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RESEARCH ARTICLE

TRIPLE TALAQ: JUDICIAL REFORMS IN INDIA

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Abstract

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Introduction:-

The word "Divorce" is well-known all around the globe and the concept of dissolution of marriage is found in every religion and language. Marriage, according to the concept of Islam is an alliance that has the nature of a social contract and can be put to an end i.e. it can be dissolved when it is unable to serve its purpose or ceases to serve its purpose. But it should not be mistaken that marriage is merely a contract. It should not be misunderstood that it has no solemnity and sanctity. Islam has a practical and realistic outlook on all human affairs and as a result of that it has recognized divorce but only as a necessary evil. Thus, resort to divorce must be taken only in inevitable circumstances. No one can refuse that at times such circumstances arise that makes it almost impossible for the couple to pull together and live peacefully and happily in their conjugal home. And in such situations, it is better to part ways rather than dragging on with the bitter, miserable and weak reality in a partnership that is forced. It is more conducive for the couple to part ways with good will and grace.

Divorce or *Talaq* is a concept that is not completed unless the husband pronounces it and it comes to the notice and knowledge of the wife. When dissolution of marriage is initiated from the side of the husband it is called *Talaq*. When the proceedings initiate from the wife's side it is known as *Khula* (redemption) and when it is decided by mutual consent that the parties want a divorce it is called *Mubara'at*.

As regards to the procedure of dissolution of marriage in Islam, generally there are two methods that are followed:

1. Firstly, the method prescribed and mentioned by the Holy Book, Qur'an and *Hadith* which is known as *Talaq-us-Sunnat*.
2. Second process is pronouncement of *Talaq* three times in one breath or on paper which is known as *Talaq-ul-Biddat*.

Former is the one which is in compliance with the law and the latter is the one in violation of law. This method is called Triple Divorce. This procedure of dissolution, Triple *Talaq*, was recognized by the *Sunni* Muslims and has unfortunately gained prevalence in the entire Muslim society, especially in India.

Holding Triple *Talaq* i.e. the three pronouncements together as a final irrevocable form of divorce is not so simple. It is problematic. This method of dissolution of marriage has created many socio-economic issues in the society. Among all the rules and regulations of the Muslim Personal Law Board which have been criticized and protested against adversely, the concept Triple *Talaq* is on the top. It is an extremely sensitive issue that has touched the lives of Muslims, especially the Muslim wives. The process of Triple *Talaq* has developed through various stages of

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history and if we see the recent controversies that are cropping up after every few days show that it is still in the process of development and that such development has not come to an end. There has always been a good deal of debate on the matters and laws relating to divorce. The uneasiness of this method has been discussed by various authors, judges, jurists and other legal experts, such as Asaf Ali Asghar Fyzee, Syed Ameer Ali, Sir Dinshaw Fardunji Mulla, Faiz Hassan Badruddin Tyabji, Prof. Dr. Tahir Mahmood, Baillie, Fitzgerald, Abdul Rahim and many others. While considering the controversy among Muslim jurists and theologians, over the subject of triple divorce it may be said that the scholars of both the views have over-emphasized their own arguments and underrated those of others.

Seeing the social aspect of Triple *Talaq* it must be borne in mind that the society of Indian Muslims today is far from the true Islamic teachings, values and principles. In simple words, we can say, that Islam and Muslims are two different concepts, far from each other. Somehow it is believed that divorce does not occur on the first pronouncement of the word and if husband does not retract it within the specified period, it becomes final and irrevocable.

Many Muslims have very rightly waived off and abolished the effectiveness of triple *talaq* as an irrevocable form of divorce. Its rigidity has been put to an end. They have made the law of three divorces altogether amount to one revocable divorce. However, no such change in the law or reform has taken place in India and if the attempts were made, all such efforts had to face the allegations in the religious and political rights of the Muslim community. While some judicial decisions viewed and defined triple *talaq* as rigid resulting in one irrevocable divorce, some judges represented a liberal approach towards this matter. The courts are now departing from their old approaches that were rigid and are inclining towards the views and approaches that are progressive i.e. pronouncement of *talaq* three times in one breath amounts to a single *talaq* which is revocable.

In the year 1993, three Muftis of *Jamiat Ahl-e-Hadith* had given a *fatwa* according to their *maslak* or law that if a Muslim husband pronounces “*Talaq TalaqTalaq*”, it will not bring divorce into operation as per the *Shariat* and subsequently will not affect the rights and obligations of the husband or wife. It shall be subject to legal consequences such as, refrain from sexual cohabitation, but if the husband resumes cohabitation, *talaq* will stand revoked and the couple would be entitled to stay together. This organization of *Jamiat Ahl-i-Hadith* is an all India, non-political organization which draws its inspiration from the Holy Book, Qur’an and *Hadith*. Some members of this organization are on the All India Muslim Personal Law Board and some are on the All India Milli Counsel. This verdict or *fatwa* stated that at least a month has to pass before the husband pronounces *talaq* the second time. After another month only it can be pronounced a third time. After the first and the second pronouncement the husband has a chance to reverse his decision and revoke *talaq*.

After this *fatwa*, the Allahabad High Court in the year 1994 pronounced a similar decision. On April 15, 1994, Justice H.N. Tilhari of the Lucknow Bench held that the practice of uttering the word ‘*talaq*’ in one go, goes to an effect of being irrevocable was both unconstitutional and illegal. The Bench held as follows:

“The pronouncement “*Talaq TalaqTalaq* is no final *talaq*”. These words show the view of triple *talaq* published by the *fatwa* by the *Jamiat Ahl-i-Hadith* published on 21st of May, 1993 in *Jareida Tarjuman*. This way shows that both the social as well as the judicial trend is shifting. This has been proved by referring to an article written by Fafia Zakaria named “Islam and Reforms” in which she repeatedly stated that the country’s old traditions and values which are prevalent in the society of Muslims, needs reform keeping in view the changing trends in the society which are within the parameters of faith.”

Prof. Dr. Tahir Mahmood, in his own way pleaded that Muslim law is not a foreign law and is justiciable in a civil court. The Indian Legal System has recognized Muslim Law as part of the Law of the Land i.e. “*Lex Loci*” and is much a part of the law of this country as the Hindu Marriage Act, 1955.

In the recent years rights of the women have been progressing by advanced interpretations of Muslim Law by the judiciary. These verdicts are markers that serve to support the rights of Muslim women. Despite such positive and innovative interventions, Muslim women are still subject to ill-treatment and they suffer as they are not aware of their rights.

After the landmark judgment of *Mohd. Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945, which attracted controversy in 1985, and subsequently the Muslim Women (Protection of Rights on Divorce) Act, 1986, it seemed that the right to maintenance of Muslim wives has extinguished. This controversy that arose in later cases in lower courts as well as High Courts was settled in *Danial Latifi v. Union of India* 2001 (7) SCC 740 where Supreme Court upheld the validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The court held that the Muslim Women's Act, 1986 substituted the right to recurrent maintenance under Section 125 of the Code of Criminal Procedure, 1973 with a new right consisting a lump sum provision to be made and paid to the woman soon after she gets a divorce.

There have also been significant judicial verdicts that dealt with the controversial issue of triple *talaq*. The judgment of *Shamim Arav. State of Uttar Pradesh* AIR 2002 SC 3551 is a landmark case on this issue which advocated, promoted, directed and highlighted the method of dissolution of marriage as per the Holy Book, Qur'an.

Citing the case of *Riaz Fatima v. Mohd. Sharif* (2007) DMC 26 Del, the High Court discussed in detail the issue of proving *talaq* and the requirements essential for its validity. It stated as follows:

1. Reason for divorce must be reasonable as prescribed in the Qur'an. Thus, the husband has to prove that he is divorcing his wife for a valid cause.
2. He has to prove that he pronounced the word '*talaq*' thrice in the presence of witnesses or in a letter.
3. There has to be a proof that *Mahr* has been paid and that *iddat* period is observed
4. The husband must prove that reconciliation/settlement efforts were made prior to the divorce.

These are the requirements that must be proved in order to deem *talaq* valid.

This leads us to arrive at a conclusion that the right of maintenance of a divorced Muslim woman from her husband does not come to an end upon divorce and even after *iddat* if she does not have sufficient means to maintain herself. She is entitled to such relief till she dies or remarries.

The Islamic policy has never been to confer an absolute authority of *talaq* upon a husband to be misused by him. Unfortunately, this power of *talaq* or divorce has been misunderstood and distorted and the actual guidelines of Islam for it have been flouted by the society as well as the courts. Thus, the result is that there is no legal control over this power and right of a Muslim husband which is unfettered by uttering a few words.

The judicial verdicts, later, leaned in favor of subsistence and saving of marital tie and not on divorce and separation. These pronouncements advocated and aimed to protect and safeguard the sanctity of marriage. But the main motive was to protect the women who were victims of this weapon of triple *talaq* in the hands of husbands to escape their obligation to maintain her.

There can be no doubt that giving three divorces together is a wicked and condemnable act. A number of traditions and statements agree upon the evil of this method of divorce. But the legal permissibility of divorce with restrictive safeguards and reservations still stand firm.

The best possible way of pronouncing divorce is the way prescribed in the Holy Book, Qur'an and once Qur'an as a word of God has been given precedence over all other norms or ways, there should be no objections particularly when that can save women folk from humiliation, mental torture thus making them helpless. And as *Nikah* is solemnized by a *Qazi*, divorce or *talaq* must also be pronounced in the presence of a *Qazi*. The enactment of Muslim Women (Protection of Rights on Marriage) Act, 2019 has made this heinous act illegal and void and also penalizes the one resorting to it with imprisonment and fine. It also provides the custody of children to the mother. But this Act has various loopholes and needs amendment.

Islam stands for justice, equity and benevolence and therefore anything which is unjust should not be allowed and must be done away with.

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