
TRIPLE TALAQ: THE CONSTITUTION OF INDIA

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ABSTRACT:

Women's rights in Muslim personal law are a contentious topic nowadays. Nowadays, there is a lot of focus on Muslim women's rights, particularly those related to triple talaq divorce, inheritance, and maintenance. Notwithstanding the Indian Constitution's guarantees of equality and freedom from discrimination on the basis of gender or religion, a number of traditions persist that are rooted in a callous conservative culture. The majority of court rulings are based on the standards outlined in the Quran and hadith, and as far as we know, a significant portion of Muslim personal law remains unchanged. The main argument about how to interpret Muslim personal regulations contains both advantages and disadvantages. According to some writers, Muslim personal rules grant Muslim women a number of privileges, including the ability to choose their spouse and inherit property. On the other hand, some people believe that a number of behaviors go against the spirit of the Indian Constitution. This study aims to analyze the ongoing discussion over the implications of Muslim personal law in India and offers a number of solutions to empower Muslim women. Therefore, for the sake of Muslim women's rights, these ambiguities must be eliminated by providing the genuine meaning of the Holy Quran.

Keywords-*Women Rights, Muslim Personal Law, Triple Talaq, Indian Constitution.*

INTRODUCTION

Religion serves as a cover for a number of social activities that reflect societal injustices. Personal laws were derived from a variety of sources under British administration. Given that males have always interpreted "religion," it represented the gender biases of the day. During British administration, regressive behaviors were also first reformatted. Reformers put a stop to child marriage and Sati. These reforms were resisted by conservative segments of society, who demanded that they be maintained in the name of "religion defense." To end triple talaq, there is a growing movement among the populace. A organization leading this equality drive, the Bharatiya Muslim Mahila Andolan (BMMA), polled around 5,000 women. The findings were categorical: almost 90% of respondents desired the practice to be outlawed, and 78% of those surveyed had divorced through triple talaq. The most misused tradition, known as "Nikkah Halala," which requires a woman to marry and have sex with another man before she may remarry a guy who has divorced her three times, has also been the subject of glaring silence from parliamentarians. The goal is to eliminate the orthodoxy of all faiths and societies that are biased toward women, girls, and frequently children, not to essentialize Islam or any other faith.

In India, personal law is applicable based on an individual's religion and is applicable to persons of all faiths. Muslim women have been battling for gender equality in the Islamic laws governing

marriage, divorce, and property rights for many years. Every Indian One of the most important organizations in the Muslim community is the Muslim Personal Law Board. This board has received a lot of praise and criticism. This body has repeatedly rejected proposals to amend Muslim personal law because they feel that doing so would violate fundamental Islamic beliefs. Additionally, that specific board is dominated by male members. On the other hand, a system that is solely run by the patriarchal system is not supported by the Quran. Many Muslim women activists have been inspired to fight for their rights by the rights of Muslim women in marriage, divorce, and inheritance. Instant triple talaq, also known as Talaq-e-Biddat, is a contentious Islamic divorce custom that has been declared arbitrary and in violation of Islamic principles. According to the Supreme Court, the practice violated Article 14 of the Constitution, which protects the right to equality.

What is instant triple talaq

The Muslim community has a practice known as "instant divorce," which involves just using the word "TALAAQ" three times, giving their male counterparts—that is, their husbands—the advantage of breaking the married union. The unjust practice ignores the complexities of human nature, which are characterized by impulsive emotional outbursts in heated situations and occasionally providing the guy with an easy way out to worsen his want to engage in polygamy. Due to the usage of electronic media, there have been an increasing number of cases recently where it has also gained a tech-savvy component. Thus, as the Supreme Court has stated, this chauvinistic and paternalistic practices are not only discriminatory against women but also violate the right to equality (Article). Therefore, it is not reasonable to defend the religion's ongoing practice, profession, and spread by claiming that the ruling violates its personal laws.

- There are three forms of talaq (divorce) in Islam: Ahsan, Hasan and Talaq-e-Biddat (triple or instant talaq). Ahsan and Hasan are revocable but Biddat is irrevocable.
- Triple talaq is a practice mainly prevalent among India's Muslim community following the Hanafi Islamic school of law.
- According to the Sharia Act of 1937, a Muslim man can divorce his wife by just saying "talaq" three times; however two men cannot pronounce it that way and must appear in court for omitting to do so.
- Many Islamic nations, like as Pakistan, Bangladesh, and Indonesia, prohibit triple talaq divorce.

TRIPLE TALAQ AND ITS EFFECTS ON MUSLIM MARRIAGES

About 50,000 Muslim women and men have signed a petition calling for the prohibition of polygamy and talak-i-bidai, or triple talaq, which violates the sanctity of marriage by allowing

the husband to end the marriage by saying the word three times in front of at least two people but not always the wife. The Muslim personal law's provisions pertaining to triple talaq, polygamy, nikah halala (the prohibition against remarriage with a divorced husband without a subsequent marriage with another man), and inequality in intestate succession (a person who dies without leaving a will) were further supported by NISA, a women's organization in Kozhikode. The organization hopes to declare these laws unconstitutional.

Additionally, the petition said that it was unjust for Muslim men to be allowed to have up to four wives. Additionally, it claimed that Muslim personal laws' succession rules seriously infringed against the right to equality since they stipulated that a Muslim woman who died leaving behind just a daughter must divide the property with her father's brothers and sisters, but this is not the case when the dead was left by an only son. The Muslim women's advocacy group Bharatiya Muslim Mahila Andolan (BMMA) also started a campaign against triple talaq, claiming that the Quran did not approve of it. According to a BMMA poll, 92% of Muslim women oppose this despicable behavior.

These traditions must end not just because they contravene the Quran or because many Islamic nations have abolished them, but also because they infringe upon the constitutionally protected right to democracy. The 2002 ruling in *Shamim Ara v. State of UP* and further directives from many High Courts declared the triple talaq to be unlawful. However, this hasn't halted the practice; many Muslim women are either ignorant of the rulings or have been forced to accept them due to pressure from hardline groups. Having been evicted from their homes, many women have experienced significant trauma. Under reality, Muslim women's rights are being violated under the pretext of constitutionally protected rights for minorities. The question is not whether a religious group has the right to follow its sacred laws, but rather whether any group has the right to follow laws that violate the constitutionally protected rights of all citizens.

The fact that Muslim men and women have entered a field formerly reserved for activists makes the move encouraging. According to recently revealed Census 2011 statistics, the triple talaq option appears to have increased the percentage of divorced women among Muslims to 5 per 100, compared to 2-3 per 10,000 for Hindus, Sikhs, and Jains. These tendencies, which are comparable to those seen in the last Census, are caused by a complex web of social and religious influences. Divorce may still be stigmatized in Hindu society even if it is legal. This may explain why the divorce rate was only estimated to be 1.8 per thousand Hindus, although the separation rate was 5.5 per thousand married Hindus (unlike Muslims).

PERSONAL LAWS

The majority of individuals think that our nation lacks basic civil laws. In actuality, every civil law is the same, with the exception of one, the personal law, which differs depending on the religion. Marriage, divorce, inheritance and succession, child custody, maintenance, and adoption are all covered under personal law. Despite having nothing to do with religion, the personal law is traditionally seen as religious. Personal laws have historically been used to institutionalize discriminatory traits and gender-inequitable interpretations of major religious traditions in order to retain conventional masculine privileges. Therefore, all personal laws—whether derived from Muslim, Jewish, or Hindu laws—are significantly discriminatory against

women in family affairs like marriage and divorce since they were created via male-centric interpretations of religious scriptures and traditions. They go against both the Indian Constitution, which forbids the State from discriminating against women as a class, and the egalitarian tenets of CEDAW (Convention on Elimination of All Forms of Discrimination Against Women, 1979).

Regarding the Triple Talaq problem, the Quran does not support this type of divorce, nor was it deemed lawful by the Constitution. The core Islamic values of gender justice, gender fairness, moral conscience, and women's dignity are all violated by such activity. However, because it saw the triple talaq issue as one involving basic rights rather than law, the court had reserved its power to make a decision. Their struggle for fundamental dignity is not about wanting to stay married; rather, it is a protest against egregious inequity. Without a doubt, all personal laws must be fair and just to both men and women; as a result, the positive aspects of all personal laws must be embraced, while the negative aspects must be disregarded. Therefore, the personal rules of religious groups must be distinct from the universal code, if and when it is implemented. All religious communities must agree on its definition, and it must adhere to the standards of contemporary freedom, equality, justice, logic, and humanism for both men and women.

CRITICISMS FROM OTHER COUNTRIES

Undoubtedly, talaq-i-bidat has wreaked havoc on the lives of several women and children. This method of divorce has been criticized in a number of Muslim nations and has led to reform via codification since it denies any chance for compromise. A number of nations, including Turkey, Tunisia, Syria, Egypt, Morocco, Iran, Iraq, Malaysia, Indonesia, and Pakistan, have either implemented strict legal preventive measures or entirely changed their laws in this regard. If Muslim nations can alter their family rules, India should do the same. According to Justice Hidayatullah, "it is hoped that in time the same measures will be applied in India also if the lead is coming from Muslim countries."

Background:

Since a Muslim organization called Bharatiya Muslim Mahila Andolan (BMMA) started a campaign to outlaw triple talaq and "nikah halala," which requires divorced women to be married again in order to keep their previous marriage, the issue has gained attention.

- Shayara Bano, a native of Uttarakhand, petitioned the Supreme Court in 2015 to stop the practice after her husband broke their 15-year marriage by mailing a letter that three times pronounced the word "talaq." In her petition, she asks the Supreme Court to rule that polygamy, nikah halala, and talaq-e-bidat are unlawful and unconstitutional since they infringe upon the rights protected by Articles 14, 15, 21, and 25 of the Constitution.

- In order to investigate whether arbitrary divorce, polygamy, and nikahhalal violate women's dignity, the Supreme Court filed a suo motu public interest litigation (PIL) petition in 2015 with the title "In Re: Muslim Women's Quest for Equality."

In the months that followed, a number of other women lined up with their petitions. In accordance with the Sharia Act of 1937, women are not permitted to declare triple talaq and must file for divorce in court.

Triple Talaq and the Indian Constitution

- The freedom to practice and propagate one's religion is guaranteed by Article 25 of the Constitution.
- Like all other fundamental rights, it is subject to limitations and does not protect religious activities that may have a detrimental impact on individuals' well-being.
- Therefore, Article 14, which provides the right to equality as triple talaq, supersedes Article 25 and denies Muslim woman equality before the law.
- Article 15(1), which says that the State "shall not discriminate against any citizens on grounds only of religion, race, caste, sex," also applies to Article 25. Triple talaq violates Article 15(1) of the Constitution since it does not benefit women.
- Nonetheless, triple talaq is recognized as a legislative right under section 2 of the Muslim Personal Law (Shariat) Application Act of 1937, which falls under the purview of Article 13 of the Constitution. Article 13 defines "law" and states that no legislation, whether it is drafted before or after the Constitution, may infringe upon basic rights.

Triple talaq as a statutory right: Triple talaq had already been acknowledged as a legislative right under Section 2 of the Muslim Personal Law (Shariat) Application Act of 1937. Since instant talaq falls under the purview of Article 13 of the Constitution, it was no longer a personal legislation that was exempt from the requirements of fundamental rights. According to Article 13, no law, whether it was drafted before or after the Constitution, may infringe upon basic rights.

Past Supreme Court Rulings:

- In the Shah Bano Case (1985), the Supreme Court granted 62-year-old Shah Bano additional right to alimony from her husband by citing a section of the Criminal Procedure Code (1973), which stipulates that the husband must provide maintenance to his divorced wife.

- Nonetheless, the then-central government approved the Muslim Women (Protection of Rights on Divorce) Act, 1986, which was considered as an attempt to lessen the impact of the Shah Bano Case ruling.

- In the Danial Latifi and Anrv. Union of India case from 2001, the Supreme Court reaffirmed the legitimacy of the Shah Bano case ruling that supported the rights of Muslim women.

- In June 2016, the Supreme Court made the decision to investigate whether Islamic regulations pertaining to marriage and inheritance violated women's fundamental rights and to determine the extent to which it may step in to change the current laws.

Recent Supreme Court Verdict

The Supreme Court's five-judge panel decided in a divided decision on August 22, 2017, that the practice of immediate triple talaq in the Muslim community is unconstitutional. The bench is positioned next to the 3:2 practices.

Key Points of the SC ruling:

Majority Verdict

- Triple talaq must be abolished because it violates the constitution and is undesirable, according to three justices.

- They claimed that because triple talaq was recognized and enforced by the Muslim Personal Law (Shariat) Application Act of 1937, it should not be regarded as a personal law but rather as a statutory law. Therefore, it falls under the purview of Article 13(1) of the Constitution.

- Any law, whether drafted before or after the Constitution, must not violate basic rights, according to Article 13.

- Clearly arbitrary, triple talaq violated Article 14 (the right to equality) and was not protected by Article 25(1) of the Constitution.

Minority Verdict

- Since triple talaq is a component of Muslim personal law; two judges decided that it bears the status of fundamental rights.

- They were in favor of putting the practice on hold for six months so that Parliament could pass legislation.

- They requested that political parties put aside their disagreements and enact a new legislation governing the practice that takes into consideration Sharia law and Muslim laws.

SOLUTIONS/SUGGESTIONS:

The moment has arrived for significant action to be made in order to reform and amend India's Muslim Personal Law. The following actions must be performed in order to achieve these goals:

CODIFICATION OF THE MUSLIM PERSONAL LAW: A committee of legal specialists, liberal ulema, and professors in the subject must now take seriously the urgent task of codifying Muslim law. The unifying denominator must be rules that are gender-just. Muslim men's groups must advocate for change with Muslim women.

ROLE OF THE STATE: Parliament should take action by enacting a secular code based on the fundamental values of justice, human rights, and individual liberty rather than a Hindu or Muslim code. If the Muslim Personal Law (Shariat) Application Act infringes against the constitutionally protected democratic rights of individuals, severe action must be taken.

ENCOURAGING THE IDEA OF A UNIFORM CIVIL CODE: By eliminating the inconsistencies rooted in beliefs and customs, it will support the goal of national cohesion. Along with strengthening the nation's unity and integrity, it will also aid in the eradication of several ills and unfair and illogical behaviors that are common across the communities. Any civilized society must adhere to these standards in all interpersonal interactions.

INTRODUCTION OF GENDER JUST PERSONAL LAWS: Since the majority of personal laws give women a subordinate standing, they mirror society's hierarchical ideas. Therefore, gender-neutral personal laws are what we need. In turn, the gender code must be consistent throughout all communities, making it uniform. Uniformity must be founded on gender fairness; otherwise, it may out to be especially unfair to women.

PRIORITISATION OF GENDER EQUALITY: The equality of men and women with respect to their fundamental rights must take precedence over the conservative views of religious professors. Polygamy and a big no to triple talaq are two ways to do this. The topic of personal

law must be interpreted within the framework of patriarchy, and laws that give women a subordinate position must be changed.

SUPPORTING ALL REFORM MOVEMENTS THAT CHALLENGE PATRIARCHY: In order to end the injustice against women and promote the general growth and development of the country, all citizens should work together with the government. We must make an effort to guide traditions away from darkness and toward light rather than letting them drag us down.

There are national, state, and municipal (Panchayat) policies promoting women's empowerment in a variety of areas, including as political involvement, economic opportunity, gender-based violence, health, and education. At the community level, there are notable discrepancies between policy developments and real practice, nevertheless. To close this gap between philosophy and lawmaking practice, the state and its legislative bodies should focus their efforts. All of the laws that go against the spirit of the constitution, such as polygamy and Triple Talaq, should be abolished. Minorities communities are guaranteed by the Constitution the freedom to exercise and spread their religion, own property, build houses of worship, and operate educational institutions. The foundation of liberal democracy gives this fundamental safeguard its power. Furthermore, the fundamental right to equality cannot be superseded by religious rules in a secular democracy. Muslim women shouldn't have to endure patriarchal religious customs when Hindu personal laws have developed to empower Hindu women. Polygamy and triple talaq don't pass the Indian constitutionality test.

Therefore, women's rights, which are violated by societal norms like polygamy and Triple Talaq as well as power structures, must to be protected in all countries. Women should not be denied the fundamental dignity they are entitled to. The establishment of a secular law based on the values of justice, human rights, and individual liberty will support women's empowerment in addition to bolstering secularism.

Conclusion

The ruling is historic for the nation's female empowerment, giving Muslim women equality. All communities now have a wonderful opportunity to campaign for progressive changes to personal laws that affect all women, men, and children, as well as other reforms like the Uniform Civil Code (UCC).

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