AN OVERVIEW OF TRIPLE TALAQ: SITUATION OF THE MUSLIM WOMEN DURING TALAQ

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ABSTRACT

This article mainly focuses on the threshold problem of the triple talaq. First, being the validity of the procedure of giving triple talaq which is still prevalent in India and the violation of the rights that it causes to the Muslim women. Second, the situation of the Muslim women who got divorced by their husbands by pronouncing triple talaq with reference to the decided cases by the Indian judiciary over the time period. Here we have also tried to focus on the current scenario of Indian laws relating to triple talaq with the other muslim majority countries. The issue of the ‘triple talaq’ is regarded as highly sensitive among the Muslims, not only in India but elsewhere. Despite clear Qur’anic injunctions to the contrary, immediate triple talaq is permitted, destroying marital life in one breath and henceforth family law in many countries has changed significantly over time, in most cases toward greater equality and safeguards for women in marriage and family matters. The practice of immediate triple talaq is widespread among Sunni Muslims and has legal validity. Even then the jurists call it a talaq-e-biddat (innovative form of divorce). This article explains the dynamic shift of the rights of the women after the leading judgment of the Apex court on triple talaq last year and making it unconstitutional. Third, way out the from the lacunas of the bill which is proposed to pass in the year of 2017 and already been passed by the law minister Ravi Shankar Prasad in the lower house of the parliament but did not come into existence as the upper house of the parliament did not give it a green signal. This article also tries to give some suggestions to regulate the ever increasing numbers of triple talaq in India.

Keywords- Muslim family law; India Muslim Women; Triple Talaq; Talaq
INTRODUCTION

Muslim law is a divine law, a law which is believed to be formulated by the God (Alah) himself. The main source of Muslim law is their Holy Quran; there are 114 chapters in the Quran which are called Sarat or Surah. These are again divided into 6666 verses which are called Ayat, among all those ayats there are only 200 of them which conveys principles and only 80 out of them are for Marriage, Divorce, Inheritance and Dower. Triple-Talaq is a form of dissolution of marriage in Muslim Personal Law which is called “talaq-ul-bidat” in which, the husband may pronounce the three formulae at one time, and it is irrelevant that whether the wife is in state of tuhr or not. It is denoted in Arabic as Mugallazah, means very hard-divorce which is the most disapproved and which does not conform to Talak-ul-sunnat. The separation then effects definitely after the woman has fulfilled her “iddat” or period of probation. There is a great controversy regarding the effect of triple pronouncement of the divorce at one and the same time. The difference in the opinion of jurists is due to the difference in their interpretation and application of the law. One class of the jurists is of the opinion that no leniency is to be shown in the application of laws so that people should not take undue advantage on that account. Abu Hanifa and Malik, therefore, hold the three repetitions of divorce to be final. The other jurists explained that Allah wants to treat people leniently so that they may not be put to hardship, and also to minimize the chances of separation. Hence, they hold three repetitions to amount to one only. Ibn Rushd has explained that Islam believes in golden mean.

Muslim majority population is regulated by the Sharia law. Sharia is derived from the religious precepts of Islam, particularly the Quran and the Hadith. A couple which undergoes Nikah Halala, where a divorce cannot remarry unless the women marry another man, consummates the marriage and then her second husband dies or divorces her. Nikah Halala is practiced under Sharia law. There are different traditions of Prophet quoted by scholars regarding whether three divorces at same time should be treated as one or three distinct divorces. Those scholars who accept triple-talaq on a single occasion as one quote following tradition in its favor: It is said that the notion of three divorces as one is not altogether baseless and invalid, but there is a ground for it which has always been accepted by a group of Ahl-e-Sunnat Wal Jammat (the followers of the tradition of the Prophet and of the decision of the collective body of Musli, Jaipur, India). In the Holy Quran
there is nowhere been ordained the three divorces pronounced in a single breath would amount to three separate divorces. In all Muslim countries there has been pressure to introduce reform which will safeguard the wife’s right, and enable a proper opportunity to be made to attempt to reconciliation. The first of major reforms were in Egypt in 1920. In no other country except Iraq, women have equal rights with men in the matter of divorce.

ORIGIN AND HISTORY

Triple talaq or triple divorce is a recognized but disapproved form of divorce and is considered by the Islamic Jurists as an innovation within the fold of Shairat. It commands neither the sanction of Holy Quran nor the approval of the Holy Prophet. It was also not in practice during the lifetime of First Caliph Abu Bakar and also for more than two years during the Second Caliph’s time. Later on Hazrat Umar permitted it on account of certain peculiar situation. Arabs conquered Syria, Egypt, Persia, etc. They found women over there more attractive, better looking compared to Arabian women and hence they wanted to marry them. But the Egyptian and Syrian women insisted them that in order to marry them, they should divorce their exiting wives instantaneously by pronouncing three divorce in one sitting. The condition was readily acceptable to the Arabs because they knew that in Islam divorce is permissible only twice in two separate periods of Tuhr and its repetition at one sitting is unislamic, void, and shall not be effective. In this way, they could not only marry these women but also retain their existing wives. The fact was reported to the Second Caliph Hazrat Umar. The Caliph Umar then order to prevent the misuse of the religion by the unscrupulous husbands decreed that even repetition of the word ‘talaq’, ‘talaq’, ‘talaq’ at one sitting would dissolve the marriage irrevocably. It was, however a mere administrative measure of Caliph Umar to meet an emergency situation and not to make it a law permanently. But unfortunately the Hanafi Jurists later on at the strength of hi instant administrative order of Second Caliph declared this form of divorce valid and also pave religious sanctions to it.

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1 The chief Muslim civil and religious ruler, regarded as the successor of Muhammad.
2 State of purity, the period between two menstrual cycles.
MEANING OF TALAQ AND THE CAPACITY TO GIVE TALAQ (TALAQ)

Talaq in its original sense means repudiation or rejection but under Muslim Law, it means a release from the marriage tie, immediately or eventually. It is generic name for all kinds of divorce, but particularly applied to the repudiation by or on behalf of the husband. A revocable pronouncement of talaq does not dissolve the marriage till the period of iddat has expired, but an irrevocable pronouncement dissolves the marriage immediately on its pronouncement. Under the Muslim Law a marriage is dissolved either by the death of the husband or wife, or by divorce. After the death of the wife, the husband may remarry immediately. But the widow cannot remarry before a certain specified period called ‘iddat’. The ‘iddat’ of death is months and 10 days in case of the death of husband and if she is pregnant, until delivery of child.

In order to pronounce a valid talaq, the husband must possess the following qualifications. There are two forms of criteria under two major heads of Muslim laws which are Shia law and the other one is Sunni law.

Shia Law

- Every husband must attain the age of puberty
- The husband must be of a sound mind person
- The talaq must not be pronounced under any compulsion or duress
- Talaq shall be pronounced in front of two witnesses

Sunni Law

- A man of sound mind
- Attained the age of majority

Talaq pronounced under intoxication

Muslim Law on the question of talaq pronouncement under intoxication is not clear. One view is that if the husband was forcibly made drunk, and he has pronounced talaq, such a talaq will not

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3 The period during which adolescents reach sexual maturity and becomes capable of reproduction.
take effect. According to Shafei School, the talaq of drunken man is not recognized by Muslim Law. Under Sunni Law of Schools there are jurists who are of the opinion that talaq during intoxication inn any manner would not be valid. In the case voluntary intoxication, talaq would be effective if it has been caused by the use of the wine obtained from grapes or dates or from hemp-leaves, opium or henbane-seed as in such cases the person would be liable to punishment.

The guardian of a husband of unsound mind, who has attained puberty, may pronounce a talaq on behalf of the husband, if doing so is to the husband’s benefit.

_Pronouncement of talaq in the absence of wife_

It is not necessary for the validity of talaq by husband that the wife should be present. The husband can pronounce talaq even in the absence of his wife. It was laid in Fulchand v. Navab Ali Choudhry, that the talaq should be deemed to have come into effect on the date on which she came to know of it. Similar opinion came in the case of Mohd. Shamsuddin v. Noor Jahan, AIR 1955, Hyd. 144

**MODES OF TALAQ**

1. _Talaq-ul-Sunnat_- This form of repudiation of marriage is regarded to be the approved form of Talaq in Muslim law. It is called as Talaq-ul-Sunnat because it is based on the Prophet’s tradition (Sunna). As a matter of fact, the Prophet always considered Talaq as an evil. If at all this evil was to take place, the best formula was one in which there was possibility of revoking the effects of this evil. With this idea in mind, the Prophet recommended only revocable Talaq, because in this form, the evil consequences of Talaq do not become final at once. There is possibility of compromise and reconciliation between husband and wife. Talaq-ul-Sunnat is also called as Talaq-ul-raje. Only this kind of Talaq was in practice during the life of the Prophet. This mode of Talaq is recognized both by Sunnis as well as by the Shias. Talaq-ul-Sunnat may be pronounced either in Ahsan or in the Hasan form.
2. **Talaq-ul-Ahsan** - This is the most proper form of repudiation of marriage. The reason is twofold: First, there is possibility of revoking the pronouncement before expiry of the Iddat period. Secondly, the evil words of Talaq are to be uttered only once. Being an evil, it is preferred that these words are not repeated. In the Ahsan Talaq there is a single declaration during the period of purity followed by no revocation by husband for three successive period of purity.

3. **Talaq-ul-Hassan** - This Talaq is also regarded to be the proper and approved form of Talaq. In this form too, there is a provision for revocation. But it is not the best mode because evil words of Talaq are to be pronounced three times in the successive Tuhrs.

4. **Talaq-ul-bidaat (Irrevocable)** - This form of talaq is also known as Talaq-ul-Bain. It is a disapproved mode of divorce. A peculiar feature of this Talaq is that it becomes effective as soon as the words are pronounced and there is no possibility of reconciliation between the parties. The Prophet never approved a Talaq in which there was no opportunity for reconciliation.

The above first three forms are talaq are the most in use and most approved form of talaq but in reality the fourth form of talaq which is not even an approved form and irrevocable in nature is in use the most amongst the Muslims of India. There are other modes of talaq as well in the Muslim law, like talaq by muslim woman, talaq by mutual consent, and grounds of talaqs under Dissolution of Muslim Marriage Act, 1939 and judicial termination. There are different modes of dissolution of marriage is present but the practice in ground reality shows a different picture altogether. A brief picture of other forms of dissolution of marriage except dissolution by muslim men is given below-

**DISSOLUTION OF MARRIAGE BY MUSLIM WOMEN**

- **Zihar** - This form of dissolution of muslim marriage occurs when the husband compares his wife with his mother or other wife i.e when the husband includes the wife into a prohibited degree of relationship for marriage.
• **Talaq-e-tafweez**- This form of dissolution of marriage takes place when there in the Nikahnama, a contract is signed between the husband and his wife that if the husband fails to maintain his wife then she can divorce herself. Here the women perform duality by divorcing herself from the marriage contract but not divorcing the husband.

• **Khula**- Wife has the right to dissolve the marriage by approaching to her husband and saying that she is not happy with him and hence she demands khula. In case the husband denies the wife can approach the kazi also.

• **Ila**- This form of dissolution of marriage takes place when the husband who has attained the age of majority and is of sound mind, swears by God that he will not have sexual intercourse with his wife and leaves wife, to observe iddat, he is said to make ila. In this case the wife is entitled to approach the court for passing a decree of dissolution of marriage.

### DISSOLUTION OF MARRIAGE BY MUTUAL CONSENT

• **Mubarat**- This is based upon the basic principle of contract where one party offers or gives proposal and the other party accepts or shows acceptance.

### DISSOLUTION OF MARRIAGE BY JUDICIAL PRONOUNCEMENT

• **Lian**- The husband presses false charges of adultery against the wife then the wife has the right to get a judicial decree of dissolution of marriage from the court of law.

• **Faskh**- The wife is facing hardship in the marriage, like the husband is beating or the husband is a drinker, then the wife can go to kazi with two witnesses to annulment of her marriage, if the kazi is satisfied after questioning the witnesses and her he pronounces annulment.

Dissolution of marriage under The Dissolution of Muslim Marriage Act, 1939: There are certain grounds under this acts which are specified here on which the wife can get divorce from her husband. These grounds are-
Absence of husband for 4 years
Unable to maintain wife for 2 years
Imprisonment of husband, 7 or more years
Failure to perform marital obligation for 3 years
Impotency of husband
Insanity
Option of puberty
Cruelty by husband

Mohd. Prophet himself never liked the concept of talaq but as the religion grown rules regarding marriage started to change and now in current position the laws regarding divorce only the muslim men are enjoying the monopoly of its rights. Therefore, the irrevocable talaq was not in practice during his life. The talaq-ul-bidaat has its origin in the second century of the Islamic-era. According to Ameer Ali, this mode of Talaq was introduced by the Omayad Kings because they found the checks in the Prophet’s formula of Talaq inconvenient to them. Since then this mode of Talaq has been in practice among the Sunni Muslims.

SHIA LAW

Under the Shia Law, an irrevocable Talaq is not recognized. We have already seen that in a Bidat form there is no opportunity for the revocation of Talaq. A biddat Talaq becomes final as soon as the words have been uttered and the marriage is completely dissolved. A Sunni husband, who wants to divorce his wife irrevocably, may do so in any of the following manners:

(a) The husband may make three pronouncements in a period of purity (Tuhr) saying: “I divorce thee, I divorce thee, and I divorce thee”. He may declare his triple Talaq even in one sentence saying: “I divorce thee thrice”, or “I pronounce my first, second and third Talaq.”

(b) The husband may make only one declaration in a period of purity expressing his intention to divorce the wife irrevocably saying: “I divorce thee irrevocably” or “I divorce thee in Bain.”
In *Marium v. Md. Shamsi Alam*\(^4\), the wife left her husband’s place and went to her parent’s house because she found that the husband was negligent to her health. When the husband went to take her back, she refused to go with him. The husband became agitated and in anger he uttered Talaq three times in one breath. But later on, realizing his mistake, he revoked the Talaq within the period of Iddat.

It was held by the Allahabad High Court that although the word “Talaq” was uttered thrice, but since they were pronounced in one breath it is to be interpreted as one single pronunciation. It was observed by the court that in this case the Talaq was in the Ahsan form which was revocable. As the husband expressly revoked the Talaq before the Iddat he cannot be said to have intended the divorce seriously.

The marriage was, therefore, not dissolved and the wife had to accompany the husband. In this case the court has interpreted the rules of Muslim law liberally in order to discourage hasty and unconsidered divorces.

It is significant to note that in the recent years Talaq-ul-Biddat has become a subject of criticism among the jurists and the Indian Courts have attempted to discourage it. In Rahmat Ullah v. State of U.P., the Allahabad High Court has observed that an irrevocable Talaq (Talaq-e-Biddat) is unlawful because this kind of Talaq is against the dictates of the Holy Quran and is also against the provisions of the Constitution of India. Facts and the law laid down in this case are briefly given as under:

**IMPORTANCE OF MAHR**

Marriage in Muslim law provides an absolute power to the husband to divorce his wife. It also allows the husband to have multiple wives. This often results to a desperate situation for women because they are left with no means to support themselves. Mahr is a very important for balancing the rights of the wife against their husband. Mahr is an absolute requirement of a Muslim marriage, and so even if Mahr is not specified at the time of marriage, the law will presume it by virtue of the contract of marriage itself.

\(^4\) AIR1979 ALL257
Thus, right of wife to her Mahr is a fundamental feature of the Muslim marriage contract (Nikahanam)

- To impose an obligation of husband as a mark of respect to his wife.
- To place a check & regulation on the power of husband to divorce and polygamy.
- To provide for subsistence of wife in the event she is divorced by the husband.

*Abdul Kadir v. Salima*\(^5\)

Hon'ble Mahmoud, J. said that the marriage contract is easily dissoluble and the freedom of divorce is the power in the hand of the husband which the Muslim law intends to restrain by the mechanism of Mahr. If no dower is expressly fixed or mentioned at the marriage ceremony, the law confers the right of dower upon the wife.

*Smt. Nasra Begum v. Rizwan Ali*\(^6\),

It was held that right to dower precedes cohabitation. Thus a wife can refuse consummation of marriage until Mahr is paid.

*Habeebulla v. Shakeela*\(^7\)

In this case the court held that a Muslim wife claimed maintenance against her husband who had taken another wife. She had also obtained a divorce from a civil court. The husband contended that he was a Muslim and so could take another wife under the personal law. He advocated the supremacy of his personal law over the provisions of the code. He was successful in trial court but in appeal that order was set aside.

*Mohd. Ahmed Mr. Khan v. Shah Bano Begum*\(^8\)

Shah Bano a 62 year old Muslim mother was married to Mohammed Ahmad Mr. Khan. She had five children from the marriage. After 14 years, her husband, Mr. Khan took another young woman as his second wife. In April, 1978 Mr. Khan stopped giving his first wife Rs 200 per month which he had apparently promised to give her as maintenance. She had no means to support herself and

\(^5\) AIR 1886 ILR 8 ALL 149
\(^6\) AIR 1980 ALL 119
\(^7\) AIR 1984 CRIJ 1062
\(^8\) 1985 SCR (3) 844
her children. She filed a petition at a local court in Indore against her husband under sec 125 of the Code of Criminal Procedure, asking him for a maintenance amounting of Rs 500 for herself and her children. In November 1978 her husband gave an irrevocable talaq to her which was his prerogative right under Muslim law. He also took up the defense that hence Mrs. Bano had ceased to be his wife and therefore he was under no obligation to provide maintenance for her as prescribed under the Islamic law.

In 1979 the court was decided that Mr. Khan to pay a sum of Rs 25 per month to Mrs. Bano for the maintenance. On 1st July 1980, on a revision application of Bano, the high court of Madhya Pradesh increased the amount of maintenance to Rs 179.20 per month.

There Mr. Khan contested in his petition that Shah Bano is not his responsibility anymore because Mr. Khan had a second marriage which is permitted under the Muslim law.

Held :- The supreme court conclude that " there is no conflict between the provision of section 125 and those of the Muslim personal law on the question of the Muslim husband’s obligation to provide maintenance for a divorced wife who is unable to maintain herself.” Such a wife is entitled to the maintenance even if she refuses to live with the Muslim husband because he has contracted another marriage within the limit of four wives allowed to him by Quran. The Supreme Court rejected this contention of the husband that section 125 of Criminal Procedure Code providing for the maintenance of divorced women who is unable to maintain herself is inapplicable to Muslim. It was said that the religion professed by a spouse or the spouse has no place in the scheme of section 125 Cr.P.C which is a measure of social justice founded on an individual’s obligation of the society to prevent vagrancy and destitution. Whether the spouses are Hindu , Muslim, Christians ,parsis, pagans or heathens is wholly irrelevant to the application of section 125 of Cr .P.C .it was held that a Muslim divorce women who cannot maintain herself is entitled to maintenance from her former husband till the time she gets remarried.

**Shayara Bano v. Union of India and others**

Facts - Shayara Bano, a 35 year old mother of two children had been visiting her parents' home in Uttarakhand. Mrs. Khan visited her parental home for medical treatment. In October of 2015 she
received notice of talaq-nama from her husband while residing at her parental home. Her husband lived in the city of Allahabad. She tried to contact her husband after receiving the notice of Talaq-nama but her efforts were in vain as he switched off his phone. She added to her petition that she was worry about her child, and then Mrs. Bano finally filed Public Interest Litigation (PIL) under the Article of 136 of the Indian Constitution. In The Apex court in 2016, seeking a ban on the practice of instantaneous divorce after her 14 year marriage ended abruptly in October 2015.

Bano has been joined by at least five other women from different parts of the country seeking a similar ban, but since she was the first petitioner, this case is known as Shayara Bano versus the Union of India

Held - The Supreme Court held that the practice of instantaneous triple talaq (talaq-ul-biddat) which authorized a Muslim man to divorce his wife by pronouncing the word "talaq" thrice was legally invalid.

A BRIEF COMPARISON OF LAW RELATING TO TRIPLE TALAQ IN INDIA WITH OTHER MUSLIM DOMINANT COUNTRY OF THE WORLD

In India, Triple Talaq has been a bone of contention. Under the Muslim Personal Law (Shariat) Application Act (1937), Triple Talaq – a practice that has been discarded by several Muslim majority countries, including Turkey, Pakistan and Bangladesh – still exists in India. Up until now, it was maintained that when it came to marriage, divorce and other personal riffs, the state would not interfere, and the religious law would be the prevailing authority. Pakistan’s Muslim Family Law Ordinance (1961) was a watershed moment in the country’s history, which altered the martial laws in Pakistan and made the customary triple talaq, illegal. This law has been adopted by Bangladesh as well. Turkey is one of the most secular Muslim nations in the world. In Turkey, up until 1917, divorce could only be done by the man, by simply saying “talaq, talaq, talaq” – which is still accepted as Islamic tradition in India. In 1926, however, under the leadership of Mustafa Kemal Ataturk, the Islamic laws of marriage and divorce (grounded in the Quran) were abolished and the modern Swiss Civil Code (a highly progressive Civil Code in Europe) was adopted. This was part of the reorganization Ataturk undertook as the founder of the Republic of Turkey between 1926 and 1929, which introduced a gamut of progressive social reforms. Among the most
significant were the acknowledgment of equality of the sexes, civil marriage and divorce, abolition of polygamy and unilateral repudiation. At that time, while the abolition of the Sharia law was accepted and embraced by the Turkish elites, it was opposed by Islamic authorities. This civil code was further adopted by Cyprus as well. In 1929, Egypt was the first country to adopt a modern perspective held by scholar Ibn Taimmiyah (1268-1328) and theologian Ibn alQiyam (1292-1350), with regard to the personal laws on marriage and family. Both Ibn Taimmiyah and Ibn alQiyam declared that repeating “talaq” three times would only be considered as the first step in the overall three-step process of divorce. It has the Marriage and Divorce (Muslim) Act 1951, which states that a husband who wishes to dissolve his marriage can only do so by giving a “notice of his intention to the Qazi”. Subsequently, it is the Qazi who first attempts to initiate a reconciliation process between the husband and wife, which involves the assistance of relatives and family elders. Reconciliation period is a period of 30 days, after which, if differences between the spouses are still not resolved, the husband has the liberty to declare talaq, but only in the presence of two witnesses and the said Qazi. As a country, Tunisia has a progressive Code of Personal Status (1956), where a divorce is not valid outside the court of law. More importantly, a divorce is not given unless and until the court has looked into the causes for the fissures in the relationship, validated them and is assured that no reconciliation can be done. Similarly, in Algeria, divorce can only be given by the court, after an attempt at reconciliation has been made. The reconciliation period cannot exceed the duration of three months.

FROM SHAH BANO TO SHAYARA BANO

The supreme court has consulted and cited the laws of as many as 19 countries including Egypt, Pakistan, Turkey and other nation states from the Arab peninsula south – East Asia and south Asia that have abolished triple talaq Arab countries such as united Arab emirates, Egypt, Kuwait, Algeria Iraq Jordan, Lebanon, Libya morocco, Sudan, Syria, Tunisia and Yemen have enacted laws against the practice of triple talaq. Now India also is free from the practice of triple talaq. And this is been a long journey for Indian Muslim women challenging government to uphold their rights to life and liberty under the constitution now today is a day to celebrate one stop on that journey.
THE MUSLIM WOMEN (PROTECTION OF RIGHT ON DIVORCE) ACT, 1986

The Muslim women (protection of right on divorce) Act is a central legislation enacted in 1986 to safeguard the rights of divorced Muslim women who have been separated from their husband either by themselves or by the husband. The Act was passed to invalidate the decision of the supreme court in *Mohammed Ahmad Khan v. Shah Bano Begum*, in which a Muslim woman is not remarried and cannot maintain herself, she can claim maintenance from her former husband as long as she remains unmarried.

According to the Act a divorced woman is a Muslim woman married and divorced from her husband under the Muslim law. The former husband shall pay the divorced women reasonable and fair amount of maintenance during the Iddat period. The husband is under an obligation to pay maintenance to the child for a period of two years from the child's date of birth. The woman is also entitled to receive a sum equivalent to Mahr agreed during or after the marriage. Divorced wife is also entitled to all the properties given to her by her parents or relatives during her marriage (Nikah). The divorced woman is entitled to file an application before the Magistrate for an order to make her husband compel to pay the maintenance amount or any other allowances specified under this act, if the husband fails to comply with the provision of the same act.

TRANSITION OF MUSLIM WOMEN PROTECTION AND RIGHT

- Marriage was easily dissolved
- The right to give divorce was the power in the hand of the husband.
- Muslim women were entitled to maintenance till the iddat\(^{10}\) period

*After this bill (Muslim Women Protection Act, 1986) has passed*

- She can claim maintenance from her former husband as long as she remains unmarried.

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\(^{10}\) In Islam, *iddah* or *iddat* is the period a woman must observe after the death of her spouse or after a divorce, during which she may not marry another man. Its purpose is to ensure that the male parent of any offspring produced after the cessation of a nikah (marriage) would be known.
• Husband is entitled to give the fair and reasonable maintenance during the iddat period.

• In case the husband is not given the fair and reasonable maintenance to his wife then wife has a right to file the suit against the husband.

_Lacunas in this bill (Muslim Women Protection Act, 1986)_

• There is no provision which is prohibiting the triple talaq.

• In this Act the husband has a right to give talaq to his wife by any forms, which may be in oral, written or in any other electronic medium.

• Husband can give triple talaq at the one setting, without the expand iddat period.

_The Muslim Women (Protection of Rights on Marriage) Bill, 2017_

The current ruling Government formulated the bill after 100 cases of instant triple talaq took place in the country within a short span of time. The Supreme Court of India gave judgment on Law minister Ravi Shankar Prasad proposed the bill named Muslim women (protection of right on marriage) in Lok Sabha and the bill was passed on 28th December, 2017 by the majority in the lok Sabha.. The bill makes instant triple talaq which may be in any form, either spoken or writing or by electronic means such as email, SMS and whatsapp illegal and void. The bill also talks about punishing the husband with up to three years of imprisonment if he pronounces triple talaq to his wife at one sitting. In nutshell the after the leading judgment of the Supreme Court any muslim man who divorces his lawful wife by the mode of Talaq-ul-biddat, will be considered null and void and also the muslim husband will be liable to punishment according to this act. The leading decision of the Apex court not only makes this practice null and void but also makes it unconstitutional.

ANALYTICAL VIEW

_The Muslim Women (Protection of Rights on Marriage) Bill 2017_

This bill protected the rights of Muslim women and prohibits divorce by pronouncing talaq her husband .it also pronounces section 3, 4 and 7 of talaq –e –biddat as void and illegal, anyone who does that will be punished.
There are some lacunas in the current bill for which the bill was been opposed by the upper house of the Parliament and not been passed by the legislatures. The lacunas which are the main reasons for this bill not to get passed by the assembly season are been noted below.

The bill consists of some lacunas which are as follows -

- The women and the child will be deprived of their normal livelihood and also will not get maintenance if the husband of the woman goes to prison.

- The provisions of the bill can be used as a weapon of torture against Muslim man, because police has a right to take action without warrant.

- The bill seeks to prohibit the right to divorce of the Muslim man, because the prevalent practice were happening the rights of the Muslim women for centuries.

- The bill Muslim Women (protection of right on marriage), 2017 is a bill on civil matter precisely about personal law but the bill talks about criminal punishment.

CONCLUSIVE REMARK

We have discussed here all the aspects of the acts related to the muslim women protection of rights and the scenario of muslim women before that act was present and after that act got implemented. We have also witnessed the current position of muslim women before and after the leading judgment that the Apex court of the country has provided related to triple talaq. We can say from the above discussion that previously where muslim women were deprived of their rights related to divorce and were suppressed by the male dominating society which started to change after the act, “The Muslim woman protection Act 1986” was been formulated and took a full circle which changed a drastic parallel shift of the rights of the muslim women. In the recent judgment the Apex court has declared triple talaq as unconstitutional and not only that now this act is also a punishable offence. The lower house of parliament has already drafted and passed the new bill but it awaits pendency in the higher house of the parliament. The rights and powers provided in the current bill, if that would have got passed without being scrutinized by the Rajya Sabha then it would have violated the principle of “audi alteram partem” and
more over violated the principle of Natural Justice.

Here we suggest few steps that can protect the rights of both the parties to a muslim marriage and can dissolve the marriage without any violation of anyone’s fundamental rights. These steps are-

- Divorce should not be valid if it is been opted by anyone outside the court.
- If the husband pronounces talaq three times in one sitting would be considered as one talaq only.
- The role of kazi should be abolished in case of talaq related matters, as of patriarchal society like ours, kazi is not a help to the muslim women.
- Punishing the husband with imprisonment who pronounces triple talaq is not a solution, as it closes the door of the muslim women to get maintenance. Hence instead of imprisonment, court can fine him.