



INTERRELATION BETWEEN WOMEN RIGHTS AND RELIGION IN CONTEXT TO “TRIPLE TALAQ”

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“ABSTRACT”

“There is no tool for development more effective than the empowerment of women.”
-Kophi Annan

The prevalence of male dominance in the society resulted in deprivation of the status of women in the country. The women were not permitted to take part in implementation of any sort of work other than the family exercise.

Through this research paper the author attempts to show the interrelation between women rights and religion with special reference to the “Triple Talaq” judgment passed by the Supreme Court of India. In the light of this landmark judgement given by the apex court, the author has critically discussed and given a constructive analysis of conflict between religious freedom, guaranteed under “Article-25” and the right to equality in “Article-14” over the Personal laws.

Judicial interpretations have also been investigated or looked into wherein the courts have laid the procedure of legitimate divorce by interpreting the holy Quran. It brings an end to stop this form of injustice done to women and its implementation for curbing the atrocities being faced by a particular section of society.

Women of India have always faced whatever

society has thrown to them. Our history holds evidence to the facts which show how women were treated and how they had to fight for every minor right. These power structures have an impact on all aspects of life, from law and politics, to economic and social policy, family and community life, education, training, skill development and attainment of employment opportunities.

The important areas that have been taken into account in this research paper include the Status of women during pre-independence, during independence, post-independence and the challenges which they had to face.

CHAPTER 1: INTRODUCTION

Prevalence of male dominance was the major cause why the position of women in the nation was in a deprived state in the period of pre-independence. Prior to the independence, the position of women in the country faced innumerable problems and challenges. Primarily, the position of women in pre-independence was dependent on the society in which they lived.

In Indian society, both the sexes, male and female are provided with different status and position. Earlier women were treated as the slaves in the family. Male dominance was observed in pre independence period i.e. British Period and Mughal Period. Women were compelled to follow all the rules made by men who were basically restricting them from coming up. The position of women was



low since pre-independence period.¹ Many restrictions were imposed on women in earlier periods. Women were not even allowed to take part in various activities like dance, singing, education, etc. women were made restricted to their household works and were not allowed to share their opinions.

Sati was a common practice where women were forced to burn themselves after the death of their husbands. In Hindu culture, it was believed that a woman who practices sati, they will go to the heaven and they will also be honoured by society. Child marriages, children below the age of 18 years were married and even some at the infant age. Girls were considered to be burden over the families therefore; the common practice of female infanticide took place where girls were murdered before their birth. In early period, men were allowed to marry more than one wife which was known as polygamy.

“Triple Talaq” was practised by Muslims, wherein the husband could divorce his wife by using the word ‘talaq’ for three or multiple times, which may be either orally or written like text messages, or on any social media platform etc. In the case “Shayara Bano vs. Union of India”, many Muslim women signed and filed a “Public Interest Litigation” (PIL) petition against “Triple Talaq”. It was a landmark case, where “Triple Talaq” was declared and marked as unconstitutional in 3:2 majorities by Indian Supreme Court in 2017 as it was not the integral part of Muslim religious practices and it was also found to violate the constitutional morals. According to the new

law, men who found breaching this law can be prisoned up to 3 years.

But today, the view point is totally different. Post-independence period witnessed the change and developments in women in Indian society. Much change is observed in the status of women from pre independence to post independence. After independence, women got their own identity and are allowed to participate in various activities. They share their own opinions and are taking their own decisions. They are made educated and employed. Social evil practices got demolished and got completely banned. Now women have their own status and are considered equal to men in every aspect. Many legislations were made and some of the laws were amended in order to serve women with the equal status with men in the society. Government played a very important and crucial role in bringing equality in both the sexes. They come up with different schemes to ensure the education to girl child and women.

CHAPTER-2: WOMEN DURING PRE-INDEPENDENCE

During this period, the position of women was inferior. Pre-Independence is further divided under:

1. **Vedic period-** The “Vedic-period” is further divided into early “Vedic-period” and later Vedic period:
 - a. **Early Vedic period or Rig Vedic period:** During this period the society was framed as an organic. On the basis of profession, the classification of society was very flexible.

¹ Senthilkumar Madasamy, ‘Status of women in India’ (quora,4th January,2019) “<https://www.quora.com/What-was-the-status-of->

women-in-pre-independent-India” Accessed on 1st September,2020.



- b. **Later Vedic period:** During this period intermarriage between lower and higher class commenced.

On account of equality and freedom the situation of women during the “Vedic-period” was undoubtedly glorious. In this period, women took part in all walks of life. From studying in Gurukuls to receiving respect from the society they enjoyed liberty in every sphere. In Upanishad, the wife is regarded as a true companion of husband and has also been blessed to live as a queen in the house of husband. It not only shows the high status of married women as the wife has been described as the root of prosperity and enjoyment. During this period, religious activities of men and religious duties couldn't be performed without the participation of his wife. Further, there was no prohibition in remarriage of widows and absence of gender discrimination was seen.²

2. **Post Vedic period-** During this period, women had to face drastic hardships and restrictions. Basically, the position of women gradually declined & women lost their intellectual freedom and the power of creativity. Access to education was denied to the girls and in fact birth of a girl child was considered as a premonition of disaster in the family. Pre-puberty marriage system also emerged during this period wherein age of marriage for girls was decreased to 9-10. Girls belonging to the ruling class were allowed limited to access education and any other training. Also, the position of woman

widow not good and widow remarriage usually was not favored which forced them to lead an ascetic way of life.

3. **Mughal period-**

The position of women of Indian society within the Mughal period underwent many transformations. The change in social laws and customs emanated the improvement in the status of women where it varied according to their classes. Women residing in the rural areas were only occupied with the household works, agriculture & the responsibilities of their families. The women, who belonged to upper classes, were involved in skill enhancing activities such as educational institutions to acquire education. Women who belongs to royal families were allowed to engage themselves in different tasks such as- music, sports, and other physical activities. They were even allowed to talk to the visitors and friends. However, on the other side the women who resided mostly in the backward conditions in rural areas did not have any opportunity to promote their social and cultural development.³

The purdah system⁴ was introduced under the Mughal regime in India, wherein women were asked to remain behind their veils. The women who belonged to royal families were mandated to follow the purdah system strictly during Emperor Akbar's period. Women belonging to lower class were prevented from remaining inside the houses and behind the purdah due to their

² S.C Tripathi, Women and criminal law, edition 2(Central law publication,2014) 1

³ Radhika Kapoor, 'Status of women in pre-Independence'(2018) Vol. No. (6) IJASSH

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https://www.ijassh.in/images/short_pdf/1549376694_

02_Dr_Radhika_Kapur.pdf > Accessed on 5th September,2020.

⁴The editor, 'what is purdah system'(Britannica,9th May 2008)

“<https://www.britannica.com/topic/purdah>” Accessed in 8th September,2020.



occupation and nature of work as they have to move out of their houses. Although there was no purdah system among Hindus, the Hindu women were asked to follow it. In lower classes, purdah system was not acquired as the women were involved in labour works, peasants, etc. Female infanticide was practiced as girls were considered as the burden upon their families. During this period, women were not permitted to dance and visit market places, if a woman was found doing so, she was labelled as a prostitute. Women, who were prostitutes, participated in occasions like festivals, marriages and others. Although prostitutes formed part in every celebratory occasion, quite contrastingly, their existence was considered to be a great social evil, revealing the hypocrisy of those times.

Emperor Akbar took a positive step towards curbing pre-puberty marriages. A law was promulgated by Emperor Akbar that girls under the age of 14 and boys under the age of 16 were not eligible to get married. Further, polygamy was also common during this period on the rationale that prestige of a man will enhance if he has more than one wife.

During the Muslim period demise of a husband was considered as a great trouble in the life of a woman. Amongst Hindu's a widow re-marriage was not allowed. Sati pratha⁵ was drastically observed where the women were burnt live when their husband died. Women who performed this Sati pratha belonged to Brahmins & Kshatriya castes.

⁵ Richa Jain, 'what Is Sati'(the culture trip,2nd May 2018) "<https://www.scobserver.in/court-case/triple-talaq-case>" Accessed on 10th September,2020.

⁶ Nitisha, 'Status of women during British period'(Your article library,17th September,2020)

Similar to Sati pratha, jauhars were practised by the Rajputs when their husbands died during the war. Sati was also noticed in Mughal period and the Mughal emperor Akbar tried to ban this but was faced with criticism for the same. The sati was practised earlier also, but it was not mandatory in nature. Efforts were made by the Emperor Akbar to prevent women from being burnt alive against their will.

4. **British period-** During the British period⁶, to bring some changes within the Indian society, social reformers such as Jyotibha Phule, Raja ram Mohan Rao and Ishwar Chandra Vidyasagar underwent numerous challenges.

Some social evils like- Sati, infanticide, slavery, child marriage, prohibition of widow remarriage & lack of women's rights, also attracted the eyes of the British and social reformers.

During the period, social reformers achieved success in abolishing the custom of sati. Raja Ram Mohan Roy fought for child marriage and widow remarriage as well. Ishwar Chandra Vidyasagar promoted girl education by establishing many schools in Bengal. Mahatma Jyoti Rao Phule opened the 1st school only for girls in India. He also initiated widow-remarriage and opened a home for upper caste widows in 1854, and a home for new-born infants to prevent female infanticide.

"<https://www.yourarticlelibrary.com/women/status-of-women-during-british-period/47393>" Accessed on, 19th September,2020.



Many women had the skills of various arts; still their status in the Indian society was considered as the underprivileged women. Women were educated in skills like martial arts. Women did not have any kind of right to take share in their ancestral property. During this period, the status of women was not given any recognition as far as matters of property are concerned, due to non-inheritance rights. For fulfilling of all their requirements, women were dependent on the male members of the family. In the presence of East India Company, women were looked upon very badly and their status was inferior to men & they were not given any significance.

CHAPTER-3: BAD PRACTICES DURING MEDIEVAL PERIOD

Predominantly during the medieval period, the Muslim rulers appeared in India as warriors. During this period, it was noticed that the social life of women had to undergo tremendous and drastic changes. Foremost feature of this period was dependence of women was on their husbands or on other male relatives.

Due to the political instability of India, many social evils like polygamy, sati, zenana, child marriage got prevalent during the middle ages. Particularly the Hindu women witnessed the indicators of low status. Child marriage turned into a standard to protect the celibacy and honor of the girls. This plainly shows that the Hindu girls were denied any

education and practice of child marriages increased the figure of child widows.

Women's age during the medieval period is referred as the 'dark age' for them. When Muslim conquerors occupied India, they accompanied their own culture where women did not have any will of their own. The polygamy structure was also encouraged by these invaders who picked up any women they wanted which means having multiple spouses at the same time i.e. multiple spouses. Hence, women came to be viewed as instruments of sexual satisfaction. Indeed, even among the Hindus there wasn't much restriction to check the number of spouses a man could take.

Indian women, in order to protect themselves, started using veil to shield their body and appearance from the evil eyes of debauched men. This not only affected their education but also hampered their external work and made them more and more dependent on men. Movement outside of their home was prohibited⁷. Such practices penetrated the mentality of patriarchy in the society and led to under-development of women.

Many women were made to believe and trust that their optimal was the home. Therefore, they were convinced by the conditions to acknowledge their inadequacy and auxiliary position. Lack of freedom further led to deterioration of their status.⁸ Some of the bad practices of this period are discussed below in detail:

⁷ Nitisha, 'position of women during the medieval period' (your article library, 26th August, 2020) "<https://www.yourarticlelibrary.com/women/the-position-of-women-during-the-medieval-period/47394>" Accessed on 26th August, 2020.

⁸ P Srivastava, 'Status of women' (Sociology discussion, 27th August, 2020) "<https://www.sociologydiscussion.com/status-of-women/status-of-women-in-india-ancient-medieval-and-G20harems>." Accessed on 26th August, 2020.



1. **“Purdah system”**: In medieval Indian culture this system of ‘Purdah’ was widely prevalent. To safeguard the women from the sight of foreign invading rulers it was used, but it ended up curtailing the liberty of women. Although this system was a practice amongst Mughal rulers or other Muslim invaders, this practice became deeply rooted in the nation to the effect that it is followed even along the Hindu rulers as late as the twentieth century.
2. **“Sati”**: It is a custom specially followed by Hindu widows wherein they burn themselves to death because it is considered that practicing this ritual of women dying at the funeral pyre of husband will ensure that they go straight to heaven. Those women who performed this ritual were also highly respected by the society. The instance of this can be seen in the movie ‘Padmawat’, which glorified the practice of sati during that time. In Hindu society plight of widows was extremely worse because of which sati was considered to be the better option than living as a widow. The condition of widows was not in a good state and they had to experience mistreatment and often sexual exploitation.
3. **“Child marriage”**: During the medieval phase of India, girls were married off around the age of 8-10 and were not allowed access education. The child marriage was not only the problem which girls had to face but it is accompanied by the increasing birth rate and poor health conditions of women because of repeated child bearing. All physical, spiritual, and intellectual development was denied to these child brides.
4. **“Girl education”**: No formal education was provided to the girls of Hindu society during the medieval period in India. The only education which was provided was of household chores and religious teachings. In medieval Indian societies all these bad practices were present and were mainly faced by the Hindu society where as in other societies such as Buddhism, Christian and Jainism women enjoyed far more freedom and had an easy access to education. According to these religions, gender was not at all an issue in attaining preservation.
5. **“Female infanticide”**: Female infanticide basically means killing of a girl child, after she has been born. Believing that women would only make demands and would yield zero returns upon investment, was the rationale for considering her a liability by her parents. Huge dowry demands at the time of the marriage of a girl child was another factor which was considered to be financial burden on the parents and therefore, preference was given to a male child. Above discussed are the major causes which led to the performance of female infanticide.
6. **“Widow remarriage”**: The state of widows was unfavorable. They experienced many problems which made their lives low-spirited. Widows were not permitted to take part in any of the religious, social, cultural and political activities. In the decision-making matters widows were not permitted to express their ideas. They were deprived of many opportunities and were not permitted to enjoy the right to property.
7. **“Nikah halala”**: It is also a type of evil practice which has been carried on since ages in the name of tradition and religion. It is basically an authorized form of raping the wife of another man in order to make the former marriage valid/lawful. It was made for the protection of woman but now it is used as



a false pretext to rape a woman. Practices like nikah halala is still valid in the Muslim law. It is basically a custom which is being practiced when a husband gives a divorce to his wife but if later on, they want to get remarried the wife has to go through Nikah halala practice in which she has to marry and sleep with another person and then only she is allowed to remarry her first husband and return to him.

8. **“Polygamy”**: In simple words, polygamy is a type of custom/practice in which a person marries multiple spouses which basically means having more than one spouse at the same time.
9. **“Triple Talaq”**: Talaq is word used for divorce in Islam. It allows the husband to take a divorce from his wife just by uttering the word ‘talaq’ thrice in any form including text message and email. It is termed as the instant divorce and also known as ‘talaq-e-biddat’.

CHAPTER-4: WOMEN DURING POST-INDEPENDENCE

In various areas, improvements were done during the post-Independence which led to improvement in the position of women in the society. Many programs and schemes were formulated in order to bring progressive reforms for women. The main areas which promote women empowerment is by encouraging them towards the education and through participation in the employment setting. The value of education was conveyed to the women and educational rights were promoted. Several benefits like scholarships, loan facilities, facilities of hostel, etc. were

provided by the government to enhance education amongst women which helped them to pursue higher education.

With the outspread of education, women in India rose against cruelties of the male members. The women started opposing evil practices like polygamy, dowry, etc. Also, various social legislations were passed to improve the pathetic condition of women in India. After independence women were allowed to choose their career options and make decisions on their own.⁹

The Constitution makers and the leaders in India recognised the unequal status of women and also looked into it that women would get equal rights amongst men and protecting their rights and ensures justice to them through the following provisions:

- **“Article-14” (Right to equality)** of Indian constitution, prohibits discriminating amongst man and a woman. Equal status to the citizens of India including women are guaranteed under constitution of India.
- **“Article-15”** of Indian constitution empowers government to make special provisions for women. In all the religious, cultural, economic and political activities women are free to participate.
- **“Article-16”** of Indian constitution- Under this article no discrimination should be made on the basis of gender during an employment.
- **“Article-42”** of Indian constitution- this provides women with the maternity benefits Providing harmony and fraternity to people doing away with all customs related to women

⁹ Diganth raj Sehgal, ‘Position of women post-Independence’(ipleaders, 4th June 2019) “<https://blog.ipleaders.in/position-women-indian->

society-independence/” Accessed on 20th September,2020.



- **“Article-243”** of the Indian constitution- this ensures the one third reservation in the presidential posts amongst women in panchayats and separate seats reserved in every municipalities for women.

Certain new legislations were made and implemented in order to increase the status and to enjoy equal rights amongst men of the society & to safeguard their interests:

- **“The Hindu Marriage Act, 1955”** – “The Hindu Marriage act” was enacted by the parliament of India to systemise marriage law amongst Hindus. This act also specifies conditions for marriage, validity of ceremonies, criteria for registration of marriage, grounds for divorce, also speaks about the alimonies and remarriage. It also includes certain prohibition on polygamy, child marriage and polyandry. The position of widow has considerably improved and she now enjoys a respectable position in the society.¹⁰
- **“The Hindu Succession Act,1956”** – Before the enactment of this act of succession the property rights were different for sons and daughters, where sons had all rights in property of his father whereas daughters enjoyed those rights until they got married. But after the enactment of “The Hindu

Succession act”, the discrimination between sons and daughters came to an end and a woman can demand her rights over her father’s property.¹¹

- **“The Hindu Adoption and Maintenance Act, 1956”** – It provides with a legal procedure for the adoption of children by Hindu’s. It provides the right of women to ask for a maintenance from her husband and in what all circumstances the maintenance is entitled.¹²
- **“Special Marriage Act, 1954”** – It provides and deals with inter-religion and inter caste marriages and also talks about the conditions for marriage, registration of marriage, grounds for divorce, judicial separation, etc.¹³
- **“Dowry Prohibition Act, 1961”** – This act intends to prevent acceptance and demands of dowry and has prohibited it completely. It also protects woman from being exploited by declaring dowry an unlawful activity. Dowry is an evil practice which was prevailing in India.
- **“The Equal Remuneration Act, 1976”** – Under this act wage discrimination between male and female is strictly not permitted.

¹⁰ Mayank Shekhar, ‘introduction to Hindi marriage act’ (legalbites,15th June 2017) “<https://www.legalbites.in/hindu-marriage-act-1955/>” Accessed on 22nd September, 2020.

¹¹ Prakriti Agarwal, ‘Introduction to Hindu succession act’(youthkiawaaz,23rd January 2017) “<https://www.youthkiawaaz.com/2017/01/is-the-hindu-succession-act-1956-constitutional/#:~:text=Introduction%20To%20The%20Hindu%20Succession%20Act%2C%201956&text=The%20object%20of%20the%20Act,to%20intestate%20succession%20among%20Hindus.&text=It%20a>

ims%20to%20integrate%20the%20Mitakshara%20and%20Dayabhaga%20schools%20of%20Hindu%20laws Accessed on, 23rd September, 2020.

¹² Subodh Asthana, ‘all you need to know about adoption and maintenance’(ipleaders,29th February 2020)” <https://blog.ipleaders.in/hindu-adoption-maintenance/#Maintenance>” Accessed on,25th September, 2020.

¹³ Diva Rai, ‘guide to special marriage act’(ipleaders,11th October,2019)” <https://blog.ipleaders.in/special-marriage-act/#Introduction>” Accessed on 25th Septembe,2020.



Many associations and organizations are working for the development of women and children in the Indian society by the “ministry of women and child development”¹⁴ which consist of several independent organizations discussed below:

- “National Mission for Empowerment of Women” (NMEW)
- “Rastriya Mahila Khosh” (RMK)
- “Central Social Welfare Board” (CSWB)
- “Central Adoption Resource Authority” (CARA)
- “National Commission for Women” (NCW)

Today women are performing very well in every field. Women are provided with many benefits from the government to make them come up. Women are competing with men in every field and number of working women is increasing rapidly. Women are also welcomed to join Indian Armed Forces. Today, we can say that most of the women are do aware about their rights in the society & are still fighting whenever their rights are infringed.

Post-Independence, women in India did not struggle much in seeking the voting rights like in other countries and thus have every woman have right to vote. Even in the political field women enjoys equal rights amongst men and many have joined different political parties and few of them have also captured the status of power as Cabinet Minister, Chief Ministers, Deputy Ministers, etc. Even families are helping women to have smooth entry in politics, now politics isn't the e exclusive domain of males.¹⁵

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https://en.m.wikipedia.org/wiki/Ministry_of_Women_and_Child_Development

¹⁵ Nitisha, ‘position of women in post-Independence’(your article library,20th September

Undoubtedly, in contrast to 1947, there was a significant change in the thoughts, point of view and consequently position of women in India. The status which had lost during the middle ages and in the 19th century, has been somewhat regained in Indian women. It can be seen that in India the position or condition of women has improved. However, even after seven decades of Independence, women are still not equal to men in reality.

Landmark judgments

1. “Mohd Ahmad Khan” v. “Shah Bano” & Ors” (1985 AIR 945)

The judicial struggle against Muslim women rights has been going since decades. One of the most celebrated and an early case is “Shah Bano’s” case. Married to a renowned lawyer in Indore, “Shah Bano” was thrown out of her house at the age of 62, along with the children. However, instead of submitting to the patriarchal expectations and covering down, she decided to fight the battle and claim her legal rights. She was divorced by her husband and had been denied her claim for maintenance. The contention given by the husband was that he had given an irrevocable “Triple Talaq” to “Shah Bano” and therefore was not liable to pay maintenance to her under Islamic law. Therefore, she filed a case for claiming maintenance from him under “Section-125” of the “Code of Criminal Procedure” before a local court. The court ordered a monthly maintenance of Rs. 25. Upon petitioning before the High court, it enhanced the amount of maintenance, which was later upheld by the Apex court.

2019)

“<https://www.yourarticlelibrary.com/women/position-of-women-in-the-post-independence-era/47398>”

Accessed on 30th September,2020.



This is a landmark judgment in the area of family law because it was the first case wherein a Muslim woman was allowed maintenance under the aforesaid section. Major issues addressed and talked about by the court were whether the term 'wife' under the aforesaid section includes a Muslim married woman and whether such provision can override the Muslim personal law or any other personal law for that matter. The Apex court dealt deeply with this matter and observed that "Section-125" of the Code is a uniform provision and is applicable to every citizen, irrespective of their religion and if any conflict arises between the personal law of a religion and this provision, then the latter shall prevail over the other.

One of the important observations given by the court in this case was related to "Uniform Civil Code". The Apex court stressed upon the need for implementation of a "uniform civil code" as laid down by "Article-44" of the "Constitution of India" (Directive Principle of State Policy). However, many decades later, we are still too far behind achieving this dream.

This judgment had attracted criticism within the Muslim community of India, especially Muslim scholars. They considered this intrusion to be against the principles of Quran and other Islamic law sources. However, despite the antagonistic attitude of the community, the then Prime Minister of India, Shri Rajiv Gandhi enacted "the Muslim Women (Protection of Rights of Divorce) Act", 1986 to protect & preserve the rights of divorced Muslim women of India.

2. "Indian young lawyer association" v. state of Kerala¹⁶ (Sabrimala temple case)

The Sabrimala temple is located in the Periyar tiger reserve of Pathanamthitta district, Kerala and is considered as the abode of lord Ayyappa. The entry of women in their "menstrual years" (which is in b/w the ages of 10 to 50) was prohibited on the ground that it is a place of worship and women were never allowed to enter into the temple and pray. Lord Ayyappa is also referred as "Lord of Dharma" and is worshipped as a "Naishtika Bramhachari". But, as per the latest notification provided by the Devaswom Board, who has authority of managing the temple. The temple of Sabrimala is visited by more than 45million of people every year and it is also considered as one of the largest pilgrimages in the world annually. It is basically a case of conflict between rights of the women and the tradition.

In 1990, a petition got filed in the "High court of Kerala" seeking a ban in the entry of Sabrimala temple of women.

In 1991, restriction was imposed on woman aged between 10 to 50 by the Kerala High court.

In 2006, in the Supreme court a petition got registered by the "Indian young lawyer's association" seeking the entry of women in the Sabrimala temple. Where a group of 5 women challenged "Rule 3(b)" of the Kerala Hindu places of public worship Authorization of entry Rules, 1965. Which authorizes the ban on entry of woman of menstruating age. Also, the association argued that the custom of ban of entry

¹⁶ W.P. (Civil) 373 of 2006



violates the right to equality under Article-14 and under “Article-25” of the Indian constitution, the freedom of religion of female worshippers. This practice violates the fundamental rights and freedom of women. It is also a concern of women’s right and dignity. It also shows them unequal to men in the society, discrimination is done and right to practice their religion is also taken. In 2016, the ban was questioned by the court, saying that under the constitution it couldn’t be done.

This is a milestone judgement in the favor of woman’s right over old customary practices. As said by the Supreme court on 28th September, 2018 with a ratio of 4 is to 1 verdict, it ruled the restriction on the women’s entry inside the temple of Sabrimala was discriminatory and unconstitutional. Hence, it ordered the lifting the ban on entry and granted the entrance of women of any age inside the temple.

By passing this judgement, “the Supreme Court of India” not only enlightened the people but also proved and stated that the doors of judiciary are widely open to let in anyone who seeks justice as provided by the constitution of India.

“TRIPLE TALAQ CASE”

“Shayara Bano” v. Union of India & others¹⁷

Supreme Court of India in this case advanced the rights of the women by holding instant divorce as unconstitutional. In the case “Shayara Bano” versus “Union of India and Others” which was decided by the Honorable Supreme Court of India on 22nd August 2017. The Honorable Supreme

Court of India set aside the practice of “Talaq-E-Bidat”, which allowed the Muslim married men to divorce with their wives instantaneously and irrevocably.

By following the way of “Triple Talaq” or in other words (Talaq-E-Biddat) the Muslim men could divorce with their wives instantly and the same could be done without state intervention and just by pronouncing the word “Talaq” thrice.

On 16th February 2017, the Honorable Supreme Court of India asked the Petitioner “Shayara Bano”, “Union of India”, various “other women rights bodies”, and “All India Muslim Personal Law Board” to give written submissions on issue of “Talaq-E- Bidat”, “Nikah-Halala” and “polygamy”. The “Union of India” and “women rights organizations” like the “Bebaak Collective” and “Bhartiya Muslim Mahila Andolan” which was supported “Shayara Bano’s” plea that these practices of “Triple Talaq” were unconstitutional.

The “All India Muslim Personal Law Board” has argued that the un-codified “Muslim Personal Law” is not subject to constitutional judicial review and these are “essential practices” of “Islamic Religion” and the same are protected under the “Article-25” of the Constitution of India.

After accepting “Shayara Bano’s” petition, the Honorable Supreme Court of India formed bench of 5 judges which was a constitutional bench on 30th March 2017. The first hearing of the bench was on 11th May 2017. On 22nd August 2017,

¹⁷ WP (C) 118/2016



the 5 Judge Constitutional Bench pronounced its decision in “Triple Talaq” Case, declaring that the practice was unconstitutional by majority of 3:2.

The aforesaid judgment was given by a 5 Judge Bench of the Honorable Supreme Court of India having Judges - “Justice Jagdish Singh Khehar”, “Justice Kurian Joseph”, “Justice Rohinton Fali Nariman”, “Justice Uday Umesh Lalit” and “Justice S. Abdul Nazeer”.

The point of view of the Judges, the opinion was different and the court came to the conclusion by a majority vote of 3:2 the practice of “Talaq-E-Biddat” was set aside. Commonly it is known as “Triple Talaq”. The case itself does not primarily focus on gender justice but has strong positive implications on advancing women’s rights and gender equality in India.

The case had been brought before the court by the petitioner with the name of “Shayara Bano” and similarly other women who had been divorced by practicing “Talaq-E-Biddat” in the same way. Many different Muslim women's groups had also intervened during the trial to support them. On the outcome, when the final decision was made the court was split in the ratio of 3:2. The three judges in the majority regarded “Triple Talaq” as invalid, but all the judges had used different reasoning to arrive at the conclusion made by them.

Whether or not the practice of “Triple Talaq” does constitute an essential religious custom was the main question/issue of the case. In the past, the

Honorable Supreme Court of India has been reluctant in positioning itself vis-à-vis to the personal laws of the nation. In particularly against the backdrop of the court's power of judicial review and its reputation as an independent and activist court, it was also noticeable that with regard to personal laws, the apex court had also practiced a "hands-off approach”.

“Muslim wives” in the past scenario did not enjoy equivalent right. With the immediate effectiveness of this “Talaq”, which leaves no room for the planning and preparing for the divorce. This makes the problem particularly problematic. With the modern technology, there have been many instances in which the wives have been divorced using “Triple Talaq” and the same is being pronounced all over the social media platforms.

The court during the course of trial, stated that the introduction of a “Uniform Civil Code” (UCC) which would "help the cause of national integration thereby removing disparate loyalties of laws which all have conflicting ideologies". It is clear that this reference to Muslim community, the court assumed, had delayed process of legal unification. The final judgement also deploys negative stereotypes against the Islam as "ruthless in its inequality" and singles out the helpless situation of Muslim women who are married.

Existence of different personal laws in the nation for different religious communities do not conflict as per se with the principle of secularism provided by the “Constitution of India”. Nor is the call for a “Uniform Civil Code” (UCC) in the “Article-44” of the “Constitution of



India” in conflict to existence of personal law.

JUDGEMENT

Under the “Article-25” of the “Constitution of India” the state cannot take away the essential religious practice of a citizen. If a practice which is arbitrary and not an essential religious practice it will be hit by exception laid down under the “Article-25” of the “Constitution of India”.

The whole issue was whether or not the practice of “Triple Talaq” is an essential religious practice of Islam or not. As per the majority of the Islamic Scholars present in the court it was held that the practice of “Triple Talaq” was not protected by exception laid down in “Article-25” of the Indian constitution.

The "Article-25” of the “Constitution of India” carries the right of every person to freely practice, propagate any religion of their choice and any such practice is only restricted to the context of following exceptions which are “Public Order”, “Health”, “Morality” ,”Other Provisions” of “Part III of the Constitution of India” although the said practice has in no relevance to the above mentioned exceptions but the said practice was surely against other provisions of “Part III of the Indian Constitution” namely the “Article-14” of the “Constitution of India”.

The said practice of “Triple Talaq” was in violation to the “Fundamental Right of equality” since it was against the rights of women as the Married Muslim Women have no say in declaration of divorce unlike other religions.

The impugned practice is a tool by which marital tie amongst the Married Muslim Couple can be broken on the whims of the Husband without any attempt of reconciliation to save the marriage. This practice of “Talaq” therefore, is in violation to the “Article 14” of the Constitution of India, and thus is liable to be struck down by the Honorable “Supreme Court of India”.

The essential religious practices are those practices on which the religion is founded upon. The essential religious is the one which is fundamental to the profession and the propagation of religion. If taking away a practice causes any substantial change in religion then such practice can be called ‘an essential religious practice.’ Only such called essential religious practices are protected in the “Article 25(1)” of the Indian constitution.

The fact states that the majority of Islamic countries have done away or cancelled with the said practice of “Triple Talaq”, also reflects that the said practice of “Triple Talaq” is not one which will be called as an essential religious practice which is to be protected in the “Article 25(1)” of the Constitution of India.

CRITICAL ANALYSIS

The “Triple Talaq” judgment is appreciated throughout the jurisdictions as it is a protection shield against the social evil in the society. The majority of the bench on the face of it had criticized the Indian government for not making any relevant laws to solve the problem or prohibit such a regressive practice followed in a section



of the society. This practice of “Triple Talaq” allowed the husband to end the marital tie on his own, thereby making the life of the married Muslim women hell. The married Muslim women have been demanding the protection from such regressive bad practice and finally it was the Supreme court which gave them appropriate remedy.

The Honorable Supreme Court of India bench also observed that merely because practice is widespread and continuing since time immemorial it cannot be held as essential religious practice. The bench also cited the example of the practice of Sati in Hinduism, which was penalized and made an offence as it goes against the rights of women. Sati was also in practice universally and the same was practiced since ancient times. Therefore, the court arrived at very correct judgment.

During the case the judges of Honorable Supreme Court of India bench have talked about the issue of polygamy and Nikah Halala but at the time of giving the judgment, there was not even a single provision for both the issues too and both of them have been left unanswered and unaddressed in the judgment passed by the “Supreme Court of India”.

When this judgment was passed, it also received a lot of criticism from the Muslim board and the issues of Shia, Sunni also arose. However, this step furthers women reforms and it has also reduced the grievances of women. It is also a step in the ladder for the initiatives taken in the upliftment and welfare of the position of women in the Indian society. It is high time now that other retro cities which are in the

society against the women should also be redressed and ineffective solution should come up for the women as the society belongs to all and even women have equal rights as those of men.

To conclude the analysis, I may thank to the justified judgement which convinced me fully and was also provided by the majority bench of the Hon’ble “Supreme Court of India”. We the citizens of India have finally did away with the regressive and backward practice and a difficult process which woman had to go through with and was followed by a part of the society practicing “Triple Talaq” or also known as “Talaq-e-biddat”

CONCLUSION

Although, the struggle of women rights has been a long battle. There has been considerable amount of reforms where social evils like “Sati”, “Triple talaq”, “Widow Remarriage”, “Female infanticide”, “Child marriage”, etc. are no longer but there are various evils which are still prevalent. It would take years to bring about the change even after the laws are made as the enforcement at ground level takes long time and is very poor as we have seen in the recent case of rape where police did miscarriage of justice as reported by the media, it is high time that strict actions and enforcement should be and women rights should be protected.

Evil practices like “Triple Talaq” and ban on entry of woman in Sabrimala temple case still continued even after post-Independence till the time the decision wasn’t taken by the court, until the judgement was passed.



It can be concluded that since Independence the position of women in Indian society has radically changed. After looking at the situation of women the government of India took many measures/ initiatives to improve the economic, political and social status/situation of women in the society. A gradual change has been experienced over the years by women and have become more independent in today's time. Though, it cannot be considered that the measures taken by the government have been completely implemented as tradition and customs are still given much importance amongst the uneducated people.

