

SUPURD-E-KHAK : Triple Talaq ~ A Misconception

Riya Mishra¹

Women have upper hand in a marriage. Her assent is sought at the time of Nikah but when everything comes to talaq is forgotten.

An instant divorce is a type of divorce which is used by the Muslim men's here in India. It is just all about uttering the word 'talaq' three times and the bond between the two comes to an end. Talaq is an Arabic word which is used for divorce. A man saying talaq three times will be termed as an irrecoverable divorce. This is so unexpected but yes the pronouncements can be written as well as oral, in this era it happens even over the internet, social media and even on whatsapp. From ancient time the institution of marriage has evolved to a large extent. Marriage is a relation between the man and the women which is termed very pure and brings many responsibilities as the relation begins. It is the foundation of a family and a basic building block of the society.

Marriage is a matter of social and legal status and therefore it touches the domain of human rights too as it not only affects the couple but it also brings anxieties and the innocent child is disturbed.

MARRIAGE AND DIVORCE UNDER MUSLIM LAW

Marriage under the Muslim community is termed as 'Nikah'² which means a solemn impact. In other sense it means to tie together³. A particular contract is implied for the legalization of intercourse and procreation of child. As written in Quran, Nikah has been used for both sexual connection and for contract of marriage. As per the Muslim law, Nikah is a contract for the legalization of intercourse and procreation of children. Nikah has an objective behind it which talks to confer the status of husband and wife on a man and a woman to marriage and the status of legitimacy on the children born out of such union. ⁴Muslim marriage is a civil contract as

well as a religious and a social institution.

It is considered as a contract as it contains some elements similar to civil contract. The elements include:-

- ❑ Parties must be competent to marry
- ❑ Without offer and acceptance the marriage will not be termed as complete marriage.
- ❑ There should be free consent
- ❑ Within the legal limits the contractual terms can be settled by the parties.
- ❑ When the contract is breached there are some provisions regarding the rights and duties of husband and wife on dissolution of marriage.

There is a basic principle of marriage which talks about keeping your soul mate happy for a good healthy marriage life. Divorce becomes a necessity in some occasions whereas, the Muslim law talks about saving a marriage rather than ending it up. Divorce is one of the worst decisions which ends the marital tie. 'I divorce you' refers to 'talaq' in Muslim law and it refers to an authoritative nature where as if a wife asks his man for a divorce she has to ask like 'please divorce me' which is a kind of pleading, the meanings are same but here the interpretations are different by the virtue who is asking for divorce. Here a husband can disown his wife easily on the basis on the mere pronouncement with divorce but when it comes to the wife, she cannot divorce her husband on her own accord, she can do so when the husband delegate such rights to her or under by agreement through Khula or Mubarat and it is done on a mutual agreement.

Divorce has been divided into two categories in the Muslim law:-

- ❑ **Judicial divorce** – According to the customs and law, it is a formal separation between the husband and the wife. It does not depend on the will or pleasure of the husband.

- ❑ **Extra- judicial divorce** – It depends on the will of the husband or the wife or where the mutual decision is present. If it is by the side of husband it will be termed as Talaq, Ila and Zihar .When done by the wife it is Talaq-e-tafweez or Lian .
- ❑ Talaq-i-baddat is also a form of talaq in Muslim law which was introduced during the second century of Islam. It has two forms:-
- ❑ The triple declaration of talaq made in period purity, either in one sentence or in three.
- ❑ A single irrevocable pronouncement made in a period of tuhr.

Triple Talaq is not recognized by the Shias. This form of divorce is considered unorthodox because of its irrevocability.

TRIPLE TALAQ

There have been a lot of disputes regarding this topic as it has been practiced among the Muslim community since a long period of time. When a Muslim man go for a divorce, he has to divorce his wife during the period of their iddat and wait for three menstruation .Quran states that a man is not suppose to divorce his wife when she's menstruating⁵.

It is a divorce which is pronounced thrice in a sitting when the wife is in the state of purity (tuhr), i.e. when a man says 'I divorce you (3 times continuously)'. This custom of saying talaq three times is prevalent in modern times, mostly by the Muslims in India. Quran states that "Divorce is to be given two times and then must be retained in a good manner"⁶.Quran does not recognize this type of talaq and is therefore categorized into a sinful form of divorce. There are no statues that are provided as it is said to be a custom. Even if it is being recognized as a custom, it has not gained the force of law. Muslim women's were victimized on the basis of triple talaq. Triple talaq have been suppressing the interest of the Muslim women. It has also been used as a threatening tool to procure dowry,

Quran does not allow dowry nor does the law. When talaq is pronounced thrice the women's are completely deserted and are not provided by the maintenance of survival. When triple talaq has been announced in the absence of the wife it is arbitrary in nature and is illogical too .It has made the communication easier but it also has many disadvantages for a women, as these technologies has been misused. In few cases, the women after divorce are not even allowed to meet their children, in fact the divorced Muslim woman were not even permitted to have a telephonic conversation with her children.⁷.When a divorced Muslim woman wants to re-marry, they're asked to halala by their husband who shows that how patriarchal the society is. Muslim women go through many struggles. Article 25⁸ is a safeguard to the personal law by giving a position under fundamental right. Every religious practice is sacred in nature and no one has rights to interfere in these practices, not even the law. Triple talaq has been treated as illegal in many countries like Pakistan, Turkey, Bangladesh, Iran and many such theoretical states but India took way long to understand the constitutionality of triple talaq. Article 14⁹ of Indian Constitution states that no person is above the law and law is supreme. Every person is equal before the eyes of law, irrespective of the gender , caste , color or religion. Triple talaq has infringed the rights of the Muslim women as men can give it without the knowledge of the wife. It confers the absolute and unlimited power to give divorce without any kind of reasonable cause. This just satisfies the ego of men and suppresses the women without any cause. Article 15¹⁰ does not permit any kind of discrimination while triple talaq violates it. Unfortunately the rights are conferred on the men and the women's are treated like puppets. The Muslim women have to bear the triple penalty which clearly violates the article 15(1). Article 27¹¹ is the most sacred fundamental right conferred by the law, it has also said that

no person shall be deprived of his right to life and personal liberty as per the procedure of law. Due process of law has two forms, first, substantive due process – law must be just and fair. Aggrieved is provided with fair hearing. Personal liberty of a person cannot be taken away by a law which is arbitrary, unreasonable or unfair. When a law is trying to restrict someone's right to personal liberty, there must be some resemblances of reasonableness. Article 25(1)¹² talks about the freedom, it provides freedom of religion where every citizen have rights to choose and practice any religion freely. Muslim marriages and divorce are governed by their personal laws and are solely responsible for the infringement of the rights of the Muslim women's. Apart of the constitutional view, there are several reasons which has held triple talaq unconstitutional. It is the women and the child who are the ultimate suffers and it is such a big loss to the country as well and is a total unjust too. There are many cases in which the women's has testified that the personal law has refused to hear the plea and which is still leading to a gross unjust. Triple talaq has been held un-Islamic in Quran too. It has been misused by Muslim men a lot. They marry a Muslim girl, spend few years and then ask for divorce by leaving her alone without any kind of justification or reason. In case of divorce, triple talaq provides all the rights to the men and this is the reason it has been held unconstitutional.

CASE LAWS

1. MD.Ahmed Khan V. Shah Bano Begum (Shah Bano case)¹³ Facts:-¹⁴ Appellant is an advocate by profession, was married to the respondent in 1932. They had three sons and two daughters. In 1975, the appellant drove the respondent out of the matrimonial home. In 1978, the respondent filed a petition against the appellant under section 125 of code of criminal procedure, in the court of judicial magistrate, Indore. Asking for maintenance of

Rs 500 per month, in view of the professional income of the appellant which was around sixty thousand per annum. On Nov. 6, 1978 the appellant divorced an irrevocable talaq and took up the defense that she has ceased to be his wife by reason of the divorce granted by him; that he was, therefore under no obligation to provide maintenance for her, that he'd already paid the maintenance for her at the rate of two hundred rupees per month for about two years, he also had paid three thousand rupees in the court by the way of 'dower' or 'Maher' during the period of 'iddat'.

2. *Held:-* The case was triumph of the principle of social justice and was a step in the direction of implementation of Uniform Civil Code.

3. *Yusufv.Sowramma*¹⁵ Justice Krishna Iyer observed that "the Muslim men enjoys the unconstrained authority to dissolve the marriage. Quran also says that the man is forbidden to divorce his wife as long as she's faithful and obedient. Court took the notice of gender discrimination and male authoritarianism which was the effects of the triple talaq and thus the court observed that there is a need of codification of law on Muslim marriage and divorce which will be in pace with the constitution of India.¹⁶ *Shamim Ara v. State of Uttar Pradesh* ¹⁷ The Supreme Court took into consideration the Quran and various sunnahs and came to the conclusion that the rights not to disturb the interred corpse are not absolute

CONCLUSION

Marriage should be dissolved in a sacrosanct manner irrespective of religion as it is a very divine relation between the two. Triple talaq violates the human rights which are thereby conferred upon the Muslim women. Muslim men are given a sense of superiority by this kind of practice over the Muslim women's. The Muslim marriage is contractual in both the ways when both the competent parties pronounce

'Qubool hai' thrice but same is not in the case of the divorce. Right to equality has been violated as stated under Article 14 of the Constitution of India. Muslim women are not allowed to live their life the way they want, therefore right to life has also been violated here.

Religious practices are governed by personal laws of respective religion. Personal law boards have been established to act as a medium to maintain integrity of law and order in particular community and people will willingly follow the verdict of the board. The law does not interfere into the personal sphere which leads to tyranny. But these personal boards are not more than a corpse and are being stubborn on the matters that the government wants to decide. Religion should be progressive in nature and should change with the change in society and time. The journey of Triple talaq can be summed up from the case of Shah Bano to Shayara Bano. These two cases are the basic of the verdict given in Triple Talaq. Shah Bano laid the foundation for the illegality of triple talaq and Shayara Bano took it to the final results. The journey has faced many obstacles but has settled finally. The Supreme Court said that 'Triple Talaq is worst and undesirable form of dissolution'. The right to religious freedom applies to both men and women equally.

Codification is very important for the right implementation of the judgment passed on Triple Talaq, it is necessary to codify the Muslim law. Codification will help to remove the so called leaders that are self appointed and a specifies family code should be followed without any discrimination. The status of Muslim women improved as compared to earlier.

WOMEN HAVE TO BE STRONG ENOUGH TO STAND AND DEAL WITH THE WORLD.

(Endnotes)

- 1.. IInd Year Law Banasthali University
2. Arabic word which refers to the union of sexes.
3. Dr.S.R Mandeni-Sociology of law 2nd Ed, reprint 2008, Allahabad law agency.

4. Dr. Nishi Purohit- principles on Mohmmedan law, 2nd Ed., 1998 , orient publishing co. , Allahabad
5. (surah-al-baqarah 2:222)
6. Chapter II , verse 229
7. Shayara Bano v. Union of India.
8. The constitution of India ,1950
9. The state shall deny any persons equality before law or equal protection of law within the territory of India.
10. The constitution of India ,1950
11. The constitution of India ,1950
12. he constitution of India
13. 1985 SCR (3) 844
14. (March 29,2018,7:09 AM, <http://indiankanoon.org/doc/>
15. AIR 1971 KER 261
16. (1984),2 SCC 138
17. march 29,,2018,11:09 am)