



TRIPLE TALAQ AND UNIFORM CIVIL CODE

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Introduction:

It has been rightly said that, “Man is a social animal”. Every person needs a company to live the life to the fullest. Marriage is one such social institution which has been prevalent since times immemorial. Every society has defined this institution with respect to their beliefs. Talking about the Muslim law, marriage is considered to be a civil contract whereby the dominant position is accorded to the husband whereas the wife has a subordinate role. The husband has the unilateral right to divorce his spouse while the wife has the right only under certain circumstances as mentioned in the Holy Quran. Although the Quranic law refers to divorce as involving the upper hand of the husband yet at the same time does not undermine the position of women owing to the detailed procedure involved in the process of divorce. But with the passage of time, the Quranic verses, known as Ayat have been wrongly interpreted which eventually leads to the degradation of Muslim women in the hands of male chauvinists Muslim scholars.

Concept of ‘Talaq’ and the evolution of ‘Triple talaq’ as put forward in Quran:

Talaq is Arabic word which means “to release” or “taking off any tie or restraint” or

“removal of the restrictions of nikah”, thus in Mohammedan law talaq is equivalent to dissolution of marriage i.e. divorce.

In the pre-Islamic state, the Arabs took even the most important and significant decisions in a hasty, unjust and frivolous manner. As far as the divorces were concerned, these unscrupulous Arab men exercised unbridled power to get rid of their wives. The right to divorce was solely vested in the hands of men while the women were subjected to maltreatment, torture and humiliation. With the rise of Prophet Mohammad as the righteous messenger of Allah, tremendous efforts were put to bring women on equal footing with men in order to regulate the male authoritarianism as prevalent in the pre-Islamic state. In this respect, Ameer Ali has said “*he (the prophet) restrained the power of divorce possessed by the husband and towards the end of his life went so far as practically to forbid its exercise by the men without the intervention of a judge.*”¹

HUSBAND’S RIGHT TO DIVORCE :

The Quranic law recognizes talaq-i-sunnat as the most approved form of divorce. It exists in two forms i.e. *ahsan talaq and hasan talaq*. It is a well known fact that talaq-i-sunnat is the most appropriate, reasonable and meaningful mode of repudiation of bridal bond sanctified and warranted by the holy Quran. Talak-i-sunnat may be pronounced either in ahsan or in hasan form as engrafted in holy Quran. In the form of talaq-i-ahsan there is a single pronouncement of talaq during the period of purity (tuhr) followed by no revocation by husband for three successive periods of purity, After the single pronouncement, the wife is to observe iddat of three monthly courses and during iddat there should be no



revocation of talaq by the husband but during this period if there is cohabitation, this will amount to revocation and reconciliation between husband and wife. Talaq-i-ahsan has been based on the verses mentioned in sura II verse 228 of the Quran which reads as follows: “ *and the divorced women should keep themselves in waiting for three courses*”. However, talaq-i-hasan is also regarded proper and approved form of talaq and has provision of revocation. In hasan talaq word of talaq is to be pronounced three times in the successive periods of purity. It is immensely important to note that the husband may revoke the first and second pronouncements either expressly or by resuming conjugal canopy of cohabitation and consummation and same tantamount to as if no talaq was made at all. In case third pronouncement is made, then the talaq becomes final and is irrevocable. Talaq-i-hasan has been mentioned in Quran in the following verses: “*divorce may be pronounced twice, then keep them in good fellowship or let (them) go kindness*”(II:229) . “*so if he (the husband) divorces her (third time) she shall not be lawful to him afterwards until she marries another person*” (II;230).

Another mode of divorce followed by some prominent schools of Muslim jurisprudence is “Talaq-i-biddat”. Although there is no substantial proof with regard to its approval in Quran, it has gained much popularity in the modern times especially in India. It is the most detestable and inhuman form of divorce which subjects the women to mental torture and immense humiliation. It is a plight that some of the even most influential and dominant schools as well as Muslim scholars have given recognition to it. For

instance, the Hanafi School and majority of the Sunnis have been advocating Talaq-i-biddat for more than 1400 years approximately. Thus, it can be said that gradually it has taken force of a recognized form of divorce in the contemporary Mohammedan law.

The talaq-i-biddat did not exist at the time of Prophet. It came into picture after it was granted sanction by Ummayid monarch caliph Umar. However it was introduced merely as a temporary solution to deal with the torture and humiliation faced by the Muslim women .The reason why this form of talaq came into force goes back to the time when Arab invaded Egypt, Syria, and Iraq. The male chauvinist Arabs found the women of the foreign land more beautiful than their own wives and wished to marry them. On the other hand, the women of these countries wanted them, firstly, to nullify their existent marriages and then marry them. As a result the men began to search for easier and more convenient ways to break off their marital ties which further deteriorated the already degraded condition of their wives. When frequent occurrence of such incidents began, then Caliph Omar, in order to safeguard the wives of these Arabs from unreasonable torture and suffering and to prevent the misuse of religion, ruled that anybody pronouncing Talaq thrice in one sitting would result in irrevocable dissolution of marriage. This was introduced as a temporary administrative measure, keeping in mind the circumstances which had arisen during that period. It is really deplorable that this concept which was introduced centuries ago continues even today, despite being contradictory to the ideals of contemporary world.



WIFE'S RIGHT TO DIVORCE:

The Holy Quran mentions the grounds on which a wife can seek divorce. Prophet Mohammed had never wanted women to be exploited and hence vested in them the right to seek divorce. There are three forms in which a women can ask for divorce from her husband:

a) When the power of divorce has been delegated to her by the husband (Talaq-i-Tafweez): The exercise of delegated power to divorce is valid both in cases of pre-nuptial as well as post marriage agreements. Once the power is delegated to her, it is entirely on her to exercise it, or not to exercise it; when she exercises it, consent or dissent of the husband is immaterial.

b) Khul or Khula: Khul or Khula in case of wife is equivalent to what "Talaq" is in case of the husband. It is the divorce which is initiated by the wife herself.

In an early case, the Privy Council said; *"A divorce by khula is the divorce with the consent, and at the instance of the wife, in which she gives or agrees to give a consideration to the husband for her release from the marriage tie. In such a case the terms of bargain are a matter of arrangement between the husband and wife, and the wife may, as a consideration, release her mahr and other rights, or make any other agreement for the benefit of the husband."*

c) Judicial Divorce (Turkaf): Muslim lawgivers also provided for the dissolution of marriage by a decree of the court. It is called Turkaf which means separation.

Thus, it can be clearly seen that the verses in Quran have mentioned the procedure of divorce with respect to both men and

women and no kind of discrimination has been laid down. Further, in our paper we will discuss about the most controversial form of talaq i.e. talaq-i-biddat popularly known as the triple talaq, how it is demeaning to women, why is it rendered to be unconstitutional and the need of Uniform Civil Code.

NEED TO ABOLISH THE EVIL OF TRIPLE TALAQ :

Triple Talaq is certainly an unreasonable and inhuman concept. It has gained acceptance and popularity over the period of time despite being against the modern civilization. It has subjugated and subordinated the position and status of Muslim women whereas their counterparts are in a better position in the society. The former have to bear the brunt of Triple Talaq which is a deadly weapon in the hands of the husbands. They live their life fearing that they may have to face this injustice someday. The presence of the spouse who is being divorced is totally immaterial. Triple Talaq pays no heed to any possibility of reconciliation between the spouses and is effective from the moment "Talaq" is pronounced thrice in a sitting. With the advent of technology and more efficient ways of communication, this custom which has now apparently gained the force of law, has become even more popular. The husbands nowadays divorce their wives via telephone, telegram, letters or even whatsapp. This in itself is a pity and mars the very existence and sanctity of marriage. Triple talaq not only declines to a Muslim woman the rights which are guaranteed under the Holy Quran but also makes them a puppet in the hands of their husbands. Triple Talaq is in no way a constructive practice



but causes the male authoritarianism to grow manifold. It strengthens the male dominant society which attacks the interests of the women and makes them a “weaker vessel”. It undermines the principle of gender equality. Even the majority of Muslim countries all around the world have enacted laws to abolish the horrendous practice of triple Talaq. It is indeed a shame that India still continues to acknowledge it as an approved form of divorce. It is the need of the hour that the Muslim organizations at the position of authority namely Jamiat Ulma -I-Hind and AIMPLB (All India Muslim Personal Law Board), who enjoy the privilege of influencing the masses, come to the forefront and do away with the prevalent practice. The Muslim population is so deeply engulfed in this derogatory practice that only the involvement of their own religious leaders can bring out the desired outcome of eradicating Triple Talaq. It is of utmost necessity to curb it otherwise the womenfolk will continue to remain downtrodden and looked down upon. Not only the rights of the women as enshrined in the Holy Quran are violated, but also the Fundamental Rights guaranteed under the constitution. The Triple Talaq is directly an infringement of the Fundamental Rights i.e. Article 14, 15, 21 and 25. These are the basic human rights that every citizen of the country is entitled to. In a plethora of cases; the courts too have found this form of Talaq to be derogatory and in violation of the above mentioned rights. It would be no exaggeration to say that the abolition of Triple Talaq would certainly pave the way for many more positive changes or transformations which need to be brought about keeping up with the ideals of the modern era.

Realizing the necessity to abolish triple talaq, many organizations have openly come forward to fight for the cause. One such organization which needs a special mention is **BMMA** (Bhartiya Muslim Mahila Andolan).

BMMA: It is an autonomous, secular, rights-based mass organization led by Muslim women which fights for the citizenship rights of the Muslims in India and was formed in January, 2007. A laudable initiative was taken by **BMMA** in 2016 with the formation of Women Qazi Training Institute: *Darul Uloom Niswaan*¹. It focuses on training the Muslim women to take the position of a Qazi in a Muslim society (there is no ban on women Qazis as per the quran). It is a commendable initiative as it is a step towards regulating the dubious and orthodox role of the Qazis in the present scenario. The imparting of the knowledge and appropriate interpretation of the Quranic verses to the Muslim women is a win-win situation. It will make them aware of the practices being interpreted wrongly and being imposed on the women in the name of Islamic faith. Darul Uloom Niswaan strives to make the women more self-reliant so that they can draw the interpretations correctly and put an end to the unislamic practices like Triple Talaq as well as Nikah Halala.

Despite the establishment of many such organizations, it needs to be kept in mind that these organizations are still at their infancy and if drastic change is expected then collective efforts are to be made in this direction.

What we need to keep in our minds is that:

“Why does it have to be deemed too difficult and hyped to eradicate this evil in India, when the other Muslim nations



around the world have been successful in doing so?”

Triple Talaq: Whether an infringement of fundamental rights or not?

It would be really improbable and unjustified to state that Talaq-i-biddat is in conformity with the Fundamental Rights enshrined in Part III of the Constitution. Firstly, it stands completely in conflict with the spirit of Article 14 i.e. Right to equality. It is quite evident that Triple-Talaq causes a severe blow to the equality as it is a gender biased concept. It is an arbitrary and unilateral power only vested in the Muslim men and the women have absolutely no say in the matter. It also violates the provision mentioned in Article 15 i.e. right against discrimination which states that no person shall be discriminated on the grounds of caste, sex, race, place of birth, religion whereas Talaq-i-biddat is discriminatory on the basis of sex. Article 21 which provides to the citizens the right to life and personal liberty also stands violated. However, due to this improper form of divorce, the interest of the women who have been discarded by their husband's are not being protected and are just dumped without any source of justice. Triple Talaq takes away the honorable position of the women in the society and leaves them in dark with no justice given to them.¹

Many a times people have taken the protection of Article 25(1) [to profess, practice and propagate religion] in order to justify their actions in the name of religion. But it is not an absolute right and is subject to restrictions, for instance public order, morality and health. Moreover, the alleged party cannot challenge the state's right to regulate various activities associated with

religion unless it is sacrosanct or quintessential to the religion itself. In umpteen numbers of cases, the courts have voiced strong opinion that Triple Talaq is not integral to the Islam and is merely a custom which has gained the force of law. Hence abrogation of Triple Talaq does not violate Article 25(1).

Landmark Judgements:

Let us discuss some landmark judgements delivered by the learned judges:

Yousuf Rawther v. Sowramma¹:

“..the view that the Muslim husband enjoys an arbitrary, unilateral power to inflict instant divorce does not accord with Islamic injunctions...it's a popular fallacy that a Muslim male enjoys, under the Quranic law, unbridled authority to liquidate the marriage...however, the Muslim law, as applied in India, has taken a course contrary to the spirit of what the prophet or the holy Quran laid down and the same misconception vitiates the law dealing with the wife's right to divorce...”

Shamim ara v. State of U.P.¹:

In this case, the learned judge expressed disapproval of the statement that *“the whimsical and capricious divorce by the husband is good in law, though bad in theology”* and observed that such a statement is based on the concept that women were chattel belonging to men which the Holy Quran does not brook. The correct law of Talaq as ordained the Holy Quran is that Talaq must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters – one from the wife's



family and the other from the husband's, if the attempts fail, Talaq may be effected.

***Shayara Bano v Union of India*¹:**

The learned counsel for the petitioners put forward the following arguments:

1. Violation of the fundamental rights guaranteed under Article 14, 15 and 21 of the Constitution.
2. Ban on Triple Talaq in the Muslim majority nations around the world.
3. Talaq-i-biddat should be banned the same way the practices of Sati, Devdasi and Polygamy amongst Hindus were banned despite being prevalent for centuries.
4. Talaq-i-biddat gives to the husband the unilateral and unbridled power to divorce their wives and the latter have absolutely no say in the matter. This contention was supported with reference to the tradition of Sunni Muslims:

“Mahmud-b, Labeed reported that the messenger of Allah was informed about a man who gave three divorces at a time to his wife. Then he got up enraged and said, ‘Are you playing with the book of Allah who is great and glorious while I am still amongst you? So much so that a man got up and said; Shall I not kill him.’”

5. It was submitted, that the *Universal Declaration of Human Rights, 1948, The International Covenant of Economics, Social and Cultural Rights 1966* emphasized on equality between men and women. It was also submitted that the Government of India ratified the *Vienna Declaration and Convention on the Elimination of All Forms of Discrimination against women (CEDAW)* on 19-6-1993. Keeping in mind the above mentioned conventions, dealing with the

concepts of equality, it becomes essential to abrogate the Triple Talaq which is not in conformity with the spirit of these conventions.

The rebuttal of the petitioner's contention's:

1. The Hanafi School of Sunni Muslims, who form the majority in India, has ardently followed Talaq-i-biddat over centuries. It is considered to be a part and parcel of their personal law. This contention was supported with reference to a sunni tradition:

“a man met another playful man in medinah. He said, “did you divorce your wife?” He said, “yes”. He said, “how many thousand?” so he was presented before Umar . He said so you have divorced your wife? He said I was playing. So he mounted upon him with the whip and said out of these three will suffice you. Another narrator reports Umar saying : “Triple Talaq will suffice you”.(musannaf abd al-razzaq, kitab al- Talaq , Hadith no.11340)

2. Having put forward the contention, that talaq-i-biddat is the part and parcel of their personal law and religious faith , it is unjustified to say that this practice violates articles 14 ,15 and 21 of the constitution .Instead the question arises regarding the violation of article 25 (right to religion).

3. It was contended that the Special Marriage Act (1954) was enacted so that the people of different faiths could get their marriage registered under this act without any interference of their personal laws. Thus, it was submitted that all those who despise this practice of Talaq-i-biddat always have an option to escape it by getting married according to the secular provisions laid down under the said act.

4. It was further contended that a wife while executing the ‘nikahnama’ (marriage deed)



is free to include a condition restricting the husband's right to pronounce triple Talaq.

5. It was pointed out that the matters of faith should best be left to be interpreted by the community itself, in the manner in which its members understand their own religion. Hence the court should not interfere in the matters of interpretation of their personal laws. Moreover, it was stated that the interpretations relied upon by the petitioners were mostly of the scholars who were alien to Sunni faith and were therefore irrelevant.

After considering the contentions put forward by both the parties, the Supreme Court with the majority of 3:2 ruled in favor of the petitioners and declared Triple Talaq unconstitutional.

As far as the question of uniform civil code is concerned, supreme court is of the view that this concept needs to be understood in its *"true purport and substance"*. The court also took into consideration the contentions submitted by both the counsels in relation to the debates held amongst the members of the Constituent Assembly while the drafting of the constitution. After the detailed analysis of the matter, the court stated that, *"...all religious practices should remain, beyond the purview of law...all this leads to the clear understanding, that the Constitution requires the State to provide for a Uniform Civil Code to remedy and assuage, the maladies expressed..."*

Mohd. Ahmed Khan v. Shah Bano Begum¹:

It is one of the most important landmark cases of all time dealing with the complexities of Muslim Law. Although the case mainly dealt with the obligation of the husband to maintain his wife after the divorce and the question was raised as to whether there exists a conflict between the

Muslim personal laws and the CrPC on the matter of maintenance. The judgement was delivered in favor of Shah Bano Begum and it was held that, here, as per the facts of the case the provision under CrPC will override the legal position under Muslim Law.

The Court strongly felt a need to abolish Triple Talaq and introduce Uniform Civil Code in the country. It observed that:

"Article 44 of our constitution has remained a dead letter. There is no evidence of any official activity for framing a common civil code for the country. A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. It is the state which is charged with the duty of securing a uniform civil code for the citizens of the country and, unfortunately it has the legislative competence to do so. A beginning has to be made if the constitution is to have any meaning..."

UNIFORM CIVIL CODE: A RAY OF HOPE:

Article 44 of the Indian constitution provides that the state shall endeavor to secure for all citizens the uniform civil code throughout the territory of India. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.

While drafting the Constitution, Dr. B.R. Ambedkar was in favor of introducing the Uniform Civil Code for the whole territory of India. However, due to the conflicting views between the members of the Constituent Assembly it was merely included in the part IV of the constitution i.e. Directive Principles (not enforceable by



any court of law). It has always been a sensitive issue since its introduction in the Constituent Assembly. With the passage of time, the complexities in litigation have increased manifold due to the conflicts arising between the personal religious laws and the other statutes legislated by the government. Thus, it is high time that a Uniform Civil Code regulating the marriage, divorce, inheritance, adoption and maintenance laws for all religions without any discrimination be enacted. It will help in strengthening the solidarity and integrity of our nation. The courts too have laid emphasis on having a Uniform Civil Code, so that the citizens are not prejudiced on account of the conflicts between personal and public law.

Justice Kuldeep Singh also opined that Article 44 has to be retrieved from the cold storage where it is lying since 1949. The Hon'ble justice referred to the codification of the Hindu personal law and held,

“where more than 80% of the citizens have already been brought under the codified personal laws there is no justification whatsoever to keep in abeyance, any more, the introduction of the ‘uniform civil code’ for all the citizens in the territory of India.”

It is shameful that despite many judgements ruling in favor of implementation of uniform civil code, the government has failed to legislate on this matter even after 70 years of independence. Unless and until the legislative body takes a pragmatic approach, all the debates, controversies and discussions regarding Uniform Civil Code are futile.

CONCLUSION:

In a nutshell, it can be concluded that Triple Talaq is an obstacle in the progress of any

society. It needs to be done away with for the uplifting and betterment of women folk. Every possible effort should be made by the authorities concerned so that the very foundation of patriarchy can be uprooted and the pillars of gender equality and harmony be established.

To cut the long story short, let us drown ourselves in the rage and enthusiasm with which Swami Vivekananda said, *“There is no hope of rise for that family or country where there is no estimation of women, where they live in sadness.”*

