence triple Talaq is against basic tenets of the Holy Quran and consequently it violates Shariat. Triple Talaq which is known as Talaq-e-Biddat is an instant and irrevocable form of divorce. It allows man to legally divorce his wife by stating the word 'Talaq' three times in oral, written or more recently electronic form. Concept of triple Talaq should be understood as it is imperative to understand. Under Islamic law divorce is divided into three categories:-

1. Talaq- Simple means of divorce instantly.
2. Khula- This divorce is at the instance of wife.
3. Mubaroat- This kind of divorce is done with the mutual consent of the parties.

Now as we mentioned Talaq above it is further divided into three kinds:-

TALAQ-E-AHSAN

This kind of divorce is proved by Quran and Hadith and is the most reasonable form of divorce. It is done by simple pronouncement of Talaq with abstinence. Period of abstinence is regarded as period of Iddat(period of waiting) it has duration of 90 days to 3 menstrual cycle. In case the wife is not menstruating then 3 lunar months. If there is intimacy within the period of Iddat then it is said to be revoked and if no intimacy is involved for 3 months then it becomes final and irrevocable. To resume they have to conduct a new Nikah and Mahr (money paid by the groom or his father to legalise the wife's property)but before



remarriage the wife needs to marry another man and dissolve the marriage to get remarried to the previous husband. Muslims only agree that Talaq-e-Ahsan is only the proper form of divorce.

TALAQ-E-HASAN

It is same as the Talaq-e-Ahsan but in three successive pronouncement. If after the pronouncement there is cohabitation then within one month it is said to be revoked. Second Talaq needs to be pronounced after a month assuming there is no resumption and it is the last chance to revoke the Talaq. After third pronouncement it becomes irrevocable. After the Talaq there is a period of Iddat where the women cannot remarry and the rest process follows as in Talaq-e-Ahsan.

TALAQ-E-BIDDAT (TRIPLE TALAQ)

It is effected by one definitive pronouncement of Talaq or three pronouncement of Talaq utter at the same time simultaneously. Talaq-e-Biddat is irrevocable from the time of announcement. It is not included in Quran it is secured by the second century after the advent of Islam. It was recognized by few Sunni schools popular amongst Hanafi section Sunni Muslims even they say it as 'sinful form of divorce'.

Background with reference to Quran

Muslims believe that Quran was revealed by god to the Prophet Mohammad over a period of 23 years beginning from 22.12.609 when Muhammad was 40 years old up to his death on the year 632. After his death Quran was completed by his companions who have either written it down or memorized it. Quran is divided into 'Suras'(chapters) each Sura

contains 'verses' which are arranged into sections. Reference maybe first be made to Verse 222 and 223 contained in sec28 of Sura 2.

- Verse 222 has been interpreted to mean that matters of physical cleanliness and purity should be not only from man's point of view but also women's point of view. If there is danger of hurt to the women she should have every consideration. The Quran records the action of men towards women are often worst. It mandates that the same should be better with reference to the women's health both mental and spiritual.
- Verse 223 says husband should be considerate to his wife and treat her the way that will not injure or exhaust her.

Verses 222-223 exhorts husband to extend every kind of mutual consideration which is required toward his wife.

- Verse 224 has a reference to many special oath some oaths become a problem of separation, division among husband and wife. The Quran ordains in general terms that no one should make an oath in the name of god as an excuse for not doing the right thing or for refraining from doing something which will bring people together. These Verses followed are in the context of existing law. In anger or caprice a husband may take a oath in the name of god not to approach his wife. This act will keep his wife tied and will not let her remarry even if the wife protested the husband will be bound by oath in the name of god. Quran disapproves thoughtless oaths and insists on a proper solemn and be a purposeful oath. The above Verses cautions a husband to



understand an oath is in the name of the god and not a valid excuse.

- Verse 226 & 227 says husband and wife are given period of 4 months to decide whether any adjustments are possible or not if not prepared for reconciliation then the divorce is only fair and equitable source.
- Verse 229 if the husband is not giving any divorce but the wife is a victim of cruelty then the wife can give divorce named 'Khula'(3 times Talaq)

The Verses of the Quran is imperative and is not conformity with the unambiguous edicts of the Quran and therefore cannot be as valid Constitution of Muslim Personal Law.

Why judicial review cannot be done on personal laws?

1.The court has already examined in Ahmedabad women action group v.UOI (1997) 3 SCC 573 about the following issues:-

- Whether Muslim Personal Law which allows polygamy is void as offending Article 14 and 15 of the Constitution.
- Whether Muslim Personal Law which enables a Muslim male to give unilateral Talaq to his wife without her consent and without resort to judicial process of courts, is void as it offends Article 13,14,15 of the Constitution.
- Whether the mere fact that a Muslim husband takes more than one wife is an of cruelty.

While considering the above issues the court declined to entertain the above mentioned issues stating that these were matters wholly involving issues of state policies with which the court will not ordinarily have any concern. The court also

held that these issues are matters which are to be dealt with by legislature.

i. Personal laws cannot be challenged as being violative of part III of the Constitution-The board said in Krishna Singh v. Mthura Athir (1981) 3 SCC 689 has held that the part III of the Constitution does not touch upon the personal laws of the parties. High court in applying the personal laws of the parties could not introduce its own concepts of modern times but should enforce the law as derived from recognized and authoritative sources. Since part III of the Constitution does not touch upon the personal laws of the parties, court cannot examine the question of constitutional validity of the practices of marriage, divorce and maintenance in Muslim personal law.

ii. Personal laws of a community cannot be re-written in name of Social Reform-The board submitted that in Sardar Sydena Taher Saifuddin Saheb v. State of Bombay AIR 1962 SC 853, Supreme Court observed that the exception carved in Article 25(2) of the Constitution of India to the Freedom of Religion enabling the state to enact laws providing for social welfare and reform was not intended to enable the legislature to "reform" a religion out of its existence or identity. According to the Board even while bringing in such a social reform it is not permissible to change the entire practise or acts done in pursuance of such religion.

iii. Article 44 of the constitution which envisages a Uniform Civil Code is only a directive principle of state policy and is not enforceable-Article 44 of the Constitution of India stipulates that the state shall endeavour to secure for the citizens a uniform civil code through out the territory of India. The board submitted



that the Uniform Civil Code is only a Directive Principle of State Policy and is not enforceable. Further, this paper by necessary implication recognizes the existence of different codes applicable to different religions in matters of Personal Law and permits their continuance until the State succeeds in its endeavour to secure for all citizens a Uniform Civil Code. It is also submitted that the framers of the Constitution were fully conscious of the difficulties in enforcing a Uniform Civil Code and thus they deliberately refrain from interfering with the provisions of the Personal Laws and laid down only a Directive Principle. Moreover, conflicting viewpoints on different religions on the issues of marriage, divorce, maintenance makes the vision contemplated in Article 44, a goal yet to be reached.

Muslim Personal Law provides for the practices to be followed on the issues of marriage, divorce and maintenance and these practices are based on holy scriptures; Al - Quran and sources are based on Al-Quran. The board on the issues arising in the present said the matter can only be decided as per Muslim Personal Law which derives its sanctity from the Holy Quran and Hadith. According to the board all the sources of Muslim Personal Law have been approved and endorsed by the Holy Quran and the practices of marriage, divorce and maintenance etc. are based on such sources all of which flow from the Holy Quran itself. MEASURES TO BE TAKEN:

1. Implementation of Uniform Civil Code
2. Codification of Muslim Personal Laws

UNIFORM CIVIL CODE AND TRIPLE TALAQ:

Article 44 of The Indian Constitution speaks about Uniform Civil Code that, “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”. Under which all the personal laws based on the scriptures and customs of each major religious community in India will be replaced with a common set governing every citizen. Religion is the root of all these problems and if Uniform Civil Code is implemented then it can resolve all the contradictions that will arise from substitution of the present system with any other system that derives its sustenance and sanctity primarily from religion. If religion is continued to be treated as a supreme when it is about marriage, divorce or anything which directly affects the life of a woman, then the women of that society will continue to suffer from inequality and discrimination. And that has happened with the Muslim women, under the rule of Ostrich-like mentality of the AIMPLB. AIMPLB has always been against it, it was formed when the question of implementation of Uniform Civil Code arose in the early 1970s by the then law minister Mr H R Gokhale when Mrs. Indira Gandhi tried to control the dominance of Sharia Law of 1937. AIMPLB has consistently asserted that Sharia is beyond reach and scope of India’s courts of law, including the Supreme Court, as in its opinion, secular courts do not have the authority to either interpret or apply Sharia, which is based on the Quran and the Hadith, which are above any manmade law. In its self-appointed role as the sole arbiter of Muslim destiny in secular, democratic India, AIMPLB may have taken upon itself the onerous task of saving the minority Indian Muslims from the persecution of



majority Indian Hindus. The point is, once you remove the words 'Muslims' and 'Hindus', only Indians remain – with no majority or minority – but equal in every respect before law (today they are guided by different sets of laws) enjoying equal rights and privileges under the Constitution. That can happen once the Shariah is no longer allowed to control the lives of Indian Muslims and their freedom to worship and follow their religious practices are left to individuals, as in most religions. AIMPLB cannot allow it to happen, since it then loses its *raison-d'être*. In no other religion and perhaps in no other country, least of all in any democracy, the clergy, or the mullahs, are allowed to wield so much power by the State. In *Mohd. Ahmed Khan v. Shah Bano Begum* Case, when Supreme Court made a recommendation of Uniform Civil Code. The All India Muslim Board defended the application of their laws and supported the Muslim conservatives who accused the government of promoting Hindu dominance over every Indian citizen at the expense of minorities. The Criminal Code (under which the Shah Bano got justice which she rejected after sometime) was seen as a threat to the Muslim Personal Law, which they considered their cultural identity. According to them, the judiciary recommending a uniform civil code was evidence that Hindu values would be imposed over every Indian. The orthodox Muslims felt that their communal identity was at stake if their personal laws were governed by the judiciary. The members of the Muslim board, including Khan, started a campaign for complete autonomy in their personal laws. An independent Muslim parliamentarian proposed a bill to protect

their personal law in the parliament. The Congress reversed its previous position and supported this bill while the Hindu right, the Left, Muslim liberals and women's organizations strongly opposed it. The Muslim Women's (Protection of Rights on Divorce) was passed in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women. The debate now centred on the divinity of their personal law. A Muslim member of parliament made a claim emphasizing the importance of the cultural community over national by saying that only a Muslim judge could intercede in such cases.

This clearly shows that AIMPLB will never let Uniform Civil Code happen but if it is implemented then there will be equal status to all the citizens, gender parity, accommodation to the aspirations of young population, national integration will be supported and it will bypass the contentious issue of reform of existing personal laws. Facing the difficulties like diverse nature of India and fighting against people like AIMPLB who consider UCC as encroachment on religious freedom, once is implemented all the worries and discrimination towards Muslim women will flow away.

Codification of Muslim Personal Law

According to a survey by Bharatiya Muslim Mahila Andolan, an overwhelming 83.3% women felt that their family disputes could be resolved if a law based on Quranic principles was codified and 89% wanted the government to intervene in helping to codify Muslim personal law.

The British enacted the Shariat Application Act, 1937 which was an attempt at applying Shariat law and not customary laws to the



Muslim community. This act states that the Muslim community will be governed by the Shariat and not customary laws. Although it states that Muslims will be governed by Shariat, it does not specify much on aspects such as the age of marriage, divorce, maintenance, custody of children, polygamy, etc. This is of no help to women as it does not list the various issues that they face. In practice, followers of different schools of thought continue to apply their own varied understanding and interpretation of the Shariat. There are, therefore, many conflicting views on several significant issues, especially those concerning divorce. The irony is that each view claims to be based on their respective interpretations of the Shariat. And the practice of unilateral oral divorce continues. Several Muslim countries have codified their laws and tried to ensure justice to women. Several socio-religious communities in India, including minorities, have codified personal laws as per their religious texts. But such a move has not been taken up for the Muslims owing to the politics over leadership.

The Dissolution of Muslim Marriages Act 1939 gave a Muslim woman the right to seek dissolution of her marriage on nine specified grounds. This is the only legislation enacted by the British, which introduced a substantive codification of the divorce law. However, although the act benefits women, it is rather piecemeal. It only lays down the grounds on which women can seek divorce. It does not lay down any procedure or a time frame within which she can get a divorce. The man can divorce his wife without assigning any reason and even in her absence. He may or may not approach the court or any authority to seek divorce. This act does not question

or restrict the man's unbridled right to oral triple divorce. The act deals only with divorce and not with related matters such as maintenance, custody of children, payment of Mehr, etc. For these matters, the woman has to file separate cases under other laws, sometimes in other courts. This law is a welcome measure but it needs more elaboration and matters under its purview. Our findings clearly indicate that it has not stopped Muslim women from being divorced unilaterally and instantly.

The latest development in recent times has been the Shah Bano controversy and the Muslim Women (Protection of Rights on Divorce) Act 1986. The Shah Bano case is one of the most significant lawsuits in the history of the Indian judicial system. The case pioneered the Muslim women's fight for justice on the right to claim alimony. There was a huge uproar at the time over the right to maintenance granted by the courts to Shah Bano. It was dubbed "interference in religious matters" by some conservative male sections. In the aftermath, the Muslim Women (Protection of Rights on Divorce) Act 1986 was passed by Parliament. These three laws exist in India in the name of Shariat or Muslim personal law but these are highly inadequate in enabling justice for women in the matters of marriage and family. There is no codified law that covers all aspects of family and marriage matters.

In Muslim society there are multiple implementing agencies that dispense justice in family matters. There exist Shariat courts, qazis, muftis (religious clerics), jamaats (sect arbitration councils) that also take in cases of family dispute. These bodies are readily accessible and have closer contacts with the community unlike



the secular court structures. Poor people find going to a court expensive, cumbersome and time-consuming. The community mechanisms are accessible but are dominated by men who arbitrate and settle disputes, which more often than not go against the interest of the women. These individuals and institutions have adopted patriarchal, conservative and anti-women interpretations of the religious texts. In some cases there is little recognition of the Constitution and the values of justice and equality. Besides, the Muslim law being followed by these bodies is not homogeneous and its provisions vary according to the different sects and sub-sects.

Furthermore, it is an amalgamation of customary law and practices, statutory law and interpretations of the verses of the Quran. So while a Muslim woman is required to go to the court to seek divorce, a Muslim man is not required to do so. He can pronounce divorce thrice and terminate the marriage contract instantly and unilaterally. The presence of wife or witnesses is not required. These councils are mostly approached by men as most of these places may not be women-friendly. However, Muslim women do approach Shariat courts regularly with the help of male relatives or directly.

Clearly, the existing male-oriented community justice framework has not helped Muslim women to get justice in matters of marriage and family. It is important to understand the meaning of the popularly held perception about Indian Muslims being governed by Shariat in matters of personal laws. The secular democratic state has failed to enable fair

representation for all sections of the population, including women, by only recognizing the conservative religious voice as the voice of the whole community. The conservative sections are unaware and unconcerned about the issues of Muslim women and therefore they cannot continue speaking for them.

Furthermore, Muslim women and girls face several challenges of safety, security, survival and dignity in modern times like women and girls from all other communities. They are gradually learning to cope with these challenges. The solution cannot be that of confining them to homes for their own safety and well-being. They have aspirations like other citizens and it is binding on both the government and the community to recognize and support their concerns. Muslim women cannot forever live with the threat of instant oral unilateral divorce or polygamy or post-divorce economic uncertainty. These must be presolved by evolving a just and fair legal framework based on the principles of the Quran.

Uniform Civil Code is one of the way by which the problem of all the inequalities, injustice and the obnoxious practices could be stopped that are going on in the name of religion whereas Codification of Personal Laws is the need of the hour of all the Muslim women as they believe that their family disputes could be resolved if law based on Quranic principles is codified. Both ways the society will be uplifted and the Muslim women will get justice.

India's top court on Tuesday struck down the controversial Islamic practice that allows men to divorce their wives instantly by a 3:2 majority, deeming it "unconstitutional".



The Supreme Court (SC) ruled that the practice of “Triple Talaq”, whereby Muslim men can divorce their wives by reciting the word Talaq (divorce) three times, was both unconstitutional and Un-Islamic.

Victims including Shayara Bano, whose husband used triple Talaq to divorce her by letter in 2015, had approached India’s highest court to ask for a ruling.

A panel of five judges from India’s major faiths — Hinduism, Christianity, Islam, Sikhism and Zoroastrianism — said triple Talaq was “not integral to religious practice and violates constitutional morality”.

They said it was “manifestly arbitrary” to allow a man to “break down (a) marriage whimsically and capriciously”.

“What is sinful under religion cannot be valid under law,” said the judges.

Indian Chief Justice JS Khehar, who was a part of the panel, asked the government to bring legislation in six months to govern marriage and divorce in the Muslim community

Judicial review was done by the court

It was said that triple Talaq does not fall within the sanction of the Quran. Even assuming that it forms part of the Quran, Hadis or Ijmaa, it is not something that is “commanded”. Talaq itself is not a recommended action and therefore Triple Talaq will not fall within the category of sanction ordained by the Quran. While the practice is permissible in the Hanafi jurisprudence, that very jurisprudence castigates triple Talaq as being sinful.³

³www.livelaw.in

2.a practice that is manifestly arbitrary is obviously unreasonable and, being contrary to the rule of law, would violate Article 14 of the constitution. If an action is found to be arbitrary and unreasonable, it would negate the equal protection of the law contained in Article 14 and would be struck down on this ground. Pointing out that triple Talaq is sanctioned under the Muslim Personal Law (Shariat) Application Act, 1937, it is said to be constitutionally invalid. “Divorce” breaks the marital tie which is fundamental to family life in Islam. Not only does it disrupt the marital tie between man and woman, but it has severe psychological and other repercussions on the children from such marriage. After the advent of Islam, divorce was permitted to a man if his wife by her indocility or bad character renders marital life impossible. In the absence of good reason, no man can justify a divorce for he then draws upon himself the curse of God. Indeed, Prophet Mohammed had declared divorce to be the most disliked of lawful things in the sight of God. The reason for this is not far to seek. It is clear, therefore, that Triple Talaq forms no part of Article 25(1) of the Constitution. This being the facts, the submission on behalf of the Muslim Personal Board that the ball must be bounced back to the legislature does not at all arise in that Article 25(2)(b) would only apply if a particular religious practice is first covered under Article 25(1) of the Constitution. If a constitutional infirmity is found, Article 14 will interdict such infirmity. It should conform to norms, which are rational, informed with reason and guided by public interest, etc. Applying the test of manifest arbitrariness to the case at hand, it is clear that Triple Talaq is a form of Talaq which is itself considered to be



something innovative, namely, that it is not in the Sunna, being an irregular or heretical form of Talaq. Given the fact that Triple Talaq is instant and irrevocable, it is obvious that any attempt at reconciliation between the husband and wife by two arbiters from their families, which is essential to save the marital tie, cannot ever take place. It is clear that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. Therefore, the 1937 Shariat Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression “laws in force” in Article 13(1) of the Constitution and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq.”

3. “What is held to be bad in the Holy Quran cannot be good in Shariat and, in that sense, what is bad in theology is bad in law as well. Merely because a practice has continued for long, that by itself cannot make it valid if it has been expressly declared to be impermissible. The whole purpose of the 1937 Act was to declare Shariat as the rule of decision and to discontinue anti-Shariat practices with respect to subjects enumerated in Section 2, which include Talaq. Therefore, in any case, after the introduction of the 1937 Act, no practice against the tenets of Quran is permissible. Hence, there cannot be any Constitutional protection to such a practice.”

Banned in various Countries: Tradition dictates that religious laws should be preserved. Unlike India however, there

are several Muslim majority nations where triple Talaq has been banned:⁴

1. **Egypt:**

It was the first country to reform its divorce system in back 1929 with the accordance of the holy book Quran.

2. **Pakistan:**

It was abolished after the recommendation by a 7 member commission on marriage and family laws in 1956 and the framed the legislation of marriage and divorce similar to Egypt, the husband must pronounce Talaq in three successive menstrual cycles.

Tunisia :

As per Tunisian Code of Personal Status 1956, it enshrine that the institution of the marriage comes under the ambit of state and judiciary which cannot allow husband unilaterally to verbal divorce his wife without explanation of reason.

Sri

Lanka:

Although, it is not Muslim majority country but some Islamic scholars consider the Srilankan Marriage and Divorce (Muslim) Act, 1951 as the ‘most ideal legislation on divorce (Triple Talaq)’. This act envisages that if husband wants separation from his wife then he has to give notice of his intention to Qazi (Muslim Judge) along with the relatives of the partners, elders and other influential Muslims of the area, for attempting the provision of rethink, reconsider and reconcile.

⁴www.bbc.com/news/world-asia-india-41008802



5. Bangladesh:

The process of divorce is very simple in Bangladesh just in three steps to divorce for both Husband and Wife (When power of giving Divorce has been delegated in the Kabin) wanting separation:

- Give Notice in writing;
- Face the Arbitration Board (Appeared or not doesn't matter); and
- After expiry of 90 days take a registration certificate from a registered Nikah Registrar (Kaji).

6. Turkey:

The process of Talaq in Turkey can begin only if the marriage was registered at the Vital Statistics Office. Then the entire process of Talaq will be done in civil court.

7. Indonesia:

Every divorce can only be executed by a court decision. An agreement to divorce between the husband and wife will not be constituted as a divorce, only a court decision may constitute a divorce. It is regulated under Law No. 1 of 1974 concerning Marriage ("Marriage Law") which also further regulated under Government Regulation No. 9 of 1975 concerning The Implementation of Law No. 1 of 1974 concerning Marriage ("Marriage Regulation").

8. Iraq:

It was the first Arab country to replace Sharia court from the government-run personal status court.

So, if these countries being the 'Muslim dominant countries' have banned it and are following the basics of Quran to dismiss any marriage then there is no doubt that banning

triple Talaq in India will not be in accordance with the principles of Prophet Mohammed(may he live in peace).

CONCLUSION

India is a diverse country where every religion has its important and has the right to continue its practices. Muslims are the largest minorities in India and have been given various privileges to follow their religion and are not bound to do anything which against their religion or something which they are not allowed to do.

Triple Talaq, a practice that is being followed in India under the cover of religion and traditions has devastated results in our society. Suppress the right of other because of Religion is not acceptable. But this practice has gone against many rights enshrined in our Constitution. A husband divorces his wife over the phone just because he wanted a son; another person send a text on Whatsapp and ends the marriage, there and then only; another person ended his marriage with his wife in a drunken state, not even realizing the consequences of it. These instances clearly shows that this practice must be stopped, the aftermath of this inimical practice not only ruins the life of the wife but also shatters the dreams of the children and affects the future life of the husband. The wife loses trust in marriage, alumina, which is a must, is not provided to the wife because of which she and her kids have to live a life in poverty. Unemployment, illiteracy, criminal activities are few aftermaths of this practice. Husbands too take this practice for granted, they marry whoso ever they want to and for how short period they want to, at times they have a purpose behind it and when the



purpose is over they leave the girl like that only.

empowerment, literacy and freedom, and then why not gives women her due.

There have been instances where courts gave judgements in the favour of wife and asking the husband to state a reasonable cause **(Dagdu v. RahimbiDagduPathan[23])**, whenever they repudiate a marriage and if they fail to provide a valid reason there wasn't any Talaq.

A 2015 survey of about 5,000 women across 10 states by the Bharatiya Muslim Mahila Andolan (BMMA) found that over 90% wanted an end Triple Talaq. Of the 525 divorced women surveyed, 78% had been given triple Talaq; 76 of these women had to consummate a second marriage so that they could go back to their former husbands.

In India we have arrived at this that women in marriage have less rights than men. Article 25 and 26 of are equally meant for men and women, whatever be the denomination. Triple Talaq is Against the Progressive spirit of Quran. It symbolizes the subordination, subjugation and suppression of human rights of women. The practice of triple Talaq is grossly injurious to the human rights of the Muslim women. This form of Talaq is infested with the malady of inequality which goes against equality which is enshrined in Article 14 of the Indian Constitution.

The Shariat law as practised in India falls short of meeting the evolved standards of gender equality and justice, now it is the society who has to change it. India has moved away from the clutches of orthodoxy and fanaticism, this era is an era of

