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Dr. Krutika Khandare
Dr. Vijay Matkar

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46. Use of E Resources By The Female Pg Students: A Study	Dr. Nandkishor Patade Ravindra Sagar	145
47. Role of Public Library in the Society	Mahavir Katke	148
48. Human Health and Environment	Dr. Ramdas Madale	151
49. Elections in India And Voting Behaviour	Mayarani R	153
50. Social And Educational Challenges Of Dalit Women In India	Maya Annasaheb Bansode	156
51. Right To Education Under Indian Constitution- Judicial Perspective	Manjusha Nitin Suryawanshi	159
52. Role Of Social Media In Cultural Identity ...	Mohit Ram Chelak	164
53. Nirbhaya Act – Changed Law for an Unchanged Crime (Rape)...	Veena Shrivastav (Ingle)	168
54. Entry into the Services and Challenges Ahead: A Special Perspective	Capt Sarbjit K Cheema	170
55. Triple Talaq under Muslim Personal Law: A Bane to Gender Justice	Ms. Harsha Suryawanshi	172
56. Assessment Of Diet, Nutritional Status and Nutritional Awareness	Dr. Anuradha Nisal	175
57. Financial Distress is the Leading Cause of Divorce: Advocates ...	CA. Gunvantrai A. Rachchh	179
58. Computer Mediated Discourse Analysis	Dr.Pritamúndarsingh Thakur	182
59. Tribal Social Life and Customs of the Chakhesang Nagas	Nüveta Khüsoh	185
60. Recent Advances in Music	Dr. Meenal Thakare	188
61. Recent Advances in Social Sciences - Home Science	Dr. Ragini Rajendra Padhye,	190
62. Self-Confidence and Decision Making Between Joint And Separate...	Dr. Vidya D. Kasture	193
63. Physical Education: Need and Importance	Dr. Chandrakant B. Satpute	195
64. Impact of Home Environment and Educational Aspiration ...	Vaishali K. Shelke	197
65. The Influence Of Population In The Overall	Raj Dave	199
66. Mother and Child Paintings Done By Indian Contemporary Artist	Rakhi G. Charwad	203
67. Tribal Development: Issues And Challenges Before The Nation ...	Phole Kavita Bhaurao	206
68. Recent Trends in the Study of Communalism In India	_Pardeshi Enayat Ranjeet	208
69. Talaq - Social Legal Aspect	Dr. Sayyad Ismail Nasir	211
70. Recruitment and Training Practices In Public And ...	Dr.Sathya Sai Laxmi.P	213
71. Political Empowerment Of Women Through Panchayati Raj ...	Lata	221

TRIPLE TALAQ UNDER MUSLIM PERSONAL LAW: A BANE TO GENDER JUSTICE

Ms. Harsha Suryawanshi

Asst. Prof.

Shri Shivaji Law College, Parbhani

Triple Talaq under Muslim Personal Law: A Bane to Gender Justice*"The lawful thing Allah hates most is divorce"*Prophet Mohammad (PBUH)¹

Introduction: Family is basic unit of every society while marriage is foundation of family, ultimately marriage is the thread that binds the society. In every society and religion, marriage is considered as highly important because of the function it performs i.e. binding the society. Westermarck defined, 'marriage, as a relation of one or more men to one or more women which is recognized by custom or law; and involves certain rights and duties both in the case of parties entering the union and the children born to it (U.S. Singh 2008 p. 148).' The marriage institution that is prevalent in every society is outcome of patriarchal form of social structure and hence it is inclined towards men causing injustice to women². According to Hindu culture, marriage was sacrament and hence indissoluble and divorce was not permitted until 1955 when Hindu Marriage Act, 1955 introduced concept of divorce. However, Shariat law i.e. Muslim Law permitted divorce to women but with some restrictions, rules of divorce for women are distinct from that of men. One of such rule or form of divorce for Muslim men is Triple talaq or talaq-ul-biddat. The form of triple talaq is gross violation of rule of law i.e. equality and ultimately causes injustice to women leading to need of gender justice in that specific area.

Concept of Gender Justice:

Gender inequities throughout the world are among the most all pervasive though deceptively subtle forms of inequality. The process of gender justice, broadly speaking covers rights of women against exploitation and victimization. The process of conferment of right on women and their empowerment has come to be recognized as gender justice. Attaining social justice and peace through empowerment of women is basically another description of the same process. This process is multidimensional ranging from private sphere (home) to public sphere (outside the home) (Anand A.S. 2002 p.).

Sex is creation of nature while gender is creation of mankind. Gender is perception of being

male or female: it also comprises social notions framed separately for men and women. Since manmade, these notions are apt to discriminate as these are made according to the needs and will of society and society being patriarchal, these notions are favourable for men than women. This has caused discrimination against women and resulted into injustice to women. The instances of injustice towards women are rampant in every sphere of life of women.³ Gradually civilization led towards equality and women were conferred rights equal to men however this was not absolute. Women still lagged behind especially in domestic life and triple talaq is example of it.

What is talaq & triple talaq?

When the divorce proceeds from the husband, it is called talaq (ss. 308-315); when it is effected by mutual consent, it is called khula (s. 319) or mubaraat (s. 320) according to the terms of contract between the parties (Mulla, 1999 p.258). Any Mahomedan of sound mind, who has attained puberty, may divorce his wife whenever he desires without assigning any cause (S.308). This section of the Shariat Act, 1937 is itself very arbitrary since it gives unrestricted power to the husband to divorce his wife without assigning any reason. A talaq may be effected in any of the following ways-

- a. Talaq Ahsan: This consists of single pronouncement of divorce made during a tuhr (period during menstruations) followed by abstinence from sexual intercourse for the period of iddat (S. 257).
- b. Talaq Hasan: This consists of three pronouncements made during successive tuhrs, no intercourse taking place during any of the three tuhrs.
- c. Talaq-ul-biddat or talaq-i-badai: This consists of-
 - i. Three pronouncements made during a single tuhr either in one sentence, e.g. "I divorce thee thrice", - or in separate sentences e.g. "I divorce thee, I divorce thee, I divorce thee" or
 - ii. A single pronouncement made during a tuhr clearly indicating an intension irrevocably to dissolve the marriage e.g. "I divorce thee irrevocably." (Mulla, 1999 p. 261) This form of talaq is commonly called as 'triple talaq'. Recently, the Supreme Court of India, in *Shayara Bano vs. Union of India* observed the rationale behind condemning triple talaq in Qwan,

"There is however a recorded word of caution - that the parties could act in haste and then repent, and thereafter again reunite, and yet again, separate. To

¹Soman & Niaz: 'No more talaq, talaq, talaq-Muslim Women call for a ban on unIslamic practice', 2015

²Polygamy was permitted but polyandry was condemned, similarly husband could marry during life of his wife but widow remarriage was prohibited amongst Hindus. It was only after passing of Hindu Widow Remarriage Act, 1856 the Hindu widows were allowed to marry. Similarly, a Muslim male could marry up to four wives but Muslim women could not marry with more than one, widow remarriage was not prohibited under Muslim Law

³Women could not seek education, women did not enjoy political rights, women were also denied certain civil rights such as inheritance

prevent erratic and fitful repeated separations and reunions, a limit of two divorces is prescribed. In other words, reconciliation after two divorces is allowed. After the second divorce, the parties must definitely make up their mind, either to dissolve their ties permanently, or to live together honourably, in mutual love and forbearance – to hold together on equitable terms. However, if separation is inevitable even on reunion after the second divorce, easy reunion is not permitted. The husband and wife are forbidden from casting aspersions on one another. They are mandated to recognize, what is right and honourable, on a collective consideration of all circumstances.”

Triple talaq whether rational?

According to Ameer Ali, "Talaq-al-Biddat or triple divorce, as its name signifies, is heretical or irregular mode of divorce which was introduced in the second century of the Islamic Hijri era. It was then that the Ommeyyad monarchs, finding checks imposed by the Holy Prophet (PBUH) on the facility of repudiation interfered with the indulgence of their caprice, endeavoured to find an escape from the strictness of law and found in the pliability of the jurists a loophole to effect their purpose.”⁴

Rule of law presupposes existence of equality and strictly prohibits discrimination on the grounds of sex, race, religion, caste, creed, etc. Prima facie talaq itself appears to be absurd since it gives arbitrary powers to a Muslim husband to divorce his wife without her fault and hence Muslim wife is at the mercy, whims and caprice of husband. Again triple talaq is aggravated form of divorce which permits Muslim husband to divorce wife irrevocably without giving her opportunity to avoid it. That's why, it can be safely concluded that provision of talaq, especially triple talaq is irrational having no grain of reasonableness. Again triple talaq comes into effect immediately after pronouncement and does not give second chance to the spouses to think twice over it.

Triple talaq also violates fundamental right of women guaranteed under Art. 21 of Indian

Judicial Approach on Triple talaq:

The concept of triple talaq as mentioned above is against rule of law. It violates right to equality on the ground of sex. It grossly discriminates against women by giving unfettered powers on Muslim husband to divorce his wife any time without assigning reasons and thus unreasonable. In this regard it becomes necessary to peruse judicial approach on triple talaq. In *Rashid Ahmad vs. Aneesah Khatun*⁵ the Privy Council, upheld as valid, 'talaq-e-biddat' triple talaq, pronounced by the husband, in the absence and without the knowledge of the wife, even though the husband and wife continued to cohabit for 15 long years thereafter, wherefrom 5 offspring were born to them.

In *Jiauddin Ahmed v. Anwara Begum*⁶ Ganthati High Court held that the 'talaq-e-biddat' pronounced by

the husband without reasonable cause, and without being preceded by attempts of reconciliation, and without the involvement of arbitrators with due representation on behalf of the husband and wife would not lead to a valid divorce. Thus the High Court suggested some procedure to be followed before talaq.

While deciding in *Masroor Ahmed v. State (NCT of Delhi)*⁷ held that, 'a triple talaq (talaq-e-bidaat), even for sunni muslims be regarded as one revocable talaq. This would enable the husband to have time to think and to have ample opportunity to revoke the same during the iddat period.' In a way the High Court admitted triple talaq but said that it is not irrevocable immediately after pronouncement

In *Nazeer v. Shemeema*⁸ though the validity of triple talaq was not an issue but the High Court deprecated the practice on the ground that the provision of triple talaq is misused largely.

Finally, in *Shayara Bano's* case the Supreme Court came with the issue of validity of triple talaq and declared the same as unconstitutional.

Legal provision regarding triple talaq:

After the historic judgement of *Shayara Bano*, the Central Government moved a Bill in Parliament in its winter assembly and the same was passed in the Lok Sabha while it is under discussion in the Rajya Sabha. The bill is *The Muslim Women (Protection of Rights on Marriage) Bill 2017* and concerned provision of triple talaq is provided in Chapter II which runs as follows.

Section 3. Any pronouncement of talaq by a person upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

Section 4. Whoever pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years and fine.

As per section 3, talaq or divorce out of the court is prohibited and would be void and illegal. Not only this, pronouncing talaq shall be also an offence punishable with imprisonment up to three years and fine too.

Triple talaq: a bane to gender justice:

Equality as enshrined in Article 14 is the essence of democracy and a basic feature of the Constitution and it has been expanded to include concepts of non-arbitrariness and principle of natural justice. Triple talaq violates right to equality as it denies voice to women at the time of divorce. Not only this, triple talaq also gives unfettered power to the husband to divorce the wife without assigning any reasons.

Article 21 lays down that "no person shall be deprived of his right to life and personal liberty except according to the procedure established by law. It also violates her right to live with dignity as wife is left at the mercy of God as she does not have the right to claim maintenance after iddat period.

Conclusion: Civilization demands abolition of discrimination on flimsy grounds, it also highlights

⁴ http://shodhganga.inflibnet.ac.in/bitstream/10603/52355/7/07_chapter%203.pdf

⁵ AIR 1932 PC 25

⁶ 1981, 1 Gau.L.R. 358

⁷ 2008 (103) DRJ 137
⁸ 2017 (1) K.L.F 300

respect and honour of womanhood. To that end, it is necessary to make special legislative provisions for women and elimination of practices derogatory to women. This will truly result in giving justice to women. Women constitute half of the population and

decide future of any nation as progenies are created and nurtured by them. Hence it is necessary to ban practices like triple talaq, halala that treat women like chattel or property.

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