

Talaq-Ul-Biddat- 'The Irregular' Force of Islamisation and its Confrontations with Feminism

Meher Dhingra

Student, BBA.LLB(H) 2nd year, Symbiosis Law School, Pune, Symbiosis International (Deemed University). Author can be reached at meher2698@gmail.com (09810157066). 1st Prize Winner of Symbiosis Law School, Pune Juristas International Law Essay Competition-2018.

Abstract

The essay pertains to the now withering custom of Triple Talaq, which until recently was in practice in a secular country like India despite having been disposed of by many orthodox Islamic countries, including Pakistan and Bangladesh. The same is read in the light of Islamic Fundamentalism, and how an undeterred and stubborn application of ancient scriptures in a bid to conserve the essence of the religion has actually led the followers of Islam into more regressive times. The essay focuses on the need of correct and uniform interpretation of the Quran, factoring in the tool of 'Occasions of Revelation' in order to assume a more balanced foundation for the legal system that follows, and to avoid the dastard misinterpretation of ancient texts to suit the sensibilities of those who yearn political control and dominance. The same is followed by an in-depth analysis of how the practice of Triple Talaq came into being, its legality and propriety as per the respective sources of Islamic Law, and hence whether it has been rightly adjudged as illegal or not. Islam and its progressivity with respect to its detailed laws and regulations in apparent barbaric times is also highlighted, as is their redundancy in today's day and age. The essay also discusses the implications of Islamisation to the general and much needed wave of feminism which is at its peak in the rest of the world, and how backward as well as socially immoral practices like the Triple Talaq and Nikah Halala further dampen the cause of the movement, all while embedding the seeds of patriarchy to such an extent that women in such societies fail to recognize a lack of their basic fundamental rights, a fact which is deeply disturbing in the day and age of today. The text then comes to a close with a Global Perspective on the custom, including a brief summary of the Indian Case Laws, and how the courts have dealt with the issue before the Shayra Bano Judgment as well as in the said judgment, which is followed by the stance of a few other nations including both Muslim majority and minority countries.

KEYWORDS: Divorce, Muslim Law, Triple Talaq.

INTRODUCTION

A distraught Zeenat, pleading in front of a Maulvi, demanding a clarification as to whether a marriage and a bond that she had preserved for 20 long years had ended because her husband in a fit of rage had pronounced the dreaded word 'Talaq' thrice, personifies the helplessness and the plight of women still subject to the practice of the 'Talaq-ul-Biddat' and often the consequential 'Halala Marriage'. But Zeenat had merely brushed against the terror that Farah had been subjected to because Zeenat's husband had mispronounced the statement that would have ridden them divorced, hence accidentally saving their marriage from unintended dissolution.

Farah's fate was much worse, because to be able to remarry her husband, who like many had rendered her a divorcee in the heat of the moment, she was to undergo a custom even more treacherous than the Talaq itself, the NikahHalala,¹ a practice where the woman if divorced under Talaq-Ul-Biddat must marry another man, consummate the marriage, then seek for divorce from him, to be able to remarry her first husband.

Women like Zeenat and Farah, despite living in times so seemingly progressive, still remain at the mercy of men, who hold the reigns of their lives by the mere virtue of their apparent masculinity and a law vastly misinterpreted.

ISLAMISATION: THE CONCEPT OF FUNDAMENTALISM IN ISLAM

Fundamentalism can be defined as a combative and conservative religious movement, backed by a school of thought which propagates strict adherence to sacred texts in all aspects of life. The term though traditionally associated with protestant Christianity is today a phenomenon which is synonymous to any religious activity claiming infallibility of those scriptures which were meant to govern a time that today is ancient history.²

The term fundamentalism has also found association with Islam, since its resurgence in the last quarter of the 20th century. The times since have seen two kinds of movements among the propagators of the religion, both falling within the umbrella of fundamentalism, however the movements vary in the particular ends they seek to achieve. The Wahabi and Salafi movements though independent of each other, advocate a return to the earlier times (the time of the prophet), to the fundamentals of Islam in order to understand how the contemporary world should function. The Salafi methodology, has recently come to be associated with the Jihad of extremist groups who resort to the killing of innocent civilians as a mode of propagation. The other identifiable branch of Islamic fundamentalism is Political Islam, where the aim is a complete social change of an environment not indigenously Islamic through the establishment of an 'Islamic State', like Zia UlHaq's Islamisation of Pakistan, where he enforced Nizam-e-Mustafa (Islamic System) a 180 degree turn from Pakistan's predominantly Common Law, inclusive of the establishment of Sharia Benches.

This fundamentalist approach of propagating the religion to the extent of an agitation against modern views and practices, to the extent of establishing a state governed by vague scriptures, is often referred to as the process of Islamisation or a branch under the Islamic Revivalism.

ISLAMIC RESURGENCE AND ITS IMPLICATIONS

Religious extremism as a concept is not unique to Islam, however what is unique to Islam apart from the Holy Book that forms the basis for such adamant extremism is the codified Islamic law that exists by the name of Sharia, devised to govern the followers of Islam. Deriving authority from Quranic verses and their interpretations among other sources, the Sharia law exists in almost

¹ Athar Ahmad, *The women who sleep with a stranger to save their marriage*, BBC Asian Network & Victoria Derbyshire programme (5/4/17)

Available at :<http://www.bbc.com/news/uk-39480846> last visited 15/7/17

² Joseph E. B. Lumbard, *Understanding the relationship between Quran and Extremism*, (2016)[online] Available at: https://www.huffingtonpost.com/joseph-e-b-lumbard/understanding-the-quran-and-extremism_b_9528766.html [Accessed 14 Jun. 2018].

all contemporary Muslim societies, and the recent times have seen an exponential growth in the demand for Muslim laws to be governing all aspects of life.

Muslim law rests on the four-fold pillars of the fiqh³, namely: the Quran (kitab), the Sunnah (Hadiths), the Ijma (consensus of the jurists) and Qiyas (the analogical deduction from a comparison of the three sources). For a 'principle' to become 'law' it must find a place in one of the above-mentioned sources. The Quran tops the hierarchy, hence if the solution of a problem is given in the Quran then it is said to be the final ruling of Sharia, for the Quran is the word of the lord and hence is held on a rightfully gained pedestal.⁴ **Hence Quranic interpretation becomes fundamental when it comes to truly delivering justice, for it is key to distinguishing between the Islam practiced by the majority and the same Islam in the name of which the radicals have terrorized half of the world.** Muslim scholars of all stripes have identified that no Quranic interpretation is free of human intermediation, As Ali ibn Abi Talib, one of the most revered figures in both Sunni and Shiite Islam, said, "This Quran is only writing, lines between two covers, that cannot speak without the intervention of an interpreter. Only human beings can speak on its behalf." The same only intensifies the contention that it is imperative that there be a consensus in the understanding of the text that is to govern about 1/4th of the world's population. The law of the land exists to ensure a peaceful, disciplined and contented way of life, and the same with its power of control over people, if manipulated, can single handedly lead to destruction of the society it has been created to govern; as can be well evidenced by the state of affairs in the Middle East.

It is a popular opinion, and is concurred by the author, **that the process of Islamisation or the Revival of Islam as they call it, because of the stringent application of rules and laws created to govern times that have long gone by and societies that have evolved by aeons ever since, all in a stubborn effort to reform by way of the Lord has in fact led their followers back into regressive times**, especially given the varying and often distorted understanding of the texts and the laws. **The most shining example of chaos created by way of confusion regarding the Shariat, would be the stance of India on 'Triple Talaq' up until the recent judgement which finally declared it to be illegal. The people couldn't determine as to whether the practice though immoral in its essence was legal or not, as it was fiercely protected by a sect which considered it to be an innate part of their culture.**

TALAQ – UL – BIDDAT

When we talk about the custom of the Triple Talaq and seek answers regarding its legality and propriety in this day and age, it becomes imperative for us to understand its source and the inherent purpose that seemingly regressive customs and laws as such carry.

Triple Talaq is also known as the Talaq-Ul-Biddat where Biddat (literally) stands for innovation, when a question regarding the integrity of it as a convention arises, we must understand the essence that it carries, and what the law has actually intended for the families that it seeks to govern, especially when it comes to the of the sanctity of a marriage and the applicability of a divorce.

³G.C.V. SUBBA RAO, FAMILY LAW IN INDIA 622-623 (NarendarGogia and company 10) (2017)

⁴Sanjana Rao , Suryakiran G &Tejas C Shetty, *The triple talaq tyranny*, JCIL Vol. 2 Issue 6

NIKAH AND TALAQ AS PER THE QURAN

NIKAH

The term Nikah which is commonly used to define a Muslim marriage, also figuratively stands to describe the coming together of various creations. In the Quranic verse; “It Is He who created you from a single soul, And made its mate of like nature in order that you might dwell with her in love....” (7:189) the meaning of marriage beyond the Islamic contract that it is presumed to be, is understood. The verse talks about how the male and female complete each other. Human marriage in the Qur'an is considered a reflection of a nature and tendency that exists at all levels of creation, as it's believed that the lord created everything in pairs.⁵ When something is created as one part of a pair it is clearly incomplete without the other, just as would be a man without a woman bound with him in the tie of matrimony, and vice versa.⁶

These verses from the holy book itself, the supreme law, emphasize on the sanctity of a marital bond, as opposed to the popular misconception of the marriage under Islamic law being a mere contract for the purpose of practicality, measured by the mehr (consideration).⁷

TALAQ

The word ‘**Talaq**’ literally means undoing the knot and signifies for the dissolution of a marriage with the husband divorcing the wife. The husband has the power to end the marriage at his own whim without having to spell out an explanation, and this arbitrary power of a unilateral divorce at the hands of the man is a unique feature of the Mahomedan law.

The wife being dissatisfied by the marriage, can only offer to compensate her husband for letting her go off the marriage contract, thus she can only ask for a divorce, but the ultimate power still lies with the man, as, if she approaches the matter per the ‘**Khula**’, the divorce is still subject to the acceptance of the offer by the man.

In the event of a mutual decision to go separate ways, there is a the ‘**Mubara’at** divorce’, wherein the offer to dissolve the marriage may originate from either side.

Though the law stated is extensive, **and in that age and time where a woman’s say was equivalent to no say at all, it gave women an opportunity, however small, to exercise rights however minimal, and considering just that, the law would have probably been considered progressive during its formulation, but today, in an age, where the society has grown and evolved, these same laws, customs and norms still remain latent in times that have long gone by, hence bereaving themselves of the title of progressivity.**

As per the Mahomedan law, Talaq can be of three kinds;⁸⁹

1. **Talaq Ahsan** or the most laudable

⁵ THE QURAN 53:45

⁶ “He himself created the pair, male and female.” (Qur'an 53:45); “God made their hearts familiar” (Qur'an 8:63)

⁷ Irshad Husain, *Marriage in Islam-making hearts familiar*, Islamfrominside.com, <http://www.islamfrominside.com/Pages/Articles/Marriage%20in%20Islam.html> (last visited Jul 15, 2017)

⁸ SAHIH MUSLIM, BOOK 9: The Book of Divorce (Kitab Al-Talaq) Thereligionofpeace.com, <https://www.thereligionofpeace.com/quran/muslim/009-smt.htm#009.3493> (last visited Jul 14, 2017)

⁹ G.C.V. SUBBA RAO, FAMILY LAW IN INDIA (NarendarGogia and company 10) (2017)

The Talak Ahsan, is one where the husband repudiates the wife during a 'tuhr' (the interval between two menstrual cycles) and the Talaq becomes complete only on the completion of the period of 'iddat' (three menstrual cycles from the time of pronouncement of talaq) hence providing the husband ample time to reconsider his decision. During the course of iddat the husband must abstain from any sexual relations for if he resumes them, the divorce will stand as revoked. The Talaq Ahsan is considered the most laudable one, for it provides a chance for introspection, and negates the element of hasty mistakes.

2. **Talaq Hassan** or the laudable

Talaq Hassan is not the most proper form, but it's proper nonetheless. Talaq Hassan involves Talaq to again be pronounced during a tuhr, and during the next tuhr a second pronouncement may be made, and in the third, the last and final pronouncement may be made, which will yield the divorce irrevocable

3. **Talaq-ul-Biddat** or the irregular

This mode of repudiation is not approved by the Islamic theology, in fact it's is not even recognized by the Shia law, Sunni's following the Hanafi school however allow this even if they don't approve of it. As per this the talaq becomes irrevocable at once, as soon as it is pronounced the relations are brought to an end, and the wife becomes a haram for the man. This mode of divorce has become rampant in the India of today, and is infamously referred to as the 'triple talaq', for it involves the man making three pronouncements, "talaq, talaq, talaq" in a row, or the pronouncement of the explicit Talaq-E-Biaan.

Talaq Ahsan and Talaq Hassan, are approved forms and hence fall under Talaq-Al-Sunnah, i.e. Talaq in conformity with the dictates of the Prophet, whereas Talaq-Ul-Biddat, since it stems out of innovation, it isn't considered to be an approved form. Divorce as a concept in Islam is the disagreement to live together as man and wife, and as a practice said to be often discouraged and disapproved of by the Prophet himself except in extreme situations¹⁰, the Prophet on one occasion has said, "Divorce shakes the throne of God" and "let not the faithful man hate the faithful woman, if he dislikes some of her habits he may like the others"¹¹

This establishes the fact, that divorce in Islam is not a frivolity, which can be done and dusted with by the mere recital of Talaq, Talaq, Talaq in one go, or in today's time, via a WhatsApp text message.¹² The Talaq-Al-Sunnah or the approved form of Talaq emphasizes on the effort towards reconciliation more than anything else, and hence captures the true essence of the same as it may have been preached the first time.

Talaq is halal, even though it ranks lowest in list, and hence it wouldn't be wrong to read the maturity inherently instilled in a format where the sanctity of marriage is respected but in situations where the agreement to share a life together doesn't fall through the man and woman

¹⁰ ASGHARALI ENGINEER, THE QUR'AN, WOMEN, AND MODERN SOCIETY, New Dawn Publications Inc. (2005)

¹¹ FURQAN AHMED, TRIPLE TALAQ: AN ANALYTICAL STUDY WITH EMPHASIS ON SOCIO-LEGAL ASPECTS, Regency Publications (1994)

¹² Hindustan Times, WhatsApp talaq: New York techie divorces wife in Hyderabad, (17/3/17), Available at:

<http://www.hindustantimes.com/world-news/whatsapp-talaq-new-york-techie-divorces-wife-in-hyderabad/story-nyII1P3zMJuPLveb7ifTsO.html> last visited (15/7/17)

are given rights to bring an end to it, the man if he is given more rights than the woman is also subjected to conditions of the 'tuhr' and 'iddat' to refrain him from misusing them. Therefore, to perceive the Talaq-UI-Biddat and its regressive persona to belong to a concept this mature is incorrect, hence its legality and propriety must be subject to question, as it doesn't capture the essence of the source it is supposed to have been birthed from.

THE HISTORY OF TRIPLE TALAQ- the word of the Prophet

Triple talaq as we know it today, is a product of the pre-Islamic times, where women were treated equivalent to chattel, having no rights and no voice. The Quran and its provisions especially on divorce came as a liberation for women as they ensured that her interests be taken care of. The birth of the Talaq Hassan has been primarily to protect the women from the injustice at the hands of a man, who would divorce them during tuhr, take them back during the period of iddat, and hence repeat the cycle. The holy book also includes provisions for safeguarding divorcees bearing the child of their ex-husband apart from giving women in general the right to refuse to go back to the marriage in order to save humiliation. With respect to the verses of the Quran itself, it can be safely said that the provisions of the book are in fact protective towards the women, and as mentioned before even if the distribution of rights is unequal, the men are subject to an equivalent amount of restrictions to prevent misuse.

The Triple Talaq on the other hand finds no mention in the Quran, and it has even been alleged that during the age of the Prophet, when news came to him about a case of triple talaq, he severely renounced it by saying "**Do you make fun of Allah's book when I am amongst you?**". The practice was banned during the age of the Prophet, then that of Caliph Abu-Bakr and for two and a half years of the time of Caliph Umar, as has been understood by the hadith in Muslim, Kitab-Al-Talaq by Ibn Abbas.

THE TALE OF RUKANAH

In Musnad Ahmed, a hadith narrated by Ibn Abbas, Rukanah Bin Abd-e-Yazid gave three talaqs to his wife in one sitting, feeling sorry about his deed he asked the Prophet about it, on knowing how he had given his wife the divorce, by pronouncing Talaq thrice in one sitting, the Prophet concluded that it amounted to only one Talaq, as it was said together at one time only, and told Rukanah that he could take her back, if he liked.¹³

Hence it is understood that the concept of triple talaq has not been very popular since the age of the Prophet considering that he himself renounced it. And as far as its revival is concerned, Caliph Umar under whose reign it made a reappearance is believed to have introduced it as means of curbing misuse and indiscipline which did not involve any alteration of the Sharia to that effect, in fact as per hadith¹⁴ it is said that Umar applied triple talaq as a matter of circumstances and not as a matter of principle, more of a punishment than a law, and he is well known for applying certain punishments such as burning down wine shops which have no precedence in the Prophet's Sunnah.¹⁵ Now where the majority of the contemporary Islamic world sees these anecdotes more as a part of historical interest than reality, India faces it, as the

¹³ ASGHARALI ENGINEER, THE QUR'AN, WOMEN, AND MODERN SOCIETY, 97, New Dawn Publications Inc. (2005)

¹⁴ Hadith in muslim, Kitab-Al-Talaq by Ibn Abbas

¹⁵ ASGHARALI ENGINEER, THE QUR'AN, WOMEN, AND MODERN SOCIETY, 96, New Dawn Publications Inc. (2005)

orthodox Hanafi and Shafi'i schools of thought consider the triple talaq to be valid, and argue against its abolishment stating it to be a violation of the Sharia, this in fresh light of the recent case in front of a 5 judge vacation bench in the Supreme Court of India which demanded a ban on practices like the triple talaq, a custom which evidently is nothing short of a wide misinterpretation of both the law and the history, considering how this practice had been and continues to be renounced in Islamic countries.¹⁶

NIKAHALALALA

When we talk about all that is wrong with the concept of Triple Talaq, it would be half-truth if we leave out the custom of Nikah-Halala, **a concept often said to be against theology but considered to be a custom nonetheless**, especially in the Hanafi school of thought. The word Halala comes from the term Halal which stands for something permissible and hence lawful, the halala marriage is with respect to an irrevocable talaq where the wife becomes haram for the husband¹⁷, and even if the husband regrets his decision of divorcing her, he cannot remarry her, unless the woman marries another man, consummates the marriage with him, and then later either gets divorced or the husband dies, only then is she permitted to go back to her first husband.¹⁸ The NikahHalala remains a regressive custom in generality, however when the divorce is given under triple talaq, it is often pronounced in the heat of the moment, and the probability of a man regretting his decision are more in comparison to the times when he has the period of Iddat for introspection. **In today's time marrying another man just for the sake of fulfilling the custom renders it a gross misuse of a principle which in any case is absolutely invalid and against the norms of the society of today.** The abomination is not that the lady must undergo it, but that the men exploit it and have made a business out of it.¹⁹ The **conditional marriage** where the husband requests a man to marry his wife only to divorce her the next is called, **Muta, and is considered to be a haram in Islam and the Sharia doesn't permit it, in a recent case in Jaipur, the barbarity of the same was displayed, where a woman was drugged and raped by her husband's friend on the context of halala marriage**, where there never had even been a nikah, and despite the triple talaq she and her husband had conjugal relations.²⁰ In the case of **RahmatUllah and KhatoonNisa v. State of U.P.**²¹ few lady lawyers present in the court room stood up and proclaimed "thing like Halala or in other words second marriage of the woman with someone else, its consummation and divorce of that woman by subsequent husband in case he becomes ready to divorce, is nothing but a penalty and curse of

¹⁶Saif Khalid, *What is 'triple talaq' or instant divorce?*, Aljazeera, (12/5/17)

Available at: <http://www.aljazeera.com/indepth/features/2017/05/triple-talaq-triple-divorce-170511160557346.html> last visited 15/7/17

¹⁷Shalini Nair, *Meaning Talaq-e-Biddat and NikahHalala*, The Indian Express (26/10/16)

Available at: <http://indianexpress.com/article/explained/triple-talaq-muslim-personal-law-talaq-e-bidat-nikah-halala-meaning-3104657/> last visited 15/7/17

¹⁸ Athar Ahmad, *The women who sleep with a stranger to save their marriage*, BBC Asian Network & Victoria Derbyshire programme (5/4/17)

Available at: <http://www.bbc.com/news/uk-39480846> last visited 15/7/17

¹⁹ShaliniIyenger, *What is Nikahhalala, how it was established and where it stands in modern India*, The Indian Express (19/4/17)

available at: <http://indianexpress.com/article/what-is/what-is-nikah-halala-how-it-was-established-and-where-it-stands-in-modern-india-triple-talaq-4618415/>

²⁰ Urvashi Dev Rawal, *Man loses wife in a bet, forces her to sleep with friend on pretext of halala*, Hindustan Times (28/10/16)

²¹RahmatUllah and KhatoonNisa v. State of U.P, MANU/UP/0152/1994

womanhood for the action of husband a man”, cases like A. S. ParveenAkthar v. The Union Of India²², Masroor Ahmed v. State (NCT of Delhi)²³ and Anr. And Mrs Sabah Adnan Sami Khan vs Adnan Sami Khan²⁴ speak of triple talaq and nikahhalala in a similar manner, questioning their legality and applicability since the word of the Quran, which is supreme, is not in favor of the same.

TRIPLE TALAQ AND THE ISLAMISATION OF WOMEN

ISLAMISATION AND FEMINISM

As mentioned earlier, the process of Islamisation devoid of a comprehensive and uniform interpretation of the scripture has in fact taken the society a step back in time; the impact of the same has been maximum on the female gender, considering how the battle for equality between the genders is still on for the rest of the world including the apparently modern west. **So in a day and age, where the fight for equality in other parts of the world is onto its last details, intricate to the extent of equal pays, there are Islamic countries like Saudi Arabia, which in an attempt to protect their womankind from being corrupted from the air of independence and modernity (that blows in the west) are not granting their right to an equal vote, their right to communicate with men, to wear what they wish to, work in the profession of their choice or even be remotely independent of male influence. Hence it wouldn't be incorrect to say that Islamisation, which is inclusive of following ancient traditions, practices and laws in an attempt to lead an ideal life in the modern world is often in contradiction to the spirit of feminism, in contradiction to the morals of a modern age society and in contradiction to the development that the mankind has strived so hard to bring in.**

What use is the vastly advanced technology, infrastructure or automation, when a part of the world chooses to make selective, and at times horrendous use of it (terror via social media), in tandem to an obstinate rejection of modernity.

It would be incorrect to stereotype all Muslims as radical extremists who are intolerant to the idea of equality or development as we know it today, however when we talk about Islamic Resurgence or Islamism, the ideology as discussed above is flawed and synonymous to the extremists in question. **The idea of rejuvenating Islam so as to ensure that the ideals are not forgotten cannot be actuated with a stringent application of redundant customs and laws, it must be with a mature and dynamic treatment of the same while understanding the circumstances in which they must have been enforced, and then molding the same to suit the sensibilities of the society today.**

SHA'N-I-NUZUL-Occasions of Revelation

One of the central tools of Quranic interpretation should be the 'Occasion of Revelation', which outlines the history of a particular incident or incidents, which spurred the revelation of a verse or set of verses. They are essential for interpretation in one instance, Ali ibn Abi Talib told a man that if he did not know the "occasions of revelation," or historical contexts, he should not comment on the Quran. And hence it is imperative that the occasion of revelation be

²² A. S. ParveenAkthar v. The Union Of India, (2003- 1-LW(CrI)115)

²³ Masroor Ahmed v. State (NCT of Delhi), (2007)ILR 2Delhi1329.

²⁴ Mrs Sabah Adnan Sami Khan vs Adnan Sami Khan, 2010(112)BOMLR1409

incorporated while interpreting. The most infamous verse with regards to faulty interpretation would be Quran 9:5, known as “The Sword Verse”:

“Then, when the sacred months have passed, slay the idolaters wheresoever you find them, capture them, besiege them, and lie in wait for them at every place of ambush. But if they repent, and perform the prayer and give the alms, then let them go their way.”

The majority of Muslim scholars maintain that the phrase “slay the idolaters wheresoever you find them” refers to particular tribes that had declared open warfare on the Muslims during the lifetime of the Prophet Muhammad. Awareness of this historical circumstance contains and restrains the interpretation of the verse, thus preventing the wanton and unwarranted applications that those with political ambitions and apocalyptic visions seek today. **Hence the intended violence is inherently circumstantial and conditional to an attack, a connotation that is misunderstood because of the lack of background with respect to the verse.**

Similarly, with regards to the stature of women, the society and circumstances then must be kept in mind before the law is set in stone for the woman of today. The mainstream understanding of the Sharia, devoid of objective interpretation leads to an understanding of Islamic culture as being predominantly sexist. The laws outrightly discriminate between men and women in the name of faith, such that the women also at times fail to realize the lack of basic human rights in their lives, patriarchy has been so deeply embedded in the name of the lord, that a rebellion against inequality is believed to be a defiance of the religion itself.

The inequality propagated is also not restricted to a passive extent, where the women may not be allowed access to the same opportunities as men, the inequality is actively propagated in a manner where the woman is shown as subservient to a man in all aspects, the lesser gender. There exist schools of thought, where it is deemed perfectly acceptable for a man to physically assault his wife, in fact, **Pakistan, as recently as in 2016, was in talks of a bill which allowed a ‘light beating’ of the wife by the husband;**

“A husband should be allowed to lightly beat his wife **if she defies his commands and refuses to dress up as per his desires; turns down demand of intercourse without any religious excuse or does not take bath after intercourse or menstrual periods,**” the report states, according to Pakistan’s Express-Tribune newspaper.²⁵

Up until 2017, in Jordan, a man could get away with the punishment for rape if he married the victim for at least 3 years, similar laws exist in Iraq and Tunisia.²⁶

The Turkish President Recep Tayyip Erdogan not so long ago said, **“Women should know their place.... Gender equality is against human nature.”** This is the same country, where in 1935, women had won the right to vote and 18 female candidates had been elected to the

²⁵ Craig, T. (2016). *Pakistani husbands can ‘lightly beat’ their wives, Islamic council says*. [online] Washington Post. Available at: https://www.washingtonpost.com/news/worldviews/wp/2016/05/26/pakistani-husbands-can-lightly-beat-their-wives-islamic-council-says/?noredirect=on&utm_term=.f860131ae4ce [Accessed 14 Jun. 2018].

²⁶ BBC News. (2017). *Jordan to end rapists’ marriage loophole*. [online] Available at: <https://www.bbc.com/news/world-middle-east-39692020> [Accessed 14 Jun. 2018].

parliament, a decade before women even in western countries such as France and Italy. And decades later, when the world had finally caught up, it seems as if they have moved back into the times where women were considered to be as good as chattel.²⁷

“Guardianship laws in Saudi Arabia restrict and infantilise women, as male kin have control over their medical treatment, education, choice of spouse, divorce, acquisition of property and so forth. In Iran, the hijab is considered the ‘beating heart of the religion’. ‘Bad hijab,’ or showing hair in public, is a criminal offence. According to Sharia law, polygyny, as well as inequality in marriage, custody, inheritance, court testimony and compensation are lawful.”²⁸ If that is not Islamisation leading the society a step back in time, there is no alternate explanation.

The aforementioned cases are just a glimpse of what the scenario is like in regions where Islamic extremism is rampant, and this is barring the atrocities that ‘extremist groups’ like the Taliban or the ISIS have inflicted upon the regions they have encaptured, the vile acts in such areas are much more hostile than those which occur in countries with established institutions, however the acts of countries with governments in function, even if of a lesser intensity of misogyny are more dangerous. **Groups like the ISIS are considered to be terror organizations by most of the world, hence no amount of sanity or rationality is associated with their way of functioning, however for a government of a country like Pakistan or Tunisia, which also forms a part of the UN assemblies, when they indulge in outright misogynistic or xenophobic activities, it is worrisome, because then it stands for an ideology of the leaders of a nation pro active as a part of the community of 21st century countries.**

It is not incorrect to wish to follow one’s religion or its precepts, however it is incorrect to shove down redundancy in the name of protecting religion, the same is equivalent to a slash of secularism, or the freedom to practice, foster and propagate one’s own religion, an eminent pillar on which the society of today stands. As, a compellation of even the followers of the same religion to practice the same in a manner which may be offensive to their ideals, takes away the ‘freedom’ that is important to the idea of secularism.

TRIPLE TALAQ– Global Perspective

A custom like Triple Talaq, which is as regressive as it is demeaning, continued to survive in a secular country like India until just a few months ago, all because of the lack of clarity among the followers of Islam as to the custom’s legality and propriety as per their own personal laws. Because of this lack of clarity, many more such customs are in continuance all over the world, choking the freedom and independence of women born in the community and to the culture.

India is a secular country, and a symbol of diversity, and this spirit has been incorporated in our legal system such that, the country allows for independent family laws to govern their religious sect. And in accordance to the same, for the Muslim minority the Sharia Act, 1937, which

²⁷Burak Bekdil, *Victims of Turkey's Islamization*: Women Gatestone Institute (2018), <https://www.gatestoneinstitute.org/10900/turkey-islamization-women> (last visited Jun 10, 2018).

²⁸ Ida Lichter, *Islam's Women*, The Spectator (2017), available at: <https://www.spectator.co.uk/2017/03/islams-women/> (last visited Jun 14, 2018).

declares that the personal affairs of Muslims will be governed by the Sharia, the Dissolution of Muslim Marriages Act, 1939 and the Muslim Women (Protection of Rights on Divorce) Act, 1986, are in place. The Muslims in India are predominantly Sunni and hence the Hanafi school of Islam, which deems Triple Talaq to be valid prevails. The recent judgement on the subject, delivered by the Supreme Court of India, in the case of **ShayraBano v. Union of India**²⁹, finally deemed the practice to be illegal, the reasoning might not have been wholly sound but it is a riddance of an evil nonetheless. The five-judge bench, in a 3:2 majority, declared the practice of instant divorce by pronouncing talaq thrice at one go as “void, illegal and unconstitutional.” However, the court failed to clarify as to whether any custom under personal law of a religion, which is violative of fundamental rights, is liable to be struck down and will not be protected under Article 25.

Even well before the ShayraBano case, which has recently brought this topic to blinding light, judgements were passed, and much had been said in courts regarding the un-Islamic virtues of Triple Talaq and NikahHalala; a landmark judgement from 15 years ago, being; **Shamim Ara v. State of U.P.**³⁰, wherein the Supreme Court invalidated arbitrary Triple Talaq and held that in order to be valid, talaq has to be pronounced as per the Quranic injunction. The term “pronounce” was explained as “to proclaim, to utter formally, to declare, to articulate”. The Supreme Court said, “None of the ancient holy books or scriptures mention such form of divorce.

The major hurdle that India as a country faces when it comes to regulating the religious laws is that even though the country is secular by nature, it’s a Hindu majority country, where minorities like the Muslims go a little overboard in their pledge to protect their culture and heritage and hence are averse to any sort of change, which is not the issue when it comes to Hindu law reforms, and the leaders of the country hence have to make sure that there isn’t any hostility building in any Indian community to ensure peace, however this cannot be regarded as a valid excuse for overlooking the basic human rights of Muslim women entrapped in such situations, this is merely an extra issue that the country faces as opposed to other Islamic countries that have done away with the practice.

There are many cases where the obiter dicta revolves around how the practice of triple talaq sees no mention in the Quran and hence is not in tandem with the essence of talaq.

The case of **Masoor Ahmed v. NCT of Delhi** is one such case where the topic has been vastly discussed giving out an explanation as follows; “It is an innovation which may have served a purpose at a particular point of time in 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. In this background, I would hold that a triple talaq (talaq-e-bidaat), even for sunnimuslims be regarded as one revocable talaq.”

The judgement in the case of **Mohammad Faroor vs. Chief of the Army Staff and Ors**³¹., gives an **insight into the changing Muslim world with respect to the laws of Islam**, for instance the **Moroccan Family Code** (Dooudawana) of 2004, puts the husband and wife on an equal footing and states that neither of them, especially the husband, can pronounce divorce

²⁹ShayaraBano vs. Union Of India and Ors. (22.08.2017 - SC Order) : MANU/SCOR/34974/2017

³⁰ Shamim Ara v. State of U.P, AIR2002SC3551

³¹ Mohammad Faroor vs. Chief of the Army Staff and Ors, MANU/AF/0094/2016

unilaterally except under judicial supervision. This, the Code explains, is to control and restrict the abusive arbitrary practices of the husband in exercising repudiation, and that **Pakistan**, has made considerable changes in its legislation to conform to the true meaning of Quran and the teachings of the prophet, it enacted a similar legislation (to Morocco) as far back as 1961 entitled **The Muslim Family Laws Ordinance**, like Pakistan, **Indonesia and Bangladesh** government officials **have to prove that they had gone for a divorce only after having made serious efforts to patch up their differences with their spouse**. In all these Islamic countries, **divorce is final only after a court verdict**. Even countries like **Algeria, Indonesia, Iran and Tunisia** have **de-recognized a husband's right to unilateral divorce** by legislating that all divorces must go through a court. Unlike in India, where Muslim women have no right to divorce, in **Turkey and Iran, both husband and wife enjoy equal rights for seeking divorce**. Turkey, Indonesia, Iraq, Iran and Bangladesh have legally banned one sided divorces, which gave men arbitrary powers to break marriages, while countries like **Egypt, Sudan, Jordan, Tunisia, Morocco, Pakistan and Bangladesh had banned the practice of triple talaq long ago**.

Even in **Sri Lanka**, where the Muslims constitute for only 10% of the population, the law is not overtly protective of them and their customs like in India, Sri Lanka's Marriage and Divorce (Muslim) Act, 1951, as amended up to 2006, doesn't recognize instant divorce. This is because the law requires a husband wishing to divorce his wife to give notice of his intention to a qazi (Islamic judge), who should attempt reconciliation between the couples over the next 30 days. It is only then the husband can give talaq to his wife – that too, in the presence of the qazi and two witnesses.

CONCLUSION

As understood in the recent judgement of the Indian Supreme Court in this matter, India now like most of the Muslim world deems Triple Talaq to be bad in theology and hence bad in law. However, the issue that still remains is, as to whether a practice is logically redundant and morally incorrect as per the day and age, yet still sound in theology, like perhaps the practice of polygamy, if the law can overstep and regulate those practices or whether they would remain protected as a part of the community's culture, or their right to freedom of religion if available in the said country.

Ideally the problem with any scripture-based law is its evolution with times, laws cannot be deemed immortal, for their purpose is governance of a society, that changes bit by bit every day. A norm prevalent today may as well become an atrocity of tomorrow. Humans grow and learn new things by the hour, and as their horizons broaden so does the definition of what is right and what is wrong, say for instance the practice of Sati, it was a norm once, something which the society of then considered to be just and right, but the same cannot be said for it today.

Hence it is grossly incorrect to protect the provisions of any text or law on the context of it having a religious backing, because the laws of a century ago in no way can be valid for a time today, the laws cannot live on, only their essence and spirit can, which must be constantly modified so as to make sure, that customs like Triple-Talaq or NikahHalala do not continue to exist to do just the opposite of emitting justice. Another issue that exists with religious texts and laws, is that since **they haven't been codified** (w.r.t Shariat in India) they are **subject to (mis)interpretation** and hence **are often bent towards a more patriarchal stance for the sake of convenience of those who act as middlemen between the follower and the**

word of God, hence making its appeal even more backward than what it may have originally intended.

BIBLIOGRAPHY

BOOKS

- I. Engineer Asgharali, *The Qur'an, Women, And Modern Society*, New Delhi: New Dawn Publications Inc. 2nded, 2005
- II. Engineer Asgharali, *Islam in Contemporary world*, New Delhi: New Dawn Publications Inc 2nded, 2007
- III. Engineer Asgharali, *The Rights of Women in Islam*, New Delhi: New Dawn Publications Inc 2nded, 2004
- IV. Subba Rao G.C.V. *Family Law In India*, Hyderabad: NarendarGogia and company, 2017
- V. Ahmed Furqan, *Triple Talaq: An Analytical Study With Emphasis On Socio-Legal Aspects*, Regency Publications, 1994
- VI. *The Quran*

ARTICLES

- I. Sarkar Urvashi, *Poll: Indian Muslim women want end to verbal divorce*, Al Jazeera (22/8/15)
- II. Rawal Urvashi Dev, *Man loses wife in a bet, forces her to sleep with friend on pretext of halala*, Hindustan Times (28/10/16)
- III. Khalid Saif, *What is 'triple talaq' or instant divorce?*, Aljazeera, (12/5/17)
- IV. NairShalini, *Meaning Talaq-e-Biddat and NikahHalala*, The Indian Express (26/10/16)
- V. Ahmad Athar, *The women who sleep with a stranger to save their marriage*, BBC Asian Network & Victoria Derbyshire programme (5/4/17)
- VI. IyengerShalini, *What is Nikahhalala, how it was established and where it stands in modern India*, The Indian Express (19/4/17)
- VII. Hindustan Times, *WhatsApp talaq: New York techie divorces wife in Hyderabad*, (17/3/17)
- VIII. Joseph E. B. Lumbard, *Understanding the relationship between Quran and Extremism*, (2016)[online] Available at: https://www.huffingtonpost.com/joseph-e-b-lumbard/understanding-the-quran-and-extremism_b_9528766.html [Accessed 14 Jun. 2018].

JOURNALS AND RESEARCH PAPERS

- I. Sanjana Rao, Suryakiran G & Tejas C Shetty, *The triple talaq tyranny*, JCIL Vol. 2 Issue 6
- II. Dr. Nafees Ahmed, *Triple Talaq : A tryst with Tyranny*, AMU Aligarh
- III. Nidhi Khare & Radhika Singh, *HalalaNikah: Marriage Against The Dignity Of Muslim Women? A Critical Analysis In Light Of The Indian Legal Scenario*, Human Rights International Research Journal : Volume 4 Issue 1 (2016)

- IV. Asghar Ali Engineer, Triple Divorce- Need for Change, 2004

ACTS AND STATUTES

- I. Sharia Act, 1937,
- II. The Dissolution of Muslim Marriages Act, 1939
- III. The Muslim Women (Protection of Rights on Divorce) Act, 1986

CASE LAWS

- I. Mohammad Farooq vs. Chief of the Army Staff and Ors, MANU/AF/0094/2016
- II. RahmatUllah and KhatoonNisa v. State of U.P, MANU/UP/0152/1994
- III. A.S. ParveenAkthar v. The Union Of India, (2003- 1-LW(Cr1)115)
- IV. Masroor Ahmed v. State (NCT of Delhi), (2007)ILR 2Delhi1329.
- V. Mrs Sabah Adnan Sami Khan vs Adnan Sami Khan, 2010(112)BOMLR1409
- VI. Shamim Ara v. State of U.P, AIR2002SC3551

WEBSITES

- I. Irshad Husain, Marriage in Islam-making hearts familiar, Islamfrominside.com, <http://www.islamfrominside.com/Pages/Articles/Marriage%20in%20Islam.html> (last visited Jul 15, 2017)
- II. SAHIH MUSLIM, BOOK 9: The Book of Divorce (Kitab Al-Talaq) Thereligionofpeace.com, <https://www.thereligionofpeace.com/quran/muslim/009-smt.htm#009.3493> (last visited Jul 14, 2017)