



Anti tripe talaq law and its repercussions: A critical appraisal

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Abstract

In the case of Shayra Bano, the Supreme Court had declared the inhumane practice of triple talaq as unconstitutional. The court believed that this was against Islam. Later, the government took a big step in the empowerment of women by passing the Muslim Women Marriage Rights Protection Act, 2019. Triple Talaq is a crime in our country but even today this crime is committed indiscriminately. Without any fear, without any regard for the law, this atrocities on Muslim women continues unabated. In just three words, a woman's confidence, her pride and her hope of survival are being shattered. Many such cases of triple talaq have come to light in the past 5 years.

This paper apart from highlighting the legal provision of the anti-triple talaq law, throws light on the recent miseries of the Muslim women who are the victims of triple talaq given by their respective husbands.

Keywords: Marriage, rights, talaq, crime, law

Introduction

There is no mention of triple talaq anywhere in the *Quran* nor in the *Hadith*. That means triple talaq is not a fundamental part of Islam. When a woman suffering from triple talaq approached the High Court, the court called triple talaq un-Islamic in the light of Quran and Hadith. Triple talaq is called '*talaq-e-biddat*'. *Biddat* means that work or process which has been adopted for centuries considering it to be a fundamental part of Islam, although this work or process is not proved in the light of *Quran* and *Hadith*.

Triple Talaq is banned in 20 countries

Triple Talaq has been banned by many Muslim countries. These countries were also mentioned by the panel on triple talaq in the Supreme Court. The panel referred to the book *Muslim Law in India* by Tahir Mahmood and Saif Mahmood. It talks about abolishing triple talaq in Arab countries.

- Algeria
- Egypt
- Iraq
- Jordan
- Kuwait
- Lebanon
- Libya
- Morocco
- Sudan
- Syria
- Tunisia
- United Arab Emirates
- Yemen

Apart from this, South-East Asian countries like Indonesia, Malaysia and Philippines have strict laws for divorce.

Indian Panorama

For the first time in 1972, Kerala High Court Chief Justice P Khalid had raised his voice against it. He had termed triple talaq against the Indian Constitution and the basic spirit of

Islam. After this, in 1981, Chief Justice of Gauhati High Court Baharul Islam had also said regarding this law that the marriage cannot be broken by divorce given without efforts for reconciliation. However, the then governments did not pay much attention to the views of these Muslim intellectuals because the parties pursuing appeasement politics were afraid that if this law was tampered with, their Muslim vote bank would be destroyed.

The Supreme Court declared triple talaq unconstitutional

While giving its verdict on Shayra Bano case, the Constitutional Bench of the Supreme Court had declared triple talaq illegal in 2017. A bench of 5 judges from different religions, while giving a 3-2 verdict, had asked the government to bring a law on triple talaq within six months. Two judges had called it unconstitutional, one judge had called it a sin.

Facts of the case

Ms. Shayra Bano and her husband Mr. Rizwan Ahmed were married in April 2002 in Uttar Pradesh. Shayra Bano claimed that her husband 'forced' her family to pay dowry for the marriage. She said that when her family could not afford additional dowry, her husband and his family drugged her, abused her, and eventually abandoned her when she became ill.

In October 2015 Mr. Ahmed divorced Shayra Bano through the practice of *talaq-e-biddat*, also known as instant triple talaq. *Talaq-e-Biddat* is a religious practice that allows a man to divorce his wife instantly by saying the word 'talaq' three times. This practice does not require the wife's consent.

Shayra Bano filed a writ petition in the Supreme Court in February 2016 challenging the constitutionality of *talaq-e-biddat*, polygamy and *nikah-halala*. Polygamy as an Islamic religious practice allows men to marry more than one woman at a time. If a Muslim woman wants to remarry her first husband after divorce, then for *Nikah-Halala* she will have to marry first and later divorce her second husband.

Shayra Bano claimed that these practices violate the right to equality, the right against discrimination and the right to livelihood. He further argued that these practices are not protected by the right to religious freedom – religious freedom is subject to other fundamental rights, public order, morality and health.

On February 16, 2017, the Supreme Court directed the All India Muslim Personal Law Board (AIMPLB), the central government and women's rights groups such as Bebaak Collective and Bharatiya Muslim Mahila Andolan to submit written submissions addressing the case. Apart from AIMPLB, all these groups filed submissions in support of Shayra Bano.

While the AIMPLB acknowledged that Shariat strongly condemns the practice of talaq-e-biddat, they argued that the Court cannot review uncodified Muslim personal law. He further argued that these practices were essential to Islam and protected by the right to religious freedom.

On March 30, 2017, the SC constituted a constitution bench of 5 judges to hear the case. The bench comprised Chief Justice JS Khehar and Justices Kurian Joseph, RF Nariman, UU Lalit and Abdul Nazeer. The bench heard the case between May 11 and May 19, 2017, and delivered the verdict on August 22, 2017. In a 3:2 split, the majority held that the practice of *talaq-e-biddat* was 'manifestly arbitrary' and unconstitutional., Chief Justice Khehar and Justice Nazeer dissented, saying that *talaq-e-biddat* is protected by the right to religion and it is the job of Parliament to make laws to control the practice.

The Anti-Triple Talaq Law - Muslim Women (Protection of Rights on Marriage) Act, 2019

In Parliament, this bill was passed thrice in the Lok Sabha, but was stuck in the Rajya Sabha. After this, to give it legal status, the government has chosen the route of ordinance. However, it was necessary to get the approval of the Parliament within 6 months.

The government brought an ordinance in September 2018 to see its use despite the Supreme Court's decision on triple talaq. There was a provision of three years imprisonment for the husband for giving triple talaq. However, in view of any potential misuse, the bill was amended in August 2018.

Before the expiry of this ordinance in January 2019, in December 2018, the government once again came to present the bill afresh in the Lok Sabha. The bill was introduced in the Lok Sabha on 17 December 2018.

However, this law could not be passed in the Rajya Sabha at that time, because the so-called contractors of Islam opposed it, calling it an anti-Islamic law. Even the country's oldest party Congress opposed this law saying that this law has been made targeting one community and there is a need to amend this law.

In 2018, the Central Government amended this bill and again introduced it in the Rajya Sabha. But this bill still could not be passed. However, after this the Central Government brought an ordinance in September 2018 and made some amendments in this law also. Then on July 30, 2019, this law was passed in the Rajya Sabha with 99 votes. Muslim Women (Protection of Rights on Marriage) Act, 2019, which made the practice of *talaq-e-biddat* a criminal offense punishable with imprisonment of up to three years. Jamiat Ulama-e-Hind, Samast Kerala Jamiathul Ulema and the President of the National Ulema Council challenged the Act in separate petitions in the Supreme Court in August

2019. However, the court has not yet started hearing arguments in the case.

What the Law says?

- The Anti Triple Talaq law- Muslim Women (Protection of Rights on Marriage) Act, 2019 makes declaration of talaq-e-bidah illegal by speaking, writing or through SMS or WhatsApp or any other electronic chat.
- Talaq-e-Biddat refers to a Muslim man pronouncing talaq to his wife three times in one go resulting in instant and irreversible divorce.
- The Anti Triple Talaq law declares Talaq-e-Bidat as a cognizable offence, giving power to a police officer to arrest the offender without a warrant.
- To prevent abuse of the cognizable nature of the offence, The Anti Triple Talaq law declares talaq-biddat only when the complaint is filed by the victimized woman or any of her relatives by blood or marriage.
- A Muslim man can be sentenced to three years in jail under The Anti Triple Talaq law for pronouncing triple talaq at once. Under the Anti Triple Talaq law, the accused is entitled to bail, which can be granted by a magistrate. But bail can be granted only after the magistrate listens to the victim woman.
- The Anti Triple Talaq law also provides scope for reconciliation without going through the process of Nikah Halala if both parties agree to stop legal proceedings and settle the dispute.
- Nikah Halala refers to the practice whereby a divorced Muslim woman has to marry another man and consummate the marriage and obtain a divorce. Only then can she be eligible to remarry her former husband.
- Under the Anti Triple Talaq law, a divorced Muslim woman is entitled to ask for the custody of minor children. This will be determined by the magistrate.
- A woman who gets divorced through Talaq-e-Biddat is entitled to demand maintenance for herself and her dependent children under The Anti Triple Talaq law. The Magistrate has the right to determine the amount of subsistence allowance.

Triple Talaq and Indian Constitution

- Article 25 of the Constitution guarantees religious freedom including freedom to practice and propagate religion.
- Like all other fundamental rights, it is subject to restrictions and does not protect religious practices that may negatively affect the welfare of citizens.
- Therefore, Article 25 is overridden by Article 14, which guarantees the right to equality because triple talaq deprives a Muslim woman of equality before the law.
- Article 25 is also subject to Article 15(1) which states that the State "shall not discriminate against any citizen on grounds only of religion, race, caste, sex" since triple talaq does not work in favor of women, therefore it violates Article 15(1) of the Constitution.
- However, Section 2 of the Muslim Personal Law (Shariat) Application Act 1937 recognizes triple talaq as a statutory right, bringing it within the ambit of Article 13 of the Constitution. Article 13 defines 'law' and says that all laws made before or after the Constitution shall not violate the fundamental rights.

The post enactment repercussions

Triple Talaq is a crime in our country but even today this crime is committed indiscriminately. Without any fear, without any regard for the law, these atrocities on Muslim women continue unabated. In just three words, a woman's confidence, her pride and her hope of survival are shattered. 13 lakh cases of triple talaq have come to light in the past 5 years.

It has been more than 5 years since triple talaq was declared illegal in the country. Still its cases did not stop. According to the Law Ministry, in the year 2023 1,57,725 Muslim women became victims of this. Most were from poor families.

After the law came into effect on September 19, 2018 (The Act came into effect retrospectively), 13.07 lakh complaints of triple talaq have been registered. In 2019, there were 2.69 lakh complaints of triple talaq. In 2020 this number decreased to 95 thousand.

But, in 2021 it reached 5.41 lakh and in 2022 a total of 2.45 lakh cases were reported. These are those cases in which women were given legal aid by the Legal Services Authority.

Few Instances

Moradabad, Uttar Pradesh

A woman living in Majhola police station area of Moradabad got married in November 2022. The father spent as much as he could. The marriage took place with great pomp, but the husband wanted dowry. After marriage, he started torturing his wife in the name of dowry. In-laws were also involved in this. These people were demanding Rs 5 lakh and some goods from the girl. When the girl refused to bring dowry, she was beaten. According to this girl, her brother-in-law also tried to misbehave with her. The girl continued to bear everything for many months, but one day her husband gave her such pain that she had not even imagined. By uttering these three words, Talaq, Talaq, Talaq, he was thrown out of the house.

Kaushambi, Uttar Pradesh

Here, in the midst of a packed panchayat, a man gave triple talaq to his wife. A girl named Saba was married to Atiq Aham three years ago. Atiq's family was unhappy with the dowry given to Saba. He was continuously harassing Saba. He even threw Saba out of the house. She came to her maternal home, but after her father's persuasion, she once again returned back to her in-laws' house, but the atrocities of her in-laws did not end. Saba Bano started fighting. A panchayat was convened for reconciliation between the two families, but in the panchayat, husband Atiq Ahmed pronounced triple talaq and left Saba alone forever. Saba's father kept pleading his son-in-law not to do so, but this man committed the crime of triple talaq without any fear.

Jaipur, Rajasthan

The third case is even more surprising. A man got rid of his wife in the police station itself by saying 'talaq, talaq, talaq'. Actually, a woman had filed a case against her husband and in-laws for dowry harassment. The police called the woman and her husband to the police station. Husband also came to the police station. He told that he has got married for the second time. He started arguing in the police station itself and then divorced the woman in front of the police. Both of them got married in the year 2018. Since the marriage, the

in-laws were continuously demanding dowry. Reconciliation took place between the two parties several times, but now the boy got married for the second time and then divorced his first wife in the police station itself.

Indore, Madhya Pradesh.

A woman living in Jabran colony in Indore was divorced by her husband. When the victim did not talk to her husband on mobile, the husband sent a voice message of triple talaq on her mother-in-law's mobile phone.

When the woman was pregnant, he would also taunt her about the child to be born and would say that the child growing in her womb was not his. The woman has complained to Raoji Bazar police. Police have registered a case against accused Irfan father Abdul resident of Heena Colony.

The woman told the police that Irfan had started harassing her three months after the marriage. When she fell ill, he left the woman with her mother and did not come to pick her up. The mother got treatment and when she recovered, he took her home.

The woman was pregnant for a few months, but she refused to adopt the child and left it with her mother. After this he did not even come to see the born daughter. The woman first talked to the people of the society. When Qazi called him, there too he started talking about divorce.

Irfan first called his wife, when she did not pick up the call, he said divorce thrice on her mother-in-law's mobile. After this the woman went to the police station with her mother and filed a case against her husband.

Other Challenges

Triple Talaq presents major challenges for Muslim women in India. The biggest obstacle is the lack of agency and autonomy during the divorce process. Women consider themselves to be women with minimal or no influence, their opinions or views are ignored regarding the continuation or termination of the marriage.

Financial instability is another important challenge. Without a legal order, women may struggle to support themselves and their children after divorce. Their economic gap has been further increased regarding maintenance.

The issue of child custody is also controversial, lacking clarity, simplicity or mechanism. This law leaves women in a precarious and disadvantaged position, with women grappling with the complexities and emotional distress of triple talaq.

Conclusion and Suggestions

- A law has been made regarding triple talaq. There are also provisions for three years of imprisonment, but looking at such people it seems that they neither fear the law nor care about punishment. The law has been made, but what should be done with such people.
- The big leaders of the Muslim community should spread awareness. They should explain about the strict provisions like Section 7 of the Aqg. In this section, the hearing on the husband's anticipatory bail cannot be held without listening to the victim woman. If these are told then people will get scared and they will follow it. Courts should also deal with such cases strictly.
- If the husband threatens triple talaq, women can complain to the police under the Domestic Violence

Act. The first responsibility to enforce the law rests with the investigating agency, i.e. the police.

- Divorced Muslim women continue to struggle with the social stigma of divorce. Comprehensive support systems including counselling, financial assistance and vocational training are vital in enabling them to rebuild their lives after divorce.
- Striking a delicate balance between ensuring gender equality and respecting religious freedom remains a challenge, considering criticisms that the Act could violate the autonomy of Muslim personal law, future efforts should aim to strike this delicate balance.

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