

## Revolution in the Islamic World: Triple Talaq

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### Abstract

In this article we have discussed about the different prospects about how islamization of women has affected Islamic women globally in the light of triple talaq. We went through an elaboration about the practice of triple talaq and the various social and religious aspects related to it. We have also discussed about the recent controversies about triple talaq and its implications on Muslim religion in a global prospect. Implications on Muslim women due to the various laws relating to divorce are briefly discussed. The various aspects of divorce by triple talaq and other laws of divorce present in the different schools of thought in the Muslim religion are also very briefly discussed.

The article additionally discusses about the global outlook towards the practice of triple talaq and how did other nations react to such practice which was against women's dignity. The story of triple talaq in India has been specifically focused and explained in detail how the evil practice was put to an end buy the various PILs and by the effort of various NGOs and also our political leaders and the parliament. The laws which are placed to curtail the practice of triple talaq which is deemed to be un-islamic and as per the modern world, which has been a member of United Nations which recognizes the equal rights of the partner during marriage as well as during divorce as a human right, treatment of this age old practice had been put to an end. Further the article raises an argument that whether the laws made against triple talaq (especially, in India) is free from any loopholes and urges for a certain solution.

**KEYWORDS:** Divorce, Muslim Law, Triple Talaq

### INTRODUCTION

Women are one such class who are mostly dominated in any society, in any field, also in any group or religion. In Islam, women are particularly subjected to harsh rules and laws. One such law is divorce law. We know that there are some contradictory verses in the Holy Quran which say men are superior to women and that men are having the responsibility to look after their female spouses. But these verses are wrongly interpreted by the Islamic scholars and had put the women in a helpless and dependent position.

Islamization of women in the general light is converting women to Islam or making them abide by the Islamic laws and regulations. In patriarchal societies that we have in almost all the countries, women are oppressed and have less power than men. Even in religious texts written by pious men, women are given less power in many important issues. For

the discussion of the present topic we will take the matter of the Muslims laws of divorce. There are as such many laws for divorce and each Muslim tribe and school of jurisprudence follows one of them. The practice of triple talaq has been said as the worst form of divorce by the Supreme Court. Islamization of women has made women to lose their rights over divorce and follow the age old custom of “triple talaq”. This has even been opposed by many Islamic countries internationally.

Triple talaq is a practice which is majorly prevalent in Indian Muslims especially the Hanafi Sunni Islamic schools of jurisprudence. It can only be given by the male member between the two couple to give instant and irrevocable legal divorce to his wife. For giving the divorce the male member just has to speak out the word “talaq” three times in oral, written or more recently in any electronic form.

In this form of divorce there is no compulsion for the male member to give any reasons for the divorce. In the recommended procedure the three pronouncements have to be done after an alternate period, during which reconciliation can be done, but in practice it was done at a single occasion only. After the divorce the woman must wait for a certain period which is known as the “iddat” to make sure that she is not pregnant. In this period the woman must not remarry. This is done to ascertain the male parent of the offspring produced.<sup>1</sup> A divorced woman can remarry her old husband only after she has been married to another husband. After divorce the woman will be having the custody of the male and female toddlers thereafter the custody of the children will go to the father.

As the speed Islamization is increasing in many Arab nations and also in nations where the Muslim population is relatively high, the women in those nations are being highly dominated. The law of divorce, Talaq, is one such law of Islam which allows a man to dissolve his marriage bond in an extra-judicial manner. A muslim man who wants to divorce his wife may utter or give in writing or by submitting in any electronic form, the words Talaq, Talaq, Talaq. This is known as triple Talaq. The triple Talaq gives the man the opportunity to divorce his whenever he wishes to and the concern of wife is of no value and thus the divorce would be binding on her.

The practice of ‘Triple Talaq’ is not considered as a moral practice if one goes according to the norms of the society. This is because the practice has ruined a lot of happy families and marriages. There are a plethora of cases relating to this practice which shows the mental trauma of women suffered by the women.<sup>2</sup>

This form of divorce is banned in the 22 major Muslim countries including Pakistan. This form of divorce has not been mentioned in the Shariat law or in the holy Quran. It gives power to divorce to the male member of the couple which was often used as whimsically and capriciously.

Triple talaq in Islamic law is based on the belief that the male member will have a good ground if he is divorcing the wife. But if the wife wants divorce and her husband does not

<sup>1</sup>CyraAkila Choudhury, *(Mis)Appropriated Liberty: Identity, Gender Justice and Muslim Personal Law Reform in India*, 17(1) CJGL 45,95(2008).

<sup>2</sup> Bhavya Bhatia & Saksham Mishra, *Oppression, Patriarchy and Its Legitimacy-A case for Triple Talaq*, 4 KIIT Student L. Rev. 8, 13-16 (2017).

agree to give a talaq, then she will have to abide by the Dissolution of Muslim Marriages Act in India.

The All Indian Muslim Personal Law Board has asked the Supreme Court of India to consider that the woman can also pronounce triple talaq and can issue nikahnamas. The urge of removing the practice of triple talaq has been understood by many countries decades ago. In India the practice has been made legally void by some recent cases and judgements.

Triple Talaq violates the basic human rights of women and inequality of gender takes place by giving unilateral power to men to divorce their respective spouses, which has been a global issue now. Long back in nations like Egypt, Syria, Algeria, Pakistan, Bangladesh, Afghanistan, Jordan, Libya, Kuwait, Morocco, Iraq and so on, instant divorce was causing a peril to women's life and thus there have been rules and laws implemented to stop such practice and orders are made that the divorce must be made through mutual agreement and through reconciliation. Thus, Islamization has been gradually reducing in those nations and women are also being given due importance to some extent. Although it took a lot of time, but in India too, in 2017 the Supreme Court has declared 'Triple Talaq' or 'Instant Divorce' as unconstitutional and void and an enactment has been passed by the parliament which declares the practice of Triple Talaq as a criminal offence. Globally, the issue of Triple Talaq has been taken seriously and is being avoided as far as possible in many nations which will be discussed elaborately in the following chapters.

## **ISLAMIZATION OF WOMEN**

In general Islamization means the conversion of someone into Islam or to convince a person or a group of persons to follow the path of Islam. The rules and regulations of most of the religions are distorted and converted according to the convenience of the powerful section of the society. Islam is no exception. Unfortunately we have a patriarchal society where men have made the rules according to their own wish. They have even distorted the rules of religion so that the powers always remain in their hands.

All religious man fears their worshipped Gods and Goddesses. Religion is the most vulnerable issue for all theists. So by changing the rules of one's religion according to one's own convenience, power can be achieved permanently. So in our male dominating society the rules and regulations tend to bend towards men giving them almost irrevocable power over women. In this article we are going to discuss particularly about the practice of Triple Talaq in Islam.

As we have discussed earlier that most of the rules tend to bend in favor of males so is the practice of triple talaq. Triple talaq is the practice of divorce done by the Sunni Muslims of the Hanafi School of Jurisprudence. In this practice the male partner of the couple merely has to say the word "talaq" three times for giving a divorce. In recent cases it has been found that besides giving talaq in oral and written forms men are giving divorce even by electronic forms as well such as that of E-mail, text messages, Whatsapp

etc. After a divorce is given, the divorced woman can remarry the previous husband only after marrying another person, a practice called Nikah Halala.

In the recommended practice a waiting period should be there between each pronouncement of talaq which is to be utilized by doing reconciliation. But in the usual practice the three pronouncements are given in one sitting only<sup>3</sup>. There has to be a waiting period before the divorce is to take place. This period is known as “iddat” which is to see if the woman is pregnant or not<sup>4</sup>. This is done to make sure about the father of the child born to the divorced woman in case the woman marries another man.

In case the woman wants divorce and the husband disagrees she will have to comply with the proceedings of the Dissolution of the Muslim Marriages Act. According to Sharia law, the woman who wants a divorce must convince her husband to agree to such by giving back the “mahr” which she has received from the husband during the marriage this practice is known as “khula”. If the husband does not agree to such then the woman must seek the proceedings under the dissolution of the Muslim marriage act. If the man still refuses to comply then the woman has to seek the decision of the “quazi” or Sharia court judge.

The Anglo Mohammedan law was replaced by the Muslim Personal Law Application Act of 1937 also called the Shariat law. This became applicable and binding on all Indian Muslims<sup>5</sup>. The Shariat law can be amended by persons called the “ulamas”. Ulamas of the Sunni Muslims consider triple talaq as correct and binding. However, the ulamas of Ahl-i Hadith, Twelver and Musta’li consider the opposite<sup>6</sup>. Although there were many debates between the ulamas of various schools of thought on this issue, the result was never satisfactory. The practice of triple talaq persisted among the Hanafi Sunnis of India.

Triple talaq is an age old practice. This practice has been started by the Sunni Muslims at about 1400 years back<sup>7</sup>. Back at that time it was accepted by the society. This acceptance has led to its out of bounds increase in the practice and has now reached a position where it is misused. Women are being given divorce whimsically by the husband without any reasonable cause. As a result it has been disproved by many Islamic legal scholars and religious men. But in spite of being frowned upon, this practice is still legal among the Indian Sunni Muslims.

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<sup>3</sup>Cyra Akila Choudhury, (Mis)Appropriated Liberty: Identity, Gender Justice and Muslim Personal Law Reform in India, 17(1) CJGL 45,95(2008).

<sup>4</sup>Cyra Akila Choudhury, (Mis)Appropriated Liberty: Identity, Gender Justice and Muslim Personal Law Reform in India, 17 Colum. J. Gender & L. 45, 73 (2008).

<sup>5</sup>Tazeen Mahnaz Murshid, *Inheritance: Contemporary Practice – South Asia*, 11 BRILL 303, 304(2003).

<sup>6</sup>Kinship, Descent Systems and State: South Asia, BRILL <https://referenceworks.brillonline.com/>.

<sup>7</sup> Press Trust of India (PTI), *SC strikes down 1400-yr-old Islamic practice of 'triple talaq'* Outlook THE NEWS SCROLL (August 22, 2017, 5:49PM), <https://www.outlookindia.com/newscroll/sc-strikes-down-1400yroid-islamic-practice-of-triple-talaq/1129346>.

The Modi government passed a bill against the practice of triple talaq after 100 cases of triple talaq or instant divorce has been filed<sup>8</sup>. The bill, namely, the Muslim Women (Protection of Rights of Marriage) Act, 2017 was passed by the Modi government which proclaimed that the practice of instant talaq in any form such as that of oral, written or in any electronic form void and illegal with an imprisonment for 3 years to the husband<sup>9</sup>. This bill was supported by the congress party but many other parties disapproved this bill as arbitrary and unconstitutional.

Since triple talaq is a practice which gives the sole power of divorce to men and no power to women, it should be considered as unconstitutional and biased and should be legally considered void. Whether the woman agrees or disagrees with the divorce is not taken into consideration. But when the woman wants to seek a divorce and the husband do not want, she has to go through a very complicated procedure as we have discussed earlier. This clearly shows the partiality in this practice.

The practice was developed ages ago in a much more open and flexible way. It engaged the couple to go into reconciliation but in today's society the system of talaq is being used in a very distorted and wrong way. The practice may have been suitable at that time when it was developed. But in today's society which is based on the ideologies of Justice, Liberty, Equality and Fraternity the practice of triple talaq should be eradicated. Our present justice system, which ensures its citizens all the four above mentioned ideologies, should take steps to put a ban on triple talaq legally because the practice clearly opposes all of those four principles on which our judicial system is based.

Triple talaq is being criticized by many religious leaders and scholars. It has also been banned in most of the major Islamic countries across the world. It's high time that we think about our society. There has been constant protest by Muslim women from all across the world against the practice of triple talaq. In India public interest litigation has been filed in the Supreme Court regarding this practice where triple talaq is considered as regressive. It's time that the right over marriage is considered as a fundamental right. There are many cases which have been filed in the Supreme Court about the ill-practice. Women should not be considered any less than that of men. In 2016, the All India Muslim Personal Law Board filed an affidavit in response to a case in the Supreme Court stating that "Sharia grants right to divorce to husbands because men have greater power of decision-making." These wrong and primitive mentalities that men have more powers than women should be changed for the betterment of the society as a whole.

There are many deaths among Islamic women because of this malpractice of triple talaq. In the Supreme Court there was a debate about this practice where the senior counsel for the women petitioners, Indira Jaising, exclaimed that triple talaq as an "extrajudicial,

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<sup>8</sup>'100 cases of instant triple talaq in the country since the SC judgement' THE TIMES OF INDIA (Dec. 28, 2017, 15:15 IST), <https://timesofindia.indiatimes.com/india/66-cases-of-triple-talaq-in-the-country-since-the-sc-judgement-law-minister/articleshow/62279519.cms>.

<sup>9</sup> Sandeep Phukan, *Lok Sabha passes triple talaq bill*, THE HINDU, (Dec. 29, 2017 1:16 IST), <https://www.thehindu.com/news/national/lok-sabha-passes-the-triple-talaq-bill/article22319663.ece>.

unilateral act that's civil death for a Muslim woman"<sup>10</sup>. These gender inequalities has led to a worldwide scenario where it is proved in the face of it that the practice is just an example of gender discrimination but even after knowing all of this yet they are widely accepted by the Sunni Islams especially in India. Such is the effect of Islamization on women that they are accepting all the rules and regulation blindly even if it is destroying their civil rights.

Islamization of women has led them to bear all this inequality against them. Nobody wants to get out of the age old customs and traditions that are prevalent in the society because they fear that it may displease their worshipped God but the changing society cannot sustain without the creation of new rules and changing customs. There are many men and even women who scorns against those who are protesting for the women's cause, because they think that the prevalent customs and traditions is the right and the only way towards salvation. Women are Islamized to believe that they are less than the males in the society. There are many ill-practices among Muslims which are against the equality of women but are embraced by them. Islamization for over centuries has instilled in the minds of men and women that society is meant to be patriarchal. But fortunately today's men and women both understand that society is actually meant to be equal and not inclined to any of the two sexes.

### **TRIPLE TALAQ AND GLOBAL OUTLOOK TOWARDS IT**

As it is the basic right of any person to decide whether to live in a matrimonial relationship or not<sup>11</sup>, if such right is given to only one person (i.e. either to wife or husband alone) then that would be injustice and inequality<sup>12</sup>. Same is the case with "Triple Talaq"<sup>13</sup>. In the Islamic law, a couple could get divorced in three ways: One is by an act of the male counterpart himself, which is famously known as Triple Talaq or Instant Divorce or as an extra-judicial divorce. Second a divorce by mutual consent or mutual agreement (khula or mubarat) and third, a divorce may be obtained through judicial order on the request of either husband or wife<sup>14</sup>.

Among all these ways, the first one which gives unilateral right to the husband himself has been under controversy and has been abolished by many nations. Now we are would know more on the aspect that how other nations treat triple talaq.

In America, which doesn't encourage any law which promotes any kind of inequality in their nation has took a step against triple talaq. The Americans, as usual, are very sensible towards the nation's constitutionality as well as morality. It strives hard to provide its citizens with utmost freedom and equality. In such case, it has long refused to apply the harsh Islamic laws, particularly talaq, which violates the basic values of the American

<sup>10</sup> *What Happened in Supreme Court on Day 1 Of Hearing on Triple Talaq*, NDTV (May 12, 2017, 00:48 IST), <https://www.ndtv.com/india-news/what-happened-in-supreme-court-on-day-1-of-hearing-on-triple-talaq-1692461>.

<sup>11</sup> *Shakti Vahini v Union of India*, (2018) 7 S.C.C. 19(India).

<sup>12</sup> INDIA CONST. art. 14, 15.

<sup>13</sup> *Muslim Personal Law (Shariat) Application Act, 1937*, S.2, 1937 (India).

<sup>14</sup> *Shayara Bano v Union of India*, (2017) 9 S.C.C. 1 (India).

nation<sup>15</sup>. For instance, state courts frequently refuse to enforce foreign divorce decrees based on the pro-husband Sharia principle of talaq, particularly where the husband attempts to use talaq in a Muslim country to avoid comity with American divorce law. In 2009, the Michigan Court of Appeals held in *Tarikonda v. Pinjari* that a lower court erred in recognizing the parties' divorce because the requirements for comity were not satisfied.<sup>16</sup>

Another nation Egypt, which is one of the Islamic nations, has made a lot of reforms in order to protect the women's rights. In reforming its divorce laws, Egypt proceeded along the same path as many of its neighbours that were also addressing issues in Hanafi law. This involved two main approaches. The first was to constrain the impact of the man's pronouncement of unilateral talaq in certain physical and psychological circumstances, so that either no divorce took effect, or a single revocable divorce was affected in place of what Hanafi law (and in some cases the law of all four Sunni schools) would have ruled a three-fold and irrevocable talaq. The second was to expand the grounds on which the wife could seek judicial divorce (tafriq/taliq) beyond the extremely constrained grounds available under the dominant Hanafi legal opinions; the approach here was, broadly, to specify, through using rules introduced from other schools of law, circumstances that would be considered harm or injury to the wife, giving rise to a right to the remedy of judicial divorce<sup>17</sup>. In order to implement these reforms, the nation has also made laws accordingly and is strictly followed.

Pakistan which is known for its cruel and harsh laws subjected towards women, the one which has high muslim population located in it, has been transforming itself by having a unique constitution which by keeping intact the Islamic laws alongside guarantees gender equality<sup>18</sup>. The Constitution recognizes almost all the guarantees of the United Nations Universal Declaration of Human Rights, including the right to life and liberty, to privacy of home, and to human dignity, which is "unparalleled and could be found only in few Constitutions of the world."<sup>19</sup>

In 1961, Pakistan has come up with new legislation which gave rise to Muslim Family Laws Ordinance (MFLO)<sup>20</sup>. MFLO would lay provisions which would specifically protect the weaker sex (women) from the dominance of the men. Then the MFLO attempted another major break from tradition by rendering all forms of divorce revocable and invalidating the talaqal-bi'da, the triple talaq pronounced in one sitting<sup>21</sup>. Because the triple talaq is not a Qur'anic practice, but an innovation divorced from Islamic principles

<sup>15</sup> Nathan B. Oman, *Shariat Law Poses No Threat to American Courts*, DESERT NEWS (Dec. 19, 2010, 12:00 AM), <https://www.deseretnews.com/article/700092695/Sharia-law-poses-no-threat-to-American-courts.html>.

<sup>16</sup> Sarah M. Fallon, *Justice for All: American Muslim, Sharia Law, and Maintaining Comity within American Jurisprudence*, 36 B.C. Int'l Comp. L. Rev. 153, 172 (2013).

<sup>17</sup> Lynn Welchman, *Egypt: New Deal on Divorce*, 2004 Int'l Surv. Fam. L. 123, 125 (2004).

<sup>18</sup> Shehla Zia v WAPDA, P.L.D. 1994 S.C. 693 (Pakistan).

<sup>19</sup> Karin Carmit Yefet, *Constitution and Female-Initiated Divorce in Pakistan: Western Liberalism in Islamic Grab*, 34 Harv. J. L. & Gender 553, 564 (2011).

<sup>20</sup> The Muslim Family Laws Ordinance, 1961, S. 7-9, (Pakistan).

<sup>21</sup> The Muslim Family Laws Ordinance, 1961, S. 7, (Pakistan).

of justice, the Constitution's mandate to follow Islamic law should require courts to dispense with this form of divorce, especially since Pakistani law has tended to read Islamic law to enhance, rather than constrict, human rights, including gender equality. If the constitutional or Islamic rights to equality are to have any meaning, then triple talaq must be banned outright.<sup>22</sup>

Also, there are many nations in which most of them are categorized as Islamic nations and still don't encourage triple talaq in their nation. For example, extra-judicial divorce has been denied legal effect in Algeria, Iran, Iraq, Morocco, and Tunisia, and in Iran the husband cannot divorce his wife without cause. The so-called triple talaq, where a final repudiation is achieved by pronouncing the divorce formula three times on one occasion, has only the force of a single repudiation in Egyptian, Iraqi, Jordanian, Moroccan, and Sudanese law. Conditional talaq has been regulated in the wife's interests in Egypt, Jordan, Morocco, the Sudan, and Syria.<sup>23</sup>

In India, which is well known as a secular nation<sup>24</sup>, was also facing problems due to arbitrary and unilateral power given to Muslim men to divorce their female spouses and suppression subjected over their wives. This kind of power of Muslim men was violating the basic human rights guaranteed by the nation to the women<sup>25</sup>. As this practice of the triple talaq was proving derogatory to their constitution provisions, India too abolished this kind of instant divorce<sup>26</sup>.

Triple talaq and Nikha Halala are not prescribed in the Holy Quran, the main source of Sharia and Muslim Law<sup>27</sup>. The practice of pronouncing one-sided irrevocable triple talaq by Muslim husbands does not keep up with the progressive spirit of the Quran, neither with the magnanimous ideals of the equality and justice of the Indian Constitution. Because Triple Talaq as exercised in India is a deviation from the Quranic norm which calls for two talaqs at an interval, to be followed by yet another interval before it becomes valid and irrevocable. The Quranic mandates also calls for setting up a reconciliation machinery and, thus, indirectly making the process justiciable by a competent authority<sup>28</sup>.

The system of Triple Talaq is an infringement and violation of various Fundamental rights<sup>29</sup> like the Articles 14, 15, 21 and 25<sup>30</sup>. This type of talaq is plagued with the

<sup>22</sup> Karin Carmit Yefet, *Constitution and Female-Initiated Divorce in Pakistan: Western Liberalism in Islamic Grab*, 34 Harv. J. L. & Gender 553, 583-585 (2011).

<sup>23</sup> Marco M. G. Gaudagni, *Colonial Origins of the Public Domain in Southern Somalia (1892-1912)*, 22 J. Afr. L. 1, 47 (1978).

<sup>24</sup> S. R. Bommai v Union of India, (1994) 3 S.C.C. 1 (India).

<sup>25</sup> Ians, *Triple Talaq, Polygamy Violate Muslim Women's Right to Equality: Center Tells SC*, THE NEWS MINUTE (April 11, 2017, 07:33 AM), <https://www.thenewsminute.com/article/triple-talaq-polygamy-violate-muslim-women-s-right-equality-centre-tells-sc-60143>.

<sup>26</sup> Shayara Bano v Union of India, (2017) 9 S.C.C. 1 (India).

<sup>27</sup> Wetenschappelijke Raad voor het Regeringsbeleid & Scientific Council for Government Policy, *The Development of Law and Legal Systems*, A.U.P., 2006, at 109, 111.

<sup>28</sup> Syed Shahabuddin, *Triple Talaq*, 30 E.P.W. 846, 846 (1995).

<sup>29</sup> Razia Patel, *Indian Muslim Women, Politics of Muslim Personal Law and Struggle for Life with Dignity and Justice*, 44 E.P.W. 44, 48-49 (2009).

<sup>30</sup> INDIA CONST. art. 14, 15, 21, 25.

ailment of inequality which conflicts with equality which is cherished in Article 14 of the Constitution of India. Talaq-ul-Biddat is violative of 'no discrimination' clause enshrined in Article 15 of the Constitution of India. Furthermore, Talaq-ul-Biddat defects the essence of Article 21. It is also important to note that Article 13 of the Constitution evidently provides that any law which is in derogation with the Fundamental Rights shall be void, and it applies fairly to the laws existing proceeding the coming into force of the Constitution and in addition to the new laws being framed by a legislation<sup>31</sup>. The rights of the Muslim men to give unilateral Talaq to their wives, under the Muslim Personal Law, are derogatory to the aforementioned Fundamental Rights. In India, the Constitution is supreme and no one can go against it. Thus, Muslim Personal Law is void; atleast to the extent it is inconsistent with the Fundamental Rights.<sup>32</sup>

As this practice of triple talaq was proving derogatory to the Constitutional provisions, India too abolished this kind of practice<sup>33</sup>. However, India banned triple talaq; it has been criticized for its delay in taking such step<sup>34</sup>. While other nations were a way too far in such matter along with reformed laws and provisions, India was too late in abolishing such evil practice which was perilous to the basic human rights of all women due to some political reasons<sup>35</sup>.

Although India was late it also came up with a specific law i.e. The Muslim Women (Protection of Rights on Marriage) Act, 2017. This act saves women from any kind of arbitrary and unilateral divorce and preserves their rights on such issue<sup>36</sup>.

In recent judgement, Bangladesh also declared that the utterance of talaq thrice by a Muslim man in order to attain divorce as invalid and also illegal as per their nation's law. Hence, the Bangladesh too has officially declared triple talaq as void and banned it.

Thus, the triple talaq has not only been one nation's problem but a global issue, because of rising position of the women in the society. They too are being recognized and their well-being is also given a due importance. Women are now being educated. They too are now aware of their rights and fighting for their rights and freedom without any fear now. So every nation is trying to safeguard their right. If there is any hindrance to the enjoyment of their rights, for example triple talaq, the nations are not ignoring it. Every nation is taking it seriously; simultaneously many nations took a step forward and banned such hindrance to ensure that women's rights are safeguarded. With changing society,

<sup>31</sup> Shahid Azad v. Union of India, 2018 S.C.C. Del. 11620 (India).

<sup>32</sup> Bhavya Bhatia & Saksham Mishra, *Oppression, Patriarchy and Its Legitimacy-A case for Triple Talaq*, 4 KIIT Student L. Rev. 8, 13-16 (2017).

<sup>33</sup> Shayara Bano v Union of India, (2017) 9 S.C.C. 1 (India). OR Shahid Azad v. Union of India, 2018 S.C.C. Del. 11620 (India).

<sup>34</sup> Zeenat Saber, *India: Triple Talaq or Instant Divorce Now a Criminal Offence*, AL JAZEERA NEWS (Sept. 19, 2018), <https://www.aljazeera.com/news/2018/09/india-triple-talaq-instant-divorce-criminal-offence-180919073349658.html>.

<sup>35</sup> Mili Mitra, *Why Did India Take So Long to Outlaw Instant Divorces Against Women*, THE WASHINGTON POST (Aug. 22, 2017), [https://www.washingtonpost.com/news/global-opinions/wp/2017/08/22/why-did-india-take-so-long-to-outlaw-instant-divorces-against-women/?utm\\_term=.c7a3abd34b2e](https://www.washingtonpost.com/news/global-opinions/wp/2017/08/22/why-did-india-take-so-long-to-outlaw-instant-divorces-against-women/?utm_term=.c7a3abd34b2e).

<sup>36</sup> Muslim Women (Protection of Rights on Marriage) Bill, 2017, S. 3-7 (India).

the public too are changing and the nations has also transformed from harsh Islamic states to nations which care for gender equality and justice.

This change is not small. This would be the building block for a peaceful society tomorrow. After all women are part of the population and their protection is the nation's responsibility. No person, no man, no nation, no law, no religion is having any right to discriminate them, oppress them or make them feel inferior.

### TRIPLE TALAQ IN INDIA

In India triple talaq had raised certain issues which can be named as issues of gender justice and equality, violation of human rights of women<sup>37</sup>, issue of secularism and also the issue of unequal application of Uniform Civil Code which is present in article 44 of the Indian Constitution<sup>38</sup>. These issues have been solved by implementation of specific legislations.

The triple talaq which was regarded as unconstitutional faced a lot of oppositions from the beginning because it was not even permissible according to interpretations of Quranic norms<sup>39</sup>. The first ever case which raised the topic of triple talaq was the Shah Bano case.

In the case, Mohd. Ahmed Khan v. Shah Bano Begum<sup>40</sup>, a divorced woman named Shah Bano Begum Filed a case against her husband demanding for Rs. 500 per month as maintenance for her and her daughters and gave the reference of Section. 125 of Criminal Procedure Code of India<sup>41</sup>. The Supreme Court when dealing with the above case a lot of objections were being raised stating that the case must be referred as per the Muslim Personal Law whose laws mostly favored the Muslim men<sup>42</sup>. Later on the formulation of "The Muslim Women (Protection of Rights on Divorce) Act, 1986 took place in India. This legislation passed by the Rajiv Gandhi Government aimed at safeguarding the maintenance rights of the women by deciding husband's financial liability towards his divorced wife or wives<sup>43</sup>.

As the time pass the issue of Muslim divorce rose up even more. This time the issue was the manner of divorce itself. This was such an issue which was not replaced by a

<sup>37</sup> FlaviaANGES, *Gender Concerns and Minority Safeguards within a Communalised Polity: Can Conditional Nikahnama Offer a Solution*, 10 NUJS L. Rev. 427, 447 (2017).

<sup>38</sup> Narendra Subramanian, *Legal Change and Gender Inequality: Changes in Muslim Family Law in India*, 33 Wiley 631, 645-646 (2008).

<sup>39</sup> Muhammad Munir, *Triple Talaq in One Session: An Analysis of the Opinions of Classical, Medieval, and Modern Muslim Jurists under Islamic Law*, 27 Arab L.Q. 29, 32-33 (2013).

<sup>40</sup> Mohd. Ahmed Khan v Shah Bano Begum And Others, (1985) 2 S.C.C. 556 (India).

<sup>41</sup> Amie Sugerman, *A Minority View: The Implications of the Shah Bano Decision on Indian Policy Towards the Separation of Church and State*, 2 Dartmouth C. Undergraduate J.L. 26, 27-28 (2004).

<sup>42</sup> *Muslim Women Discriminated by Personal Laws? SC asks Centre to High Level Panel's Report*, THE LIVELAW NEWS NETWORK (March 28, 2016, 2:13 PM), <https://www.livelaw.in/muslim-women-discriminated-personal-law-sc-asks-centre-submit-high-level-panels-report/>.

<sup>43</sup> *Rights of Shia Women*, 41 E.P.W. 4928, 4928 (2006).

common civil code also known as Uniform Civil Code<sup>44</sup>. So the triple talaq became more frequent in the society. Many efforts were made to curtail such issue, for example: there was the role of United Nations to stop such practice by implementation of The United Nations Universal Declaration of Human Rights. The article 16 of UDHR declared that equal rights to both men and women during marriage and at its dissolution as universal human right of every citizen<sup>45</sup>. Based on this many nations even banned triple talaq but in India it was still prevalent.

Then there was a public interest litigation filed against the practice of triple talaq stating it to be regressive, violative of women's human rights etc. The petitioners asked for the repeal of sec. 2 of the Muslim Personal Law (Sharia) Application Act, 1937, because according to that all the Muslim divorce cases were subjected to only Muslim Personal Law. This deprived the women to seek justice in any tribunal and also it was violating the article 14 of the Indian Constitution. Hence the PIL demanded a quash of section 2 of the said act<sup>46</sup>. In the meanwhile, Supreme Court came across many cases in which women were being divorced ruthlessly and arbitrarily by Muslim men. One such case was the Shayara Bano case, a recent one in which the wife has been divorced by her husband on the utterance of triple talaq. The wife approached the court for justice. The Supreme Court in the Shayara Bano v. Union of India & Ors.<sup>47</sup>, looking into the matter declared in its majority judgement of 3:2 that the triple talaq was against the constitutional morality, violated the dignity of women and also against the principles of gender justice. As this practice gave men the arbitrary and unilateral powers and men were also using in frequently leaving no room for reconciliation, Supreme Court of India declared triple talaq as void and unconstitutional<sup>48</sup>.

The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was new law passed by the Modi Government immediately after banning triple talaq and this law is in the favor of Muslim women as to safeguard their rights related to marriage and its dissolution and also declares the triple talaq as void and illegal<sup>49</sup>. Sections 3 and 4 under chapter 2 of the above bill declares the practice of triple talaq as void and illegal and harsh punishment is also provided for performing such practice respectively<sup>50</sup>. Punishments include 3 years of jail, maintenance costs to be provided to the wife, only a magistrate is eligible for giving bail in such cases and not any police officer and the magistrate have to speaking to the wife before giving such bail. The Law Minister of India, Ravi Shankar Prasad supported such legislation. This bill was not passed by the Rajya Sabha so the Lok Sabha legislated a new bill The Muslim Women (Protection of Rights on Marriage) Bill,

<sup>44</sup> S. Sadhana & Mrs. S. Bhuvaneshwari, *A Contemporary Study on the Uniform Code*, 120 I.J.P.A.M. 4683, 4689-4690 (2018).

<sup>45</sup> *Universal Declaration of Human Rights*, 35 Women Law. J. 12, 14 (1949).

<sup>46</sup> *Breaking: SC Constitutional Bench to Examine the Validity of Polygamy and Nikah-Halala [Read All Petitions & Order]*, THE LIVELAW NEWS NETWORK (March 26, 2018, 12:37 PM), <https://www.livelaw.in/breaking-sc-constitution-bench-examine-validity-polygamy-nikah-halala/>.

<sup>47</sup> *Shayara Bano v Union Of India And Others*, (2017) 9 S.C.C. 1 (India).

<sup>48</sup> Prateek Kushwaha, *The Journey of Triple Talaq in India*, 4 IJL 98, 100-101 (2018).

<sup>49</sup> Nandita Rao, *Triple Talaq Ordinance: The Modi Govt's Shah Bano Moment*, THE LIVELAW (Sept. 25, 2018, 5:18 PM), <https://www.livelaw.in/the-tuesday-column-triple-talaq-ordinance-the-modi-govts-shah-bano-moment/>.

<sup>50</sup> Muslim Women (Protection of Rights on Marriage) Bill, 2017, S.2-3, (India).

2018, after making some correction to the previous bill and it was passed in the Lok Sabha in 27<sup>th</sup> December 2018. This legislation would not only stop discrimination of women but also empowers women to take action against such practice and preserve their fundamental rights. This law helps the Muslim women to defend themselves from unilateral divorce given by their husbands<sup>51</sup>.

When the Muslim Women (Protection of Rights on Marriage) bill, 2017, was introduced in the Parliament's last sessions, there was a request made to the Government for approving an ordinance as per Article 123 of the Indian Constitution, to criminalize triple talaq. This led to formation of Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 by the Modi Government. Soon after the formation of this Ordinance, 2018, there were many pleas and petitions challenging it. In a Supreme Court Case, *Shahid Azad v. Union of India*, the petitioner pleaded the ordinance to be contrary to the practices and beliefs of Islam as well as discriminatory in nature. Finally, the apex court made it clear that this Ordinance only hold the instant and irrevocable talaq as an offence, thus dismissing all the similar petitions upheld the validity of the Ordinance, 2018.

These can be recognized as part of only one side of the law, i.e. only positive side of the legislation. There are also loophole presents in this legislation which can lead to dangerous consequences. As the Muslim Women (Protection of Rights on Marriage) Act, 2017 is mostly in the favor of women, there is danger to the innocent men who may be threatened by their wives to not to divorce them. There may be situations where the wife, who doesnot wish to return the Mahr (dowry) given by the husband at the time of marriage during the time of divorce, would threaten the husband by saying that she would put him behind the bars, if he asks for the return of Mahr. The husband might be threatened by their wives with false allegations of domestic violence and satisfy their demands. Thus, the punishment for utterance of triple talaq must be not too harsh because any one would come and simply say that her husband has uttered talaq three times to divorce her without any evidence and then that man would punished with three years of imprisonment, even though he might be innocent. This would be injustice on the part of Muslim men and thus the law must be made in such a way that it causes justice for all<sup>52</sup>.

Not only this, but there is also a danger of occurrence of another issue which is related to the women's rights to property and maintenance. This issue is partly related to the absence of uniform application of personal laws in the nation and partly related to reforms made in the new land ceiling acts in different states. If a wife is divorced as per the sharia law, i.e. triple talaq then she would be deprived of maintenance from her husband provided that the husband has written some property on her name. And now as the triple talaq is banned then the new Land Ceiling Acts in different state of India makes it tougher for Muslim women to claim their rights on that property which was given to her on her divorce, if the property is calculated inclusive of her property. Because as per

<sup>51</sup> *Lok Sabha Passes Triple Talaq Bill; Law Minister Says it was not Against Any Religion but to Give Justice to Women*, NEWS SERVICES DIVISION OF AIR (Dec 28, 2018, 8:15 AM), <http://www.newsonair.com/Main-News-Details.aspx?id=357197>.

<sup>52</sup> Abantika Ghosh, *Triple Talaq Bill Heads to Lok Sabha: Non-Bailable Offence, Three-Year Jail Term*, THE INDIAN EXPRESS (Dec 22, 2017, 10:16 AM), <https://indianexpress.com/article/india/triple-talaq-bill-heads-to-lok-sabha-non-bailable-offence-3-year-jail-term-winter-session-4993761/>.

law triple talaq is void and the wife would be deemed to be not divorced. Thus the women are having the danger of losing maintenance as per the Sharia Law and would also lose her property as per the provisions of the Land Ceiling Act. Hence the government must look into these issues too and re-make the law accordingly.

## **CONCLUSION**

Change is inevitable. Everything in our world depends on change. We change for the good for becoming better every day. We gain and gather experiences and lessons to evolve into a better human being. Whatever we do we are doing it for the good of mankind. Every instant we are developing new rules and laws, changing primitive customs, amending old laws and all this we are doing in search for the ideal society which is based on the four ideals of Justice, Liberty, Equality and Fraternity. Our society is male dominated from time immemorial, women are dominated in the society in many aspects. In light of the present issue on triple talaq, we have discussed how even the Islamic states have banned the practice of triple talaq to protect the civil rights of Muslim women. We have seen how women had protested against the malicious practice of getting divorced without any reasonable cause. The various cases that were filed in the Supreme Court and judgements that were given makes it very clear that the practice of triple talaq means “civil death” of Muslim women.

In India the practice of triple talaq has been prevalent for many years. Fortunately, it has been an issue which has attracted a lot of attention especially due to the Supreme Court case. With all the number of people rising and protesting against it, the media giving death reports due to this ill-practice, the pressure on the international ground and the numerous cases and PILs getting filed on the Supreme Court and on the high courts regarding the issue of triple talaq, the Modi government has passed two bills in the parliament till now but none of them is passed in the Rajya Sabha till now but it shows that essential measures are being taken and the evil practice is no longer tolerated. This has been a great triumph for the Indian Muslim women and has also served as a step forward for those who are fighting for women’s cause in our patriarchal society.

Even after all this still the practice of triple talaq is not totally eradicated from our country. Many Muslim women, influenced by the effect of Islamization, tends to tolerate this mal-practice thinking it is the rule of Islam and that the prophet has preached it. People should be educated and made aware that there is no mention of the practice of instant talaq in the Quran. People should be made aware of their rights over marriage and the laws that are present against it. With education and proper understanding of the law we will be able to eradicate the inhuman practice of triple talaq from all over the world.