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LEGALLY OUTLAWED: TRIPLE TALAQ'S SAGA IN INDIA

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Abstract

The practice of pronouncement of triple talaq by Sunni Muslims in India is fairly old and was judicially accepted as an effective mode of dissolution of marriage. Termed as extra judicial divorce, its unilateral pronouncement was visualized as an inherent power of the husband though adversely affecting a wife with irrevocability and finality of terminating a marriage. Post independence it was projected more as a gender issue with questions now raised by affected women with respect to its endorsement by the primary sources and it sustainability in light of the constitutional spirit of gender justice. The issue has been a subject of litigation directly and even indirectly time and again in connection with the status and rights of maintenance of a woman, who has been divorced through triple talaq. The present paper traces the voyage of the traditional practice of pronouncement of divorce through triple talaq towards its culmination through the judicial dictates and its final legislative prohibition.

I Introduction

THE INSTITUTION of marriage is the foundation of any civilized society, conferring recognition of status, respect and social and financial security to all the parties involved in it, specifically the spouses. Marriage ushers in a new chapter in life involving responsibility and maturity, consequently, the primary requirement to enter in it is free and voluntary consent and attainment of a specific age by both the parties. Subject to fulfillment of certain basic legal requirements,[1] anyone can marry anytime and to whomsoever he/she wants without seeking permission/approval legally of any other person, but once married, ordinarily no one is free to opt out of it at his/her whims and pleasure. Protection of institution of marriage is fundamental to the existence of a healthy society, and therefore hasty separations or decisions taken in a gust of temper must always be discouraged. Most of the laws permit judicially sanctioned dissolution based on formal petitions in conformity with the grounds specified in the law that governs the community of the parties or the law under which they had married. Some of the matrimonial laws also prescribe a minimum waiting period before the courts

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1 Every personal law lays down certain basic conditions of marriage such as degree of prohibited relations one cannot marry, conditions of age or monogamy *etc.*

can even entertain a divorce petition.[2] While a broken home is a shattered dream to many ushering in an era of uncertainty for innocent children, whose tender age requires a natural love and affection of both parents within the comforts of a home, if the parties are not happy with each other, it is desirable that they should not be compelled to live a life of misery in a dead relationship. Sheer incompatibility of temperaments, or an active misconduct on part of one, the reasons may vary but this intimate relationship has no place for bitter animosity, and hatred for one other. These are extremely dangerous factors with potentiality of disastrous consequences for those having abhorrence towards each other. In such a situation, dissolution is the only option to free them from the miserable shackles and lead a life afresh. The point is that while marriage should be protected, its preservance in all cases may not be advisable.

Nevertheless, divorce is still a dreaded word, as marriages continue to be perceived as a onetime affair. At the time of its solemnization, a future parting by divorce is unthinkable. Consequently, marriage settlements are viewed not merely inappropriate but actually ominous. The harsh reality of an abrupt marital breakup leaves the parties unprepared for a future course of action, as also a fair settlement. Although, it affects both the parties, the severity of its impact on a woman is catastrophic due to two main reasons. One, compulsory matrimonial migration at the time of marriage and second, stereotyping of roles. The first conferring a dependant status on her for a roof over her head, and the second deprives her of economic active status, as domestic responsibilities remain un-remunerative. Legal divorce ensures under the authority of judiciary that separation should be for a just cause and at the asking/instance of the innocent party extra judicial divorce, on the other hand, that too unilateral and arbitrary, does not have room for equity, fairness and justice. Triple talaq under Muslim law refers to one such instance that would be the focus of this paper.

Marriage under Islam is referred to as a civil contract, with free and voluntary consent requirements of both the parties mandatory for its validity. However, this civil contract that can be entered into only with the consent of both the parties can be broken unilaterally by only one *via* triple talaq. This in itself defies logic. Consensual entry and consensual departure can be understood but consensual entry and unilateral departure makes it one of the most, uneven and irrational concept. In an ordinary contract, if one of the parties breaks any of the conditions, the other is entitled to damages, but in a contract of *Nikah*, the unilateral termination stems from one party but results in heaping untold misery on the other, *i.e.,* the economically dependent party. Moreover, the practicality aspect of triple talaq, is advantageously used by unscrupulous men as a hammer to smash the matrimonial bond devoid of any rhyme or reason, and in any manner whatsoever. During the sustenance of marriage she finds suddenly that her world has crumbled, with three words spat at on her verbally, digitally or through a

2 See, Hindu Marriage Act, 1955, s. 14.

messenger. They come without a warning or before she could comprehend the enormity of it. Instances and excuses are a plenty, such as, of not working up to the satisfaction of the in-laws, not giving them proper respect, not giving birth to a son, not bringing sufficient dowry, excessive salt in the meal, desire of the wife to continue with her education, consistent weeping of the baby and the inability of the wife to calm him disturbing the husband's sleep, visiting her natal relations , going to watch cinema with natal family members or even female friends, getting up late in the morning, her dark skin/imperfect features *etc.* In plain and simple words: she is completely at his mercy and neither her conduct nor her faithfulness, fidelity, love and affection towards everyone in the family, or efficiency to run home is a shield for the safety of her marriage.

II Decoding triple talaq

Marriage under Muslim law is a unique brand of civil contract whereas aforesaid, entry must be consensual, but break up can be unilateral and unsupervised that too at the instance of only the husband. The parties appear to be on an equal platform while contracting *Nikah* but the husband's upper hand is evident at the time of its dissolution at his will,that makes it an uneven contract. Dissolution of marriage under Muslim law can be judicial or extra-judicial. The facility of judicial divorce is available to only a Muslim wife under the Dissolution of Muslim Marriages Act, 1939. It is extra-judicial divorce at the instance of husband that is termed talaq.

Talaq has several categories, including *Talaq-e-Sunnat* and *Talaq-e -Biddat* and *Triple talaq* is just one of it though the most heinous.[3] Islamic scholars opine that the proper way or desirable way of putting an end to the marriage is through *Talaq-e-Sunnat*, that again has two variations namely, *ahsan* form and *hasan* form. Also referred to as revocable talaq, the essence of *Talaq-e-Sunnat* lies in its possibility of reconsideration, during the time period of three months from the first pronouncement, while triple talaq is final and irrevocable the moment it is uttered or brought to the notice of the woman. The variation displayed in the two is glaring, though all the forms are projected and in reality portray unilateral desire of the husband to bring the contract of *Nikah* to an end.

Ironically none of them finds an express reference to it in the Quran, that does mention dissolution of marriage as the most sinful act. Verses 226 and 227 postulate an appropriate way of parting with fairness and reasonableness and provide that the husband and wife in a difficult relationship are allowed a period of four months, to explore the possibility of an adjustment. Further, despite recommending reconciliation, in light of the couple's resistance or inability to acquiesce to the same, the Quran ordains, that divorce is the only fair and equitable course as keeping the wife tied to her husband indefinitely in adverse circumstances is unfair. It further cautions that

3 The other variations are in the form of delegated talaq and contingent talaq.

those who transgress these limitations are committing wrong to their own souls. Quran recommends reconciliation whenever possible and at every stage. It specifically suggests that the very first serious difference needs to be submitted to a family counsel with representation from both the sides.

Adherence of practice only by Sunni Muslims

Triple talaq, or *Talaq–e-biddat* or *Talaq-e-bain* or instant talaq is practiced only by Sunni Muslims and not by the Shia males. Amongst the Shia community, the marriage can be brought to an end by a husband through *Talaq-e-Sunnat* only, which is also referred to as the most appropriate way of bringing the contract of *Nikah* to an end. According to some of the Islamic jurists, *Talaq-e-Sunnat* is the only way to dissolve a marriage as *Talaq-e-bain* is of a later customary origin and not sanctioned by the primary sources of Muslim law such as Quran and /or Hadith. Nevertheless, in reality it is almost the only way in which Sunni Muslim men resort to dismiss their wives with irreversibility and finality.

Reason or no reason, conducivity of time or place or not, the absurdity of unilateral power of termination is so blatant that under Sunni law, talaq pronounced by the husband in jest, to please someone, or even under pressure or at gunpoint would create mayhem in the life of his wife. At times even he may regret it later but that will unleash another raucous misery on the wife alone forcing her to undergo the process of *halala* to save this marriage and future of her children. The tradition, is no short of a bizarre practice in the name of exclusivity of Muslim personal law and is continued with Muslim men desecrating all reason and decency with impunity creating devastation in the lives of their wives. The desperate appeal of countless helpless Indian Muslim women praying for relief against this abhorrent practice, reached the judiciary and the legislature who could no longer shut their eyes to the countless misery this unreasonable ritual had brought on them in independent and awakened India.

Effecting triple talaq

Ironically, pronouncement of triple talaq, or dissolution of marriage through triple talaq does not necessitate adherence to any set procedure. The only thing required is that the words/statement must be clearly indicated and should refer to the wife. One word, uttered three times or even one time with finality, talaq, talaq, talaq, or I talaq you irrevocably and render you haram for me, or I talaq you thrice is enough. Intention or no intention, any day , any time, a bad wife or a good companion, in menstruation, or being with the child, healthy or sick , in home or outside, in vicinity or away to another place, virtuous, faithfulness, love and affection, loyalty, competence to look after everyone at home notwithstanding , he says it and it is over. Further, he can utter the words in her absence, or drop an email, send a fax, telegram, a message on face book, or WhatsApp, through a messenger in person or on social media, in a written statement or in defense, any mode of communication is equally effective. Talaq

pronounced in absence of the wife, even with a contended communication, is also valid and operative.[4]

Instant in operation, it leads to the immediate commencement of the period of *iddat*, without any possibility of a reunion. Any amount of repentance, pleading for forgiveness or regret has no place now. If the communication to her about it is after three months, then there is no need for observance of the period of *iddat* if she is not pregnant and she must depart immediately. Such is the intensity of arbitrariness and totalitarian powers of the husband, that if he at any stage, says that he had divorced his wife and quotes a day, time or year that has gone by, it would be treated as having taken place.

The contention that the wife was divorced through triple talaq, can be brought in even after the death of the husband by any of his relatives while claiming his property by demonstrating that she was divorced at an earlier date. Noteworthy are some of the judicial pronouncements to this effect:

i. 'a wife would be treated to have been divorced on the date on which the statement to that effect was made by the husband in his plaint'.[5]

ii. 'a husband can effect a divorce whenever he desires'.[6]

iii. 'a talaq pronounced under compulsion or in jest is valid and effective.[7]

iv. 'if in a proceedings initiated by the wife for maintenance, the husband raises a plea of divorce, the plea in itself would be sufficient to terminate the marriage'.[8]

v. 'A husband's application to Kazi stating that he has divorced his wife is enough to effect a divorce'.[9]

vi. 'If a man says to his wife that she has been divorced yesterday or earlier, it leads to a divorce between them, even if there be no proof of a divorce on the previous day or earlier'.[10]

vii. 'Pronouncement of the word talak in the presence of the wife or when the knowledge of such pronouncement comes to the knowledge of the wife, results in the dissolution of the marriage. The intention of the husband is inconsequential'.[11]

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4 See *Rashid Ahmed* v. *Anisa Khatoon,* AIR 1932 PC 25.

5 *Ajmerylussan* v.*MoinAhmad* 1983 All LJ 1332; *Jamaluddin* v.*Valian Bibi* (1975) 2 APLJ 20.

6 *Ma Mi* v.*Kallander Ammal* (1927) 54 IA 61; AIR 1927 PC 15.

7 *Rashid Ahmed* v. *Anisa Khatoon*, AIR 1932 PC 25.

8 *Chunoo Khan* v. *State* (1967) All WR (HC) 217.

9 *Saleha Bi* v. *Sheikh Gulla,* AIR 1973 MP 207.

10 *Ghansi Bibi* v. *Ghulam Dastagir* (1968) 1 Mys. L.J. 566

11 *Ibid.*

viii. 'a simple intention to pronounce talaq from the side of the husband would be enough to effect it in writing, even if the document has not been styled as a talaqnama'.[12]

ix. 'if the husband writes a letter of talaq, and sends it to his wife, the letter would operate as a talaq, even where she refuses to accept it'.[13]

Why do women fear it?

The accepted acknowledgement of the husband's unilateral powers to pronounce triple talaq on his wife devoid of reason, irrespective of her presence, in sanity or otherwise with absolute finality of his word to curtail the martial relationship was projected as part of divine law. Often a question arises, that if the husband no longer wishes to live with his wife in a marriage, why should she want to cling to him or to this dead marriage. What kind of a life would she be leading with a man who does not want her? So why does she dread triple talaq? Why would she prefer living a life of misery with a man who has no affection, love or empathy or maybe she herself does not like him? The answers are not far to seek. For a woman in the patriarchal setup, the society has created a web, a deadly and vicious web, that is reflected amply in law, and is upheld by the judiciary, throwing her totally at the mercy of her husband for two square meals and for a roof over her head, leaving her with virtually no alternative home that she can call her own. Either be on roads or under his roof. She is born in a family but matrimonial migration is compulsorily. Matrimonial home may be owned by her husband or his parents, where her stay is only till the time it suits them and not a moment more. Irrespective of the time of the day when the dreaded words are spat at on her by her man, she has to leave. The problem of arranging for a shelter at virtually no notice and at any point of her marital life would take her obviously on the streets. She may be 63 years old with children all settled and living away from her, or she may be a couple of years in her marriage, with a child of her husband in her belly and one in her lap, he says it and she must depart. Thus an abrupt end to the marriage affects a woman harshly in several ways. First, since she ceases to be his wife, matrimonial home is no longer hers to stay. None of those associated with our society or even legal system can tell her of a suitable alternative. Secondly, irrespective of her education, her economic status, a woman may be called upon to resign from a job and assume domestic responsibilities resulting in a complete financial dependency on her husband. There is no guarantee that if a woman is forced to take up domestic responsibilities associated dependency, for his home, or even at his asking, she would not be irrevocably divorced.

Society has deliberately created conditions where a woman always has to be depended upon her husband for a roof over her head and could be turned out at his whims. This

12 *Rasul Bakhsh* v. *Bholan*, AIR 1932 Lah 498.

13 *Ahmad Kasim* v. *Khatun Bibi,* AIR 1933 Cal 27.

in their view is an ideal check on women lest they by becoming too independent pose a threat to patriarchy. On the other hand, the residence and the economic situation of the husband remains unaltered post divorce. With a little amount as *Mahr* and a pittance for *iddat* period, he can conveniently wash his hands off her. She may have to fight even for this amount in court in an extremely time consuming litigation.

Bad in theology, valid in law argument

The absolute arbitrariness and injustice perpetrated in the name of religious freedom did not go unnoticed by the courts. Triple talaq, often described as the most sinful act, that is condemned strongly, disapproved intensely was nevertheless perceived valid and effective for all purposes. To begin with, the courts did little except lamenting the fact of its harshness. Some of their observations are reproduced below:

i. It is accepted by all schools of Muslim law that *Talaq-e-iddat* is the most sinful act, yet some schools regard it as valid.[14]

ii. " No doubt an arbitrary or unreasonable exercise of the right to dissolve the marriage is strongly condemned in the Quran and in the reported saying of the Prophet (Hadith) and is treated as a spiritual offence. But the impropriety of the husband's conduct would in no way affect the validity of a divorce duly effected by the husband"[15]

iii. The practice of *Talaq-e-biddat* is demeaning, unpleasant, distasteful, unsavory, disgusting, loathsome, obnoxious, debased, abhorrent and wretched, even where Muslim bodies defend it as valid as a matter of faith and religion.[16]

Rashid Ahmed v. *Anisa Khatoon*,[17] is a classic case displaying the injustice perpetrated on a helpless woman and five innocent children who became victim of the monstrosity of triple talaq, while the court, turned a blind eye to their plight. Here, a Sunni Muslim man allegedly pronounced *Talaq-e biddat* on his wife in her absence. Upon her return he resumed cohabitation, lived with her for 15 years with five children born to them. Upon his death his brothers declared both the woman and her children to be incompetent to succeed to his property. They contended that the deceased had divorced her in her absence; executed a *Talaq-e-nama*; send her the *Mahr* amount the same day with a registered receipt in presence of the witnesses. This plea/testimony came after his death. The wife's challenge to the validity of the divorce on the ground of her complete ignorance of the fact was dismissed by the court, which held that the pronouncement of triple talaq by the husband resulted in the immediate dissolution of marriage between them. The fact of their living together for 15 years with five

14 *Masroor Ahmed* v. *State of Delhi* (NCT) 2008 (103) DRJ 137, para 26.

15 *Asha Bibi* v. *Kadir* (1909) 33 Mad 22.

16 *Shayara Banu* v. *Union of India*, AIR 2017 SC 4609, para 191.

17 AIR 1932 PC 25.

children would neither undo its effect nor confer a legitimate status on the children. Once divorced, they could not validly remarry without her following the procedure of *halala*. The Privy Council upheld this triple talaq pronounced by the husband as valid though in absence of and without the knowledge of the wife.

Practical impact on a woman's maintenance claim

Arbitrariness of the power of pronouncement of triple talaq, as also the effective date of its operation affects a Muslim wife adversely in several ways. The foremost being planning shelter and food for herself and very often for children who are thrown out with her. A pattern of living in matrimony closes many economically viable options for her and a fresh start requires arrangement of an immediate roof. Presumptive existence and willingness of natal relations to rescue or support her is highly dicey, and in many cases transforms her overnight from a respectable woman to an object of pity or even an unwanted encumbrance.

Food, clothing and shelter is covered under the term maintenance. With absolutely no social security, discarded by her husband, an examination into the options available to her becomes necessary. A Muslim woman divorced by her husband can claim maintenance from him under Muslim Personal Law only till the duration of the period of *iddat* and not after that. She has to explore independent options for her sustenance free from her husband thereafter. Right from 1898, the Indian government made provisions under the Code of Criminal Procedure,1973 (Cr PC) making it obligatory on part of the husband to maintain his wife. Failure to do so was looked down upon very seriously as an act of delinquency calling for penal action. All Indian women were sought to be protected under this provision, and so it applied to all husbands irrespective of their religion.[18] Most importantly, the term 'wife' here, included a divorced wife who had not remarried. Thus Indian women, governed by whichever personal law, could avail these provisions relating to maintenance, *i.e.,* under the secular criminal law. It was in addition to one under their respective personal law. While the former is a summary proceeding which is faster, strictly enforceable with stringent penal consequences in case of disobedience, the later was in the nature of a civil remedy. So, a number of Muslim women left destitute by their husbands post triple talaq preferred to approach the criminal law provision seeking maintenance. As per law, a divorced woman (after triple talaq), could avail the beneficial provisions of Cr PC, but the intense struggle of a frail 63 year old woman Shah Bano told the whole of India that it was an extremely difficult target to achieve. She was already 71 years old when she

18 Code of Criminal Procedure, 1973, s. 488 reads: as it used to be, had a maximum ceiling of Rs 100 per month , which therefore empowered a magistrate to award maintenance to a distressed wife but its quantum could not exceed Rs 100/ per month. In 1973, s. 125 of the new Cr PC replaced s. 488 of the old law with identical remedy but enhancing the cap of Rs 100/ to Rs 500/ per month and in Sep. 2001, the cap was removed and the magistrate now was empowered to fix the quantum of maintenance depending upon the facts and circumstances of each case.

filed a petition for maintenance after having lived with the husband for 40 years, bearing and rearing five of his children. But the sword of triple talaq fell on her shattering her entire world. The home that she nurtured for 40 years was no longer hers and a *Mahr* of Rs 1000/ was all that she got at an age when she should ideally be relaxing in a home. The matter that went to the level of the apex court saw her win in theory with an order of maintenance at the rate of a paltry sum of Rs 200/ per month in the year 1986. In this amount she was supposed to find a house to live in and procure two square means with arrangement for medicines which any person of this age might require. However, the lobby of Muslim men who with a sense of enlightenment of having exclusive monopoly over the interpretation of Muslim law reacted with anger and shock. Their reaction to her struggle was twofold. During the litigation, their contention was that the courts do not have the power to interfere with the *Quranic* law that limits the obligation of the husband towards his former wife only during the period of *iddat* and not after that. Further, since a Muslim woman receives *Mahr* at the time of divorce, she becomes disentitled to proceed under criminal law under section 127 of the Cr PC. With the apex court holding that Cr PC can be availed of by a divorced Muslim women as well, there was huge backlash. This saw our political masters cooing down to the pressure from the Muslim community, which condemned the judgment as inappropriate and an interference with their divine law. The ruling government succumbed to this pressure coming from Muslim men and adopting a policy of appeasement, enacted an Act inaptly titled Muslim Women (Protection of Rights on Divorce) Act, 1986, (hereinafter referred to as MWA) whose substantive content, deprived of/stripped her of any amount that could permit her to live a life of dignity. It attempted to absolve the husband of his responsibility under the secular criminal laws of the country of maintaining the wife once he throws her out. A classic illustration of a misleading title with deceptive words/usage intended further damage to her situation and blatantly using this inappropriate and incorrect terminology limited further her rights and sought to release the husband of his legal obligation.

New strategy to evade economic responsibility

Encouraged with the success of enactment of MWA, Muslim men discovered a new strategy to legally evade their responsibilities towards their ex-wives. They could achieve their nefarious designs in two ways. First, they thought was easier. Once divorced, a Muslim woman could now proceed only under the MWA, where the perceived liability of the husband was extremely limited. So, the rule that prior to its enactment, every Indian woman irrespective of her religion could claim maintenance under the criminal law appeared to be modified and divorced Muslim woman could no longer avail it.

The second was with respect to married women. Muslim husbands were enjoined under their personal law as also the Cr PC to maintain them. Therefore a married woman could still proceed under criminal law. Thus, deliberately, with an intended objective, of thwarting their application of maintenance under criminal law, a new

trend emerged. If a wife proceeded under the Cr PC claiming maintenance from her husband on ground of his neglect, the first defense taken by him would be that she was no longer his wife on the day she filed the said application, as he had already divorced her *via* triple talaq. He would quote an earlier date so that he can claim, that being a divorced woman, criminal law provisions are no longer available to her and the only Act where she can proceed is the MWA. His second contention would be, that since it is more than three months that she was divorced and the required *iddat* period is also over, he is no longer under any obligation to maintain her even under MWA. Defence and pleadings in this manner enabled them to legally wash their hands of their wives, without having to pay anything to them. In all these cases, the mode of dissolution of marriage pleaded in written statement/defense would be through triple talaq. To begin judicial acceptance of it as a proof of divorce forced women to approach the courts under MWA, that practically negated any relief to her. This further strengthened the position of a Muslim man but made a Muslim woman extremely vulnerable. The possibility of such a terrifying scenario was enough for those in marriage now to increasingly fear the dreaded three words.

Both the language and provisions of MWA, were misleading. An additional example of it is that it even now contained a provision that stipulated for conditional application and availability of the provisions of criminal law to a divorced woman. A divorced woman could proceed under the provisions of Cr PC against her husband, if both she and her former husband chose to govern by that Act by an express declaration. So for a woman, the consent of her former husband was mandatory to proceed against him under Cr PC. The complete impracticality and absurdity of this provision can be gauged by the fact, that the wife is required to seek his consent to penalise him for his own fault of not maintaining her. Why would the husband in the first place agree to such a preposition is beyond the imagination of anyone. He is guilty of not maintaining her, she is in indigent circumstances because of his neglect, she wants to invoke criminal provisions against him, with the result that he would either have to maintain her or would have to go to jail. Would he ever consent to that? Thus in all probability, no man was likely to consent to be governed by the Cr PC, and the only platform where the wife could proceed would be the MWA.

Much to the chagrin of the male dominated Muslim society, the laudable interpretation to the MWA,[19] undid the mischief and at the same time a matching judicial clarification of the appropriate way of putting an end to the marriage even at the instance of Muslim husbands successfully curbed the unilateral and arbitrary powers unscrupulously enjoyed by Sunni Muslim husbands incorrectly taking shelter behind the Quran and exclusivity and infallibility of Muslim Personal Law.

19 See *Daniel Latifi* v. *Union of India* (2001) 7 SCC 740; 2001 Cr LJ 4660, wherein the responsibility to maintain the wife was held as lifelong with payment of it during the period of *iddat*.

III Earlier interpretations to the practice of triple talaq and judicial developments

A remarkable alteration in the perception became evident from post-independence. Judiciary including the Privy Council, in the pre-independent era, adhered to the practice of applying the provisions of the Muslim law as presented to them, preferring a man's word over that of a woman under a genuine belief of its legality, instead of interpreting the law from the original source themselves, sometimes greatly lamenting the injustice caused to a woman from such interpretations but with little correctional endeavors, leaving the reformative aspect to the legislature. The blatant misuse of its practice therefore, continued by Muslim men with impunity, causing mayhem and chaos in the life of their wives, judicial inaction emboldening them to a large extent. The traditional interpretation of the absolute power of a Muslim husband to unilaterally terminate a marriage at will, and apparently without a reason or even without a fault committed by the wife, made retention of marriage a virtual one sided affair loaded heavily in favor of men, creating an inequality between the spouses and placing the wife in an extremely vulnerable position. Judiciary accepted all of this: the husband's right to pronounce talaq on the wife even in anger, jest, and/or her absence, and later through digital platforms *via* triple talaq/*talaq-i-biddat* at one go.

However, post-independence, Indian judiciary inculcating in its pronouncement the spirit of constitutional egalitarianism, could no longer shut its eyes to the miserable plight of Muslim women at the receiving end of the heinous practice of triple talaq. Displaying a pragmatic and contemporary approach, the courts questioned the validity of triple talaq, uttered in one go as against both the principles of constitutional gender equality and also the *Quranic* injunctions and sought to liberate women from its adverse effect on their rights of maintenance.

The major impact of the interpretation led to three major developments, namely:

i. de-recognition of the plea of triple talaq taken in the written statement as a counter to a wife's claim of maintenance from the criminal courts;

ii. clarifying proper procedure for dissolution of marriage at the instance of the husband as against the unilateral and arbitrary triple talaq; and

iii. express declaration of triple talaq as void as being against the injunctions of Quran

De-recognition of the plea of triple talaq taken in the written statement as a counter to a wife's claim of maintenance from the criminal courts

The first major judicial blow to the despotic arbitrariness of husband's power displayed through triple talaq was its dismissal. While dismissing the husband's plea of triple

talaq to the application of his wife under section 125 Cr PC, the court held,[20] that a mere allegation in written statement that he had pronounced talaq to the wife without any other evidence, proof, registration or that it was for a reasonable cause or not or whether it was preceded by any attempts of reconciliation would not lead to a valid divorce. The court said that it was so, as there was a danger that the parties may have acted in haste and then repent it later. Since without the process of *halala* the parties cannot be reunited, if a man loves his wife he would not allow that to happen and therefore action taken in a sudden gust of temper or anger would not be effective. In such a case therefore, despite his plea of triple talaq, the marriage was held as subsisting and the woman entitled to maintenance. In a very important judgment that changed the whole course of dissolution of marriage through triple talaq, the apex court in 2002, in *Shamim Ara* v. *State of U.P*,[21] deliberated specifically on validity of these divorces, pleaded in defence assertions. The husband had taken the plea of divorce in the written statement in the proceedings of maintenance for the first time and the court noted with concern that none of the ancient holy books or scriptures of Muslims mention in its text such a form of divorce. The court said, that for the talaq to be effective, it has to be pronounced and observed:

> the term 'pronounce' means to proclaim, to utter formally, to utter rhetorically, to declare to, to articulate. .. there was no proof of talaq having taken place as a mere plea taken in the written statement of a divorce having been pronounced sometime in the past cannot by itself be treated as effectuating talaq on the date of delivery of the copy of the written statement to the wife. The husband ought to have adduced evidence and proved the pronouncement of talaq, and if he failed in proving the plea raised in the written statement, the plea ought to have been treated as failed.

The court also differed with the earlier views, wherein a mere plea of previous talaq taken in the written statement, though unsubstantiated, was accepted as proof of talaq bringing to an end the marital relationship with effect from the date of filing of the written statement and held that a plea of previous divorce taken in the written statement cannot at all be treated as pronouncement of talaq by the husband on the wife on the date of filing of the written statement in the court followed by delivery of a copy thereof to the wife. The apex court re-iterated that mere mention of triple talaq in written statement would not amount to a valid divorce in *Iqbal Bano* v. *State of UP*,[22] on similar facts. An analogous plea coming from the husband was again rejected in *Dagdu Latur* v .*Rahimbi Dagdu Pathan, Ashabi*,[23] and the court held that a mere plea of

20 *Jiauddin Ahmed* v. *Anwara Begum* (1981) 1 Gau LR 358.

21 (2002)7 SCC 518; AIR 2002 SC 3551.

22 (2007) 6 SCC 785.

23 2003 (1) Bom CR 740; II (2002) DMC 315.

divorce is not accepted and talaq must be pronounced in accordance with the proper procedure in which attempts of conciliation must be demonstrated.

Clarifying proper procedure for dissolution of marriage at the instance of the husband as against the unilateral and arbitrary triple talaq

These apex court's pronouncement delivered a deadly blow to the arbitrariness and casual manner in which men could dismiss their wives and make a mockery of the contract of *Nikah* and was followed in subsequent cases.[24] Judiciary now took a step further and examined the adequacy of circumstances under which it was said to have been effected and held that talaq is really prohibited except when inevitable, such as gross misconduct or adultery by the wife and also that in case of dispute, arbiters must be appointed to bring in a reconciliation.[25] If there is no reason of pronouncing talaq, there is no necessity for release or else a talaq without necessity would be stupidity and ingratitude to god giving unnecessary trouble and misery to women and children. A talaq pronounced without reason when the wife is obedient and faithful needs to be considered unlawful and no true Muslim can justify such a divorce in the eyes of religion or law.[26] It was increasingly becoming evident after the judicial scrutiny of the verses of the *Quran* that the same stood in sharp contradiction to the popular fallacy of triple talaq, that the husband has absolute powers and he does not have to cite any reason or misconduct on part of wife to get rid of her. Judicial scrutiny and clarification became necessary to identify the circumstance in which marriage could be dissolved under Muslim law at the instance of the husband and the appropriate procedure to be adopted for its valid effectiveness. This saw the courts elucidating the correct law of talaqas ordained by the Holy *Quran* as follows:

i) talaq must be for a reasonable cause[27] and must not be at mere desire, sweet will, whim and caprice of the husband. If the husband feels that his wife does not care for him, she is incompatible, she does not listen to him, she does not love him, she refuses to cohabit with him, she engages in cruel behaviour, she is unfaithful or for any other reason, he has the right to give *talaq* to his wife but by following certain procedure. Thus, the first step is that he has to make it known to his wife about any of these reasons and she must be given time to change her behaviour. If by his direct conversation/persuasions she does not change her behaviour, the husband has to

24 *Masrat Begum* v. *Abdul Rashid Khan* MANU/JK/0018/2014; *Mohd Naseem Bhat* v. *Bilquees Akhtar* MANU/JK/0455/2015; *Nawab* v. *Hasinabegum,* MANU/MH/2249/2016.

25 *Id.*, para13.

26 See *Radd-ul-Muhtar*, Vol.II, at 683 quoted in *Masrat Begum* v. *Abdul Rashid Khan* MANU/JK/0018/2014, para 15.

27 *Rukia Khatun* v. *Abdul Khalique Laskar* (1981) 1 GLR 375 (DB), para 11 see observations of Baharul Islam J.

resort to the process of conciliation by informing to her father or any other parental relations.[28]

ii) talaq must be preceded by an attempt at reconciliation between the husband and wife by two arbiters, one chosen by the wife from her family and the other by the husband from his. If their attempts fail, talaq may be effected. The conditionality of appointment of two arbiters for an attempt for reconciliation preceding the divorce is essential, non negotiable and unavoidable pre-requisite.[29]

iii) Talaq must not be secret.

iv) Between the pronouncement and finality there must be a time gap so that the passions of the parties may calm down and reconciliation may be possible.

Precise points that must be remembered are that:

i. divorce will be effective only on the completion of three menstrual cycles. This has been termed as a waiting period;

ii. during waiting period it is possible to reconcile either through physical intimacy or otherwise. This waiting period is essentially to rule out pregnancy. However the waiting period is not mandatory if the marriage is not consummated ; and

iii. once waiting period is over and marriage is not reconciled , the divorce will become effective.

This explicitly means that:

i. effecting divorce during menstrual period is prohibited; and

ii. the wife has a right of residence at husband's house till the waiting period is over and the husband has no right to evict her without any just cause.[30]

Therefore, though it is the husband, who pronounces the divorce, he is as much bound by the decision of the judges/arbiters as is his wife. Mere pronouncement of talaq by the husband or merely declaring his intentions or his acts of having pronounced the talaq is not sufficient and does not meet the requirements of law. In every such exercise of right to talaq the husband is required to satisfy the preconditions of arbitration for reconciliation and reasons for talaq. Conveying his intentions to divorce the wife are not adequate to meet the requirements of talaq in the eyes of law. All the stages of conveying the reasons for divorce, appointment of arbiters, the arbiters resorting to conciliation proceedings so as to bring reconciliation between the parties and the failure of such proceedings or a situation where it was impossible for the marriage to continue,

28 *A. yousuf* v. *Sowramma,* AIR 1971 Ker 261.

29 *Kunhimohammed* v. *Ayishakutty* (2010) (2) KHC 64.

30 *T Abbas* v. *M Ayesha* MANU/TN/1203/2020 High Court of Madras Feb. 12, 2020.

are required to be proved as condition precedent for the husband's right to give talaq to his wife. It is, thus, not merely the factum of talaq but the conditions preceding to this stage of giving talaq that are also required to be proved when the wife disputes the factum/ effectiveness or the legality of talaq before a court of law. Mere statement made in writing before the court, in any form, or in oral depositions regarding the talaq having been pronounced sometimes in the past is neither sufficient to hold that the husband has divorced his wife nor is such a divorce in keeping with the dictates of Islam.[31]

Express declaration of triple talaq as void as being against the injunctions of *Quran*

The third notable judicial dictate was virtually catching the bull by its horn. Enough was enough. Judiciary noted that the triple talaq was actually neither ordained by Islamic law nor could stand the test of the spirit and principles of gender justice enshrined in the basic law of the land, *i.e.,* the Constitution. The judicial examination into defences put forward to protect triple talaq revealed that the arguments revolved around two major counts, first that it is a part of their Islamic law and second that Muslim Personal Law being sacrosanct, and a part of their religion, is outside the scope of judicial review. While in the past they were able to get way with these arguments, by also fiercely protesting that only Muslims are competent to interpret Islamic law provisions, the same was no longer acceptable in the era of constitutionalism. Two things became apparent now. One, that when called upon to demonstrate the process (or rather lack of it) of triple talaq as part of their holy *Quran* or the Sunnat, they failed miserably to do so. Secondly, these self appointed custodians of Islamic law, claiming sole prerogative to interpret it, while defending it passionately also failed to realize that by their complete distortive interpretation to suit the interests/convenience of men, they were instrumental in actually creating a negative image of acceptable ordains of their religion. They were thoroughly exposed when judiciary quoted from the very source, *i.e., Quran* postulating the proper procedure of dissolution of marriage that stood in sharp contradiction to their pleadings and the practical practice of triple talaq. It is amazing that a reading of *Quran* revealed a very rational and admirable procedure of dissolution of marriage with maximum fairness and minimum bitterness at the same time condemning in strongest possible terms divorce itself.

Rahmat Ullah v. *State of UP*,[32] was perhaps the first notable case where the practice of triple talaq was specifically held as invalid. Despite the husband's contention that he had divorced his wife through triple talaq, the court observed that it was not a proper way of culminating the marital tie. Marriage was deemed to be subsisting and she still his wife. Interestingly, this was not an instance of a helpless woman approaching the

31 *Id*., para 22.

32 *Rahmat Ullah and Khatoon Nisa* v. *State of UP* II (1994) DMC 64.

court seeking maintenance or any monetary respite from her husband. On the other hand, this case was under section 13 of the Uttar Pradesh Imposition of Ceiling on Land Holding Act, 1960 where under the maximum land that a family can own was fixed and the surplus land acquiesced to the state to be distributed amongst the landless. While measuring the land of this family of the husband, the land owned by his wife was clubbed with his land, consequently, it exceeded the fixed limit. He pleaded that the land belonging to the wife should not be measured with his land as first she was an independent owner of it and secondly he had already divorced her *via* triple talaq and therefore as a divorced wife , her land cannot be clubbed with his. If the estate of both of them were ascertained independently, the respective land would be within the permissible limit of retention. It was in this connection that the court analyzed the validity of triple talaq as effectively dissolving a Muslim marriage. HariNathTilhariJ observed, that law must be interpreted in light of the concept of justice, social, economic and political enshrined in the Constitution and principle of equality before law and equal treatment of law keeping pace with rationality free from any type of bias or discrimination on the ground of sex or religion and questioned whether the practice of triple talaq is in consonance with the Constitution or spirit of the Constitution? Answering in the negative he held that the practice of triple talaq was void and ineffective in putting an end to the marriage, and elucidating its specific effect in terms of gender justice, one of the primary concept inculcated in the Constitution, said,

> Under Muslim Law the plight of a Muslim woman, divorced by her husband is more pathetic particularly the weak one. As the state of affairs in India under Muslim Law is claimed to exist and operate, it is the husband who has got a free hand to divorce his wife as and when he desires and even orally by reciting Talaq thrice or by reciting three Talaq in one sentence. The poor Muslim woman ... is left to the vagaries of fate after the expiry of period of three months unless she succumbs to the circumstances of re-marrying someone.

In *Pathayi* v. *Moideen*,[33] the court again questioned continuity of permissibility of the tyranny of triple talaq lamenting that its judicial conscience was disturbed at this monstrosity and wondered whether the conscience of the leaders of public opinion of the community will also be disturbed.

In addition to these, two important judicial interpretations to triple talaq set the ball of change rolling further, though in different context altogether. In *Masroor Ahmed* v. *State* (*NCT of Delhi*),[34] owing to matrimonial discord the wife came back to the natal home. The husband filed for restitution of conjugal rights; a compromise resulted; she rejoined him and resumed cohabitation at the matrimonial home. Her case was

33 1968 KLT 763.

34 2008 (103) DRJ 137.

that when she came back following the compromise, she was informed by none other than her husband that he had already divorced her *via* triple talaq, when she was at her parents' home, that too before the compromise that resulted in her returning to matrimonial home and had also actually misled the court. She argued that since they were divorced and he was instrumental of hiding this fact and cohabited with her after inducing a false impression in her mind of a subsisting marriage, he was guilty of committing the offence of rape on her. She would not have consented to sex if she knew that he had already divorced her. It was in this connection that the court adjudicated upon the validity of triple talaq, pronounced in one go, in absence of the wife and without even informing her as effectively putting an end to the marriage.

The court noted, that *Talaq-e-biddat* is treated as sinful by all schools of law and specifically held that triple talaq pronounced in one go may not be regarded as three talaqs, leading to a finality of culmination of marriage but only as one with the option still open for reconciliation, and observed:[35]

> the harsh abruptness of triple talaq has brought about extreme misery to the divorced women and even to men who are left with no chance to undo the wrong or any scope to bring about a reconciliation. It is an innovation which may have served a purpose at a particular time in the history but if it is rooted out, such a move would not be contrary to any basic tenet of Islam or the Quran or any ruling of the Prophet Muhammad....., I would hold that a triple talaq (talaq-e-biddat) 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 . All this while, family members of the spouses could make sincere efforts at bringing about a reconciliation.

The court held that the utterance of triple talaq has to be treated in the present case as one single declaration. The implication of the pronouncement was that marriage would not come to an end even if the husband pronounces triple talaq. It also took away the irreversibility and the finality effect of the triple talaq as its revocability included within it the possibility of reconciliation and reconsideration. A compromise here and return of the wife with resulting cohabitation had the effect of revoking the pronouncement of the talaq, that actually was the judicial version equating triple talaq to the first talaq in the present case. By holding so, the court negated *Talaq-e-biddat* as putting an end to the marriage and equated triple talaq as the first pronouncement of talaq as in *Talaq-e-Sunnat*. Since the marriage subsisted and by cohabitation itself, the earlier pronouncement of talaq was revoked, the husband was held as not guilty of raping his wife.

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35 *Id.*, para 26.

Shayara Bano v. *Union of India*,[36] involved a direct challenge to the validity of triple talaq. The apex court assessed its validity both from the religious and the constitutional perspectives. The arguments revolved around the familiar protection of personal laws and their infallibility, the right of the minority to practice, profess and propagate one's religion and the relation between the personal laws and the basic law of the land, *i.e.,* the Constitution that involved the fundamental right of a woman to live a life of dignity. It was a very keenly watched proceeding with tremendous political connotations. The facts leading the case to the doors of the apex court were that the husband pronounced talaq on the wife in presence of two witnesses by saying talaq, talaq, talaq, followed by the words:

> From this date there is no relation of husband and wife. From today I am haraam, and I have become naam harram. In future you are free for using your life...

The wife filed a writ petition in the court and sought a specific declaration, that:

i) *Talaq-e-biddat* pronounced by her husband be declared *void ab initio*, as such a divorce which abruptly , unilaterally and irrevocably terminates the ties of matrimony is unconstitutional;

ii) *Talaq-e biddat* is not part of the *Shariat* and divorce of this nature cannot be termed as rule of decision under the Shariat Act;

iii) the practice of *talaq-e-biddat* is violative of the fundamental rights guaranteed to the citizens of India under article 14, 15 and 21 of the Constitution;

iv) the practice of *talaq-e-biddat* cannot be protected under the rights guaranteed to religious denominations under article 25(1), 26(b) and 29 of the Constitution; and

v) the practice of *talaq-e-biddat* is denounced internationally and a large number of Muslim theocratic countries have forbidden the practice of *talaq-e-biddat* and as such the same cannot be considered sacrosanct to the tenets of the Muslim religion.

She attacked expressly the practice of triple talaq as impermissible under the *Shariat* as also violative of the Constitution.

The husband pleaded that talaq was,

i) for a reasonable cause. He stated that his wife forced him to separate from his parents, and that he complied with her wishes to please her. But then she insisted him

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36 (2017) 9 SCC 1 read with, In Re: *Muslim Women's quest for Equality* v. *Jamiat Ulma-J -Hind* with *Aafreen**Rehman*v. *Union of India*, with *Gulshan Parveen* v. *Union of India*, with *Ishrat Jahan* v. *Union of India* with *Atiya Sabri* v. *Union of India*, AIR 2017 SC 4609.

to live with her parents *i.e.,* to live as a son in-law in his father-in law's place, and to this, he as a respectable man did not agree, which led to a friction. She had no intention of living with him and it was futile to carry on with this relationship on her such terms. This behavior, being in contradiction with *Shariat*, he was left with no other option but to divorce her. The two children from the marriage were with him and he was looking after them. He further contended that:

i) the talaq pronounced by him was in conformity with the prevalent and valid mode of dissolution of Muslim marriage as it fulfilled all the requirement of a valid divorce and was in consonance with *Shariat*, *i.e.,* Muslim Personal Law; and

ii) the writ petition filed by the wife under article 32 of the Constitution is not maintainable as the questions raised in the petition are not justiciable.

The main issue that the court decided to adjudicate amongst others was the validity of triple talaq or *Talaq-e-biddat* as aforesaid, both in light of the Muslim Personal Law and the Constitution of India.

The court went through the verses of the holy *Quran*[37] and the first thing that they noted was that triple talaq or *Talaq-e-biddat* is neither mentioned nor approved in either the *Quran* or the Sunnat. Further, that the *Quran* though condemns divorce yet, if inevitable approves dissolution of marriage by *Talaq-e-hasan* and *Talaq-e- ahsan* as the most reasonable form. Examining various authentic and important texts on Muslim law, the opinion of noted Islamic jurists, and the prevalent law in a number of Islamic countries, the court observed that *Talaq-e-biddat* or triple talaq, appears to be of a later origin (second century) and though prevalent amongst few schools adhering to Sunni sect, is described as most sinful and bad in theology but popularly perceived as good in law. After going through the relevant verses of the *Quran* itself, and a plethora of other relevant texts, the court concluded as follows:

i. Divorce for the reason of mutual incompatibility is allowed but with a recorded word of caution.

ii. The husband must restrain himself, from dissolving the matrimonial tie, on a sudden gust of temper or anger.

iii. The parties could act in haste and then repent, and thereafter again reunite, and yet again, separate. To prevent erratic and fitful repeated separations and reunions, a limit of two divorces is prescribed. In other words, reconciliation after two divorces is allowed.

37 *Id.*, para18. The Holy Quran: Text Translation and Commentary' by Abdullah Yusuf Ali, (published by Kitab Bhawan, New Delhi, 14th edn., 2016).

iv. 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, without casting aspersions on one another, they must recognize, what is right and honourable, on a collective consideration of all circumstances.

v. When divorce is pronounced for the third time, between the same parties, it becomes irreversible, until the woman marries some other man and he divorces her, or is otherwise released from the matrimonial tie, on account of his death.

vi. Since termination of the contract of marriage, is treated as a serious matter for family and social life, as such, every lawful advice, which can bring back those who had lived together earlier, provided there is mutual love and they can live with each other on honourable terms, is recommended. The *Quran* ordains that it is not right for outsiders to prevent the reunion of the husband and wife.

vii. For settlement of family disputes, the *Quran* postulates the appointment of two arbitrators – one representing the family of the husband, and the other the family of the wife. The arbitrators are mandated to explore the possibility of reconciliation. In case reconciliation is not possible, dissolution is advised, without publicity or mud-throwing or by resorting to trickery or deception.

viii. *Quran* ordains that sanctity of the marriage itself, is far greater than any economic interest, and accordingly suggests, that if separation can be prevented by providing some economic consideration to the wife, it is better for the husband to make such a concession, than to endanger the future of the wife and children.

The court held that *Talaq-e-biddat* was not in conformity with the injunctions of *Quran* and therefore was void, because given the fact that triple talaq is instant and irrevocable, it is obvious that any attempt at reconciliation between the husband and wife by two arbiters from their families , which is essential to save the marital ties, cannot ever take place. They further overruled the view taken by the privy council in *Rashid Ahmed* v. *Anisa khatoon*,[38] that talaq is valid even if it is without a reasonable cause as this form of talaq is manifestly arbitrary breaking the marital tie capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. The court said that triple talaq also fails the constitutional guarantees of gender equity and gender equality. It is violative of the fundamental rights contained in article 14 of the Constitution of India and of the acceptable norms of public order, morality and health and to the other provisions of Part III of the Constitution.

38 AIR 1932 PC 25; (1932) 34 Bom LR 475.

As the world over, countries with sizeable Muslim populations including theocratic Islamic states have already abrogated the practice of '*Talaq-e-biddat'*, the court specifically stated,[39] that whatever is irregular and sinful cannot have the sanction of law. It is bad in theology, clearly patriarchal and in the present days of gender parity can never be sustained. It did not flow out of any religious practice and thus cannot be considered at all an infallible religious practice.

With respect to the practice and the contention of protection of personal laws from judicial scrutiny they held,[40] that since the Constitution is the basic law of the land it has an overriding effect over personal laws. Since the Constitution guarantees fairness, dignity and quality of life, no lady can be compelled to marry another person in case she wants to marry her husband again after talaq. It is humiliating and against the dignity of the lady protected under the Constitution and the same would constitute offence. Women of every religion are protected by Constitution and no person has any right to go against the constitutional spirit in the shadow of personal law. This extremely important, keenly watched judicial pronouncement delivered a hammer putting an end to the heinous practice of triple talaq bringing in a sigh of relief in the lives of countless Muslim women who till now were living in the constant fear of triple talaq. The pronouncement that triple talaq is void being both against the procedure stipulated in the holy *Quran* and *Hadith* as also violative of the Constitution brought cheers from women who form nearly half of the population of the community that fought desperately for its survival.

Triple Talaq and the *Quranic* injunctions: contradictions

In the holy *Quran*, there is a proper procedure stipulated for putting an end to the marriage, which the triple talaq contradicts. It first cautions a man to refrain from divorcing a wife who is faithful and good, which stands in sharp contradiction to the unilateral power of the husband to pronounce talaq on the wife even if she is not at fault. Secondly it prescribes and contains, the elements of reconciliation, attempts of mediation and arbitration and also revocability involving well-wishers from both sides of the parties. This again is contradictory to instant dissolution without any possibility of revocability.Thirdly, that as per the *Quran*, it is always advocated as a peaceful and amicable separation with maximum fairness and minimum bitterness, which makes it the duty on part of the husband to make arrangements to ensure that she is not left destitute and is well provided for, but triple talaq does not take into account this fair settlement. Fourth, talaq can be pronounced only during the period of *tuhr, i.e.,* the period of purity but Muslim men could claim the validity of triple talaq pronounced

39 *Id*., para122.

40 See also, *Lance Naik Tailor Mohammad Faroor* v. *Chief of the Army Staff,* MANU /AF/0094/2016.

even if the wife was in menstruation. In fact in *Nazeer* v. *Shemeema*,[41] the court while holding that triple talaq in one utterance is not valid according to *Quranic* injunction said that *Quran* emphasises dispute resolution in general through a peaceful manner[42] and violation of *Quranic* injunction regarding triple talaqin one utterance is punishable under penal law.

Legislative declaration of triple talaq as void

Legislation soon followed to reaffirm and consolidate the apex court pronouncement in the case of *Shayara Bano*,[43] declaring triple talaq as void, and culminated in the enactment of Muslim Women (Protection of Rights on Marriage) Act, in 2019. The objective of the enactment is to protect the rights of married Muslim women; to prohibit divorce by pronouncing talaq by their husbands and to provide for connected and incidental matters. It came into force on September 19, 2019 and extends to whole of India except the state of Jammu and Kashmir. It explains talaq for the purposes of this Act as *Talaq-e-biddat* or any similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband, and expressly declares such talaq to be void and illegal, and punishable with imprisonment of up to three years and /or fine. Chapter II carries the title "Declaration of Talaq to be void and illegal" and section 3 and 4 reads as under:[44]

> Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal. Any Muslim husband who 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 shall also be liable to fine.

The offence is cognizable and the right to file a complaint in this regard lies with the affected woman who has been so divorced or any of her relatives, related to her through blood or by marriage.

Implications

This enactment would have the following implications in future:

i. Since triple talaq is void, it would have no adverse impact on the marriage and it would deem to be subsisting;

ii. Since marriage cannot be culminated unilaterally and abruptly, revocability and possibility of reconciliation would prevent hasty and unwarranted separations;

41 2016 SCC Online Ker 41064; (2017) 1KLJ 1; (2017) 1KLT 300.

42 *Id.,* para12.

43 AIR 2017 SC 4609.

44 See, *available at*: https://egazette.nic.in/WriteReadData/2019/209473.pdf (last visited on Mar. 10, 2021).

iii. where the husband pronounces triple talaq, he runs the risk of attracting penal action that includes three years sentence and fine.

iv. a complaint can be filed either by the wife or any of her relatives either related through blood or even by marriage. This in itself would act as a deterrent to him from pronouncing triple talaq; and

v. the adherence to proper procedure and presence of concerned arbitrators will ensure either its continuity or would facilitate a separation on fair and equitable terms.

IV Conclusion

The collective judicial and legislative stroke in outlawing triple talaq has been extremely commendable and meaningful. It clarifies that the practice of divorce under any personal law has to show reasonableness and its conformity with the constitutional ideology of gender justice and fairness. The legislation would have far reaching impact on the operation of dissolution of marriages under Muslim law. The penal provisions would act as a deterrent and the unfettered, arbitrary powers used by Muslim men breaking their marriage at will devastating their wives' and their own children's life would hopefully be a thing of past. Most importantly, if women are liberated from the monstrosity of triple talaq, their existence under its perpetual shadow would cease to be a nightmare as hitherto it was. The sword of triple talaq hanging over the matrimonial alliance, during the entire duration of the marriage and its fear was a matter of continuous mental torture, for her. This extremely self-effacing practice was, and continued to be a cause of insecurity, for the entire duration of the matrimonial life, violating with impunity the pious and noble prescripts of the Quran. Their lives would be much better, and if women in marriage are secure and respected, all members of the family would be positively affected by it. Whatever be the stage of their life, marriage provides a sense of security, social, financial and mental to all members of the family but its immediate impact on a wife and children is more visible in comparison to a man. It is hoped that it would prove extremely healthy for the wellbeing of the entire family and specially for the children. At the same time, it is worth mentioning that it is not talaq that women feared but unilateral and arbitrary triple talaq. It has to be accepted that life in a happy marriage is a bliss while those trapped in an unhappy marriage if unable to break free of it experience hell. Divorce therefore must be either consensual or should be for a reasonable cause be it judicial or extra-judicial. Incompatible spouses must be permitted to depart on fair and equitable terms to lead their lives afresh.

Broken melancholic homes are undesirable and happy families, single by choice individuals or individuals free from gloomy marriages exude a positivity and healthy intensity that causes a great reflection on the perception of the community that they come from.