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## Triple Talaq: Status & Rights of Muslim Women in Indian Scenario some Implication & Changes

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### ABSTRACT

*Personal law in India, and especially muslim law has been a major political and controversial issue. Since independence it has been a rallying point for not only muslim, but also for Hindu right wing politics. After Saha Bano case, and the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, thereafter , the debate has assumed a central position, and majority identity politics has gained mileage. Apart from national parties, women's organizations and movements in India are also debating their stand on issues like the uniform civil code- the directive principle of state policy laid down by the constitution should be the basis of detailed strategy on various personal laws in the country. This article discusses the status and rights of Indian Muslim Women and explores what needs to be the real agenda for social changes.*

**Keywords:** *Shariat, NikahHalala, Nikahnama, Mehar*

### INTRODUCTION

Triple Talaq or Irrevocable divorce[1] is a form of divorce that is practiced by Muslims in India. It has been a subject of controversy and debates within the country, raising the issues of justice, gender equality, human rights and secularism. The Government of India and the Supreme court of India have been involved in addressing the issues.

For some orthodox muslims customs and traditions are more important than the Qur'anic injunctions. They really do not know that Islam was the first religion in the modern world to empower women and give them equal legal status. Talaq is a highly sensitive issue as it can break years of marital relations between husband and wife. Thus the holy Qur'an is also very cautious in matters of divorce. Firstly, it has adopted most modern approach to this sensitive issue. It requires arbitration before any breach of relations. The Qur'an says, " And if you fear a breach between the two, appoint an arbiter from his people and an arbiter from her people. If they both desire agreement, Allah will affect Harmony between them."

### INDIAN REFERENCE

Triple Talaq is a form of divorce practiced in India, whereby a Muslim man can legally divorce his wife by pronouncing talaq (the Arabic word for divorce) three times. The pronouncement can be oral or written, or, in recent times, delivered by electronic means such as telephone, SMS, email or social media. The man need not cite any cause for the divorce and the wife need not be

present at the time of pronouncement. After a period of iddat, during which it is ascertained whether the wife is pregnant with a child, the divorce becomes irrevocable.[2][3]

In the recommended practice, a waiting period is required before each pronouncement of talaq, during which reconciliation is attempted. However, it has become common to make all three pronouncements in one sitting. While the practice is frowned upon, it is not prohibited.[4] A divorced woman may not remarry her divorced husband unless she first marries another man, a practice called Nikah Halala. Until she remarries, she retains the custody of male toddlers and pre-pubertal female children. Beyond those restrictions, the children come under the guardianship of the father.[3]

Thus through arbitration the breach should be prevented and attempt should be made to bring them together again as Allah desires harmony. Despite such clear Qur'anic injunction we approve of triple talaq in one sitting and destroy marital life in one breath. How such an act be Islamic? It is greatest injustice, specially with women. The issue has also caused a debate on the need for a Uniform Civil Code in India.[00] Again justice is so central to Qur'anic teaching. And to throw ones wife but by pronouncing three words of talaq is most unjust act. There are three four key words in Qur'an – 'adl, ihsan, rahmah and hikmah and triple talaq is against all these key words. Neither it is justice, nor it is benevolence nor is it compassion, nor is it an act of wisdom.

### IS TRIPLE TALAQ UN- QURANIC

All muslims are not unanimous on this form of divorce. Ahle-Hadith, Hanbalis and Shi'ahs reject this form of talaq. Even Hanafi Muslim countries Jordan have reformed this practice and enforced the Quranic injunction of arbitration. Arbitration can and does save many marriages. The holy Qur'an does not allow triple talaq at all.

In Islam marriage is a social contract with clear conditions to be noted in a 'Nikahnama'. Not only this, it provides for affirmative provisions for a bride such as *mehar*. Triple talaq is mentioned nowhere in the Quran and perhaps, this is the reason why it is illegal in most Muslim countries. The Quran gives equal right to both husband and wife to seek divorce.

But it nowhere allows instant divorce, for it treats marriage as a serious social relationship entered into by two individuals. There are a number of verses in the Quran that call for attempts to reconcile in the case of marital discord. There is a verse calling for mediators, from families of both sides, if reconciliation between husband and wife is not working out. The verses clearly call for reconciliation and mediation process to be carried out over a period of ninety days. Allah has ordered the husband to carry out this process. Divorce can happen at the end of this time period, if the process doesn't lead to any reconciliation. So the question of unilateral or instant divorce, does not arise. This makes the practice of the triple talaq as practiced in our country, totally un-Quranic. No wonder, world over triple

### BACKGROUND

The Muslim family affairs in India are governed by the Muslim Personal Law (Shariat) Application Act, 1937 (Muslim Personal Law), one of the first acts to be passed after the

Government of India Act, 1935 became operational, introducing provincial autonomy and a form of dyarchy at the federal level. It replaced the so-called "Anglo-Mohammedan Law" previously operating for Muslims, and became binding on all of India's Muslims.[6][7] The Shariat is open to interpretation by the ulama (class of Muslim legal scholars). The ulama of Hanafi Sunnis consider this form of divorce binding, provided the pronouncement was made in front of Muslim witnesses and later confirmed by a Sharia court. However, the ulama of Ahl-i Hadith, IthnaAshariyya and Musta'lianIsma'ili Shia persuasions do not regard it as proper. Scholar AparnaRao states that, in 2003, there was an active debate among the ulama.[4]

In traditional Islamic jurisprudence, triple talaq is considered to be a particularly disapproved, but legally valid form of divorce.[8] Changing social conditions around the world have led to increasing dissatisfaction with traditional Islamic law of divorce since the early 20th century and various reforms have been undertaken in different countries.[9] Contrary to practices adopted in most Muslim-majority countries, Muslim couples in India are not required to register their marriage with civil authorities.[10] Muslim marriages in India are considered to be a private matter, unless the couple decided to register their marriage under the Special Marriage Act of 1954.[10] Owing to these historical factors, the checks that have been placed on the husband's unilateral right of divorce by governments of other countries, such as prohibition of triple talaq, have not been implemented in India.[10]

Some Muslim women have devised a standard *nikahnama* strictly within the Shari'ah framework and given to the Muslim personal law board a couple of years ago so that Muslim women do not face such situations. But the personal board is hesitating to implement it. If implemented, it can give lot of relief to Muslim women. This is very modest piece of reform but the personal board is hesitating in implementing even this.

All 'ulama agree that pronouncing triple talaq in one sitting is innovation and that innovation is sin and yet this sinful practice is enforced in the name of divine law. In fact triple talaq indeed is great sin as is to unjust and oppressive for women. Every possible attempt should be made to eradicate this sinful practice from our society. The 'ulama who are guardians of Islamic law should play a leading role in this matter.

Triple talaq, happens not because of religion but, patriarchy and power play masquerading as religion. It is important that everybody learns about triple talaq being un- Quranic and unjustified.

The practice has faced opposition from various Muslim women.[11] Some of them have filed PIL in Supreme Court of India against the practice terming it as "regressive".[12] The petitioner has asked for scrapping of section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, terming it against the Article 14 of the Constitution.[13]

Some orthodox Muslims has not allowed any improvement or amendment to the *Shariat Application Act, 1937*. As a result, muslim women suffer in matters of Triple Talaq, Halala, Polygamy, custody of children and inheritance despite highly just and favorable Quranicinjunctions. The uniform civil code is not answer for these issues. Muslimwomen can get justice through a comprehensive reform in Muslim Personal Law. This is permitted by the constitution as well. The interference is from the patriarchs and not by courts.

The personal law board should at least launch an awareness movement educating muslim men about desisting from this sinful form of divorce and resort to the Qur'anic form of divorce as clearly spelled out. The Muslim men are islamically illiterate and do not even know that triple talaq is a sinful form of talaq and holy Prophet has strongly disapproved of this form of divorce. If the members of personal law board do not have courage to abolish

this form of divorce they should at least have courage to launch an awareness movement among muslim men and appale to them not to resort to such form of divorce.

It is clear that triple talaq is a gross violation of the rights of women citizens. The right to religious freedom applies equally to women and man. It nowhere gives male citizens the permission to oppress female citizens. Muslim women have been denied their Quranic rights owing to misinterpretations and interference of patriarchal orthodox bodies. Society is confident that the courts will make this long- pending correction and give justice to the Muslim women.

While it is clear violation of the rights of women by some provisions such as oral divorce, polygamy and right to maintenance, the laws need to reformed to address these issues. After a nationwide survey, it found that Muslim women themselves wanted this change in laws.

Many Muslim women have approached courts challenging the unjust provisions of muslim personal law in their matters. There are some land mark cases by individual muslim women challenging the unjust provisions. Sometime an argument is made that the community itself must demand the changes, and these can then be effected. However, it is overlooked that Muslim women individually and in organizations have been raising their voice, and are struggling hard to get justice. In this struggle, they expect the state and the judiciary to ensure the justice, and do not want solutions from jammata or bodies like muslim personal law board.

## **SUPPORT**

The All India Muslim Personal Law Board (AIMPLB) defends the practice.[11] In April 2017, citing a report prepared by Muslim Mahila Research Kendra in coordination with Shariah Committee for Women, AIMPLB has claimed that Muslims have a lower rate of divorce compared to other religious communities, countering the argument that Muslims have highest number of divorce in the country due to the practice of Triple Talaq. It also claimed that it had received forms from 3.5 crore Muslim women across the country, supporting Shariat and Triple talaq.[14][15][16]

## **CONCLUSION**

It is against this background that one needs to reflect upon what should be the basis of making of laws .Ideally it should be the principle of justice, equality ,human rights and not the muscle power of any community. The government should not hide behind the logic of waiting for demands of community to initiate legal reform.

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