

BURNISHED LAW JOURNAL**Position of Triple Talaq in India with Special
Reference of Shayara Bano Case**

Author: Shashank Patel
III – Semester, LL.B (Hons.)
Faculty of Law, University of Lucknow

Abstract

Talaq means repudiation of marriage. Motive behind the introduction of concept of Talaq is to free the parties of marriage from continuing the marriage obligations which they no longer want to perform. Muslim personal law provides for many ways of divorce among which Talaq-e-biddat (Triple Talaq) was very controversial method. Triple talaq was criticized in many cases by courts due to its arbitrariness. Finally in 2017 Supreme Court of India declared it unconstitutional as it violates several articles of Constitution of India.



INTRODUCTION

Talaq in its primitive sense means dismissal. In its literal meaning, it means "setting free", "letting loose", or taking off any "ties or restraint". In Muslim Law it means freedom from the bondage of marriage and not from any other bondage. In legal sense it means dissolution of marriage by husband using appropriate words. In other words talaq is repudiation of marriage by the husband in accordance with the procedure laid down by the law.¹ Talaq in its original sense means repudiation or rejection but under Muslim Law, it means a release from the marriage tie, immediately or eventually. It is a generic name for all kinds of divorce; but is particularly applied to the repudiation by or on behalf of husband.

Talaq-e-biddat popularly known as triple talaq is one of the controversial method of talaq under muslim law in which marriage can be dissolved only by pronouncing the word 'talaq' three times by the husband. The wife cannot divorce herself from her husband without his consent, except

under a contract whether made before or after marriage, but she may, in some cases, obtain a divorce by judicial decree.

Moonshee Buzloor Rahim v. Laleefutoon nisa², in this case it was said that under Muslim law talaq is the mere arbitrary act of a Muslim husband who may repudiate his wife at his own pleasure with or without cause. He can pronounce the talaq at any time. It is not necessary for him to obtain the prior approval of his wife for the dissolution of his marriage.

The contract of marriage under the Mohammedan law may be dissolved in any one of the following ways³:

- ✓ By the husband at his will, without the intervention of a court;
- ✓ By mutual consent of the husband and wife, without the intervention of a court;
- ✓ By a judicial decree at the suit of the husband or wife.

The Quran makes no mention of instant divorce using the talaq method. The practice is outlined in the hadiths, or sayings attributed to the Prophet Muhammad,

¹ <http://www.legalserviceindia.com/article/I393-Divorce-under-Muslim-Law.html>; Visited on 15/09/2019.

² 8 MIA 397.

³ Sir Dinshaw Fardunji Mulla, Principles of Mahomedan Law, p. 390

which are regarded as less authoritative than the Quran but still influential in shaping Islamic doctrine.⁴ In **words of Prophet Mohammad**, “Talaq is the most detestable before god of all the permitted things”. Quran only permits talaq under exceptional and justifiable conditions and that too talaq-e-hassan and talaq-e-ahsan, which are revocable. No verse in the Quran validates instantaneous triple Talaq.⁵

With such divorces, which are available only to men, husbands can oust their wives from their homes, usually without any alimony or other financial support, leaving the women with few resources or prospects. Half of Muslim women in India are illiterate, and only 14 percent have ever worked outside the home, according to a 2014 study by the Bharatiya Muslim Mahila Andolan, a Muslim women’s advocacy group.⁶

There have been numerous court judgments which have established that Triple Talaq is invalid and have set some definite requirements for its validity.

In **Masroor Ahmed v. State (NCT of Delhi)**⁷, Triple Talaq was held to be one revocable Talaq meaning that the divorce can be revoked at any time before the completion of a waiting period of 90 days (called Iddat) after which the marriage is dissolved. Talaq must be for a reasonable cause. (Talaq given in anger is not valid).

In **Riaz Fatima v. Mohd. Sharif**⁸, it was held that evidence must be given by the husband of the reasons that has compelled him to seek divorce. A proof that talaq was proclaimed thrice in the presence of witnesses or in the letter must be provided and an attempt of reconciliation has been made. There are no official statistics to suggest how widespread the practice of instant divorce is, but the Bharatiya Muslim Mahila Andolan study found that among a sample of more than 4,700 women, 525 were divorced and 404 of those were “triple talaq” divorces. A Muslim woman in India who seeks a divorce must generally gain the permission of her husband, a cleric or other Islamic authorities.⁹

In case of **Shayara Bano v. Union of India**¹⁰, Shayara Bano, victim of this demonic practice, instituted a Public Interest Litigation (PIL) in Supreme Court in 2016. She claimed the enforcement of the Fundamental Rights mentioned u/a 14. In the meantime there were numerous petitions

⁴ Muslim Women in India Challenge ‘Instant Divorce’ Law”. The New York Times, 28 May 2017.

⁵ Case Comment on Shayara Bano v. Union of India, Adarsh Pandey and Arunaditya Singh Parihar.

⁶ “Muslim Women in India Challenge ‘Instant Divorce’ Law”. The New York Times, 28 May 2017.

⁷ 2008 (103) DRJ 137 (Del.)

⁸ (2007) DMC 26.

⁹ “Muslim Women in India Challenge ‘Instant Divorce’ Law”. The New York Times, 28 May 2017.

¹⁰ AIR 2017.

challenging the same issue therefore, Supreme Court clubbed all the petitions in one and heard it. Various NGO's and even Union government was supporting the cause.

Issue: Whether Triple Talaq is an essential religious practice?

Under Article 25 of the Constitution the State cannot take away the essential religious practice of a person. Therefore, if a practice which is arbitrary and not an essential religious practice it will be hit by the exception laid down u/a 25.

Minority Opinion: Such practice is an essential religious practice because it has the sanction of religious denomination and followed by an overwhelming majority of Muslim population.

Majority Opinion: Said practice is not an essential element of Islamic religion because majority of Islamic countries have done away with this practice. The said practice is in violation of Fundamental Right of equality since women have no right in declaration of talaq.

Judgment: The Supreme Court laid down this judgment on August 22, 2017 in 3:2 majority holding the practice of Triple Talaq unconstitutional.

The **Muslim Women (Protection of Rights on Marriage) Act, 2019** passed on 26 July 2019 after a very long discussion and opposition. It made triple talaq illegal in India on 1 August 2019, replacing the triple talaq ordinance promulgated in February 2019. It stipulates that instant triple talaq in any form spoken, written, or by electronic means such as email or SMS is illegal and void, with up to three years in jail for the husband. Under the new law, an aggrieved woman is entitled to demand maintenance for her dependent children.

Conclusion

Triple Talaq was the very torturous practice under Muslim law. Men after enjoying and extracting pleasure out of women used to abandon them easily by the virtue of Triple Talaq. After so many abortive attempts finally, a petition filed by Shayara Bano and others was successful in bringing justice to many unheard voices of India. Pronouncement of Judgment has changed the situation. No husband can now abandon his wife by ending marital tie on his whims and fancies.