



TRIPLE TALAQ- A COMPLETE PARDAH ON RIGHTS OF MUSLIM WOMEN

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ABSTRACT

God Intended Islam to be a religion and verdict of Allah, but men have attempted to turn it into politics. Religion is general, universal, and holistic; whereas politics is partial, tribal, limited to a specific community. *The oppression of women in the name of Islam, especially the abuses connected with divorce and polygamy were among the basic realms of uncodified law that had contributed to the stagnation of Muslim societies across the globe.*

This practice of talaq has deleterious effect on women; breaking of a marriage contract has emotional and financial concerns. Often it is not the interests of women, which are at stake, but those of their children as well the trauma of Triple Talaq which serves as the rife in the reality of women.

Though the question of terrorism, jihad, and alarmist concerns such as “Muslim Rage over Babri Masjid issue” and “Green Menace” have dominated discourse on Islam now and then, few issues in Islam and Muslim societies have attained global attention- and yet proven so susceptible to stereotyping- as issues of women.

For many decades Muslim women are fighting for gender equality in the Islamic

law that govern right related to marriage, divorce and property rights. *Women in Muslim societies and their muslimness have also been the subject of images and generalisations of critical feminist explorations, and as a consequence, The Muslim Personal Law for Islam – has taken precedence over basic freedoms of the women.*

Islamic Marriages have been long regarded as a symbol of chastity to build up a healthy society.

Through this essay, entitled as “Triple Talak- Islamisation of women and Global outlook” tends to extract the fossilised thought of the bias yet unique practice of divorce exercised by masculine class of muslim community. This paper has utilised the essay form in the best of worlds, to put forth the idea and attract the menaces involved in the practice of Triple talak at global level. The Author has divided her paper into four cavets, highlighting the essence of Islamisation of women and their plight; archaic vs. reformist view; global perspective and suggestions chronologically.

I.

Muslimness is an elusive state of being. There are watertight structures of the theological identity defined by men interpreted as Sharia on one hand and the broad political and cultural sense of the self on the other. Majority of Muslim population work as per the *Sharia* law.



Identity in any case is a messy affair, shifting, shifting and eventually imagined¹. So what is it to be a Muslim women? An inflexible bag of rituals? Or a cultural sense and pride of belonging? Or a deeper dogma ingrained in young minds? Though the question of terrorism, jihad, and alarmist concerns such as “Muslim Rage over Babri Masjid issue” and “Green Menace” have dominated discourse on Islam now and then, few issues in Islam and Muslim societies have attained global attention- and yet proven so susceptible to stereotyping- as issues of women with reference to their conjugal rights. Islamic Marriages have been long regarded as a symbol of chastity to build up a healthy society. However, Women in Muslim societies and their muslimness have been the subject of images and generalisations of critical feminist explorations, and apologetic resistances, especially the solemnisation of marriages. In Muslim law, marriage is a sacred contract having as its object, the procreation and legislation of children. Marriage contracts are often reduced to writing in the form of a *kabinnama*. However, The Muslim Personal Law for Islam - takes precedence over basic freedoms and has become an acute tool of gender binarism against muslim women, with an unfair practice of orally pronounced, gender specific divorce.

.As of 2010, Islam is the second largest community, contributing to 1.6 billion adherents across the globe. Where Indonesia is the country with largest muslim

population, Pakistan being the second largest, India on the other hand acquires world's third-largest Muslim population which is governed by the Sharia or Islamic jurisprudence which has been the case since British colonial rule. Ninety million out of which, India's Muslim women face the threat of a sudden, oral, and out-of-court divorce. According to the Census 2011 data, out of all married Muslim women, 13.5 per cent were married even before the age of 15 and 49 per cent were married between 14 and 19 years of age. Marriage at such an early age, in most cases, decreases the possibility of acquiring education or being financially sound. A survey by Bharatiya Muslim Mahila Andolan revealed that 95 per cent of divorced women received no maintenance from their husbands. And out of all divorced women, 65.9 per cent were divorced orally. To understand more closely, *Triple-Talaq* is a form of “*talaq-ul-bid-at*”, derived from an Arabic word “*Mugallazah*”, in which the husband may pronounce the three formulae at one time, irrespective of the fact that whether the wife is in state of *tuhr* or not.

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. Those scholars who accept *triple-talaq* on a single connotation as one quote following the long practised tradition and archaic norms in its favour.

Through triple talaq, men feel they can threaten women at the drop of a hat, who categorise them as a homogenous entity. So long as they have the power to use triple

¹ Kimberley Crenshaw “Mapping the Margins: Intersectionality, Identity politics and violence against women of colour” 43Stanford Law Review 1299 (1991)



talaq as a weapon, it's like they're constantly threatening the muslim women at the notch of freeing themselves from the marital clutches. Muslim men make the threat loosely because they don't understand the obligations of marriage. This victimised burka clad of muslim women live with the mental agony that years of their sacred marital bond can be ended with mere utterance of three words. That's exactly how the plight of Muslim women shifts from heaven into hell on the pitch of masculine hegemony. To understand this prolonged plight of victimised muslim women, the conceptualistic ideas of real Quranic verses need to be read with the origin of this debate which now has attained a political fervour. To begin with, the movement against triple talaq was started by Muslim women's organisations and women who felt wronged by the practice. But during the course of the year, politicians, clerics and the All India Muslim Personal Law Board, an NGO that claims to represent the community, and is regared as one of the main influential body in Muslim community guarding Muslim Personal law, rejected the proposal to reform the personal law mainly due to patriarchal predominance and the rallying belief that it will infringe the basic principles of Islam.

Personal laws in India and especially Muslim personal law has been a major political and controversial issue, for not only Muslim organisations, but also for Hindu community, which has now assumed a political fervour. After the 1986 Shah Bano Case, and the enactment of the Muslim Women (protection of Rights on Divorce) Act thereafter, the debate has assumed a central position, and majority identity politics has gained mileage. Moreover, the

board has vociferously [taken over the debate](#), in the name of protecting oppressed Muslim women after the majority verdict in the recent judgement decided to outlaw the practice of instant triple talaq as "un-Islamic" and violative of Constitutional Articles of 14 and 15. The judgment itself was the result of widespread prevalent discourse that Muslim religious community and its religious leadership in the country is the most frivolous amongst other socio-religious communities. These dominant religious-conservative voices among Muslim communities — represented by Jammāt Ulema Hind (JUH) and All India Muslim Personal Law Board (AIMPLB) — consider the practice of instant triple talaq as "sinful but lawful" and kept the door open for socio-religious reform from within but without the inference of the law. Their response to the judgment has been mixed one. While JUH and AIMPLB welcomed the SC verdict treating personal laws as equivalent to Fundamental Rights, they also urged the Supreme Court not to meddle with their personal laws as the issue fell completely out the judicial purview.

But how are individual Muslim women — those who have received triple talaq and have been the real victims at the hands of the gender-specific divorce practice — engaging with this high-pitched debate?

It therefore, becomes pertinent to note that 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. In the absence of the proper codified law in Muslim personal law women



are at much Disadvantageous position. Muslim women always remain the most economically and socially depressed section in Muslim community itself. The process of masculinisation has long favoured the religious traditions, negating the scriptural experiences of women, and led to their voicelessness in the history of Muslim societies². The problem of inequality is a box within a box, within another box, with no single answer. Adding fuel to the fire was One such recent case of Shagufta Shah who was thrown out of the house for showing her discontentment for abortion. Moreover, there have been plethora of judgements which have established Triple Talaq as invalid and have set some definite requirements for its validity in the recent years.

In *Riaz Fatima v .Mohd. Sharif [(2007) DMC 26]*, the court held that evidence must be given by the husband of the reasons that has compelled him to seek divorce. A proof that talaq was proclaimed thrice in the presence of witnesses or in the letter must be provided and an attempt of reconciliation has been made. There has to be proof of payment of meher (dowry) amount and observance of iddat (the period of waiting by a woman after divorce or the spouse's death before she can marry again).

II.

Global perspective and Universalism of Islam.

In Arabic, Right is pronounced as Haqq which also means truth; the truths which were deep rooted in the holy book, the Quran, which regarded God/Allah as the

final arbiter of justice. The Quran discusses freedom of religion(Q 2:256), justice and equality(Q 5:8), the right to basic standard of life(Q 51:19), the right of inheritance(Q 4:7-9), among others. It should be noted that interpretations of these verses is not fixed the public discussion of human rights in Islam has traditionally taken the form of legalistic debates between Ulema as literal meaning of the Quran. While all these rights continued in 20th century; Right to education, equality before law and marriage fall within the sharia through universal Islamic declaration of human rights issue in 1981 and the Cairo Declaration on Human Rights in Islam adopted in 1990³.

One of the most controversial theories pertaining to international human rights has been put forward by Calloway, who gave intersecting views on “*Universal rights v. Cultural-Specific Human rights*”⁴. We have observed that according to universalism, human rights are imbibed in all individuals irrespective of their nationality, ethnicity or socioeconomic standing.

In all Muslim countries there has been pressure to introduce reform which will safeguard the wife's right, and enable a proper opportunity to be made to attempt to reconciliation. The first of major reforms were in Egypt in 1920. In no other country except Iraq, women have equal rights with men in the matter of divorce. Moreover, the issue of women's participation in the Islamic context has to be given special emphasis due

² Asma Barlas, *Believing Women in Islam*, Austin: University of Texas Press, 2002, p.7

³ Judith miller, ‘Challenge of Radical Islam,’ *Foreign Affairs*, Vol 43, Spring 1993, pp.50-4

⁴ Upendra Baxi, *Future of human rights*(Oxford University Press, NewDelhi, 2008).



to the negative coverage it has attained in the international press.

III.

CONSERVATISM VS. REFORMISM.

Several Islamic philosophers assume that Islamic moral norms are superior to Western standards of human rights and therefore refuse to apply those standards to the Muslim people. Hence, these conservative Islamic thinkers rejected universal norms of human rights and brought their own version of Islamic rights. They also directed that Islam is the religion which is against global capitalism, westernisation and secularism and hence, they exclusively imbibed within their community, the textual interpretations of Islamic norms and traditions. Various such Islamic groups, including these conservative thinkers, believed that freedom of individuals, nationalism, democracy and human rights is not compatible with Islamic norms. All these concepts are in conflict with the universalism of Islam. Moreover, the entire class of conservative Islamic thinkers, instead of emphasising human rights on the same pedestal for men and women, stress on the duties of individual towards his or her community, immaterial of gender binarism. The archaic connotation of these thinkers, regarding the superiority of men is based on the fact that men are better than women for certain tasks⁵. That is the reason why, the

scholars with conservative thought argue, Prophethood and other important positions of leadership were exclusively reserved for men and hence segregation of the sexes becomes imperative for the preservation of the traditional order of Islam. Whereas, the essence of islamic modernist thought, on the other hand, was the creation of positive links between the principles of Quran and modern thought. Reformists and modern scholars have emphasised understanding holistically the motive and intent of Quranic verses.

The modern scholars suggest that the major problem is the hostile nature of Muslim countries towards western attitudes, who implemented sharia law as a “battering ram” especially for women. There is a need to reconcile Islamic norms with modern principles of human rights. However it does not mean to render Islamic personal law as completely incompatible, but to reconcile religion and human rights which is essential for the protection of people from the abusive state and political fervour.

The Islamic sharia law is the supreme. It regulates the social political and cultural aspects of life and elevates mankind to higher spiritual level, which all Muslims ought to follow. The source of all human rights as per Sharia is based on “divine revelations” and not man-made law. The Quran demands in definitive terms, from its followers, that they rise to fight against all kinds of oppression and injustice, free from any arbitrary prepollence and gender binarism. Similarly, many Islamic feminist scholars have successfully attempted to argue against the interpretative relativism,

⁵ Barbara Stowosser, ‘ Gender Issues and Contemporary Qur’an Interpretation,’ in Yvonne Yazbeck Haddad and John L. Esposito, Islam, Gender and Social Change, New York; Oxford University Press, 1998, p.33.



which views all readings as equally correct, On the grounds that not all readings can be accepted as contextually legitimate and theologically sound, especially those that read various forms of Zulms (injustice) into the Quran.

In the social and economic context of the 20th century, in which many women are economically independent and contributing to the financial needs of the family, the aforesaid connotation becomes an important subject of change. Some eminent modern scholars believe that removing the looming spectre of triple talaq can help women feel more secure and confident, since one needs security and belonging in a marriage, unlike triple talaq which is like having a Damocles sword over your head all the time. They also argue that if the law does not reflect the intent of the text, the law must be changed.

IV.

Conclusion and suggestions:

Polygamy may not be abolished completely but strictly regulated as directed by the Quran may be practised as to uproot the malice born out of Triple Talak or Talak-ul-bidat.. In fact both the verses on polygamy i.e 4:3 and 4:129 should be read together to understand the real Quran intent. Even the first verse, i.e, 4:3 requires rigorous justice to all wives by warning that “if you cannot do equal justice then marry only one. The second verse, i.e, 4:129 makes it clear that equal justice is humanly impossible. With such warning polygamy should not be practised unregulated. Other Muslim countries except Saudi Arabia and Kuwait have introduced strict measures to regulate it. Thus a draft law should introduce such regulatory measures and specify

circumstances in which one could practice polygyny. Those circumstances could be when the first wife is terminally ill or medically proved to be infertile or barren and that too with the permission of the first wife and the court of law.

Further, Quran permitted polygamy to help women in distress like widows and orphans, not to do injustice to them.

It is to be noted that Quran is the only unanimous divine source for Muslims and it remains most progressive in respect of women’s rights. Ideally it grants equality between man and woman and should be the main source of legislation about women’s right. The past interpretation of the Quran was constrained by socio economic condition and should not be binding on the present and the future generation of Muslims. All great Islamic thinkers have repeatedly made this point and have accepted the central role of ‘iJihad (creative interpretation) . it is the only our social conservatism, not lack of theological sanction, which prevents our ulama from exercising it. While this was seen by the conservative sections in the Muslim community as interference in their personal laws, the liberal voices pointed to a very significant aspect that the more liberal Islamic schools of shariat like the Shafi, Malik and Hanafi have been overlooked by the board.

Islamic law is so progressive that it can become basis for a Uniform Civil Code. However, conservative Muslim society dragged the Quran pronouncement to its own level and introduced, through human



reasoning many measure, which curbed women's rights.

The oppression of women in the name of Islam, especially the abuses connected with divorce and polygamy that had contributed to the stagnation of Muslim societies across the globe.

Women's status and role, as well as the patriarchal structure and gender relations in Muslim societies, are a function of multiple factors, most of which have nothing to do with Doctrinal position of the Quran and the Hadith. The orthodox's fear that the freedom for women will cost society to degenerate into licentious promiscuity has created a situation in which the basic rights of women have been forsaken and the fundamentals of equality, fairness and justice as enshrined in the Quran have been completely overlooked. There is no doubt that to a large extent the community itself is to be blamed for constructing a "non-reformist image", given its history of opposition and a very slow adaptation to modernisation, particularly to secular education, within and outside India. Moreover, the difference between the Islamic conservatives and modernist, when put together is very wide. Their concern to "preserve Islam in sterile form" first by denying education to Muslim girls and secluding them from "outside influence", and later by reluctantly allowing them to have access to secular education within the "Muslim environment" — led to wide public perception across the globe that Islamic traditions are the most inherently inimical and discriminatory to the women. The JUH and AIMPLB's stringent opposition to past Government's attempt to bring "legislative reform" in the field of "Muslim personal

law", which has increased in recent years to the extent of opposing to SC's right to interpret the Shariat Law as witnessed during Shah Bano case (1984-1985) has only reinforced the "non-reformist, non-progressive Muslim image" in the public domain⁶.

However, it may be emphasised that Islamic provisions concerning marriage, divorce and inheritance is far more gender friendly, liberal and modern, compared to other religious traditions. Unlike other religious traditions that treat marriage sacramental and deny the option of exit, Islamic traditions duly recognise the "principle of individual autonomy and consent" for contracting and breaking up the conjugal life.

Equality is the essence of Islamic value system, and therefore social transformation would be possible only when the status of the traditionally disadvantaged half of the society, i.e., women, was ameliorated.

Further, the issue of compulsory marriage registration is a one of the other step toward reformation in Muslim personal law. In the year of 2006, the Supreme Court directed all states and union territories to notify rules for compulsory marriage registration⁷.

Other such hurdle is that, Muslim women are still unsure of how efficiently the law

⁶ Flavia Agnes, "Shahbano to Kausar bano: Contextualizing the "Muslim woman" within a communalized polity" in A. Loomba and R. A. Lukose (eds.) South Asian Feminisms 33-53 (Duke University Press, 2012).

⁷ Flavia agnes, "Muslim Women's Rights and Media Coverage" 15 EPW 22 (2016).



will protect their rights. In triple talaq, a man has to return to the wife's family the expenses they paid on the wedding. If a woman takes *khula*, she doesn't have the right to claim any money or maintenance back. In many cases, women don't take the option of *khula* and wait for triple talaq because they know that they won't get their money if they take that route."

Also, it is fallacy on the part of those who understand that polygamy is a fundamental right of a Muslim Male. Polygamy is exception, but not a rule. The relevant Quranic provision on polygamy institution itself considers monogamous marriage as an ideal one.

Today, the issues of women rights in Muslim personal Law is highly controversial.

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, turning Article 44 a mere dead letter.

The central debate on interpretation of Muslim personal laws has both positive as well as negative aspects. Some authors has supported that, Muslim personal laws has given various rights to Muslim women such as choice in marriage, inheritance etc. Whereas, some are of the opinion that, there are various practices which is against the spirit of Indian Constitution. Therefore, certain anomalies need to eradicate by giving a true essence of Holy Quran for the benefit of the Muslim women's rights.

When Islamic Countries like Pakistan, Bangladesh banned it in 1961, and other countries like Tunisia, morocco, Afganistan, Jordan, Kuwait, Algeria do not recognise divorce outside the courts, then why is India lagging, is the question. Other religious and political leaders have argue that in order to be guided into favouring such liberal judgments and certain uniform codified laws which help to nullify to some extent the infructuous personal Muslim laws, there is need to launch an awareness campaign against the misuse of various Muslim women rights relating to marriage, divorce, property rights etc.

The response of the judiciary on the status on women under the Muslim personal law has been ambivalent. Many of the cases give the impression that the role of our judiciary has been healthy and satisfactory. In many cases Supreme Court has tested personal laws on the touchstone of fundamental rights and to make them consistent with fundamental rights.

Whereas in some of the case court held the validity of the personal laws cannot be challenged on the ground that they are in violation of fundamental rights because of the fact parties in personal law is not susceptible to fundamental rights.

The Indian judicial system is so profused with legl precedents, declaring practice of triple talaq as null and void, that among the plethora of cases both in the Supreme Court as well as High Court, the one assuming grave importance are those of Shayara



Bano⁸, Daniel Latifi⁹, Shamim Ara¹⁰ and Shah Bano¹¹. The court while upholding the rights of Muslim rights, righteously remarked the intent of section 125 of CrPc in Shah Bano's case to invoke Uniform Civil Code, and to serve the secularist form of the country, as guarded in the preamble of the constitution per se. However, the question remains that whether declaring the practice of triple talaq unconstitutional, would ameliorate the condition of Muslim women more than the invalidation has done. It is pertinent to note that identity crisis is a complex phenomenon and therefore instead of a blanket ban, the Supreme Court can delegitimise polygyny in India for not being in consonance with the Quranic procedure.

When 'gender versus community' hits the headlines in the present scenario, it should prime facie be concerned with the rights of the victimised burka clad rather than exercising oppression as a mere political tool of governance. As a matter of good public policy, criminal law must not intrude into personal lives of citizens unless there is a pressing ground for it such as physical violence. There is good reason for that because no civilised society approves of watchdogs in the family home. It is sad that some people point to what other countries do as though we have to permanently remain followers rather than show the way to an enlightened legal system. With triple talaq gone it is a waste of time to decry people for being sympathetic to triple talaq or seek punishment for those who foolishly utter it

despite its ineffectiveness. Shorn of the noise and harangue the issue is not really about the empowerment of women, because in that case the government should have been looking at enhancing the benefit and protection granted by the Muslim Women (Protection of Rights on Divorce) Act 1986 and other protective legislation. Ironically the present legislation is titled the Muslim Women (Protection of Rights on Marriage) Bill 2017.

Although there it is an undisputed fact and fear that the state might use it against Muslim men, yet the concerns of Muslim women cannot simply be given a cold shoulder. The legal protection of Muslim women has to be made concrete. Otherwise what's the point of codification, if there's no fear of law?

Putting together, it can be concluded that the Muslims are required to follow the teachings of Holy Quran and Hadith rather than the class of hegemonic men who turned the intend of Quran to the masculine preponderance. There is need to apply all the holy verses of Quran in letter and spirit. They should remember that the Prophet himself invalidated the marital alliances which were contracted against the consent of women in contemporary era, thus touching the base to voice against injustice suffered by women. Therefore, Muslims are ought not allow this arbitrary and unjust practice to plague their community and disrupt the society at large. Rather, the Muslim intellectuals are to initiate measures for drafting a comprehensive law duly codified, which is the crying need of the hour.

⁸ Writ Petition (C) No. 118 of 2016

⁹ Writ Petition (civil) 868 of 1986

¹⁰ Appeal (crl.) 465 of 1996

¹¹ 1985 AIR 945