CHANGING DIMENSIONS OF TRIPLE TALAQ

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Abstract

Islam is one of those religions which is based on the holy book Quran and traditions of the Prophet. In Islam, marriage is the affirm union which can dissolve by giving Talaq. Talaq is the part of the traditions and customary law for Muslim community indeed promoted by the Prophet Mohammad but only when it is difficult for the parties to stay together. Talaq-al- biddat is one of the kinds for Talaq which are exclusively given to the husbands. The divorce is pronounced thrice in one sitting and sentence whenever the husband wishes or under haste, which is arbitrary in nature. This sudden pronouncement by the husband alienates the women from the society; leaving no room for her to go and raising the questions on her dignity.

This arbitrary act infringes the natural rights of the wife to live in relation and move according to her own wish. In the modern progressive society, where the people are treated to be equal, here still remains the discrimination in powers of a Muslim man and woman. This is infringing their rights for equal treatment in the society. Due to this activity, many countries which include Islamic countries have prohibited this dominating action by enacting the Muslim Personal codified laws for banning the Triple Talaq. Their laws have directly or indirectly impacted to the Muslim society which prohibits the three repudiation of ‘Talaq’ in one sitting and one sentence. Triple talaq by any mode is being banned by many countries through laws. But in India where the Hanafi followers are in majority, the only Muslims who recognizes practice of Triple Talaq, has taken the step by enacting a Bill for prohibiting the action but it is yet to pass.

Moreover, it can be done by enacting effective legislation with the support of All India Muslim Personal Law Board (AIMPLB). This will not only gives the women equal rights but also allows the short tempered husbands to reconcile after realizing their indecent act. Thus, it will also indicate new direction to the Muslim community by making them aware about the procedure to be followed for divorcing the women and to know about the sin of the triple talaq. Hence, in this developing society, demand for the enactment of the effective laws is increasing as the women are getting aware of their rights which are protected by the Constitution of India.

Thus, the work critically analyses the act of triple talaq. The work also discusses the laws enacted by the countries for prohibiting such act and for the other solutions which are or can take in India for prohibiting the act.

Keywords:
1. Islam
2. Talaq-al-biddat
3. Muslim community
4. Discrimination
5. Dignity

Introduction

Islam is one of the only religions which have undeviating and simple rules based on the holy Quran and the traditions of the Prophet
Mohammad. Muslims also have their own law, abided by the traditions and customs. Muslims have complete faith in the Quran which was supplemented by the traditions of the Prophet Mohammad known as ‘Sunnah’\(^1\) and later, leads to the formation of Islamic laws.

There arose the different variations due to the different place of revelations i.e. Mecca and Medina, which made the difference of opinion in the interpretation of the spiritual words of the Prophet Mohammad. This led to the establishment of the different schools under the Islamic law by different jurists. However, this marked to different interpretation of the jurists which generally came to known as Ijma. Ijma is applied when there is no law given in the Quran or Traditions of the Prophet Mohammad.

Marriage is the institution of a stable and affirn union of two different sexes which concords faith in each other. Under Muslim Law, marriage is a contract not the sacrament. Thus, the union is an affirn union under the Quran which ends on the death of either of spouse or by giving divorce. In Islam, divorce is considered as an exception to the status of marriage. The Prophet declared that among the things which have been permitted by the law, divorce is the worst.\(^2\) Divorce dissolves the marriage when parties find it impossible to live together and find them to be tethered by the marriage which results in the dissolution of the marriage.

Generally both the parties to marriage have option of divorce but husband’s right is much greater than that of wife. Wife cannot divorce herself from her husband without his consent. If he wishes, then only the women (wife) can be delegated with the power for an agreement before or after marriage providing that she can divorce herself from her husband under certain special conditions. Such delegation of power is known as Talaq – e- Tafeez. In this dynamic society, nowadays, the husband gives the three repudiation of ‘Talaq’ in one sitting and one sentence which is irrevocable in nature. Thus, the act by the husband is tyrannical in nature.

Prophet disliked the practice of giving divorce by the husband and treating her like the goods and cattle he owns. He set out to reform this practice and laid down the procedure, to be adopted in case of divorce between the couples, and told, “now onwards only twice in the whole life can a husband pronounce a Talaq and revoke it; whenever he does so for the third time the marriage would be instantly dissolved, leaving no room for the remarriage between the divorced people.”\(^3\)

This statement means that the husband cannot give the divorce thrice in one sitting and sentence and if he does so, it will be a sin and complete violation of the Quran and the wordings of the Prophet Mohammad. Thus, the triple Talaq is against the Muslim Law.

**Origin of Triple Talaq**

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1. Sunnah is constituted from the wordings and the silence of the Prophet Mohammad. It is believed that whatever the Prophet said, it was his own understanding which he interpreted from the words of the Gabriel.

2. Tyabji: “Muslim Law” P.143, Ed IV

Islamic Shariah was formulated many years ago after the death of the Prophet Mohammad. Many Caliphs and jurists came with distinct belief and vision related to many matters which also included the issue of “talaq” i.e. whether the talaq should be given in single repudiation or three in one sitting! This had evolved the complex influence of various jurists on the Muslim society for the acceptance of the triple talaq in one sitting.

Triple Talaq was avoided during the period of the Prophet Mohammad. During the first Caliph Abu Bakr’s reign and for around more than two years during the second Caliph Umar’s time, triple talaq in one sitting was not promoted and was the disgrace activity against the Muslim women society. But during the period of Umar, he permitted it on the account of a peculiar situation. Arabs conquered Syria, Egypt, and Persia etc. where they found the beautiful women and got attracted to them. The women of Egypt, Syria, and Persia demanded the married Arabs that before marrying them they have to pronounce the Talaq thrice in one sitting to their existing wives. The women were unaware of the law that three repudiation of Talaq in one sitting was abolished and the Arabs misrepresented them. When they discovered the truth, the Egyptians and Syrian women complained to Umar, the Caliph. He enforced the triple Talaq to meet an emergency situation and to prevent its misuse by the Arabs but not with the intention to enforce it permanently. Later, the jurists contemplated and declared this form of divorce as valid and referred to it.

During the second century of Islam, Omayyad, the monarch, on finding that facility of repudiation imposed by the Prophet is being caprice; they escaped from the route of the strictness of law. Therefore, the Omayyad’s practice gave the validity to this divorce.

Later, in the Britshers era, this practice was nurtured as they were unaware about the personal laws; whatever the jurists said they made it the law, in the form of the judgments which are prevailing till today. This leads to the development and encouragement to the evil practice all over the world among the Muslim community. Indeed, this practice came to be a custom, is prevailing over the Muslim women society.

In this dynamic society, people are getting aware of their rights and have the knowledge of the good and evil practices. Hence, many countries have been imposing a ban on the practice of triple Talaq to reduce the dominating role of the men over there women! This has become a revolutionary point in the world as the Muslim Community is getting aware of their rights and duties in respect to the Quran and traditions of Prophet Mohammad. Egyptian law is the first one to incorporate the Muslim Personal Codified law which abolished the practice of pronouncing triple Talaq. Later, the Sudan, Morocco, Iraq, Jordan, Afghanistan, adopted similar laws. Besides these, many other Muslim countries such as the United Arab Emirates, Qatar and Bahrain etc have also adopted Ibn Taimiyah’s opinion as the guideline for their personal laws related to

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6 “Mohammad Munir”, Reforms in triple talaq in the personal laws of Muslim states and the Pakistani legal system: Continuity versus change” 2 International Review of Law 2 (2013)
triple Talaq. According to him “the Talaq which is uttered thrice should be considered as one and the husband thus will have the right to take his wife back within the 'iddah period or go for nikah if the 'iddah period has expired." Thus, the steps have been taken for the abolition of triple Talaq in many countries and indeed, India is also taking steps as out of the total population, around 14.2% are the Hanafi Muslims which resulted in the continuance of triple talaq.

Different Nations’ Laws on Triple Talaq
Many countries including the Islamic countries, have taken the legislative actions for the uniformity in the laws of divorce because it is misused by the dominating society of man and differently interpreted by the jurists. There are around 22 countries that have enacted the Muslim Personal Laws and banned Triple Talaq. Scholars like Ibn e Abbas, Ikramah Tawoos, Ibn e Ishaq, Imam Razee, Imam Ibn e Taimiyyah, etc. encouraged the countries to ban such evil step as they had clearly opposed the practice of Triple Talaq and treated the three repudiation of talaq in one sitting as one. According to Allamah Ibn e Taimiyyah,

"If somebody gives three talaqs in one wording or in three wordings in one Tuhr (wife's period of cleanliness) then it is haraam (unlawful) to do so according to the opinion of the majority of ulema. But the question of its being effective is under dispute. One opinion is that three talaqs will be operative and another is that it will amount to only one talaq. And the latter is correct as it is supported by the Quran and Sunnah as has been described in detail earlier elsewhere." Hence, this resulted in the enactment of the Muslim Personal Laws in many countries. First of all Egypt, in 1929, removed the principle of the effect of triple talaq and enacted a law stating that several talaq will be considered as one talaq which will be revocable in nature. (Egyptian Family Laws of 1929, Art.3)

"A divorce accompanied by a number expressly or impliedly, shall count only a single divorce, and such a divorce shall be revocable except when three talaqs are given, one in each tuhr."

In Sudan and Jordan also the position is similar that triple-talaq shall be considered as one under Section 3 of Sudanese Manshur-i-Qadi al Qudat, and Section 60 of Jordanian Code of Personal Status, 1976, respectively. The Sudanese law provides that pronouncement of all divorces by the husband is revocable except the third one. It also includes the divorce before consummation of marriage, and a divorce for consideration. The laws in Syria are the combination of Egyptian laws and Sudanese laws. It states that if a divorce is given in a

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7 “Triple Talaq”, Ibrahim B. Syed, Ph. D., President, Islamic Research Foundation International, Inc
8 Shams Pirzada; English translation Sultan Akhtar, “In the lights of Quran and Sunnah”, P. 22
9 “Mohammad Munir”, Reforms in triple talaq in the personal laws of Muslim states and the Pakistani legal system: Continuity versus change” 2 International Review of Law 2 (2013)
10 Section 3 of Sudanese Manshur-i-Qadi al Qudat, and Section 60 of Jordanian Code of Personal Status, 1976
12 Article 3, Shariah Circular No. 41/1935 of Sudan
number whether expressly or implied then not more than one divorce shall take place and as same in the Sudanese laws every divorce is revocable except a third divorce or a divorce before consummation or a divorce held with the consideration, and in this law such a divorce would be considered irrevocable.\footnote{Law of Personal Status of Syria, 1953, Article 92}

Many countries like \textit{Morocco, Afghanistan, and Libya etc.} relied on same provisions as they adopted the same laws for banning the Triple Talaq (one sentence or in a phrase uttering in one sitting) in the society. Thus, for triple talaq the statutory provisions are enacted by the countries.

Countries like \textit{United Arab Emirates, Qatar, and Bahrain} have adopted the guidelines of the Ibn Taimiyah while enacting their Muslim Personal Laws. Tunisia has also adopted the protected way so that the power cannot be misused by the husbands.

Under of the \textit{Tunisian Code of Personal Status, 1956}, divorce pronounced outside a court of law will not have any validity whatsoever,\footnote{Supra Note 4} and under also no divorce shall be decreed except after the court has made an overall inquiry into the causes of the rift and failed to bring about reconciliation.\footnote{Article 30, Tunisian code of Personal Status}

Under the family law of the \textit{Malaysian state of Sarawak}, a husband who desires to divorce his wife has to request a court to look into the causes of proposed divorce and advise the husband not to proceed with it. However, if the differences are irreconcilable, then the husband may pronounce one divorce before the court.\footnote{Article 32, Tunisian code of Personal Status}

Similarly, \textit{Sri Lanka’s Marriage and Divorce (Muslim) Act, 1951}, as amended up to 2006, provides that a husband intending to divorce his wife “shall give notice of his intention to the Qauzi [sic.Qadi]” who shall attempt reconciliation between the spouses “with the help of the relatives of the parties and of the elders and other influential Muslims of the area.”\footnote{“Mohammad Munir”, Reforms in triple talaq in the personal laws of Muslim states and the Pakistani legal system: Continuity versus change” 2 International Review of Law 3 (2013).}

Thus, laws lay down in countries like Sri Lanka, and the Malaysian state of Sarawak seems to develop the relation by harmony and if the reconciliation doesn’t occurs then only the Talaq can be given. The prior permission of the court of law is necessary for such procedure. Therefore, it reduces the misuse of the practice.

Apart from these countries, \textit{Pakistan and Bangladesh} have also enacted the laws to prevent the act of Triple Talaq. Pakistan and Bangladesh have the same provisions in Muslim Family Law Ordinance Pakistan, 1961. The basic purpose of the Act\footnote{The Act defines,}

\begin{enumerate}
\item Any man who wishes to divorce his wife shall, as soon as may be after the pronunciation of talaq in any form whatsoever, give the Chairman notice in
\end{enumerate}
reconciliation between the parties by the way of issuing the notice to the Chairman. Issuing the notice to Chairman indicates for the reconciliation between the parties, one cannot divorce his wife arbitrarily. If the person doesn’t do so then the punishment is also defined within the Section 7 (2), MFLO, 1961 and also if the notice is not given to the chairman under subsection (3) amounts to revocation of talaq., S.A. Rahman J., gave the remarks which were interpreted and do make reference to Islamic law. “His clear ruling showed that he considered section 7 of the MFLO to have abolished triple talaq in one session and that any talaq under this section is not irrevocable. Moreover, according to his interpretation, the marital status of the parties does not change within the 90-day period provided for in subsection (3). The most controversial interpretation of Justice Rahman, however, is that failure to give notice of talaq to the chairman under subsection (3) amounts to revocation of talaq. Although this interpretation has benefited women who ask the courts for maintenance when their husbands pronounce talaq orally without giving any notice of it to the chairman, however, this has caused trouble for some women upon remarrying, as ex-husbands can very well accuse them of adultery.”

The Supreme Court of Pakistan also interpreted for the failure of notice by the parties to the Chairman and it was held while discussing the Gardezi rule, that “failure to send notice of talaq to the Chairman of the Union Council does not by itself lead to the conclusion that talaq has been revoked. It may only be ineffective but not revoked.” Therefore, Sayed Ali Nawaz Gardezi ruling was overruled by the Supreme Court itself.

The court of Bangladesh relies on the judgments given by the Pakistan Supreme Court as both the countries are having the same law for the Muslims. It is because

5. If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in sub-section (3) or the pregnancy, whichever be later, ends.

6. Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from marrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time, so effective.

21 “Mohammad Munir”, Reforms in triple talaq in the personal laws of Muslim states and the Pakistani legal system: Continuity versus change 2 International Review of Law 7 (2013)
22 Mst. Kaneez Fatima v. Wali Muhammad PLD 1993 SC 901
Bangladesh has inherited the MFLO, 1961 before getting separated from the Pakistan in 1971. Many cases of the Dhaka (Dacca) High Court and Supreme Court are of the pious nature and Bangladesh case laws are the best interpreter for the situation when the Muslim husband fails to constitute the notice to the Chairman for arbitration. In one of the cases, the husband gave no notice of talaq to either the chairman of the concerned Union Council or the wife. The question arose whether the talaq was effective when arguments were in connection with payment of the wife’s deferred dower. The husband’s counsel argued that since no notice was served by the husband to the Chairman or the wife, the talaq pronounced by him had not become effective and the wife was not entitled to the deferred dower. However, the husband had sworn in an affidavit before the magistrate pronouncing talaq and had served a copy of the affidavit upon the Nikah Registrar under section 6 of the Muslim Marriage and Divorce (Registration) Act, 1974. The court held that “mere non-service of notice upon the Chairman of the Union Council under section 7 of the Muslim Family Law Ordinance, 1961 cannot render the divorce ineffective if the conduct of the husband appears to be so.” The court relied on Pakistani cases Mrs. Parveen Chaudhry v. 6th Senior Civil Judge, Karachi. Thus, the case clearly states that if the notice not given it will not be said that divorce is ineffective. It is not mandatory to give the notice to Chairman but it is a direction of law stated under MFLO, 1961. The Bangladeshi case law is also very good in answering the question about the failure of the chairman to constitute an arbitration council as well as the failure of the council to take the necessary steps.

Nevertheless, these countries’ legislations are very effective and lead to giving the equal opportunity to both the parties including the families. Indeed, India is also working on the legislation for the abolishment of this instant talaq.

**Triple Talaq in India**

India is also taking steps for the instant triple talaq as out of the total population, around 14.2% are the Hanafi Muslims which resulted in the continuance of triple talaq. Triple Talaq also known as Talaq al-biddat or Talaq al-Bain is uttered in single tuhr, thrice in one session; within one phrase as anti taliq thalathan (you are divorced thrice) or is pronounced in three sentences “anti tāliq anti tāliq anti tāliq”. This is the most condemnable form of Talaq in India. The apex court of India also acknowledges this form of talaq as the most evil of all, as similar to the views of the holy Quran and traditions of the Prophet Mohammad. This form of Talaq is recognized only by Indian Sunnis, not by the Shias. This is evil in nature because it cannot be revoked and if the husband wants to reconsider his marriage with the same wife due to his erroneous act then the wife needs to follow the “halala”. In spite of being recognized by the Sunnis, there are few

24 “Mohammad Munir”, Reforms in triple talaq in the personal laws of Muslim states and the Pakistani legal system: Continuity versus change” 2 International Review of Law 10 (2013)
25 (you are divorced, you are divorced, you are divorced)
26 After pronouncing a *talaq* (for the third time) the person cannot revoke it anymore and cannot even remarry to the divorced wife right away; if he so wish then the person has to pay a penalty. The divorced wife has to become somebody else wife after the duration of iddah and remarrying her only if and when she is lawfully free of the second marital bond.
scholars\(^{27}\) according to whom “the Talaq which is uttered thrice should be considered as one…”\(^{28}\) and the Maliki School who don’t recognize the validity of Talaq-al-Biddat.\(^{29}\)

Under Hanafi Law, the Talaq-al-biddat requires no proof of intention and divorce made under compulsion jest, inadvertently or mere slip of tongue is valid. Despite this, if the Talaq is pronounced under the compulsion, coercion, undue influence, fraud and voluntary intoxication etc, it is valid and dissolves the marriage, but if the Talaq is pronounced under the involuntary intoxication then it is void even under the Hanafi Law.\(^{30}\) In a recent case in the year 2006\(^ {31}\) where the husband pronounced a ‘triple talaq’ in the condition of the intoxication and after attaining the stage of consciousness, he realized his mistake. He agreed to live with the wife and three children but the Maulvee of the community had issued a Fatwa (religious order) that the couple cannot live together without observing the ‘halala’. But the wife refused to observe ‘halala’ in this case. The couple was forced to live separately but later, they lived together and filed the suit in the Supreme Court. A bench comprising Ruma Pal J., C.K. Thakkar J. and Markandey Katju J., ordered the police protection as may be required the couple so that they could live together peacefully with their children. The court criticized the ‘religious order of Maulvees’ and observed that “in a secular country like India, communities should behave properly.”

Therefore, in India also, Triple Talaq is violative in nature but the circumstances doesn’t allow abolishing this sinful act as taking it to be part of the customs.

The Prophet denounced the practice of giving talaq thrice and prohibited the practice of ‘halala’. The women can remarry the first husband without following the procedure of ‘halala’ stated under the verses 2:229- 2:30 of Quran. They say:

> “The divorce is allowed twice. So either remain equitably, or part with the kindness. It is not lawful for you to take back anything you have given to the women, unless you fear that they will not uphold God’s limits, then, there is no sin for what is given back.”\(^ {33}\)

> “So if he divorces her again, then she will not be lawful from him until she has married other husband. If the other husband divorces her, then they are not blamed for coming back together if they think they will uphold the God’s limit.”\(^ {34}\)

Therefore, the Prophet clearly denounced the practice of giving talaq thrice due to reasons that if the pronouncement is made under aggression, haste etc then the husband has no chance to bring the wife back during the iddah or redress his err. India with the due aspect of banning the Triple Talaq wants to enact law so that this form can be abolished.

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\(^{27}\) Ibn Taimiyah, scholar of Hanbali School  
\(^{28}\) Supra Note4  
\(^{30}\) Dr. R.K. Sinha, Muslim Law, P. 83 Ed 6\(^{th}\)  
\(^{31}\) Times of India, 22\(^{nd}\) April, 2006 P.1  
\(^{32}\) Supra note 7  
\(^{33}\) Quran 2:229  
\(^{34}\) Quran 2:230
as followed by around 22 countries which include the Islamic countries as well. But due to the strong opposition by the AIMPLB and other Muslim communities in relation to decimalizing the Bill, it is still in question. The apex court and the subordinate courts in many of the cases decided the validity of the Triple Talaq cases and held it to be unconstitutional as in the case of **Riaz Fatima v. Mohammad Sharif**. 35 the Delhi High Court held *triple-talaq* to be invalid in the eyes of law. However, the validity for the triple talaq was also questioned, where it was argued that this form of divorce is against Quaranic law & court is not bound to give effect to the rule & it’s also opposite to tradition of Prophet. It was held that “The Quran verses have been differently interpreted by different schools.” Therefore, the court gave the interpretation that this form is not Quaranic Law which was also accepted in the case **Rahmat Ullah v State of U.P.** where it was held that an irrevocable divorce is unlawful because it is against the Holy Quran and also the Constitutional provisions of India.

However, the court’s decisions are not taken in due consideration and being criticized by the Muslim people. The court also believes that there should be reconciliation between the parties after pronouncing the divorce so that the affirm union couldn’t end by single sentence or phrase. The Division Bench has held the essence of Triple Talaq in India. “In our opinion the correct law of ‘talaq’ as ordained by Holy Quran is:

(i) That ‘*talaq*’ must be for a reasonable cause; and

(ii) That it must be preceded by an attempt at reconciliation between the husband and wife by two arbiters, one chosen by the wife from her family and the other by the husband from his. If their attempts fail, ‘*talaq*’ may be affected.

In the recent case of 2010, **Kunhimallohamm v Ayishakumuty** it has followed the same and held by the court that the Muslim husband is not obliged to give reasons for the divorce but the attempt is made towards the reconciliation between them by two arbiters. His mere arbitrary pronouncement of the triple talaq does not satisfy the procedural fairness injected by the holy Quran to terminate a marriage.

In India, the All India Muslim Personal Law Board (AIMPLB) is established so that the grievances related to Muslims can be considered by the Board which has qualified jurists, who are the interpreters of the Muslim Laws.

In **Marium v. Md. Shamsi Alam** the court takes the pronounced Talaq in one Sentence in one breath to be treated as one. In this case, the husband had pronounced triple talaq to his wife and when he repented his action, he revoked the Talaq within the period of Iddah; she filed a suit for a declaration that she had been divorced by Alam. The Allahabad High Court it was observed by the court that in this case the Talaq was in Ahsan form, therefore, the Talaq can be revoked before the Iddah as valid.
the husband didn’t intend to divorce seriously. Therefore, in this case the court has interpreted the Muslim Laws liberally so that the hasty and evil act cannot be made.

As under the Sunni Law only Talaq- al-biddat is allowed, thus, it can be in writing also but the courts of India don’t consider the Triple Talaq in writing. In the landmark case of Shamim Ara v State of U.P.\(^{41}\). Shamim, the appellant, was married to Abrar Ahmad, the respondent, according to Muslim Shariat law. Four sons were born out of the wedlock.

The appellant on behalf of herself as ‘wife’, not ‘divorced wife’ & her two minor sons, filed applications for maintenance under sec 125 of Cr.P.C. complaining of desertion & cruelty on the part of the husband. The husband denied all averments made by wife. He pleaded that he has divorced his wife with triple talaq before 4-5 witnesses thus ceasing to be a couple. He also submitted that he had purchased house & delivered same to wife in lieu of dower & thus not entitled to pay dower. The learned judge of Family court at Allahabad refused to grant any maintenance to wife as she was already divorced however they granted Rs.150/- to one son till attains majority, the other one having become major during pendency of the proceedings. But the H.C. on revision held divorce was not given in presence of wife & no communication was given to her. But the communication stand completed on 5 December 1990 with filing of written statement by husband. Thus wife is entitled for maintenance. Allowing Special Appeal of wife apex court held, to make it effective and must be formally pronounced and said:

The court discussed at length all the aspects of talaq under Muslim law applied in India, including Quran ch IV Sura 34 and allowed the appeal of wife. Therefore, apex court tacitly doesn’t approve and recognize the triple talaq as held in many of the leading cases.

Hence, many cases are being decided by the honorable courts of India which clearly favor the Quran and the traditions of the Prophet Muhammad for stating the Triple Talaq to be unconstitutional and vague but due to earlier, negation by the Personal Board of Muslim Laws i.e. AIMPLB for the judgments of the honorable courts’ decision, it has not been accepted in India and still in debate. Not only has this been favored by the court of justice but also the reconciliation between the parties by the arbiters. If the person gives the divorce through the triple talaq then the arbiters should be appointed so that the reconciliation can be there between the parties which would be speedy and much more effective, as stated in one of the case by the High Court.

The attempt at reconciliation which is recommended under the Shariat has been assigned a key role by the Supreme Court. The petition\(^{42}\) was filed by one lady named Anwara Begum, for maintenance, Jiauddin alleged in his written statement before the Magistrate that he had pronounced talaq earlier and that Anwara Begum was no longer his wife. No evidence of the pronunciation of talaq was produced. When the matter reached the High Court, the question arose whether there had been a valid talaq? Baharul Islam J. observed that while a Muslim marriage was a civil contract, a high degree of sanctity attached to it. The

\(^{41}\) AIR 2002 S.C. 3551

\(^{42}\) Sri Jiauddin v. Mrs. Anwara Begum, (1981) 1 Gauhati Law Reports 358
necessity of dissolution was recognized but, only under exceptional circumstances. He held that:-

“‘talaq’ must be for reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters - one from the wife's family the other from the husband's. If the attempts fail, talaq may be affected.

Therefore, the court also favors for the Arbiter counsel from the side of the parties so that the dispute can be resolved within four walls instead of going to the court. Indeed, this needs the people’s participation and contribution as this is the easy way to solve the grievances towards each other. This is also not violating the Quran and the traditions of the Prophet Mohammad.

Hence, the courts of India also recognize the words of The Quran and traditions of the Prophet Mohammad. These initiatives converted to the revolution in 2017 from the Shayara Bano vs. Union of India and others judgment as the Supreme Court in a majority judgment of 3:2, set aside the practice of talaq-e-biddat. This gave a boost to liberate Indian Muslim women from the age-old practice of capricious and whimsical method of divorce, by some Muslim men, leaving no room for reconciliation. It vindicated the position taken by the Government that talaq-e-biddat is against constitutional morality, dignity of women and the principles of gender equality. AIMPLB contended that it was not for the judiciary to decide matters but for the legislature to make any law on the same. They had also submitted in the Supreme Court that they would issue advisories to the members of the community against this practice. Thus, SC gave 6 months time to enact the legislation for the same.

It is a need for State action to give effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce. In the result, the Muslim women (protection of rights on marriage) Bill, 2017 is being enacted.

Though, the government of India made the instant talaq to be void and illegal, however, has not taken steps to the fullest extent by criminalizing the instant talaq. If the husband serves the instant talaq then he will be criminalized for 3 years and fine, also he has to give the subsistence allowance to the wife and children which can be impossible. The prior step can itself create complications by enforcing it as non-bailable and cognizable offence.

This could create the complications in the personal life of couples and families. Criminalizing the instant talaq the husband will be jailed for 3 years and fined. The subsistence allowance should also be given to the woman that is quite unequal to the man’s part. This Act could harm the rights of man as Right to Divorce. Criminalizing won’t be any solution for the marriage instead of affecting the affirm institution. Thus, the legislature before enacting this prominent legislature needs to reconsider the Bill for the safer zone.

Suggestions and Conclusion
Islam is the religion which is totally different and relies on the words of the holy Quran and the traditions of the Prophet. Islam, even though, accepts the concept of divorce but directs the parties for such step only in the
certain circumstances where the parties find it impossible to live under the one roof. The issue can be solved with the harmony between the apex court’s decision, legislature and All India Muslim Personal Law Board. Many countries all over the world have accepted the depravity of the Triple Talaq which the legislators should have the thorough study.

The validation of the triple talaq can be made effective if the talaq uttered thrice should be counted as one and can be made for the two times more. The husband pronounces one talaq in a tuhr; he must not pronounce talaq for a second time until the next tuhr. Thus, the Hasan form should be made be effective within the triple talaq. The remedy should also be made for the husbands who under the haste and anger pronounces the triple talaq and realizes the mistake. They should be allowed to revoke the talaq during the period of Iddah. Thus, this act is not only evil upon the wife, many of the times the husband also suffers.

Rule for instant talaq cannot be enough as there is realization of his mistake and the husband wants to remarry the wife and live together happily then, the wife normally has to undergo ‘halala’. However ‘halala’ should be prohibited in India like all the other Muslim populated countries that allow the wife and husband to re-marry without following the procedure of ‘halala’ and she needs not to be dependent on the decision of the second husband who needs to divorce her with free consent after establishment of the relation. It is the decision of the second husband by divorce, which will allow the women to re-marry her former husband after following iddah. It will also prevent her from mental torture and agony caused by ‘halala’ because she also needs to follow iddah after getting the divorce from the former and second husband. Therefore, the practice of ‘halala’ should come to an end. Talaq-al- biddat shouldn’t be effective until and unless it is being communicated to the wife. Muslim husband should not divorce his wife at any time or for no reason. This practice was prevailed in the Pre-Islamic Arabia and criticized by Prophet as against justice, and cast down the women.

In Islam, the relationship between the husband and wife is pious and private who couldn’t conduct it outside the home because of which the Holy Quran ordains the proceedings for divorce and steps should be taken by members of both the families as the moderators, to have reconciliation between the spouses. If it fails to be effective then only the proceedings should start. This will lead the solving of differences within the four walls and non-involvement of any outsider. Thus, criminalizing the husband can be against the humanity.

In India, the Parliament could also give recognition to the legislation of Pakistan and Bangladesh, that there must be an arbitration council, appointed and headed by a Chairman for the purpose of reconciliation between the Muslim parties. It not only reduces the burden on the courts, since it is already dealing with so many cases, but also save time and efforts of the parties to file the suit & third during succeeding tuhr. Before the third pronouncement talaq is revocable but not after the third pronouncement.

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44 In Hasan there are three successive pronouncements of divorce and in case of menstruating wife; first pronunciation should be made during period of tuhr, second during next tuhr
and later for the proceedings. The Chairman should be granted with the powers so that his decisions should be effective in the society. This will help in delivery of fast and effective judgments as the arbitrator would be much more efficient and his judgment will be binding on both the parties.

Therefore, to eliminate the practice of triple talaq, it is necessary that, firstly the legislature should make laws to the effect of true Islamic laws of divorce. The legislature may take effect of the laws enacted by the Muslim countries that have reformed the triple-talaq in one form or the different. Secondly, it is very important that the Muslim community should accept the laws and adopt the proper method of divorce for ending the relation of marriage. Thirdly, the Muslim society should accept the decisions of the courts so that the path of justice can be followed. The society should be aware of the rights and duties as they are the main source for the development of the laws. Fourthly, the Muslim society should be made aware of their laws through the means of education, camps etc so that they could know about the sin of the triple talaq. Hence, the participation of the society is vital because the laws are made for the development of people and for their rights. Thus, at prior view they need to be social rather than political.

Thus, it can be concluded that the words of the Holy Quran and the traditions of the Prophet Mohammad should be followed by the Muslim community rather than the rule described by the third Caliph which deprave the women in the society and made this action to be arbitrary and dominating. There is the need for the enactment of efficient Muslim Personal Law by the Parliament after the suggestion of AIMPLB, jurists or others which will be binding all over the country. The affirm union which was promoted by the Prophet Mohammad for the development of the Muslim community will remain same as per his wish if there can be reunion between the parties by the arbiters. This will set a new example for the women society and leads them to live with dignity.