

Empowering Indian Muslim Women by criminalizing Triple Talaq

Hasibur Rahaman Molla*

Abstract

In Islam the marriage is a social contract between a male and a female and 'talaq' is a process of separation of married couple prevalent in the Muslim community. By uttering talaq three times, a husband can give divorce to his wife and the wife is not entitled to seek any justice in this regard. Though there is a provision for reconciliation between husband and wife but the decision taken by the husband is deemed to be final. It has been found that in most of the cases of verbal talaq is intentionally used by the husbands and women are the sufferers. As no legal process is involved in talaq, a husband can misuse the talaq and can give divorce to his wife arbitrarily. This type of divorce causes distress to the women particularly belonging to the lower strata of the society. The present study is to focus on the implication of triple talaq on the Indian Muslim women and to examine its relevance through the light of rational justification.

Keywords: Talaq, Community, Divorce, Social contract, Rational justification.

Introduction

Muslim women suffer from challenges comprising education, livelihood, health care, etc. They lag behind in almost all key socio-economic indicators of development. Additionally and very importantly the Indian Muslim women face hardship in marriage and family emanating from the rampant misinterpretations of Quaranic tenets related to marriage and divorce. Bharatiya Muslim Mahila Andolan (BMMA) reported that since 2007 they have come across numerous cases of verbal talaq rendering Muslim women destitute. BMMA has been working on numerous accounts of Muslim women being divorced overnight and separated from their children as their husbands chose to unilaterally say 'talaq', 'talaq', 'talaq'. In most of the cases the husband's mindset as well as the action is dictated by a common sensical understanding that husband enjoys the 'right' given by the Islam to divorce his wife just by saying 'talaq'. Hardly there is any awareness about Quaranic injunctions or the real meaning of 'talaq'. However, Indian Government has criminalized the triple talaq by an act of parliament in 1st August, 2019. Objectives of the paper is to find out the circumstances that ruled out the practice of 'triple talaq' and its real implication in the Indian Muslim Community. .

Materials and Methods

Participation in the 'no more triple talaq' campaign has made me to understand the grave reality and distress of Indian Muslim women divorced by verbal 'triple talaq'. Both primary and secondary data have been collected from different sources to analyze the social implication of triple talaq. Extensive questionnaire surveys have been conducted across the society to generate primary data. These Questionnaires answered were: 46% Divorced women, 10% Professors, 16% Clerics, 28% Students in relation with this issue. Secondary data have been collected from the reports of the National Family and Health Surveys, Sachar Committee – 2006, All India Muslim Personal Law Board (AIMPLB), Bharatiya Muslim Mahila Andolan (BMMA) and from different newspapers. Analysis of these data has been made to show the socio-economic status of the Indian Muslim women in comparison to the national average (Table-1).

Results and Discussions

The practice of instant triple 'talaq' (uttering 'talaq', 'talaq', 'talaq' at a time) to divorce a woman by her husband is the misinterpretations of Quranic guidelines. 'Talaq' (divorce) should be the last

* Asstt. Professor, Department of Geography, Sivanath Sastri College, Kolkata, India

resort of believing Muslim if there is serious marital discord. Nowhere in the Holy Quran, it is clearly mentioned that triple 'talaq' at a time will be considered as 'talaq'. The Prophet said "The most hateful permissible thing in the sight of God is divorce" (Abu Dawud: 1863). But when the situation is such that it is not possible for the couple to stay together, then the 'talaq' is desirable. Quran (3:34) advises the husband to reason out (Faizuhunna) with his wife through discussions. If differences persist the couple are directed to keep sexually distance themselves (Wahjuruhunna) from each other in the hope that this temporarily physical separation may encourage them to reunite. And if it fails, the husband is said to once again explain (Wazribuhunna) to his wife about the seriousness of the condition so that there is a possibility of reconciliation. If the differences still persist, the Quran (4:35) instructs the matter to be put before two persons (arbiters), one from the family of each spouse to provide reconciliation efforts.

After the failure of the above mentioned four attempts to unite them together, the Quran allows first 'talaq' to be uttered and followed by a waiting period of the three months. This waiting period is called Iddah. Not more than tow 'talaq' can be pronounced within this period. If the husband and wife are unable to reconcile during Iddah, the final 'talaq' can be pronounced in the presence of two witnesses but only after the expiry of the Iddah. Even after the Iddah has lapsed, the Quran offers the challenging parties a chance to reunite, provided the final talaq has not been pronounced. Once the final 'talaq' has been pronounced the break up in the marital is taken place and the parties are considered as divorced.

Talaq System in the Muslim Societies

If we see the divorce system in the major Muslim dominated countries, the fact is that the triple 'talaq' method of instant divorce is today banned in more than 21 Muslim majority countries including Bangladesh, Pakistan, Malaysia, Indonesia, Egypt, Iran, Iraq and others. The laws enacted by the Muslim majority countries about triple talaq do not consider the religious arguments. Egypt is the first country to remove the principle of the effect of triple talaq in 1929 and enacted a law stalling that several talaqs will be considered only one talaq and that will be revocable one. "A divorce accompanied by a number expressly impliedly, shall count only single divorce, and such divorce shall be recoverable" (Egyptian Family Laws of 1929). A similar law was enacted by Sudan in 1935, by Jordon in 1951, by Syria in 1953, morocco in 1958, Iraq in 1959 and Pakistan in 1961. Kuwait introduced the law restricting the effect of triple talaq in one sitting to one talaq in 1984.

Indian government is trying to abolish the triple talaq as it is violative and derogative to the dignity of Muslim women. The Supreme Court has already held triple talaq as void in its Shamim Ara Versus State of UP judgement of September 18, 2002. The Judgement clearly means that already there is no legal validity for the triple talaq. The BMMA has launched a nationwide campaign against triple talaq and the online petition against triple talaq has been signed by more than 50,000 men and women electronically across the country. The BMMA survey in 2015 found that 92% Muslim women want triple talaq to be banned.

Religious Freedom versus Universal Rights in India

Since independence India is staggering with the issue. Our constitution has enshrined both the universal rights and religious freedom. Article 15 of the Indian Constitution says "the state shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth or any of them. Article 26 of the Indian Constitution has given the people freedom to manage their respective religious affairs. It (Art. 26-b) says "subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion". We have a plurality of faith and belief and plurality of cultures amongst us. Seeking to accommodate multiple faiths, India's law for marriage, divorce and inheritance related matters are deemed to be 'Personal Law' and are left largely up to the respective religion. The practice of instant triple talaq simply violates the fundamental rights of the Indian constitution as the constitution does not allow women to be treated differently. According to Yusuf Muchhala, a lawyer of All India Muslim Personal Law Board, the religious freedom nowhere means a free license to the male of the Muslim community to subjugate the woman.

Triple Talaq and All India Muslim Personal Law Board

The practice of triple talaq is illegal in many Muslim majority countries, but in India it was permitted in India (before 1st August, 2019) under the Muslim Personal Law (Shariat) Application Act, 1937. According

to this Act, in matters of personal disputes, the state will not intervene and a religious authority will instead pass the judgments. (Al Jazeera, 2016). All India Muslim Personal Law Board (AIMPLB) has been set up in 1973 as a custodian of Muslim Personal Law. It wants to impose the Shariat laws on Muslim community in India and the focus of this organization is to educate the Indian Muslim and built awareness on the protection and application of Islamic laws. This law has made the Muslim community stuck in time warp and the subsequent laws like the Dissolution of Muslim Marriage Act of 1939 and the Muslim Women (Protection of Right on Divorce) Act of 1986 had not been able to move the community away from discrimination shown to Muslim women (The Hindu, 2016).

Will a Ban on Triple Talaq truly empower Muslim Women?

The fact is that Muslim women in India face many challenges and constraints not only in their inlaw's houses but in their natal families too. So how much the Muslim women will be benefitted from just merely enacting a law to ban triple is a great question. Several reports by independent agencies and experts have focused on how Muslim women have been left out from the entitlements pertaining to food, rights, education, health and livelihoods. When the whole community faces problems in access to entitlements, the women from the community are further pushed to the margins. Muslims in India fares worse than other socio-religious-communities on issues of access to health, education, credit, general infrastructure and employment (Sachar Committee Report, 2006). In rural areas, the workforce participation rate for Muslim Women is only 29 percent whereas 70 percent Hindu women workforce participation is found in rural areas. In urban areas this figure for Muslim women is even lower than 18 percent. Table - 1 shows the status of Muslim women on selected indicators vis-à-vis the national average. While the data point to significant differences between 'Muslim women' and the national average, it is important to underscore the category of Muslim women is not a homogenous one. Therefore, their experiences too remain highly varied, based on the position of marginality they inhabit at the intersections of class, caste, sect, region, language, etc. (Zoya and Ritu - 2004)

Table – 1.
Selected Indicators on the Status of Muslim Women

Indicators	Status of Women
Incidence of urban poverty Source: Planning Commission (2009-10)	All India Average: 20.9% Muslim: 33.9%
Teenage pregnancy Source: National Family Health Survey, 2005 -06	All India Average: 16% Muslim: 17%
Under five Mortality rate Source: National Family Health Survey, 2005 -06	All India Average: 70/1000 live birth Muslim: 74.3/1000 live birth
Literacy rate Source: National Family Health Survey, 2005 -06	All India Average: 55.1% Muslim: 49.5%
Percentage of women with bank accounts that they themselves use Source: National Family Health Survey, 2005 -06	All India Average: 15% Muslim: 10.5%

The 'triple talaq' is criminalized by the Act of Indian Parliament on 30th July, 2019, notwithstanding of its prevalence is abysmally low in the Muslim Society (Figure: 2). In this context without implementing the recommendations of Sachar Committee, the present government's move to just ban triple talaq may be politically motivated to gain electoral benefits. But in true sense, mere ban of triple talaq will not be able to uplift the status of Muslim women in the society when the whole Muslim community is suffering from multiple exclusions in the social, political and economic arenas.

Conclusion

Instant triple talaq in the Muslim community is a malpractice to give divorce to a woman by her husband arbitrarily. This type of one sided divorce without any effort to reconcile is neither formulated in the Quaranic guidelines nor supported by the Indian Constitution. It is due to misinterpretation of Quaranic guidelines by some clerics, the Muslim women are facing great adversaries in their marital as well as natal lives. Indian Muslims do not have codified Shariat Laws that adequately address all aspects concerning marriage and family matters. The conservative sections are unaware and unconcerned about the issues of Muslim women and therefore they cannot continue speaking for them. By recognizing only the conservative religious voices the democratic state has also failed in enabling fair representation for all sections of population including women. Regarding marital dispute, the triple talaq is banned in several Muslim majority countries. Therefore, in India the practice of instant triple talaq as a means to divorce cannot continue when the era is confronted by modern conceptions of justice and rights, and the ideals of universal human rights, equality and personal freedom.

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