

International Journal of Innovative Research in Science, Engineering and Technology

(A High Impact Factor & UGC Approved Journal)

Website: www.ijirset.com

Vol. 6, Issue 8, August 2017

Triple Talaq: A dark Side of Muslim Personal Laws

Kumari Ranjana Bharti¹

Department of Law, Galgotias University, Yamuna Expressway Greater Noida, Uttar Pradesh, India¹

ABSTRACT: The problems of women's rights in Muslim personal law are very contentious today. In particular, the rights of Muslim women pertaining to triple talaq divorce, succession, maintenance have attracted a lot of coverage for a few days now. The Indian Constitution, however, promises dignity and freedom from oppression depending on ethnicity or faith, but there are also distinct policies based on heartless conservative practices. In 2017, the Central Government passed legislation in the context of the Triple Talaq to protect the freedom of Muslim girls from separation. The legislation is now widely referred to as the Triple Talaq Act. The Bill was drawn up to resolve the conditions, taking into account the truth of the condition of Muslim girls to eradicate the age-old Sharia Laws. Yet the Bill had substantial offsets, and many Muslim activists and many people opposing the enactment ordered an urgent correction. The key concerns in the Bill and how the Bill criticizes the faith of laywomen in today's world are discussed in this paper.

KEYWORDS: - Indian Constitution; Muslim Laws; Triple Talaq.

I. INTRODUCTION

There is a flood of media photos of a burqa clad thoroughly victimized Muslim women in need of protection through the debate on liberal rights. Such a universally victimized subject's depiction generates awareness of the 'other' as coercive and therefore an opposing portrayal of the human self. Religious fundamentalism is frequently depicted as a trait or attribute of 'other' nations, 'other' worlds, and, of all, most often, the Islamic world and the Muslim culture[1].

This activity is reminiscent of the colonial project of civilizing the "other" where imperialism was justified on the basis of "the burden of white man," where any perception of the society of the non-west was produced by the development of information from the west. Via textual analysis and education, some debate about the non-west was constructed[1].

The Hindu identity is also influenced by this creation of the Muslim 'other'. It is important to remember that, in structuring the identities of both the Hindu and the Muslim community, personal laws have become the central. The Hindu codification of private law has become the face of the community's modernity. But it is important to note that the codification did not empower Hindu people[2].

These provisions have restricted divorce rights for women and provide the 'right to conjugal rights'. There were many instances in the following two decades in which husbands challenged courts to discourage their wives from taking up a lucrative position at the place of their choosing by filing petitions for the restoration of conjugal rights[2].

Moreover, as far as polygamy is concerned with just the codified Brahmanic notion of marriage where saptpadi was a sine qua non to marriage, most customary conceptions were eliminated, giving the Hindu man an opportunity to indirectly solemnize marriage[2].

Human rights are typically equated with more equality and development. It is, however, important to remember that granting freedom does not necessarily contribute to emancipation. The universal premise on which it is based is the primary explanation behind this exclusionary existence of human rights. In the case of women, when they are trapped

International Journal of Innovative Research in Science, Engineering and Technology

(A High Impact Factor & UGC Approved Journal)

Website: www.ijirset.com

Vol. 6, Issue 8, August 2017

at the intersection of group identity and the narrative of modernity, the darker dimension of human rights most obviously manifests itself. The picture of a thoroughly abused Muslim woman who is in need of defence through the rhetoric of liberal rights is one such universal issue[3].

The latest discussion on the triple talaq, based on the Sharaya Bano and other batches of petitions as well as the suo moto PIL owned by the Supreme Court, finds some elements of Islamic personal laws that amount to gender inequality and thus violate the constitution[4]. We ought to delegate the category of faith and tradition to the liberal understanding of justice for women's empowerment. However, if we do not consider the way in which identity politics unfolds, especially in the case of women, fundamental rights would remain a dead text[5].

The whole triple talaq dilemma has become a battleground for controversy over culture and modernity. It is important to note that in these reductive binaries, women's perspectives cannot be grasped because "she" is created by the same ties of authority that delegate them. In this article, in the light of the recent petition lodged in the Supreme Court to find such talaq unconstitutional, the author answers the issue of triple talaq[6]. The author claims that with regard to triple talaq, there is an already current legal framework set by the Supreme Court that should be pursued instead of resorting to a confrontational strategy that may become hegemonic for Muslim women themselves. The author claims that the identity of Muslim women must be interpreted at the intersection of gender and faith, based on third-wave feminism[7].

II.DISCUSSION

Triple-Talaq is a type of talaq-ul-bid'at in which the husband can pronounce at one time the three formulas, and whether or not the wife is in the state of tuhr is meaningless. In Arabic, it is referred to as Mugallazah, which means very hard-divorce that is the most disapproved and does not adhere to Talak-us-sunnat. The split then definitely takes place after the woman has completed her "iddat" or probation period[8].

There is a great debate over the impact of the divorce's triple pronouncement at one and the same time. The disparity between jurists' views is due to the difference between their understanding and the enforcement of the law. One class of jurists is of the view that in the enforcement of rules, no leniency can be shown so that persons should not take excessive advantage of it[8].

There is no material distinction with respect to the consequence of "Triple Divorce" in substance under most of the classical schools of Sunni Islamic Jurisprudence, although there is a minor difference only in terms of practice. Whereas the Shafii insists that if a husband repeats three divorce pronouncements but without intending, it will result in a single divorce merely for clarification, but if he pronounces the three divorces with or without any intention, it will result in three divorces[8].

It is important to take the opinion of the judiciary on the issue of triple divorce. Critically evaluated in order to assess how the judiciary has reviewed. The triple-talaq controversy is widespread in the Muslim world. "Triple Divorce" has been recognised and upheld by the Indian Judiciary since its establishment, and the Bombay High Court recognized "triple divorce" on an irrevocable basis as early as 1905 in the case of *Sara Bai v. Rabia Bai*[9].

Marriage has been viewed in Islam as an essential role which an ideal Muslim should perform first, whether male or female, in order to save humanity from unchastity to build a balanced community. This tradition of talaq has a deleterious impact on women; there are emotional and financial issues over breaching a marriage contract. It is often not the needs of the women at stake, but those of their children, too[9].

Islam is a religion whose perspective is very realistic. It recognizes the value of the marriage institution, but also considers that there can be certain situations and circumstances under which partnerships between the parties to marriage become so fraught that they cannot proceed with those relationships. While divorce is possible in Islam, it is

International Journal of Innovative Research in Science, Engineering and Technology

(A High Impact Factor & UGC Approved Journal)

Website: www.ijirset.com

Vol. 6, Issue 8, August 2017

detestable and should be resorted to only in severe situations that are allowed by the modern world's irretrievable breakdown doctrine[9].

We see, however, that there has been a sea shift in the judiciary's mind-set. The triple talaq is now neither upheld by the courts nor deemed to be legal. But in this respect, there is still a need for a verdict from the Supreme Court. Even in a vast number of Islamic countries which have regularly revised or modernized their personal rules, triple-talaq continues to gain express or implicit approval of its practice[9].

Media photographs of a burqa clad thoroughly victimized Muslim women seeking protection in the debate on liberal rights are proliferating. Religious fundamentalism is often portrayed as a trait or attribute of 'other' nations,' other' worlds, and most frequently, of all, the Islamic world and the Muslim culture. Such portrayal of a uniformly victimized subject produces awareness of the 'other' as authoritarian and thus an opposite self-image of humane[9].

This strategy is reminiscent of the colonial strategy to civilize the "other" where imperialism was justified on the basis of the "load of the white man" where the development of information from the West produced a certain perception of the non-western society. Via textual analysis and education, some debate about the non-west was constructed[9].

The Hindu identity is also influenced by this creation of the Muslim 'other'. It is important to remember that, in structuring the identities of both the Hindu and the Muslim community, personal laws have become the central. The Hindu codification of personal law became the face of the community's modernity, while understanding that the codification did not empower Hindu women is important[10].

These provisions have restricted divorce rights for women and provide the 'right to conjugal rights'. There were many instances in the following two decades in which husbands challenged courts to discourage their wives from taking up a lucrative position at the place of their choosing by filing petitions for the restoration of conjugal rights[10].

In this article, in the light of the recent petition filed in the Supreme Court to find such talaq unconstitutional, the author would deal with the issue of triple talaq. The author argues that with regard to triple talaq, there is an already existing legal precedent developed by the supreme court that should be pursued instead of resorting to a confrontational method that could become hegemonic for the Muslim women themselves[10].

It is important to understand that a very complex process is identity subversion. The concern with identity politics is that the distinction itself is not transcendent, but rather formed by the very difference. The subjectivity of Muslim women must be considered to be built within the same socio-cultural context, based on post-modern scholarship[10].

III. CONCLUSION & IMPLICATION

The Bill plainly indicates that it was drafted without due diligence and that Muslim Agencies or Muslim Women's Organisations were not consulted. This Bill was the product of bad drafting and thus needs an expert analysis of the definitions and Rajya Sabha should take some time to address any inconsistencies and procedures in such a way that there is no negative effect on families, men and women.

As this Bill is protected by Family Law, in a country like India, where laws have multiple judicial pronouncements and other laws have to be weighed, it makes it even more complicated and lengthy. The present Bill is in naked shape, and there will be no benefit and no political win if Rajya Sabha did nothing and passed this naked Bill.

If there is a need for government to introduce a solid social change to enlighten the lives of Muslim women, the Bill must be well drawn up, add more law descriptions, procedure and legal process and penalty, and then passed with the consultation of Rajya Sabha's other House members and by not passing it in the Upper House by brute majority.

International Journal of Innovative Research in Science, Engineering and Technology

(A High Impact Factor & UGC Approved Journal)

Website: www.ijirset.com

Vol. 6, Issue 8, August 2017

But even when disadvantaged women's gender issues hit the headlines, they do so solely to affirm the existing stereotypical perceptions towards the community as a whole. Thus, 'women's rights' is a multifaceted challenge that is rooted in wider political systems and therefore needs a nuanced solution. In order to potentially have an effect on the life of Muslim women, such a reaction must result in a community-vitiated climate.

REFERENCES:

- [1] N. Ahmad, "A Critical appraisal of 'triple divorce' in Islamic law," *Int. J. Law, Policy Fam.*, 2008, doi: 10.1093/lawfam/ebn019.
- [2] K. Al-Azri, "One or three? Exploring the scholarly conflict over the question of triple riple Talāq (Divorce) in Islamic law with particular emphasis on Oman," *Arab Law Q.*, 2011, doi: 10.1163/157302511X568529.
- [3] "Talaq Tiga: Analisis Terhadap Penghakiman Mahkamah Syariah," *J. Syariah*, 2000.
- [4] O. Drabu, "Who is the Muslim? Discursive representations of the Muslims and Islam in Indian prime-time news," *Religions*, 2018, doi: 10.3390/rel9090283.
- [5] F. Agnes, "Muslim women's rights and media coverage," *Economic and Political Weekly*. 2016.
- [6] M. A. Khan, M. Zubair, and S. & H.-U.-R. Khattak, "Divorce: A Critical Analysis of Islamic Law," *J. Basic. Appl. Sci. Res*, 2014.
- [7] S. Chhallani, "Critical Anaylsis on the Effects of Triple Talaq, the Plight of Women, its Impact on the Society Muslim Community," *Int. J. Trend Sci. Res. Dev.*, 2018, doi: 10.31142/ijtsrd16996.
- [8] F. Agnes, "Triple Talaq - Gender Concerns and Minority Safeguards within a Communalised Polity: Can Conditional Nikahnama Offer a Solution," *NUJS Law Rev.*, 2017.
- [9] M. Munir, " Reforms in triple talaq in the personal laws of Muslim states and the Pakistani legal system: Continuity versus change ," *Int. Rev. Law*, 2013, doi: 10.5339/irl.2013.2.
- [10] M. Munir, "Triple Talaq in one session: An analysis of the opinions of classical, medieval, and modern muslim jurists under Islamic law," *Arab Law Q.*, 2013, doi: 10.1163/15730255-12341247.
- [11] K Deepika, N Naveen Prasad, S Balamurugan, S Charanyaa, "Survey on Security on Cloud Computing by Trusted Computer Strategy", *International Journal of Innovative Research in Computer and Communication Engineering*, 2015
- [12] Abhishek Kumar, Bishwajeet Pandey, D M Akbar Hussain, Mohammad Atiqur Rahman, Vishal Jain and Ayoub Bahanasse, "Frequency Scaling and High Speed Transceiver Logic Based Low Power UART design on 45nm FPGA", "2019 11th International Conference on Computational Intelligence and Communication Networks (CICN)" during 3rd - 6th January, 2019 at University of Hawaii, USA.
- [13] Anirudh Khanna, Bhagwan Das, Bishwajeet Pandey, DMA Hussain, and Vishal Jain, "A Discussion about Upgrading the Quick Script Platform to Create Natural Language based IoT Systems", *Indian Journal of Science and Technology*, Volume 9, Issue 46, December 2016, page no. 1-4 having ISSN No. 0974-6846 .