

Triple Talaq: The Practice In Conflict With Indian Constitutional Mandates Analysed Through Judicial Lens

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Abstract

Muslims view marriage as a legal contract that can be broken in a number of ways. Looking at the Talaq's historical development, we can see that it was one of the first religious institutions to allow for divorce. Islamic law mandates that a Talaq be a two-way conversation. Both men and women have the right to ask for a talaq, though the options available to women are quite limited. During the lifetime of the Prophet Mohammed, the practice of talaq was at a place but in staggered manner. If living together under one roof becomes intolerable, there is a provision to seek divorce that does not go against women. The term "Talaq" which has been originated from the word which is the Arabic word to "repudiate the marriage" or which means separation of one person from another person in a way, they would not be bound or liable to perform the obligation of married life. In other word talaq is breaking of bondage of marriage. It is situation where one person absolves himself from the liability, which he took at the time of marriage. It is not a new phenomenon in the society but at present, it is increasing by leap and bounds, the cases of triple talaq, especially. Under Muslim personal law triple talaq is most prevalent mode of giving talaq under the head of Talaq-UI-Biddat. Triple talaq is talaq, which is given by the husband by uttering the word Talaq thrice in one go, and talaq becomes irrevocable. This form of talaq seems to be violating the very important rights of women like right to life, right to dignity etc. Another important thing is that right to pronounce triple talaq is given to the husband only therefore it's discriminatory in nature and violating the right to equality which is fundamental right of every person irrespective of gender and religion in India. This topic has been taken by the author keeping in mind the present controversy relating to the Triple talaq which emerged after Apex Court judgment by which Triple talaq practice was found "unconstitutional" on ground of violation of fundamental right of equality, life, and dignity of women. This paper also discusses many controversies like whether Apex court of India has jurisdiction to deal with personal laws, whether declaring the triple talaq practice as unconstitutional is violative of Freedom of religion etc. Beside above this paper will critically analyze the shayara bano judgement and legislation enacted to eradicate triple talaq practice.

Keyword: Talaq, Constitution of India, Fundamental Right, Unconstitutionality, Judicial Review.

Introduction

The practise of instant triple talaq, also known as talaq-e-biddat, which had been abused by Muslim husbands to terminate marital connections with their wives instantly and forever, was found unlawful by the Apex Court of India in *Shayara Bano v. UOI*.¹ Because it is acknowledged as a game-changing move towards achieving gender equality in society, the Judgement has received a great deal of appreciation, particularly from women's rights NGO's, institutions, and organisations.² The fact that judges from different religious backgrounds made up the bench that delivered the ruling is also noteworthy, but it primarily has symbolic value³. According to Muslim divorce custom, the marriage contract must be broken by saying the word "talaq" three times in a row. Long periods of time were spent with this practise. According to Islamic law, the Talaq must be pronounced at different-different occasions over the course of three months of purity. This period of three months should be utilized for reconciliation between married couple. During the reign of the second Caliph of Islam, the custom of pronouncing triple Talaq at a time had been acknowledged as legal only under special circumstances, the spouse must be permitted to utter triple Talaq at a time.⁴ It eventually became a staple of Muslim institutions around the world, including India. People in today's world have forgotten about the option of staggered Talaq and have come to expect the Talaq being delivered all at once.⁵

Islam religion is one the best religion, has been mostly misunderstood and misrepresented Because of followers⁶ ignorance towards it “Now onwards, only twice in the whole life can a husband pronounce a Talaq and revoke it; whenever he does so for the third time the marriage would be instantly dissolved, leaving no room for remarriage between the divorced couple.”⁷ Like every other scripture, Islam's holy book, the Quran, illuminates principles through parables and signs. Regarding marriage and divorce, it offers an exception and a complex procedure. If you are afraid of getting divorced, you must counsel your wife. If that doesn't work, you must sleep in different beds. Finally, use real-life divorce examples to demonstrate how it negatively affects families and kids. If it doesn't, the Quran offers two people—one from each of the husband's and wife's families—for conciliation and arbitration. The husband has the choice to go for the divorce if the aforementioned processes are unsuccessful, however the Quran prescribes a three-month waiting period during which the spouses must continue to live as husband and wife with object of bringing reconciliation. The husband has the right to revoke the divorce during the iddat time, and once three months have passed, if the wife agrees, they can get married again. The Quran further stipulates that the divorce must be witnessed by two witnesses and states unequivocally that these limitations were imposed by God, implying that no human power can change them and that this is the only way that divorce can take place. Imam Malik, a scholar of Islam, regarded even the Talaq Hasan, which involves three different proclamations made at the beginning of each month, as Biddat since it is another

¹Shayara Bano v. Union of India, (2017) 9 SCC 1

²The Wire staff, ‘Apex Court’s Triple Talaq Order Welcomed by Activists, Muslim Personal Board’, (The Wire, August 22, 2017) <https://thewire.in/170027/supreme-court-triple-talaq-verdict-2/>. accessed on 20th February 2022.

³The Bench comprised of J.S. Khehar (at that time Chief Justice of India), Kurian Joseph, Rohinton Nariman, U.U. Lalit, and S. Abdul Nazeer, JJ. belonging to Sikh, Christian, Parsi, Hindu and Muslim faiths respectively.

⁴AIR spotlight summary on “Emerging issues over Triple Talaq” (Insight, November 3, 2016) <http://www.insightsonindia.com/2016/11/03/air-spotlight-summary-emerging-issues-triple-talaq/>; accessed on 21st February 2022.

⁵AIR spotlight summary on “Emerging issues over Triple Talaq” (Insight, November 3, 2016) <http://www.insightsonindia.com/2016/11/03/air-spotlight-summary-emerging-issues-triple-talaq/>; accessed on 21st February 2022.

⁶Hussain, Sameer; “Triple Talaq: A Socio-Legal Analysis” Ili Law Review, (2010) 130, Vol. 1, https://papers.ssrn.com/Sol3/Papers.Cfm?Abstract_Id=1597858; Accessed On 8th March 2022

⁷Furqan Ahmad, “Understanding the Islamic Law of Divorce”, (2003) 45 JILI 484. <https://www.studocu.com/row/document/university-of-dhaka/derivatives/020-understanding-the-islamic-law-of-divorce-484-508/10035563>; accessed on 8th March 2022.

practice that is not authorized by the Quran. The Quran further clarifies that during a lifetime, this option is available only twice, it means third pronouncement would result into irrevocable separation. Triple is atrociousness; it is inheritance of a pre-Islamic Arabia. It is incredibly inhumane to consider women in this context as property that can be disposed of at the "master's" pleasure. Therefore, this disgusting practice must be stopped in every Islamic nation, there is no reason why the Indian Muslim husband should continue to enjoy this special privilege.⁸

Meaning of Triple Talaq

The Strong bond between the husband and wife is an essential element for a happy and prosperous family life. Islam, therefore, gives more emphasis upon the survival of a marital bond not on its end. Ancient time's marriage not meant for dissolution but in unfortunate situations came and broken of marriage started. Mainly there are two methods of dissolution of marriage, one is divorce and other is death of spouse. The divorce can be obtained under Indian Islamic law by either deeds of the parties or by a judicial order. However, the divorce has not been seen as a norm, but rather as an exception to the spouse's marital life, regardless of how it is carried out. Under Muslim law, there are a variety of divorce procedures that will be covered in the sections that follow.

There are numerous other modes of divorce under the Muslim law, where the husband is permitted to give divorce his wife by repudiating the marriage without assigning any reason but, Muslim wife has no right to give divorce to her husband except when the husband delegates such a right or by either Khula or Mubarat, modes of talaq. Prior to the Dissolution of Muslim Marriages Act of 1939, a Muslim wife could only file for divorce if her husband had been falsely accused of infidelity, lunacy, or impotence. However, some other grounds were added for a Muslim wife to get divorce by decree of the courts under the Dissolution of Muslim Marriages Act 1939. Divorce may extra-judicial divorce, or judicial divorce. Extra-judicial divorce, where divorce takes place outside the court. The extra judicial divorce can be further sub-divided into three types, namely- Divorce by Husband- Talaq, Ila, And Zihar, Divorce by Wife includes Talaq-e-Tafweez, Lian, Fask, and lastly Divorce by Mutual Agreement- under Khula and Mubarat for both husband and wife.

Talaq by husband refers to the breakup of the marriage and is an Arabic phrase that means "cutting off any bond or restraint." There is no specific way to pronounce talaq according to Hanafi law. However, Ithna Asharia law insists on strict adherence to a certain manner, that is, it must be oral and in the Arabic language, in in the presence and hearing of two male witnesses while wife's presence is not required at all. Two types of talaq exist: Talaq-ul-Sunnat and Talaq-ul-Biddat. Talaq-ul-Sunnat is a talaq that has the Prophet's approval. It could be in the talaq's most accepted form, and it is further separated into two: Ahsan (most popular) B Hasan (Approved). Talaq-ul-Biddat/Triple talaq occurs when the husband does not adhere to the prescribed form of talaq and does not take into consideration the period of purity or the prohibition against having sexual relations. Repudiation of the marriage by the husband when he says "divorce" three times in a row or when he says it three times in a tuhr, independently. Triple talaq is another name for talaq e biddat.⁹

⁸ Md. Khan, Arif "No country for triple talaq" The Indian Express, (Delhi, 6 June 2017) <https://indianexpress.com/article/opinion/columns/no-country-for-triple-talaq-4690585/>; accessed on 10th March 2022.

⁹ AQIL Ahmad, Mohammedan Law, (22nd edition. Central Law Agency 2006).

Triple Talaq and Right to Equality

The practice of triple talaq can be challenged on various constitutional grounds including the right to equality and termed it "abhorrent", Only husband has right to break marriage through triple talaq while wife does not have right to give triple talaq, violates right to equality enshrined in the Article 14 the Constitution of India 1949. Termination of marriage it's objectionable and needless if it is one sided. It is argued that the triple talaq creates sex-based discrimination in regard to marital rights, which is in violation of article 15 which put prohibition on discrimination based on race, caste, gender, or place of birth. This practice is not violative of article 14, 15 but also repugnant to the belief of muslim bible known as Quran and this "sinful" usage which is divergent to constitutional mandates cannot be saved by any amount of its advocacy.

The Triple talaq is arbitrary in nature because it does not provide sufficient time to the person who pronouncing it to re-think and leaves no option for reconciliation and re-union, the pronouncer of triple talaq has only iddat period to re-think which is not found sufficient because in other form of talaq, pronouncer would have at least six months to re-think i.e., three pronouncements in three times during purity. Similarly, in Hindu law first no petition can be filed for first year after marriage and incase of divorce by mutual consent six months waiting period is given to the parties of divorce. Hence at least six-month period must be sufficient time of re-thinking and reconciliation. Any law which is arbitrary in nature shall always violate fundamental right of right to equality.

The practice which is prevailing in the Islamic nations of the world refers and emphasised that "If thrice pronouncement of talaq at a time should be taken as one pronouncement, then 90% of the problem which is emerged due to triple talaq in one sitting would be resolved and will lose its irrevocability nature and promote reconciliation among couples during the three- month 'Iddat' period". It is widely accepted that laws can be passed to better the lives of women rather than depriving them of their rights, in accordance with Article 15(3) of the Indian Constitution. Every citizen of India owes fundamental duty to renounce practices which are deemed to be derogatory to dignity of woman¹⁰. It will not be wrong to say that the man by pronouncing a divorce by using the word talaq three times in one go or refusal to maintain is amount to a practice which is derogatory in nature and violative of dignity of women.

Triple Talaq and Right to Life and Dignity of Women

"No one shall be deprived of his right to life and personal liberty except by the procedure established by law."¹¹ Right to life does not mean mere animal life but much more than that¹². It does not denote to a mere physical existence but life with dignity¹³. The menace, which is under challenge, is triple talaq. Triple talaq is a practice that not only undermines women's social standing and dignity but also renders them weak and vulnerable to males from their own community, women from other groups, and Muslim women living outside of India. Triple talaq is a practise that not only undermines women's social standing and dignity but also

¹⁰The Constitution of India 1959, Art. 51A, (1) (e)

¹¹The Constitution of India 1959, Art. 21

¹² Kharak Singh V. State of UP, [1963] AIR 1295, [1964] SCR (1) 332

¹³ Maneka Gandhi V. Union of India, [1978] AIR 597, [1978] SCR (2) 621

renders them weak and vulnerable to males from their own community, women from other groups, and Muslim women living outside of India.¹⁴

Right to live with dignity means that there should not be risk of sudden breakup of such tie between man and women which affects the life of Women who does not have means of earning and livelihood, leads to live an un-dignified life. A Triple Talaq breaks the marital tie, which is basic element for family life in Islam. It does not disturb the marital knot between husband and wife, but also it has severe psychological, emotional, and other dreadful effects the life and nourishment of the children born out of from such marriage.

Triple Talaq and Freedom of Religion

Article 25 clause 1 provides that “all persons are entitled to freedom of conscience, profess, practice and propagate religion but such rights shall be curtailed on the ground of public order, morality, health and to the other fundamental rights mentioned in Part III. It makes very clear that freedom of religion can be restricted on the grounds of public order, morality, and health and on the ground that freedom of religion is violating the other fundamental rights provided in part III.¹⁵ Therefore, the practice of triple talaq could not be guarded on the basis of freedom of religion while freedom of religion will not be available if it is violating the other fundamental right like right to life, right to equality and dignity of the women. Hence Abolition of Triple Talaq is not in violation of Freedom of religion¹⁶.

Article 25 clause 2 states that “freedom of religion shall not affect the implication of any existing law or shall not restrict the state from making any law, ensuring social welfare and reform¹⁷. It means article 25 clause 2 certifies¹⁷ that any religious practice, which is affecting social welfare, or derogatory to the woman or against the morality, can be restricted by the Legislature by enacting a law and therefore banning triple Talaq is not amount to interference with the freedom of religion. It is the fundamental duty of every citizen of India to renounce the practices, which are derogatory to the dignity of women with the purpose of bringing social welfare and reform.¹⁸The holy book of Quran dose not permits it than how it can be a religious practice because religious holy book must certify the triple talaq.

Two judges have given a dissenting opinion and cited article 25 of Indian constitution as a defence for non-declaration of triple talaq unconstitutional because it is essential part of religion which guarantees to the fundamental rights to religious freedom. Triple talaq custom practice was not an integral part of Islam and cannot be protected on the ground of freedom of religion because no religion will allow the exploitation and harassment of women at any sphere. It has been noticed that almost all Islamic states of the world has abolished the triple talaq practice.¹⁹the majority judgement held that triple talaq is of part of Islam part it is not an essential or it had inherent part of Islam. Hence this practice does not get support of article 25 which ensures religious freedom. Religious freedom does not mean allowing a person to

¹⁴PTI, ‘TRIPLE TALAQ IMPACTS DIGNITY OF MUSLIM WOMEN: CENTRE TO APEX COURT’, THE INDIAN EXPRESS, (NEW DELHI, 11TH APRIL 2017); [HTTP://INDIANEXPRESS.COM/ARTICLE/INDIA/TRIPLE-TALAQ-IMPACTS-DIGNITY-OF-MUSLIM-WOMEN-CENTRE-TO-SUPREME-COURT-4608512/](http://indianexpress.com/article/india/triple-talaq-impacts-dignity-of-muslim-women-centre-to-supreme-court-4608512/); ACCESSED ON 12TH MARCH 2022.

¹⁵The Constitution of India 1959, Art. 25 (1).

¹⁶Steuer, Bastian, ‘Triple Talaq and the Irrelevance of Religious Freedom’, (Live Law, 31 August 2021); <http://www.livelaw.in/triple-talaq-irrelevance-religious-freedom>; accessed on 15th March 2022.

¹⁷The Constitution of India 1959, Art. 25 (2).

¹⁸Supra note 19.

¹⁹SURAIYA, JUG. ‘TRIPLE TALAQ: TIME TO DIVORCE RELIGION FROM INEQUALITY, EXPLOITATION AND DISCRIMINATION’ TIMES OF INDIA, 23 AUGUST 2017) [HTTPS://BLOGS.TIMESOFINDIA.INDIATIMES.COM/JUGGLEBANDHI/TRIPLE-TALAQ-TIME-TO-DIVORCE-RELIGION](https://blogs.timesofindia.indiatimes.com/jugglebandhi/triple-talaq-time-to-divorce-religion); ACCESSED ON 23 MARCH 2022.

practice once custom but also means that such customs must have legal and social significance.²⁰

Triple Talaq and Jurisdiction of the Apex Court

Firstly, the All-India Muslim Personal Law Board (AIMPLB) asserted in a document submitted to the Supreme Court that personal laws of a community cannot be changed in the name of social reforms. They provided the following primary grounds in support of the contentious triple talaq practice. The Board submitted that the Apex Court in *Krishna Singh V. Mathura Athir*²¹ has held that article 13 of the Indian Constitution does not apply on the personal laws of the parties. It is also submitted by the AIMPLB that since Part III of the Constitution does not interfere with the personal laws of the parties, Court cannot examine the constitutional validity of various practices related to marriage, divorce, and maintenance in Islamic personal law.

Secondly, the Board submitted that in *Sardar Saifuddin Saheb V. State of Bombay*²², Apex Court held that the exception carved in Article 25 (2) of the Constitution of India empowers the state to enact laws bringing "social welfare and reform" was not intended to empower the state legislature to "reform" a religion in such a manner that results in destruction of identity and existence of religion.

Thirdly, The Board argued that Muslim personal law is a cultural issue that is intimately linked to the community's faith. Therefore, it is not just a matter of the freedom of conscience at issue, but also of the right to practice one's religion and to propagate it, as guaranteed by articles 25 and 26 of the Indian Constitution of 1949 read along with article 29. The protection provided by Articles 25 and 26 covers actions related to religion as well as matters of doctrine and belief. Additionally, it is claimed that every faith has a different approach to marriage, divorce, and maintenance. Each religion has a different perspective on these rituals; hence each religion's practices are distinctive and peculiar to that faith alone. Due to the fact that each religion's activities are unique to that faith alone and have been covered by the protections provided by articles 25, 26, and 29, one cannot in this situation consider the legitimacy of one religion's customs as being inferior to the rights of another religion.

Lastly, the Board argued that the Constitutional scheme clearly states that the judiciary shall not establish rules for any religious denomination or branch thereof and whenever the Court is introduced with any religious issues, it will consult the sacred texts of the relevant religious denomination. In other words, the Court has no authority to impose its own viewpoint when addressing the religious issues, scriptures, or beliefs of any religious group.

In *State V. Narasu AppaMalli's case*²³, It was noted that the provisions of Article 13 would not apply to personal laws because they are not "laws in force" as defined by Article 13 and declared to be valid by the Bombay High Court in 1951. to which the courts sometimes submit under political pressures, are the reason why this ruling hasn't been overturned. In the case of *Ahmedabad Women's Action Group v. Union of India* in 1997²⁴, the Bombay High Court's decision was ultimately confirmed by the Supreme Court after the Apex Court initially dallied on the matter. The Shariat Application Act of 1939, which just stated that the Shariat

²⁰Supra note 4.

²¹*Krishna Singh V. Mathura Athir*, [1981] 3 SCC 689.

²² *Sardar Saifuddin Saheb V. State of Bombay*, [1962] AIR SC 853.

²³*State V. Narasu Appa Malli*, [1952] AIR Bom 84.

²⁴ *Ahmedabad Women's Action Group vs. Union of India*, [1997] AIR SC 3614.

will rule Indian Muslims in all situations relating to marriage, divorce, inheritance, guardianship, and maintenance, among other things, remained unquestioned as a result. Pernicious practises including triple talaq, Nikah halala, and polygamy have flourished uncontrolled as a result of the Narasu Appa Malli ruling.²⁵.

Triple Talaq Is “Law” As Per Article 13 Of Indian Constitution?

There are various reasons for considering triple talaq as a law. Such reasons are as follows-

Firstly, it is argued that the definition of "law" in article 13 is not comprehensive and should be interpreted to encompass "personal law" as well. The court heard an argument that the subjects listed in entry number 5 of the Concurrent list in the Seventh Schedule, pertaining to "family matters including marriage and divorce," fall under the category of "personal law," and as such, both the central and state legislatures have the authority to enact laws on these matters in accordance with Article 246 (2). Therefore, 'personal laws', are subject to inclusion in the periphery of term "law" within the meaning of Article 13 (3) (a) of the Constitution.

Secondly, the bare reading of Article 13 clause (3) sub-clause (a) which defines the term "law" includes not only the ordinance, rules, regulation but also includes "any custom or usage having the force of law in boundary of India, leaves no room for any doubt or confusion, on the issue of Triple Talaq practice which is being followed from time-immemorial by the people of concerned religion without any objection and have certainty in it, in order to come with the purview of the term "custom" under article 13 (3) (a).

Lastly, without affecting the above, the prevalent practices of Triple talaq under challenge, had been enshrined into the Muslim 'personal law' by the Shariat Act 1939. Since This Act was enacted by the Parliament and hence becomes law automatically. It is Considered that the Shariat Act, was clearly a "law in force", within the meaning of Article 13(3)(b) for being enacted by the Parliament which is legislative body at center, and it is in-force till date. After considering the above reasons, it becomes very clear that triple talaq is a law and Article 13 gives jurisdiction to Apex Court to declare any law unconstitutional on being violative of the fundamental rights given in part 3 of the Constitution of India 1949 and as per discussion above triple Talaq is violative of right to life and right to equality under Art. 21 and 14 respectively.

Criticism of Judgement and Triple Talaq Act 2019

Firstly, according to the Chief Justice Khehar and Justice Abdul Nazeer's minority dissenting judgement, such a practice is a fundamentally religious aspect of Islam. They defended their position by pointing out that many people around the world follow the talaq-e-biddat as custom. The Supreme Court acknowledged lack of jurisdiction in the case of State v. Narasu Appa Malli²⁶, it was established that the requirements of Article 13 would not apply to personal laws since they are not "laws in force" as defined by Article 13, held by the Bombay High Court in 1951. In the case of Ahmedabad Women's Action Group v. Union of India in 1997, the Bombay High Court's decision was ultimately confirmed by the Supreme Court after initial dithering on the matter.

²⁵Jawad, A.J., '*Personal Laws And Supreme Indecision*', (Live Laws, 9 June 2017) at <http://www.livelaw.in/personal-laws-supreme-indecision/>; accessed on 25th March 2022.

²⁶ AIR 1952 Bombay 84

Secondly, according to Article 25 of the Constitution, a person's fundamental religious practices cannot be taken away by the government. Therefore, a practice will fall within the exclusion outlined in Article 25, if it is arbitrary and not an essential religious practice. Due to the fact that Shariat, or Muslim personal law, is not based on any state legislative action, this practice did not violate any of these exceptions.

Thirdly, The Supreme Court ruled triple talaq to be unlawful, but nowhere in the ruling did it state that it needed to be deemed a crime; yet the measure that has been introduced states that a husband who give triple talaq may face a three-year prison sentence. The government has not made it clear in this measure whether it intends to criminalize triple talaq as a strict liability offence or a crime of guilty intent. What if the husband does not intend to divorce the wife but only says the word "talaq" three times? Can he still be held accountable in this situation?

Fourthly, according to criminal law, the burden of proof rests with the petitioner, and the respondent is deemed to be innocent unless proven guilty. Hence, the burden of proof shall lie on wife to prove that the husband gave her triple talaq. It is vital to notice how the woman would be able to prove that the husband has used triple talaq in cases where the husband orally pronounces it without anyone else presence.

Fifthly, according to the Act, the husband will be bound to provide maintenance for his wife. It is important to consider how the spouse will be able to make maintenance payments while he is behind prison. What would the couple's marital status be after the husband declares the triple talaq, given that it is unconstitutional? If the three pronouncements are assumed to have no repercussions, then neither the wife nor society as a whole should be harmed, protecting no state interest. It was therefore improper for the government to intervene and make it a penal provision because it would damage the entire institution because there would be no love or affection left after the husband is imprisoned. At most, it should have been made a civil contempt of the Supreme Court instead because this issue is not only religious but also affects the institution of the family.

Sixthly, according to article 141 of the constitution, the Supreme Court's decision is a law in itself. Hence the parliament should not have intervened in the current case. A law didn't seem to be necessary because the declarations no longer dissolve marriages. Additionally, the three-year sentence seemed arbitrary because it is the same as the penalty for rioting with deadly weapons under section 148 of the Indian Penal Code, and there isn't technically any criminal punishment for a husband divorcing his wife because most family law-related issues are civil in nature.

Lastly, this law will provide once again another opportunity for the blatant misuse and extortion from the husband, which is a routine trend with laws designed to protect one segment of society from another. As a result, it was crucial that the government analyse all relevant factors before introducing a legislation on this subject; otherwise, it would have been wiser to go without one altogether.

Conclusion

Women's lives in our nation are terrible, and when they come from a minority group, their circumstances are even worse. According to the Indian constitution, minorities are in a difficult situation. While it is the state's duty to uphold the minority's constitutional protections, which prevent the government from interfering with their religious practices and customs, and

to allow them to practice their religion openly and continue to follow their own traditions. The constitution also requires the government to guarantee each citizen's equality and the right to live in peace and dignity. Triple talaq has been taken as "sinful", and worst "unnecessary" form of dissolution of marriage in Islam. The Holy book of Islam (Quran) that governs each aspect of life including marriage and talaq but does not include Triple talaq as method of dissolution of marriage. This form of talaq cause extreme melancholy not only to the divorced women but also left no chance for a man, to undo the deed and reunite again with divorced spouse, once pronounced the triple talaq. Triple talaq does not only deprive Muslim women from right to equality but also depriving them from right to life which ensure dignified life. Besides this it violates human rights which human being gets from birth.

Such practice is also found derogatory to women, where women is respected as goddess and being Indian citizen it's our fundamental duty to renounce such practices which are derogatory to the dignity of women. India is known for its culture where women are respected like deity. The policies of government of India and various laws which are being made for strengthening the women and all efforts are being made for providing them equal status in all walks of life would fail if such practices existed. Abolition of such practices is necessary to give respect to women and to make welfare state. Triple Talaq is bad because it instantly dissolves the marriage and left parties of marriage with no option to re-unite. It also does not follow some basic principles of dissolution the marriage in India, when family members of the spouse make sincere efforts to bring about reconciliation and re-union of divorced couple, proves to be futile exercise due irrevocability of triple talaq. Furthermore, even if the iddat period expires and the talaq could not be revoked automatically, the couple still has prospect to reunite by entering marriage by doing a fresh nikah on fresh condition of mahr etc.

In *Must. Rukia Khatun v. Abdul Khaliq Laskar*²⁷, In the instant case, the High Court listed the following essential ingredients of a valid 'talaq' under Muslim law. Firstly, 'talaq' should be based on good cause, and must not be at the mere sweet will, desire, whim and caprice of the husband. Secondly, it must not be secret. Thirdly, there must be a time gap between the pronouncement and finality of dissolution in order to enable the parties to calm down from his or her anger, and reconciliation could be possible outcome. Fourthly, there must be a process of arbitration (as a means or method of reconciliation), wherein the arbitrators must be representatives of both the husband and the wife. If the above ingredients do not exist, 'talaq' – divorce would be invalid. *Masroor Ahmed v. State (NCT of Delhi)*²⁸ it was held by the High Court of Delhi that it is accepted by all schools of law that talaq-e-biddat is sinful.

Apex Court's decision in *Shayara Bano verses Union of India*, case is appreciable judgment. This judgment will be milestone in providing Muslim women a dignified life and equal status in the society. Apex Court has not given justice to the Muslim women but has made a great contribution towards giving them an equal status and strength. It has been pointed from time immemorial that a country will be the prosperous country where women is respected as deity, proper respect and dignity is given. Under the Indian constitutional dimension, it is the fundamental duty of every citizen to renounce the practices which are derogatory to women. Such kinds of practices are not affecting any one class of society but society as a whole. It's not about Muslim religion where such derogatory practices are being observed it's about the humanity which shall be protected at all spheres irrespective of religious thoughts. Besides triple talaq, nikah-halala and polygamy which is still existing in India even Muslim countries has renounced and prohibited such practices. Only Apex Court's judgment and legislation

²⁷ *Must. Rukia Khatun v. Abdul Khaliq Laskar* [1981] 1 Gau. L.R. 37

²⁸ *Masroor Ahmed v. State (NCT of Delhi)* [2008] 103 DRJ 137;

which parliament is making to make practice of triple talaq punishable is not sufficient unless we the people of India change our mentality towards the women.

Indian Parliament has enacted the Act 2019²⁹ to prevent any sort of harassment in form of triple talaq, to protect the rights of married Muslim women and to prohibit divorce through triple talaq by their husbands. This act prescribes that triple talaq is void and illegal and husband shall be punished with imprisonment which may extend to three years and fine. It is declared that an offence under this Act shall be cognizable, non-bailable and compoundable, notwithstanding anything contained in the Code of Criminal Procedure, 1973.

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