

ANALYSIS OF TRIPLE TALAQ JUDGMENT AND THE ROAD AHEAD

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INTRODUCTION

The Recent Judgment of Supreme Court on triple talaq won't simply have a liberating impact on Muslim women — the danger of triple talaq that hung over their heads has been removed — likewise it also passes on a message of gender equality.

WHAT IS TRIPLE TALAQ?

There are three types of talaq: Ahsan, Hasan and Talaq-e-Biddat (triple talaq).

Ahsan and Hasan are revocable type of talaq. Biddat — pronouncing talaq in one go by the spouse — is irrevocable type of talaq, this talaq is generally followed by sunnis muslims in india. Biddat is viewed as 'evil,' however admissible in Islamic law. The basic element of talak-ul-biddat is its irrevocability. Be that as it may, the triple repetition isn't the primary condition of talak-ul-biddat, and the intention to render a talaq permanent might be communicated even by a solitary declaration.

The All India Muslim Personal Law Board contended that for the Hanafis, who make up over 90% Sunnis in India, triple talaq involves matter related to religious affairs followed over a long period of time.

HISTORICAL BACKGROUND

The Shah Bano judgment came after amendments in the Criminal Procedure Code which included the ex-wife in the meaning of wife. This change was required remembering the true objective to manage a situation where the spouse would betray the wife and when the deserted wife went to court searching for support allowance, he began divorce proceedings. On account of a Muslim spouse only three pronouncements were sufficient to divorce her. Shah Bano was a text book case where she was first deserted by her prosperous lawyer husband 40 years after marriage and following three years when she moved toward the court, the husband used the instrument of instant talaq and expressed that he was not liable for any amount or payment after the Iddat period that is three months. The court in the light of new law that is section 125 of Criminal Procedure Code, decided in favor of Shah Bano and ordered the husband to pay a nominal sum of rupees 250 per month. The issue went to higher courts lastly the Supreme Court maintained the judgment of the lower court for Shah Bano.

At this stage the Muslim Personal Law Board bounced into the shred and began organizing protest gatherings saying that this judgment was obstruction in issues of religion and if this judgment was not reversed it would wreck the community identity of Muslims. It was a similar nonconformist contention that was bolstered by the Muslim League before 1947. By then it was asserted that Muslims were a different nation, now it was expressed that the Muslims have a different identity. The development used greatly aggressive language. Outside Parliament in a dissent meeting a call was given to break the legs of Muslim MPs who had negated the Board's request and inside Parliament, ZR Ansari, a minister, used contemptuous language for the Supreme Court judges.

The Muslim Personal Law Board developed such pressure that the union government was forced to take cognizance of it. To its good fortune, even Congress pioneers, for instance, Narasimha Rao and Arjun Singh held the view that the Congress Party can't play out the role of a social reformer for Muslims and advised the prime minister not to jeopardize the political electorate of the party by neglecting the demands of the Personal Law Board. Rajiv Gandhi, the young Prime Minister, couldn't disregard this advice and agreed to pass on an enactment to reverse the judgment but consequently this made such an enormous reaction, to the point that inside a few days the legislature was forced to do something to manage the adverse reaction and at this stage Ayodhya dispute came handy and the unlocking of the gate was organized to shift public attention from the Shah Bano decision.

HOW DID IT COME ABOUT?

On October 16, 2015, the Supreme Court addressed whether Muslim personal law practices of marriage and talaq decreases the status of women. In an exceptional move, it registered a suo motu public interest litigation petition titled 'In Re: Muslim Women's Quest for Equality' to examine whether triple talaq, polygamy and nikah halala violates women's dignity and status.

The court lamented missing the opportunity to address the issue of gender equality in both the Shah Bano and Daniel Latifi cases. In the Shah Bano case, the court essentially impelled the legislature (government) to frame the Uniform Civil Code. In the Daniel Latifi case, it kept up the benefit of Muslim women to maintenance till re-marriage. Various Muslim women and groups supported the court's initiative. In the end, a Constitution Bench restricted itself to analyzing triple talaq and not polygamy and nikah halala.

WHY DOES IT MATTER?

This has been a matter of debate for over 65 years for Muslim women, which contributes to around 8% of the population as indicated by the 2011 census. "Muslim women deserved and it is their rights to have a life proportionate to that of other women, says a Christian or Hindu wife," this was argued by the union government in court. The union government

contended that triple talaq isn't fundamental to Islam. Union government assured the court that it will enact a new divorce law in case the court strikes down the triple talaq.

The Union government argued that Muslim marriage and separation is provided under Section 2 of the Shariat Act of 1937 and comes within the meaning of 'law' under Article 13 of the Constitution. Subsequently, they ought to maintain the standards of dignity and non-discrimination.

The All India Muslim Personal Law Board contended that triple talaq is a matter related to religion, in the same way as the Hindu belief that Ayodhya is Ram's birthplace. The Union Government and Supreme Court should leave such matters to the Muslim community, it stated, citing the Bombay High Court's unchallenged judgment in the Narasu Appa Mali case that personal law ought not to be meddled with. Additionally, where will Muslim men go for talaq in the event that the court strikes down triple talaq and Parliament refused to pass another law?

ANALYSIS OF THE DECISION

The Supreme Court set aside the practice of instant triple talaq followed by Muslim men for the purpose of giving divorce to their wives by a majority of 3:2. What seems, by all accounts, to be divided decision on its substance is really consistent with regards to maintaining the status of women and assisting the campaign for gender equality justice in India. Before we move to the wordings of the judgment it is critical to comprehend certain concepts which will make it easier to comprehend the judgment and its imports far better. Muslim marriage (Niqah) is one of the few wedding ceremonies which is shorn of any religious prerequisite, and is in truth Muslim marriage is contract. It would be extremely difficult to find some other union of a man and women that does not include or require any religious ceremony. If in case that one needs to acquire a word from the Triple Talaq Case itself, Astonishingly Modern is exceptionally well-suited to portray Muslim marriage.

Though Muslim marriage is a standout amongst the most current union of man and women, the way toward decoupling from this union is one of the most gender biased or unequal, exclusionary and backward in nature. It is correlated to take note of that there are many types of separations accessible to Muslims yet the scales are generally tilted in favor of Muslim men. The question under the watchful eye of the Supreme Court was related to Talaq, all the more particularly Talaq-e- Biddat.

Talaq is separated into three kinds and these are as per the following:

- Talaq-e-ahasan – It is the most affirmed type of Talaq, it is endorsed by the holy Quran and Hadith. It includes single declaration of talaq which is followed by a period of restraint (Iddat), the period for the most part is of 90 days (three menstrual cycles) or three lunar months when wife isn't menstruating. It is most affirmed type of talaq in light of the fact that the same is revocable and leaves space for compromise between the couple. The talaq becomes final and irreversible if compromise falls flat and Iddat period is finished.

- Talaq-e-Hasan – It is another approved type of Talaq which includes three successive pronouncements of separation over the time of 90 days, one each toward the end of each Tuhr. The talaq becomes conclusive after the third declaration, it is important to take note of the fact that this type of talaq additionally leaves room of compromise and ends up irrevocable simply after the Iddat period is over and no resumption of matrimonial relationship has taken place.
- Talaq-e-Biddat (Instant Triple Talaq) – It is the most disapproved type of talaq, and before the pronouncement of judgment in Triple Talaq Case it is was viewed as Bad in religious philosophy, yet good in law. It is a Talaq by development. It involves single permanent pronouncement of talaq, which rules out compromise and in this way is disapproved. This sort of separation left the wife totally helpless before the husband. This gave a one-sided power of divorce to Muslim male which could be practiced at his whims and fancies. The only plan of action accessible to resume marital relationship is Halala which includes marriage of the divorced wife with another and its consummation followed by divorce. The inquiry as to legitimacy of Nikah Halala was additionally raised before the Supreme Court; however, it was not entertained by it.

The Supreme Court in Triple Talaq Case concerned itself legitimacy of Instant Triple Talaq i.e. Talaq-e-biddat. The subject of legitimacy of Instant Triple Talaq is contentious not just in light of the fact that it includes the question of equality as guaranteed in Article 14 of the Constitution yet in addition as a result of present politically charged landscape of India.

The genuine trial of the Supreme Court was to toss the political contemplations out of the window and decide the issue as basically a constitutional one. An isolated decision in any case, the Apex Court did precisely that. The issues examined by the Apex Court in achieving the decision included, regardless of whether Triple Talaq involved matter of faith and thus protected under Article 25 of the Constitution?; Does the act of Triple Talaq forms the part of personal law? Did the Muslim Personal Law (Shariat) Application Act, 1937 (Shariat Act) gives statutory status to the subjects managed by it? Whether Instant Triple Talaq was bad in religious philosophy and good in law?

The issues that tilted the tide in favor abolition of practice of Instant Triple Talaq are as follows:

Bad in Theology, Bad in Law

The Supreme Court decided finally the controversial issue whether Instant Triple Talaq was bad in Theology and good in law? The Supreme Court examined plenty of cases to decide the philosophical and legitimate sanctity of Instant Triple Talaq; the two judgments which set forward the combative view point are that of The Privy Council (PC) in Rashid Ahmed v. Anisa Khatun¹ which held the practice of Instant Triple Talaq in Muslim personal law to be legitimate. For this particular case the Privy Council held the triple talaq

¹ AIR 1932 PC 25

to be final and irrevocable even after the couple had lived together for a long time after pronouncement of talaq. The opposite view in connection to triple talaq's legitimacy originates from Jiauddin Ahmed v. Anwara Begum² (Jiauddin) in the said case the Guwahati High Court held that the perception made in previous cases in regards to Instant Triple Talaq, that is, bad in philosophy, good in law depended on wrong ground the same being regarding women as chattel having a place with husband.

Talaq if ends up becoming unavoidable must be followed by a period of compromise, a legitimate reason ought to be doled out for the same, it can never be in mystery and it can never be subjective. Justice Kurien in the Triple Talaq case depended heavily on Shamim Ara v. Territory of UP (Shamim Ara) and others³ which endorses Jiauddin⁴, and expressed that it is inappropriate to recommend that there is no ratio decidendi in Shamim Ara⁵. But most importantly Shamim Ara holds importance with regards to Instant Triple Talaq in India; it is ex facie illegal and against the principles of Holy Quran.

Arbitrariness is anathema to the Equality-

Justice Nariman attacked the Muslim customary practice of Instant Triple Talaq on the grounds of Arbitrariness and held it to be violative of Article 14 of the Constitution of India. Justice Nariman referred to plenty of judgments of the Supreme Court which have held that Arbitrariness is only an utter anathema to Equality. The customary practice of Triple Talaq which lays exclusively on the impulses of a Muslim man don't deserve the sanctity of law and was appropriately held to fall foul with the test of Arbitrariness as set forth in E. P. Royappa v. State of Tamil Nadu⁶. In the present time limitation of Article 14 to mere test of classification would sum confinement of what is really a wide right, which enables the State to not only preclude but also act. Additionally Article 14 forms with Article 19 and Article 21 this blessed troika which gets destroyed if even any of them is aggravated. Therefore Supreme Court use of Article 14 and possible striking down of Triple Talaq does an incredible support of the rights development in India.

Some issues were dealt with by the Supreme Court, yet they still remained undecided:

Statutory color to the practices stated in Shariat Act

Amid the arguments in the present case, one line of argument that was taken by the Petitioners was that the Shariat Act, has codified Muslim law and every one of the provisions contained in the same, consequently if any of its provisions repeals or takes away any fundamental right enshrined in the constitution then the same can be set aside according to Article 13 of the Constitution. The essence of the argument being, after the

² (1981)1 Gau. L.R. 358

³ (2002) 7 SCC 518

⁴ Supra

⁵ Supra

⁶ (1974) 4 SCC 3

passing of the Shariat Act, it no longer remains some portion of personal law and subsequently opens itself to challenge for infringement of the Constitution. The Apex court however was split on this issue while Justice Kurien concurred with the perspective of Justice Kehar that the Shariat Act isn't a legislation regulating Talaq(divorce), consequently the same can't be tried at the anvil of Article 14, Justice Nariman held it otherwise. It can be safely conclude that the Supreme Court missed a chance to conclusively determine whether Personal laws can be tried in light of the fact that they violate fundamental rights. The Court could have tested the complex connection between the Constitution and Religion and find out answers. The inquiry in the matter of whether personal law will be law within the meaning of Article 13 could have been managed in more noteworthy detail. This was an open door for course correction as some interesting judgments held personal law which are not codified not to be 'law' within the ambit of Article 13 and subsequently, excluded from constitutional scrutiny. The issues turns out to be very vital in the light of the fact that regardless of whether one thinks about Personal laws as fundamental rights as enshrined and guaranteed under Article 25⁷ of the Constitution the same is subject to different provisions of part III (Fundamental Rights) of the Constitution. As things stand today Shariat Act does not control Talaq in India, thus Shariat Act has not codified the practices governed by it rather Shariat Act is rule of decision⁸ in contentious issues in Muslim Law including matter of Talaq. It is an act to nullify, inhuman practices and traditions against Muslim women.

Another issue that remains to be worked out with the judgment would maybe be the judgment written by Chief Justice Khehar and Justice Nazeer wherein they disagreed, holding that the act of triple talaq as a part of Islam, and asked parliament to bring about its change through legislation. The six month order against exercise of this right was a bit baffling and of shaky legitimate standing, as it is practically equivalent to stating that 'Z' practice is a constitutionally secured right, however its practice is being injuncted for a 'Z' period.

ROAD AHEAD

It is a no love lost to a despicable practice called Talaq- e- Biddat. A practice which was neither consistent with words of the Prophet (PBUH) nor with the provisions of the Constitution. Equality in the matter of divorce, which was prior denied, to Muslim women has to some degree been given, Muslim Divorce is not any more whimsical and impulsive rather it would now be represent by reason.

⁷ Article 25

Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

⁸ Section 2 the Muslim Personal Law (Shariat) Application Act, 1937

Justice Kurian Joseph, a judge on the Constitution Bench, lighted a spark by proposing a choice that a Muslim bride, at the time of her marriage, is allowed to set out a condition in the nikahnama that she would not be subjected to instant talaq on the off chance that the marriage hits an intense situation.

Days after the court reserved the case for judgment, the AIMPLB (All India Muslim Personal Law Board) filed an affidavit saying that it would issue an open consultative to Qazis to advise grooms against instant talaq and besides incorporate a condition in the nikahnama to refrain from instant talaq. The AIMPLB even suggested social boycott of Muslim men who turn to instant talaq.

The hearings likewise observed the court toy with idea of making the Muslim Dissolution of Marriage Act of 1939 — applicable just to Muslim women — gender neutral.

CONCLUSION

The Supreme Court judgment of 2017 is a triumph for Muslim ladies and their associations. The ladies who have battled this case needed organized support system but still they endured and took the battle to its legitimate conclusion.

This is a noteworthy judgment that will make the way for new era in this nation. The 2017 Supreme Court judgment won't just have a positive impact on Muslim women — the threat of triple talaq that hung over their heads has been removed — yet it additionally conveys a solid message of gender equality. It is an huge source of motivation also for non-Muslim women. If these poor Muslim women with no help or resources can battle their fight effectively, then why can't others too?

The Supreme Court has in a majority judgment declared triple talaq to be unconstitutional. Now on the same point other provisions like polygamy can be tested on the ground of its being unfair and arbitrary. Frankly my understanding is that like triple talaq, the uncontrolled right to polygamy similarly finds no sanction in the Quran. It was an Arab practice and it isn't a part of Islam. This judgment has opened the door, it is the begin of a voyage not the end and now the women won't stop at anything not as much as gender parity, that is, equality of status as guaranteed by the Constitution of India.

In issues of social change, the way is never smooth. You will find out about many cases where the man will even now make three declarations. Furthermore, the lady will refuse to move out saying there is no legitimate sanction for triple talaq. Also, in the event that she goes to the police, it will be a fit case for indictment under harassment and mental torture. If in few cases successful action is taken, individuals will basically forget about triple talaq.

The society has for a long while been itching to advance. The clerics are the deterrents. In 1986 they prevailing with regards to exciting Muslim interests yet with the ascent in literacy and awareness levels especially among women, this time they got no genuine response. Furthermore, the present political administration additionally discouraged them from propelling any forceful dissent development. The way in which Prime Minister Narendra

Modi supported Muslim ladies and the affidavit and promotion by the government has absolutely helped them battle this historic fight.

This judgment conveys to my mind an observation of Pandit Jawaharlal Nehru. At some point in the mid-1950s, Taya Zinkin, a reporter from The Guardian, London had talked with Pandit Jawarharlal Nehru. She asked him what he considered his most noteworthy accomplishment in life ? Pandit Jawarharlal Nehru had stated: "I prevailing to secure rights for my Hindu sisters which were denied to them for a considerable length of time." Then she asked and what his life's biggest disappointment was? He shot back: "I couldn't accomplish the same for my Muslim sisters." This judgment has increased the confidence of the common men and women in our framework, our judiciary and our constitution. It is a cheerful sign for our secular and democratic republic.