

Muslim Women and Triple Talaq: A Historical and Contemporary Study of Changing Trends

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Abstract

Practiced under the authority of a religion whose most prominent messenger has categorically disapproved of it, triple talaq has been in the cradle of controversy right from its inception. While the Supreme Court in the Shayara Bano Judgment has laid to rest the question pertaining to the constitutionality of triple talaq, the debate on the issue is still far from over. First, this essay will discuss the position of women in the pre-Islamic and early Islamic society and the peculiar circumstances surrounding the origin of this practice, while also analyzing its sanctity through interpretations of Koranic provisions by two conflicting bodies of jurists. It will then analyze the practice of triple talaq focusing on the social aspects of the issue, and how it is not only a tussle for rights between the parties to the contract of marriage but also between the factions of orthodox and modern followers of the religion. The essay will then assess the position of triple talaq in Islamic states around the world and exhibit how this recent phenomenon in India was not a solitary one but a part of a much larger ongoing shift worldwide. To conclude, the essay will argue that despite the progress that has been made so far, in most states a lot is still left to be done to ensure that there is gender parity in the true sense, and both parties in the marriage have equal rights and obligations under the contract of marriage under Islamic Law.

KEYWORDS: Divorce, Muslim Law, Triple Talaq

Triple talaq is a polarising topic of discussion, with opinions ranging from absolute support to vehement opposition. Despite the controversy it is embroiled in, from an academic perspective it has a lot to offer. While on the surface this is an issue dealing with the violation of the Human Rights of the women who have suffered injustice due to the continuance of this practice. On a deeper inspection, it is a multifaceted issue dealing with the relationship between the religious law and the civil law with both vying for supremacy. It can also be used to highlight the importance of the ideology of an interpreter of religious texts, since, in discussions related to this issue, two schools of interpretation contend two contradictory conclusions from the same holy text, each with the intention to further its agenda. It also highlights the broader conflict of a religion and culture trying to stay true to its root while also trying to accommodate the sensibilities of the changing times in order to keep itself relevant. This work delves into a deeper analysis of the aforementioned issues and other related themes.

An essential pre-requisite for understanding Islamic practices prevalent today is an understanding of the Islamic holy texts and the historical context from which these practices have emanated, a pre-condition that becomes even more important in the case of triple talaq, which is practiced widely under the authority of a religion whose most prominent messenger has categorically disapproved of it.¹ In order to understand the position of women in Islam, it is imperative to understand their position in the pre-Islamic era, referred to in the Koran as, Jahiliyyah (period of ignorance). A lot about this period can be learned by a study of literary forms of expression like narratives along with mentions about this era in the Koran and hadiths. The Koran describes various repressive practices to which women were subjected to in this period, such as the practice of women being treated as an inheritance, a practice which was ended by the Koran while at the same time laying down that the women of the family were to be given the right to inherit.² During the Jahiliyyah period the husband, having purchased the wife, could get rid of her at his will by way of pronouncement of the formula of dismissal³ while the introduction of Islam led to a curtailment of the husband's power to dissolve the marriage by the introduction of a three months waiting period, referred to as iddat and a requirement of paying a fixed financial compensation to the women. Another alteration brought about by the ushering in of Islam was limiting the number of wives a man could have at a time to four, a practice which prior to this was completely unregulated.⁴ The role of women in the formative decades of Islam, especially by the wives of the Prophet, Khadijah (his first wife) and Aishah (his youngest wife) was crucial. Khadijah is considered one of the first followers of Islam after placing her belief in the Prophet during the time he received his initial revelations.⁵ She aided and advised him during the tumultuous time in early Mecca. Whereas, Aishah played a much more prominent role after the death of Prophet, "draw half of your religion from this ruddy-faced woman",⁶ he stated which indicates to her role, which was pivotal in shaping the religion in those early days. She was considered as an authority on many matters pertaining to her husband's teachings. Although, it is important to note, that after the end of this initial era in Medina the level of involvement of women in the shaping of the religion, was drastically curtailed and with the spread of Islam into more culturally different states like Persia etc., the Islamic teaching were altered in order to harbour the cultural sensibilities of these states.

The regulation of marriage (nikah) is considered as a stark shift from the disorderly and immoral ways of the Jahiliyyah. Islam treats the act of marriage as a sacred religious duty, laying down that marriage is considered as one half of the religion.⁷ The importance of this can be further ascertained by the disapproval of the Prophet

¹M ABUL A' ALA MAUDUDI, THE LAWS OF MARRIAGE AND DIVORCE IN ISLAM 22 (Prof.Fazl Ahmed trans., Islamic Book Publications 1983).

² The Koran (n.d.) ("[O] you who have believed, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take "back" part of what you gave them unless they commit a clear immorality").

³REUBEN LEVY & HERBERT SPENCER, AN INTRODUCTION TO THE SOCIOLOGY OF ISLAM 230 (Williams & Norgate 1933).

⁴ The Koran 4:3.

⁵ Al-Tabari, A. H. 1329, 28:90.

⁶ Amina Abdullah & Abu Shehab, Women, Islam and Modernity, (1993) (published MPhil thesis, London School of Economics and Political Science) (on file with the London School of Economics Thesis Online).

⁷ Al-Mu'jan Al-Awsat 992 (Statement of Anas ibn Malik) ("[W]hoever Allah provides with a righteous wife, then Allah has assisted him in half of his religion. Let him fear Allah regarding the second half").

towards celibacy.⁸ So while the institution of marriage is granted a position of great importance in Islam, unlike other religions such as Christianity and Hinduism, it accepts that this institution is not infallible. Thus, even though Islam disapproves of it, the procedure pertaining to the dissolution of nikah is provided for in the Koran. Therefore, the issue pertaining to divorce under Islam is not concerned with the validity of divorce, which it indubitably allows, but with whether it allows a unilateral and unfettered right to one of the parties with regard to such dissolution and at the epicentre of this discourse, is the practice of triple talaq or talaq-ul-biddat. It is believed to be promulgated in the era of the Umayyad Dynasty, as a means to circumvent the limits imposed by the Prophet on the authority of men to dissolve the marriage, which was till then unfettered.⁹ The scholars state that the second Caliph Hazrat Umar enforced talaq-ul-biddat taking into consideration the extraordinary needs of that time. It is believed that during the war of conquests women from various places such as Egypt and Syria amongst others were captured and brought to Medina. The Arabs sought to marry them, for which they set the condition that these men divorce their wives thrice in order to ensure that the termination of marriage is irrevocable. Although, these women were oblivious to the fact that three pronouncements were treated as one under the Koranic Law. Therefore, in order to marry these women, the Arabs would pronounce three divorces to their wives but would later take them back, which resulted in a flood of disputes and thus, in order to prevent this, 'Umar' deemed it necessary to decree such divorce as irrevocable.¹⁰ Under this form of dissolution, the husband renounces his wife by three pronouncements of divorce at once or he repeats them separately thrice within one tuhr (sign of purity).¹¹ The essential feature of this form of talaq is its irreversibility. Although it is also believed that a triple repetition is not a sine qua non for talaq under the biddat form and that the intention to render the talaq as irrevocable can also be expressed by a single pronouncement.¹² A practice which is condemned as a sin by the prophet¹³ since it leaves no room for discussion and arbitration between the spouses, a condition to which parties are suggested to take recourse to prior to initiating dissolution¹⁴ in order to prevent the capricious use of talaq.¹⁵ The verse¹⁶ relating to Nikahhalala in its misconstrued sense has been used as a justification for this unconscionable practice, which very much like triple talaq is, as practiced in its modern form, an absolute corruption of the Koranic edict. This practice is closely linked with triple talaq and its irrevocable nature. The word halala is derived from the Arabic word halal meaning permissible or that "which is considered appropriate or

⁸ Vol. 3, Book 9, Hadith 1848.

⁹ Dr. Naima Huq, *Talaq: A Modern Debate*, 6 DUJ 33, 45-47 (1995).

¹⁰ ASGHAR ALI ENGINEER, *THE RIGHTS OF WOMEN IN ISLAM* 125 (C. Hurst & Co., 1992).

¹¹ ALI IBN ABI BAKR, *THE HEDAYA, OR GUIDE A COMMENTARY ON THE MUSSULMAN LAWS* 73 (Charles Hamilton trans., 1957).

¹² JUSTICE ALTAF HUSSAIN, *STATUS OF WOMEN IN ISLAM* 586 (1987).

¹³ M ABUL, *supra* note 1 at 31.

¹⁴ The Koran 4:35.

¹⁵ MAULANA MUHAMMED ALI, *THE RELIGION OF ISLAM* 627 (Ahmadiyya Anjuman Ishaat Islam 1990), <http://aaiil.org/text/books/mali/religionislam/religionofislam.pdf> (last visited Jun. 11 2018).

¹⁶ The Koran 2:229, ("[Y]e may divorce your wives twice, after that ye must either retain them with kindness, or put them away with benefits....If then the husband divorces her (a third time), it is not lawful for him to take her again, until she shall have married another husband, and if he also divorces her, then no blame attaches to them if they return to each other").

permitted within the bounds of Islam.”¹⁷ The Koran, as stated, lays down that after being divorced by her husband, the wife becomes haram to him, a predicament that can only be rectified if she marries another man and he divorces her, in which case she is allowed to marry her first husband again. This practice in its modern form has resulted in the rise of temporary marriages,¹⁸ whose sole object is a divorce, where a woman pays the man to marry her and consummate the marriage, only to be subsequently divorced so that she can marry her first husband again, which in the opinion of various academicians is under certain circumstances, comparable to rape.¹⁹ Authors have argued that the practice in its modern form has defeated the aim of restriction that the Koranic provision sought to enforce, which was that a man can divorce his wife only twice after which she was free to marry anyone she chooses, therefore, empowering her with the freedom of choice rather than forcing her to marry and consummate with another man in order to save her previous marriage.²⁰ While there is still great ambiguity pertaining to the validity of this practice in India, the Supreme Court has recently sought the Government’s reply on a plea against the practices of polygamy and nikahhalala.²¹ With regard to the view of Koranic provisions pertaining to the authority to pronounce talaq, there are two schools of jurists with contrasting interpretations, the Orthodox jurists who believe that the husband has the unilateral authority to pronounce divorce and the modern jurists, who believe that this authority is not unfettered and is subject to conditions.²² While the former cites Koranic statements which they believe decrees the superiority of men over women²³ and of the rights of men over the rights of women.²⁴ The modern jurists disagree with such views and hold that these verses do not intend to undermine the equality of the sexes but that the superiority referred to herein, is a mere biological fact and not a social one.²⁵ They argue that the Koran imposes certain restrictions to this power of the husband and that it is permitted only in circumstances where it is absolutely necessary²⁶ and that even in these cases, she should be “released in kindness”.²⁷

Islamisation was traditionally conceived to be fundamentally associated with radical Islamic practices as the term is born where the religion finds its source, in the principles embedded in the bedrock of Islam. In actuality, Islamisation is the evolution of a process which insists on a better degree of compliance with the Islamic practices in accordance with the perception that is well suited for the school of thought one advocates. The initial theoretical approach to understanding this

¹⁷GARY R. BUNT. ISLAM IN THE DIGITAL AGE: E-JIHAD, ONLINE FATWAS AND CYBER ISLAMIC ENVIRONMENTS 45 (Pluto Press 2003) (statement of Hazrat Umar) (“[T]he second Caliph during his reign ruled that those performing a pre-planned *halala* would be punished by being stoned to death”).

¹⁸DR. RAJESH KUMAR SINGH, TEXTBOOK ON MUSLIM LAW 125 (1st ed., Universal Law Publication 2011).

¹⁹Rashi Gupta, *Abominable rapes in the name of NikahHalala: An analytical study of Halala with special reference to Rape Laws in India*, 3 INT’L J. ADV. RES. DEV, 131,134 (2018).

²⁰ZIYA US SALAM, TILL TALAQ DO US APART 120(Penguin Books 2018).

²¹*Supreme Court seeks govt’s reply on plea against polygamy, nikah halala*, INDIAN EXPRESS, (Apr. 23, 2018 8:29 PM), <http://indianexpress.com/article/india/supreme-court-seeks-govts-reply-on-plea-against-muslims-polygamy-nikah-halala-5148785/>.

²²Dr. Naima, *supra* note 9 at 34-36.

²³ The Koran 4:34.

²⁴ The Koran 2:228.

²⁵ ASGHAR, *supra* note 10 at 53.

²⁶ MAULANA MUHAMMAD ALI, A MANUAL OF HADITH 3 (Muhammad Ali ed., 1951).

²⁷ The Koran 2:229; Ayah al-Baqarah 2:229.

complicated process is of a substantial importance to draw a connection between modern-day Islamisation and triple talaq. The potential of the modern-day Islamisation first became known during the Iranian revolution and therefore, Iran has played a pivotal role in aiding and abetting revolutionary movements in the direction of Islamification.²⁸ Islamisation can more easily be comprehended in relation to the extremes of Fundamentalism and Liberalism.

[T]he interpreters of the Koran and the Sunna have been able to offer different interpretations during different epochs precisely because the original 'word' infinite in depth and scope and, hence, applicable to innumerable circumstances and able to define evolving conditions infinitely...²⁹

In the religious fundamentalist context, an individual may be inclined towards this Islamic approach in the wake of such uninviting and grim circumstances due to the religious/social/economic backdrop that abets an impulse to converge his beliefs along with evolving personality traits such as aggressiveness, paranoia, authoritarianism, and inferiority complex. The individual further redirects it all towards a firm belief in Islamisation. It has a wider impact than conceivable as it covers various dimensions of an individual's life such as cultural, religious, political, etc. One may also reasonably assert that this Islamist discourse is in response to the increasing western political, economic and cultural pressure in Muslim societies. It is often perceived in contrast to the modernized outlook of a series of developments, however, that is partly beyond the scope of the topic that the authors seek to illuminate. Under Islamisation, religious law becomes the most authoritative, taking precedence over Civil Laws. Moreover, the traditional Islamic approach gravitates against the notion of gender equality.³⁰ The advocates of fundamentalist approach have often pushed forward the idea of inequality between both the genders as more just and appropriate in accordance with the ideals of seventh century Islam. The discerning of Islamist discourse is intrinsically intertwined with theorizing about the rise of religious ardour as a reaction towards foiled attempts at modernization and the secondary nature acquired by the authority of local traditions in the face of globalization.³¹ It includes homogenous ways for women to practice their faith restraining them from thwarting the strict interpretation of Shia laws that often becomes the case when there is overwhelming involvement in the affairs of the Western Societies. It entreaties a practice which is followed universally transcending all national and ethnic customs viz. an endeavour to spread homogeneity in terms of religious ideology and practice, political movements and state policies, and the processes of economic and social change within which women individually and collectively attempt to shape their lives.

Certain other reasons that may have given rise to the fundamentalist Islamic approach are poverty, as in the case of the Gaza Strip and shifts in the political climate, as in the case of Pakistan. The rationale for this growing cultural influence is multi-faceted and entails another convoluted and lengthy discussion fustigating the process

²⁸ Shireen T. Hunter, *Iran and the Spread of Revolutionary Islam*, 10 Third World Quarterly 730, (Apr. 1988) (Role of Iran in Islamification).

²⁹ MAHNAZAFKHAM ET AL., A MANUAL FOR WOMEN'S HUMAN RIGHTS EDUCATION IN MUSLIM SOCIETIES 320 (3rd ed., 1996).

³⁰ Jonas Svensson, Globalization and the 'Islamization' of Women's Human Rights, Presentation at the fourth Nordic Conference on Middle Eastern Studies: The Middle East in globalizing world, Oslo (Aug. 1998).

³¹ KARIN ASK & MARIT TJOMSLAND, WOMEN AND ISLAMISATION - CARVING NEW SPACE IN MUSLIM SOCIETIES 65 (1991), available at <https://brage.bibsys.no/xmlui/handle/11250/2435804>.

nonetheless. However, on analysis of the liberal context, another interesting position comes to light pertaining to the contemporary discussions on Islam and the scope of its re-interpretation. In the recent times, there have been various feminist discourses where the possibility of re-interpretation of Koran so as to accommodate the interest and rights of women have been intensely debated. In some places, it is also regarded as a global movement for equality and justice in the Muslim family.³² It is opined on one hand that the Koranic texts have a wide scope of being reconsidered in the light of the women's rights, which is regarded as feministic re-interpretation of Koran. Although, alternatively, it also leaves a lacuna for misinterpretation by specialists who oppose the feministic methods of interpretation and hence, the tools of re-interpretation should be dealt in with great care and caution. "Although women are often very religious, religions are often not very kind to women."³³ The revelations of the Koran have been propagated in a patriarchal setup for a long time. Thus, it is at loggerheads with the purpose of change and innovation which ensures equal protection for both genders. Islamic feminism provides space for conceptualizing the idea of the modern womanhood into the broad spectrum of the Islamic School of Thoughts of Sunni and Shia, which form the progressive to the regressive outlook in the present day. It is a widely held notion that Islam since its advent has conferred a high rank upon women and has resulted in the betterment of their condition by terminating the previously existing practice of Jahiliyyah as has been discussed previously. Koran has even condemned any unwarranted cruelty on the women of Islam by the introduction of certain concrete Koranic Provisions in the interest of women.³⁴ The Koran stipulates distinct roles for both men and women and accordingly differentiates between their rights and obligations in marriage, divorce, and inheritance, inter alia. Marriage (Nikah), as one of them, is a contract between two consenting partners.³⁵ The institution of Nikah and the law of divorce therein specify the duty of the husband to his wife and to his children and condemnation for failure to discharge those duties. More importantly, as mentioned before, the word of God intends to regulate the practice of capricious divorce making and to abolish the iniquity that the women were subjected to in the marital bond prior to the advent of Islam.³⁶ Wherever, there is a scope for change and development, it shall be duly brought about or else there will be delay and high rates of despondency among the Muslim masses pushing for a more equitable society. However, it is troubling to know that the inherent problem with the interpretation of the Koran is that, traditionally, barring certain exceptions, it is a norm that only males shall be authorised to interpret the Islamic theology exclusive of women's perspective. In addition to this, the gender segregation in the Muslim society with greater separation in form of rights and duties of men and women, the ideas of female Koranic interpreters are dismissed outright by the traditional jurists.³⁷ Talaq-ul-Biddat is often justified by portraying it as a solution for the divorce of an incorrigibly acrimonious couple without any further impediments from any other legal or religious institution. Besides, it intends to

³² Salma Khattab, *Can feminism be Islamic?*, (May 19, 2017), <https://en.qantara.de/content/womens-rights-in-islam-can-feminism-be-islamic>.

³³ Nadiyah Bte Rdizuan, *Women, Islam and Feminism in Postcolonial Malaysia and Singapore* (2012) (unpublished B. SocSci (Hons.) thesis, National University of Singapore) (on file with Department of Political Science, National University of Singapore).

³⁴ The Koran 4:34.

³⁵ SALLY BADEN, *THE POSITION OF WOMEN IN ISLAMIC COUNTRIES: POSSIBILITIES, CONSTRAINTS AND STRATEGIES FOR CHANGE* 45 (Institute of Development Studies, Sept. 1992).

³⁶ KARIN, *supra* note 31 at 43.

³⁷ KARIN, *supra* note 31 at 50.

provide relief to women bogged down by the exploitative husbands who have become habitual to pronouncing talaq in order to threaten their partners. It is an intelligible reflection of demoralized orientation as these Islamic beliefs have paved way for an overpowering and dominating footing for the husband in marriage. Moreover, it was also propagated as providing a quick relief to the wives from their husbands by permitting the husband to decide when he wants to single-handedly walk out of the wedlock once and for all. The misconception noted is how conveniently the picture of the husband still having an upper hand in resolving problematic issues in the marriage, especially, in such a volatile situation is overlooked. It is further said that, thus, an acrimonious marriage may be dissolved much more easily or when the exploitative husbands are inclined to pronouncing talaq for threatening the wife, they could not revoke it later. However, this is not the only possible scenario and, therefore, even though this could be one reason how triple talaq could effectively be used, in most situations it can grossly be misused by the husbands to manipulate the wedlock. The view that the husband has a whip hand for the better of both the genders is a misunderstood notion and an often quoted excuse for continuing his predominance in the issues related to the institution of marriage. These are the views and notions often cited by proponents arguing for the continuance of this practice. Therefore, in response, the feminist, woman scholars and academicians from different Islamic Schools of Thoughts have reacted instinctively to affirm the status of women as one of major importance in the religion of Islam. Islamic feminism is a unique concept which is capable of operating at all three levels—individual, societal or national, depending upon the extent of support that this feminist discourse receives. After having delved into the controversy over the various perspectives relating to Islamisation of women with special focus on triple talaq, it is opportune to consider the shift in the legal position in states having a considerable Muslim population. A two-pronged approach of codification and legislation is used to accommodate changes in the legal regimes of Muslim states with the intention of finding a path which establishes equality with regard to the options available to both genders for dissolution, while also taking into consideration the teachings of the Holy book. However, such approaches are met with strong opposition from hardliners who view any change as a threat to the religion itself. While in some states, the traditional definition of triple talaq is still applicable, many other states have debated and abolished it long ago, in order to achieve a more equitable society in which women shall have more autonomy within the institution of marriage. One of the most prominent techniques which is widely employed by the modern jurists is that of *ijtihad*.³⁸ Under this doctrine, the Islamic jurisprudential literature is re-interpreted keeping in view the changing social conditions of the state.

The *ShayaraBano*³⁹ case which reignited the debate relating to the validity of triple talaq, resulted in close scrutiny of the validity of this practice in Muslim dominated states around the globe, a task undertaken even by the Hon'ble Supreme Court in the aforementioned judgement, indicating how the apex body acknowledges the impact of global factors on such decisions. The Court declared Triple Talaq not to be integral to the practice of the religion and to be violative of constitutional morality. The judgment delivered by a bench consisting of five judges arrived at the decision through differently reasoned approaches. However, the

³⁸Furqan Ahmad, *Triple Talaq: An Analytical Study with Emphasis on Socio-legal Aspects*, 37J. INDIAN LAW INST., 121-123 (1995).

³⁹*ShayaraBano v. Union of India*, 2017 SCC OnLine SC 963.

decision has received criticism from various authors and opinionists stating that the Supreme Court of India has created further confusion on the constitutionality of triple talaq thus, missing out on a great opportunity to discuss the constitutional approach towards gender equality and secularism.⁴⁰ The lawmakers of the state, nonetheless, applauded this decision⁴¹ and subsequently, introduced the Muslim Women (Protection of Rights of Marriage) Bill, 2017 which has met with criticism, the nature of which is not very different from the criticism received by the problem it seeks to rectify,⁴² although, an analysis of the same is beyond the scope of this essay.

The Muslim Family Law Ordinance, 1961 (MFLO) was promulgated to regulate the law related to talaq in the states of Pakistan and Bangladesh, with the latter inheriting it from the former. It is a controversial legislation which was denounced by the ulama since its inception⁴³ with critics alleging that various provisions of it were contradictory to Islam.⁴⁴ Section 7 of this Ordinance lays down the mode of giving talaq. It assigns the issue of divorce to an administrative body for attempting reconciliation and makes, this talaq ineffective for ninety days, in which reconciliation is being attempted. While the requirement which makes reconciliation a precondition to the divorce has roots in Koranic provisions, as has been stated previously, the criticism stems from the fact that under this provision a lot of importance has been accorded to the notice which is to be given to the Chairman of the Union Parishad (Council) by the husband after the pronouncement of talaq, irrespective of the method (Talaq Hasan or Talaq-ul-Biddat) of the talaq and that failure to do so is punishable with imprisonment up to one year. Critics contend that under Islamic law iddat is calculated from the date of the pronouncement of talaq whereas under this provision it is counted from the day the notice has been received by the Chairman and also how under Islamic law the period of iddat for a woman who is not pregnant is three monthly courses and that under this provision it is over ninety days,⁴⁵ as examples of deviations from Islamic edicts. The issue has been further complicated by the inconsistency of the courts in the interpretation and application of Section 7, specifically with matters pertaining to the cases relating to failure in giving notice to the Chairman.⁴⁶ So while this provision has abolished triple talaq, it leaves a lot to be desired, since, the husband still retains the authority to renounce the marriage extra-judicially at his will and without showing any cause and, on the contrary, the

⁴⁰Prof. Saptarshi Mandal, *Triple Talaq Judgment and the Continuing Confusion about the Constitutional Status of Personal Law* (Sept. 04, 2017), <http://jgu.edu.in/article/triple-talaq-judgment-and-continuing-confusion-about-constitutional-status-personal-law>; Dr. Sandhya Ram, *Judicial Dichotomy: Analysis Of The Majority Judgments In Triple Talaq Case*, LIVELAW.IN (Aug. 25, 2017 09:49 PM), <http://www.livelaw.in/judicial-dichotomy-analysis-majority-judgments-triple-talaq-case/>.

⁴¹*Ban on triple talaq will grant equality to Muslim women: PM Narendra Modi*, INDIA TODAY (Aug. 22, 2017 03:37 PM), <https://www.indiatoday.in/india/story/triple-talaq-narendra-modi-supreme-court-verdict-amit-shah-1030785-2017-08-22>.

⁴²Amrita Nandy & Hasina Khan, *With the Muslim Women Bill, the Government is Repeating its Mistakes since the Shah Bano Judgement*, THE WIRE (Mar. 12, 2018), <https://thewire.in/women/with-the-muslim-women-bill-the-government-is-repeating-its-mistakes-since-the-shah-bano-judgement>.

⁴³MAULANA AMIN AHSAN ISLAHI, A CRITIQUE OF THE MODERNIST APPROACH TO THE FAMILY LAW OF ISLAM, IN *STUDIES IN THE FAMILY LAW OF ISLAM 120* (Khurshid Ahmad ed., 1959).

⁴⁴Altaf Hussain Langrial et al., *A Critical Review of Pakistani Muslim Family Laws Ordinance 1962 in the Light of Islamic Family Laws*, 30 GOMALU. J. RES. 98, 99-100 (Jun., 2014) (discussing the contradictions to MFLO raised under Islam).

⁴⁵Muhammad Munir, *Reforms in Triple Talaq in the Personal Laws of Muslim States and the Pakistani Legal System: Continuity Versus Change*, 2 INT'L REV. L. 565, 565-566 (2013).

⁴⁶*Id.*

Right to Divorce that the wife has is not absolute and is subject to conditions.⁴⁷ Reform in Egyptian Personal Status Laws has taken place through five stages in the years 1920, 1929, 1979, 1985 and 2000. The fourth amended Code⁴⁸ of Egyptian Family Law was the primary reformed legislation in the world to disallow the practice of triple talaq. It clarified that in Egypt, a talaq made in one sitting, no matter how many times uttered shall only be accepted as one talaq which remains revocable for ninety days. This feature of revocability can only be reversed when three talaq are given consecutively during three successive *tuhrs* (menses-free time) for a consideration and expressly described as 'irrevocable'. Although, this reconstruct has solved one aspect of inequity in the divorce proceedings in Egypt, there are many other aspects yet to be revised in light of the feministic re-interpretations of the Koran. Practice of the Muslim Law in Egypt is evidently biased towards women with regards to the judicial and evidentiary proceedings that the women have to go through in order to separate from their husbands, while the same standards have not been man dated for their husbands. The Republic of Syria has divorce provisions along the same lines as the Egyptian Personal Status Law which renders the practice of immediate and irrevocable triple talaq of traditional Sunni Law ineffective. Thus, if a talaq is given more than one time, express or implied, in one sitting, it shall have the same effect as one talaq.⁴⁹ Not more than one talaq can take place at one time in personal law of Iraq which should also be simultaneously confirmed by the Court or through registration.⁵⁰ Its law is based on the Islamic values interpreted in the wider liberal context to suit the present needs of the Muslim society. The same is the case with Tunisia. Through the Code of Personal Status, 1956,⁵¹ not only the practice of triple talaq, but the act of polygyny was also abolished, thus, putting Tunisia before many other states, including India for ensuring a better protection of women's rights in the marital bond. The Tunisian state has brought its domestic legislation in harmony with principles of gender equality and unlike in various other Islamic states, the Ulama of Tunisia has welcomed these including the declaration of equal inheritance rights for women. Tunisian feminist Omaima Abou Bakr affirmed the latest decision of the President as the ambiguity of the provisions dealing with inheritance leaves enough lacuna for more favourable re-interpretation.⁵² Although, these progressive acts which are actively accepted by the Tunisian Government are seen as repugnant to the ulamas of other Muslim states. States like United Arab Emirates,⁵³ Bahrain and Qatar⁵⁴ have relied upon Ibn Taimiyah's opinion, which is that three pronouncements of the word talaq in one session equals to only one talaq, to mould their personal laws so as to ban the practice of triple talaq. The Hashemite Kingdom of Jordan⁵⁵ which derives its laws

⁴⁷Dr. Naima, *supra* note 9 (highlighting the husband's supremacy despite the ban on Triple Talaq).

⁴⁸ Law No. 100 of 1985 (Law of Personal Status), *al-Jaridah al-Rasmiyah*, vol. 27, 3 Jul. 1985, (Egypt).

⁴⁹ Law No. 59 of 1953, (Amendment to the Code of Personal Status), *Al-Jarida Al-Rasmiyya*, vol. 62, 17 Sept. 1953, (Syria).

⁵⁰Dr. Naima, *supra* note 9.

⁵¹ Law No. 1 of 1957, (Code of Personal Status), *JORT*, 1 Jan., 1957, (Tunis.).

⁵²JavedAnand, *Tunisian Ulema March 'Ahead' of the Qu'ran: Endorse Muslim Women's Right to Equal Inheritance, Marrying non-Muslims*, SABRANG INDIA (Aug. 26, 2017), <https://www.sabrangindia.in/article/tunisian-ulema-march-%E2%80%98ahead%E2%80%99-qu%E2%80%99ran-endorse-muslim-women%E2%80%99s-right-equal-inheritance-marrying>.

⁵³ Law No. 28 of 2005, (Federal Law of Personal Status), 19 Nov., 2005, (UAE).

⁵⁴ Law No. 22 of 2006, (Family Law) *Al-Jarida Al-Rasmiyya*, vol. 08, 28 Aug., 2006, (Qatar).

⁵⁵ Law 36 of 2010, *Al-Jarida Al-Rasmiyya*, vol. 5061, 17 Oct., 2010, (Jordan).

from its Constitution, Customs, Islamic Law and other Legislations was a part of the Ottoman Empire up until World War I. Although, the State achieved independence in 1947, the impact of the Ottomans can be seen in some parts of Jordan even today. The legislative developments in Jordan are influenced by the Syrian and Egyptian laws. The state has both Sharia and Civil Courts since the coming in of the Constitution in 1952. The Personal Law of Jordan states that talaq accompanied by a number, in word or gesture, or repeated in a single session, gives rise only to a single revocable repudiation. The global perspective shall be incomplete without discussing what is regarded as the most ideal legislation⁵⁶ on triple talaq, i.e., Sri Lanka's Marriage and Divorce (Muslim) Act, 1951. According to this Act, first, a husband has to inform the Qazi of his intention to divorce after which the Qazi shall attempt to reconcile the differences between the husband and wife. In the process of reconciliation, relatives and friends of the two parties respectively can also make contribution to improve the relationship. However, if the attempt at reconciliation is rendered fruitless even after 30 days from the date of request for divorce, the husband may proceed to pronounce the divorce in the presence of Qazi and two other witnesses.⁵⁷ This makes the practice align with the Koranic requirement of attempting reconciliation prior to dissolving the marriage with the help of a Qazi and relatives of the husband and wife.

This essay set out to understand the issue of triple talaq and its impact on the Islamisation of women from a global perspective, and what emerges of this exposition is that triple talaq is one of the most misconstrued and outdated aspects of Muslim Law. Its development has been riddled with controversy and obfuscation. The arrival of the Modernist Movement led to a vocal demand for the reinterpretation of these provisions, which has, in most states, culminated into scholars reinterpreting these provisions by way of ijtiḥad and other techniques. While this has led to various steps being taken in the right direction, these attempts still leave a lot to be desired. After implementing legislation that forbids talaq-ul-biddat, most states have reigned in cases of capricious dissolution of marriage by the husband, yet even in a majority of these states, the husband still has the authority to renounce the marriage without showing any cause and the right to divorce that the wife possess is conditional and not absolute. The practice of Muslim Law, in relation to marriage and divorce in many states, is still biased with the rights of the women being secondary to that of the man. Judicial pronouncements such as Shayara Bano are small yet significant steps in a global trend towards eradicating these inequities and ensuring that religion is not used as a shackle to curtail liberties, but as a means for achieving liberation, which itclaimsto guarantee in the first place.

⁵⁶ Muhammad Munir, *Reforms in Triple Talaq in the Personal Laws of Muslim States and the Pakistani Legal System: Continuity Versus Change*, 2 INT'L REV. L. 565, 565-566 (2013).

⁵⁷ *Id.*