

**TOPIC NAME**

**CRITICAL APPRAISAL OF TALAQ WITH SPECIAL REFERENCE  
TO TRIPLE TALAQ**

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## **LIST OF ABBREVIATION**

1. **AIR**- All India Reporter
2. **DLT**- Delhi Law Times
3. **I.P.C** - Indian Penal Code
4. **SC**- Supreme Court
5. **SCC** - Supreme Court Cases
6. **S.C.R**- Supreme Court Reporter
7. **Cr.p.c**- Criminal Procedural Code
8. **UCC**- Uniform Civil Code

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## CHAPTER -1

### INTRODUCTION

In general parlance, the word *TALAQ* is an Arabic word, which means repudiation or rejection but under Muslim Law, it means a release from the marriage tie, immediately or eventually. It is generic name for all kinds of divorce.

According to Oxford Dictionary Divorce is the Legal dissolution of a marriage. Divorce is a severance and separation (a divorce between thought and feeling). It is a break up of marriage. Divorce means the legal termination of a marriage relationship. A divorce—referred to in some states as dissolution of marriage by the decree of the court declaring that a valid marriage no longer exists. A Divorce leaves both parties free to remarry. It usually provides for division of property and makes arrangements for child custody and support.

The marriage is a civil contract. Now, once it becomes a contract, the next inevitable question is whether it could be dissolved because although the marriage has characteristics of a contract (most important being consent) it has always been a sacrament and a social Institution.

Love, affection and mutual understanding between husband and wife is a necessary condition for a happy married life. Islam therefore, insists upon the subsistence of a marriage and prescribes that breach of marriage contract should be avoided. Initially no marriage is contracted to be dissolved but in certain unfortunate circumstances the matrimonial contract is broken. One of the ways of such dissolution is by way of divorce. Under Muslim law the divorce may take place by the act of the parties themselves or by a decree of the court of law. However in whatever manner the divorce is effected it has not been regarded as a rule of life. In Islam, divorce is considered as an exception to the status of marriage. The Prophet declared that among the things which have been permitted by law, divorce is the worst. Divorce being an evil, it must be avoided as far as possible. But in some occasions this evil becomes a necessity, because when it is impossible for the parties to the marriage to carry on their union with mutual affection

and love then it is better to allow them to get separated than compel them to live together in an atmosphere of hatred and disaffection.

Divorce in Islam is known as “*Talaq*”, which means “I divorce you”, if wife asks “*Talaq*” to her husband then. The term could be interpreted as “*Please Divorce Me*”.

*Talaq* in its primitive sense means dismissal. In its literal meaning, it means 'setting free', 'letting loose', or 'taking off any ties or restraint'. In Muslim Law it means freedom from the bondage of marriage and not from any other bondage. In legal sense it means dissolution of marriage by husband using appropriate words. In other words *talaq* is repudiation of marriage by the husband in accordance with the procedure laid down by the law. The following verse in support of the husband’s authority to pronounce unilateral divorce is often cited: “Men are maintainers of women, because Allah has made some of them to excel others and because they spend out of their property (on their maintenance and dower).

According to Hedaya, *talaq* means repudiation of wife by husband in exercise of the absolute powers which the law has conferred on him... As per Baillie, the term divorce includes all separation originating from the husband and repudiation, for *talaqin* the limited sense, namely, or separation effected by the use of proper words... In the Encyclopaedia of Islam, the term *Talaq* means absolute power which the husband possesses for divorcing his wife at all times. The Fatwa-i-Alamgiri terms *talaq* in its original sense as repudiation or rejection but under Muslim law it is a release from the marriage tie either immediately or eventually.<sup>1</sup>

In the pre-Islamic period, the husband possessed an unlimited power to divorce which included divorcing wives anytime, for any reason or even without any reason. They could revoke their divorce and divorce again as many times they preferred, accuse their wives of adultery, dismiss them and leave them, while they themselves would go exempt from any formal responsibility of maintenance or legal punishment<sup>2</sup>.

After the advent of Islam the Prophet looked upon these customs of divorce with extreme disapproval. At the same time was impossible to abolish them entirely. Therefore, a

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<sup>1</sup> Fatwal-i-Alamgiri, Vol 1 p.49

<sup>2</sup>Ibrahim Abdul Hamid "Dissolution of Marriage" Islamic Quarterly,3(1956)166

limited power of divorce was allowed, i.e. under certain conditions. He permitted to divorced parties three distinct and separate periods within which they might to become reconciled; but should all attempts at reconciliation prove unsuccessful, then in the third period the final separation became effective.

The reforms of Prophet Mohammad marked a new era in the history of Eastern legislation. An effective check placed by Islam on frequent divorce and remarriage was that, in case of irrevocable separation, it is essential for a remarriage that the wife should marry another man and this marriage should be consummated before divorce and the wife should observe the period of *Iddat*. It intended to control one of the most sensitive nations of the earth by action on the strongest feeling of their nature, the sense of honour.

*Talaq* means repudiation or rejection but under Muslim Law, it means a release from the marriage tie, immediately or eventually. It is a generic name for all kinds of divorce but is particularly applied to the repudiation by or on behalf of husband.

In *Moonshee Buzul-ul-Raheem v. Luteefut-on-Nissa*<sup>3</sup> it was said that under Muslim Law *talaq* is the mere arbitrary act of a Muslim husband who may repudiate his wife at his own pleasure with or without cause. He can pronounce the *talaq* at any time. It is not necessary for him for him to obtain the prior approval of his wife for the dissolution of his marriage.

A revocable pronouncement of *talaq* does not dissolve the marriage till the period of *iddat* has expired but an irrevocable pronouncement dissolves the marriage immediately on its pronouncement.<sup>4</sup>

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<sup>3</sup>1861MIA 397

<sup>4</sup>See Saxena (KP); Muslim Law, p76

## **STATEMENT OF PROBLEM**

To analyse the lacunas abuse of triple *talaq* with respect to position of Muslim Women

## **OBJECTIVE OF STUDY**

To explain the position of Muslim women with respect to marriage under Muslim in the light of the concept of triple *talaq*.

To analyse the lacunas in the triple *talaq* system prevalent among the Muslim Personal laws in India.

## **HYPOTHESIS**

The divorce laws under Muslim law are of arbitrary in nature and are biased against the Muslim women

## **RESEARCH QUESTIONS**

- Q. what is the correct method according to Islam?
- Q. is the practice of triple *talaq* ethical according to society in which we live today?
- Q. what steps should be taken to improve the position of Muslim women in practice of *talaq*?

## **SCOPE OF STUDY**

- a) To examine the practice of triple *talaq* in Indian Muslim law. The problem of holding three pronouncement of *talaq* as irrevocable divorce is not simple .it leads to many socio- economic problems.
- b) It must be admitted that there existed a controversy among Muslim jurists over the subject of triple *talaq*.
- c) In this research attempt has been made to elaborate the effects of triple *talaq* in changed socio economic conditions with some suggestion to eradicate this social evil.

- d) To examine the long standing controversy on this subject a fresh and to seek a solution of the problem. It is related to limited rights of divorced Muslim Women in India.

### **RESEARCH METHODOLOGY**

The doctrinal methodology of research based on in depth analysis of authoritative texts, case laws, newspaper, articles and relevant websites has been used.

## **CHAPTER - II**

### **MARRIAGE UNDER MUSLIM LAW**

Muslim law is a personal law. Personal law is that branch of civil law which regulates the personal matters of an individual.

Marriage and divorce are called personal matters of individuals because they relate to those affairs which normally affect their own personality. Muslim law may be described as that branch of Civil Law which regulates the family matters of the Muslims.

A Muslim is a person whose religion is Islam. The Arabic word Islam means submission to the will of God, Islam is a religion in which it is that (i) God Allah is one and only one. The word Muslim is derived from Islam signifies a person who adopts the faith of Islam from the point of view of the court of law, the only requirement for being Muslim is the belief in one god and the prophet of Mohammad.

Marriage is a social union or legal contract between people that create kinship. It is an institution in which interpersonal relationships are acknowledged in a variety of ways depending on culture or subculture it is found such a union often formalized via a wedding ceremony, may also called matrimony. The act of marriage usually called normative or legal obligations between the individuals involved. In some societies, these obligations extend to certain family of married persons marriage helps in maintaining high moral standards of which can society really proud of without our marriage our social system creates many problems. Importance of marriage is very much respected and accepted in all types of societies. Many social scientists have found that married couples are happier than unmarried couple and capable of living longer than unmarried couple. A person's both physical and emotional needs are satisfied in the institution of marriage.

## 2.1 Definitions

Marriage is a socially acknowledged and legally ratified union between an adult male and female.

Marriage is the approved social pattern whereby two or more persons establish a family. It is a contract for the production and maintenance of children.

Marriage consists of the rules and regulations which defines the rights, duties, privileges husband and wife with respect to each other. It is universal. Under Muslim Law, marriage is a Civil Contract is for legalization for the intercourse and for the legitimization of children.<sup>5</sup>

According to *Hedaya* "*Nikah* implies a particular contract used for the purpose of legalizing children".<sup>6</sup>

According to Justice Mahmood 'marriage among Muslims is not a sacrament but purely a Civil Contract.'

## 2.2 CONCEPT OF MARRIAGE IN ISLAM

Marriage (*nikah*) in Islam is a contract and not a sacrament. There are three aspects of Marriage in Islam.

**Legal Aspect:** It is a contract and not a sacrament. It has three characteristics: (i) there can be no marriage without consent; (ii) as in a contract, provision is made for its breach, to wit, the various kinds of dissolution by act of parties or by operation of law; (iii) the terms of a marriage contract are within legal limits capable of being altered to suit individual cases.

**Social Aspect:** Islamic Law gives to the woman a definitely high social status after marriage (ii) Restrictions are placed upon the unlimited polygamy of pre-Islamic times and a controlled polygamy is allowed. (iii) The prophet, both by example and precept, encouraged the status of marriage. It is clear that among Muslims marriage is not an

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<sup>5</sup>S.R. Myneni (Sociology)

<sup>6</sup>Hedaya (Hamilton translation)Ed II pg 25 R.K. Sinha (Muslim Law as applied in india)



ordinary contract. It is powerful institution for the uplift of women, promotes the development of a healthy society free from evils.

**Religious Aspect:** Quran, which is a collection of the words of God, directs every Muslim to marry a suitable woman of his liking. It is therefore, a religious duty of every Muslim to contract a marriage according to the rules of Islam. Marriage is recognized in Islam as the basis of society. It is a contract, but it is also a sacred covenant. Temporary marriage is forbidden. Marriage as an institution leads to the uplift of man and is a means for the continuance of the human race. Spouses are strictly enjoined to honour and love each other.<sup>7</sup>

“*Nikah*” is a wide term, comprising sexual union between a man and his wife; in Mohammedan law it has a very definite legal meaning. It is a contract for the legalization of intercourse and the procreation of children. Marriage is an institution ordained for the protection of society, and in order that human being may guard themselves from foulness and chastity.

Justice Mahmood, in the leading case of *Abdul Kadir V. Salima*<sup>8</sup> had defined marriage in the following words "marriage among Muslims is not a sacrament but purely a Civil Contract. The object of the marriage contract (a) to provide legal validity to the sexual relationship of husband and wife (b) to legalize the children. Marriage legalize the children born out of that wedlock. Children born out of any union other than valid marriage are illegitimate. A Muslim marriage is a civil contract it is not a sacrament, but purely a civil contract and though solemnized generally with recitation of certain verses from the Quran. The objects, therefore promotion of a normal family life and the legalization of children.

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<sup>7</sup>Mohd. Ali Manual 271 (Abdul A. Fyzee)

<sup>8</sup>(1933 )55 All 743

### 2.3 Form and Capacity of Marriage

Under Muslims laws, religious ceremonies or rites are not necessary to validate the marriage. According to Ameer Ali, a Mahomedan marriage requires no particular or formal rites (sacrament) to constitute it valid in law. Under Muslim law the only essential formalities are that the offer and the acceptance are made at the same sitting.

### 2.4 OFFER AND ACCEPTANCE: *Ijb-O-Qubool*

Offer (*Ijab*) signifies willingness of a person to contract a marriage with the other. The offer is in form of declaration that is generally made from the side of the groom or his guardian. The offer for the marriage must be accepted by the girl or her guardian. Acceptance (*Qabool*) is made by girl or her guardian. The offer and the acceptance should not be of uncertain or doubtful nature. The offer and the acceptance must be made within one transaction and for a consideration, i.e., *mehr* (Dower).

### 2.5 CLASSIFICATION OF MARRIAGES

According to Muslim Law, marriage classified into three categories. (i) Valid (*sahih*), (2) Void (*batil*) and (3) Irregular (*fasid*).

**(i) Valid (*Sahih*) Marriage:** Under all the schools of Muslim Law, a valid marriage is that which has been constituted in accordance with the essential conditions prescribed under the law. That is to say, a marriage is valid only where:-

- a. The parties are competent.
- b. The consent of the parties, or of their guardians, is free
- c. The offer and acceptance for marriage between the parties.
- d. There is no prohibition for marriage between the parties.

**(ii) Void (*Batil*) Marriage:** a Void Marriage is no marriage at all, it is an illegal union following marriages are void:

- (A) Marriage in violation of absolute prohibitions, marriage in which the parties are within prohibited relationship on the ground of consanguinity or fosterage.

- (B) Marriage with any lawfully married woman (polyandry) being strictly prohibited in Islam.

Following marriages are also void:

- (a) Marriage against the prohibition of unlawful injunction.
- (b) Marriage with fifth wife
- (c) Marriage during pilgrimage.

**(iii) Irregular Marriage (*Fasid*):** A union between a man and woman may be either lawful or unlawful unlawfulness may be either absolute or relative if the unlawfulness is absolute, this is void *Batil* Marriage.

Following marriages considered are irregular marriages:

- (a) Marriage against the rule of unlawful injunction
- (b) Marriage with the fifth wife.
- (c) Marriage without two competent witnesses
- (d) Marriage with a woman undergoing iddat.
- (e) Marriage with a woman who is neither Muslim nor kitabia.

## **2.6 MUTA OR TEMPORARY MARRIAGE**

Muta marriage is a distinct kind of marriage in Islam Muta may be defined as temporary union of male and female for specified duration. Muta marriage may be regarded as temporary union of male and female for specified duration literary meaning of the Arabic word “muta” is “enjoyment” it may be regarded as “marriage for pleasure”. In the earlier days of Islam, when the Arabs had to live away from their homes for considerably long time and account of wars or on trade journeys ,they used to satisfy their sex desires through prostitutes.

## **2.7 ESSENTIALS OF MUTA MARRIAGE:**

- (a) The parties must have attained the age of puberty (fifteen years) and must also possess a sound mind.
- (b) The consent of both the parties must be a free consent.
- (c) The formalities of offer and acceptance, which are necessary for a regular marriage, are also essential in the muta form of marriage. Muta marriage may be contracted lawfully without the witness. Muta marriage may be contracted either by the use of word muta or any other signifying temporary marriage.

## **2.8 Legal Effects of Muta Marriage**

- (1) The cohabitation between the parties is lawful.
- (2) The children are legitimate and have rights to inherit the properties of both the parents.
- (3) A muta wife is not entitled to get maintenance from the husband under the shia law; but she is entitled to claim maintenance under the code of criminal procedures
- (4) There is no divorce in a muta form of marriage .the marriage in this form dissolves by:
  - (a) By death of either party
  - (b) On the expiry of the specified period
  - (c) The husband leaves the wife before the expiry of the term. Where a husband leaves the wife before the term, it is said that he had made a gift of the unexpired period in favour of the wife (Hiba-I-Muddat) because in that case he has to pay

the full amount of dower. If wife leaves, her power is deducted in proportion to the remaining period of the term.

## CHAPTER - 3

### NATURE OF *TALAQ* UNDER MUSLIM PERSONAL LAW IN INDIA

Among almost all the nations of antiquity, divorce was regarded as a natural corollary or marital rights. Divorce among the ancient Arabs was easy and of frequent occurrence. In fact, this tendency has even persisted to some extent, in Islamic Law in spite of the fact that prophet showed his dislike to it. It was regarded by the prophet to be the most hateful before the Almighty God of all permitted things; for it prevented conjugal happiness and interfered with the proper bringing up of children.

#### 3.1 CAPACITY TO *TALAQ*

**Shia Law:** In order to pronounce a valid *talaq*, the husband must possess the following observations. Under Shia Law, every Muslim husband of sound mind, who attained the age of puberty is competent to pronounce *talaq*, provided *talaq* is not pronounced in any form of compulsion or duress etc., and is pronounced orally (in presence of at least two witnesses), unless the husband is unable to speak.

**Sunni Law:** Any Sunni Mohammedan of sound mind who has attained majority may divorce his wife whenever he likes by pronouncing *talaq* even without assigning any cause and must be of sound mind and an adult. Apart from Muslim Law, the provisions of Indian Majority Act, 1875 are also applicable to Muslims.

In *Medak V Hajju Bibi*<sup>9</sup> any Sunni Muslim of sound mind who has attained majority may divorce his wife whenever he likes by pronouncing *talaq* even without assigning any cause.

A *talaq* pronounced under compulsion or intoxication or fraud is also effective under Sunni law but void under Shia Law. Muslim law on the question of *talaq* under intoxication is not plain. One view is that if the husband was forcibly made drunk, and has pronounced *talaq*, such a *talaq* will not take effect. Ameer Ali was of the opinion that a *talaq* pronounced by a person in a state of intoxication or by one laboring under a

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<sup>9</sup> (1970)1 Andh WR 138

temporary stupor from the use of some practice, or any other cause is invalid. According Shafi School, the *talaq* of a drunken man is not recognized by Muslim Law<sup>10</sup>.

The guardian of a husband of unsound mind, who has attained puberty, may pronounce a *talaq* on behalf of the husband, if doing so is to the husband's benefit.

A *Talaq* may be affected (i) orally (by spoken words) or (ii) by a written document called *talaqnama*<sup>11</sup>. The husband may give *talaq* by mere words without any *talaqnama* or deed of divorce and no particular form of words are necessary. If the words are express and well understood as implying divorce, no proof of the intention is required. If the words used are ambiguous, then intention of the user must be proved. Thus the words " I have divorced thee "Or "I divorced my wife forever and render her *haram* for me, clearly indicate an intention to dissolve the marriage and no proof of intention is necessary.

In ***Wajid Ali v Jafar Hussain***<sup>12</sup> the words "Thou art my cousin, the daughter of my uncle, if thou goest", or "I give up all relations and would have no connection of any sort with you' are ambiguous and the intention must be proved.

In ***Fulchand v Nazib Ali***<sup>13</sup> under Sunni Law. Presence of wife or address to her is not essential. In this case it was held that the *talaq* should be deemed to have come into effect on the date on which the wife came to know of it. In ***Fulchand Hussain v Janu Bibi***<sup>14a</sup> *talaq* pronounced before a family counsel was held invalid as the wife was not named. The Privy Council cited this case with approval and held that *talaq* pronounced in the absence of wife was valid.

***In Saiyed Rashid Ahmad v Mst Anisa Khattun***<sup>15</sup>, a divorce pronounced under compulsion or jest or inadvertently or by mere slip of tongue is valid. An ailing Muslim has been given the power to dissolve his marriage. The right is generally exercised by a man who does not want to give right of inheritance to his wife after his death. Hedaya says a sick man may divorce his wife though he is on his death bed. When a man

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<sup>10</sup>Amir Ali : Muhammedan Law p.179

<sup>11</sup>Ma Mi V.Kallender Ammal (1927)54 IA 61

<sup>12</sup>AIR 1932 Oudh 34

<sup>13</sup>36 Cal 184

<sup>14</sup>(1878) 4Cal 588

<sup>15</sup>AIR 1932 PC 25

pronounces an irrevocable *talaq* in death illness and dies before the expiry of his wife's *iddat* she is entitled to take her share in his estate unless the *talaq* was given at her request. In case the husband has died after the expiry of her *iddat* period, she will have no right of inheritance.

Under the Muslim law a husband can authorize his wife to dissolve her marriage on the happening of certain contingencies. The contingency must be reasonable. In *Bachhoo v Bismillah*<sup>16</sup> the husband agreed to pay his wife maintenance with a specified time and in default the writing of the deed in respect thereof operate as a divorce. In *Mohammad Muin-ud-din v Jamal Fatima*<sup>17</sup> it was held that a divorce may be pronounced as to come into effect not immediately but at some future time, contingent on the happening of some specified future event.

When the husband exercises his right to pronounce divorce, technically this is known as *talaq*. The most remarkable feature of Muslim law of *talaq* is that all the schools of the Sunnis and the Shias recognize it differing only in some details. In Muslim world, so widespread has been the *talaq* that even the Imams practiced it. The absolute power of a Muslim husband of divorcing his wife unilaterally, without assigning any reason, literally at his whim, even in a jest or in a state of intoxication, and without recourse to the court, and even in the absence of the wife, is recognized in modern India. All that is necessary is that the husband should pronounce *talaq*; how he does it, when he does it, or in what he does it is not very essential. In *Hannefa v. PathummalBeevi*<sup>18</sup>, Khalid, J., termed this as “monstrosity”. Among the Sunnis, *talaq* may be express, implied, contingent constructive or even delegated. The Shias recognize only the express and the delegated forms of *talaq*.

A *talaq* may be writing and no particular form is necessary. Under the Sunni Law, where the husband properly, executes a deed mentioning the lady whom he has divorced and the name of the writer, it constitutes a valid divorce without any regard to intention with which it has been executed. If the contents of the deed are not intelligible or facts cannot be deciphered, even clear intention of *talaq* will not validate the pronouncement, an

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<sup>16</sup>AIR 1936 All 387

<sup>17</sup>AIR 1921 All 152

<sup>18</sup> AIR 1972 Ker 132



intention must be proved<sup>19</sup>. So the deed of divorce, not writing in usual and customary form showing the name of the writer and the person addressed to, does not constitute a valid pronouncement of divorce unless it can be comprehended as having been written with the intention of its operating as pronouncement of divorce<sup>20</sup>. The wife presence is not necessary it may be signed in the presence of the Qazi or the Wife's father or any other person<sup>21</sup>. A talaq whether oral or writing may be made without witnesses. Talaq without witnesses is valid under Sunni Law.

### **3.2 DIFFERENT MODES OF TALAQ**

In Muslim Law there are different Modes of *talaq*. There are many classifications given for dissolution of a Muslim Marriage. *Talaq* can be provided by:

#### **(1) TALAQ BY THE ACT OF PARTIES**

**(a) *Talaq-ul-Sunnat***

**(b) *Talaq-ul-Biddat***

**In *Asha Bibi v Kadar*<sup>22</sup>**, it was held that the word 'talaq' means dissolution of the marriage tie by declaration of the husband.

**In *Wajid AH Khan v. Jafar Hussain*<sup>23</sup>** it was said that the word talaq means freedom

From the bondage of marriage and not from any other bondage.

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<sup>19</sup>Ma Mi V. Kallendar Ammal, 54 IA 61

<sup>20</sup>Russial Baksh V.MT Bhelan, 1932 Lah 498

<sup>21</sup>IN Re, Raja Sahe, 44 Bom 44

<sup>22</sup>(1909) 33 Mad 22

<sup>23</sup>AIR 1932 Oudh 34

## TALAQ-UL-SUNNAT

Talaq which is given in accordance with the traditions of the Prophet and carries his approval is Talaq-ul-Sunnat. It is further subdivided into Ashan and Hasan forms of talaq.

### 1) *Ahasan form*

*Ahasan* in Arabic means the 'best'. Thus it signifies the best form of *talaq*. Here the talaq is made by a single pronouncement when the woman is in a state of purity (*tuhr*). For talaq to be complete the husband must abstain from intercourse during the period of iddat because it remains revocable during that period. In case of non-consummation of marriage *talaq* may be pronounced even when the wife is not in a state of purity.

In *Chand Bibi v Bandesha*<sup>24</sup>. Where the wife and husband were living separately, or when the wife was of advanced age, the condition of *tuhr* was not applicable.

The Quran itself says:

*"And the divorced woman should keep themselves in waiting for three courses and those of your woman who despair of menstruation, if you have a doubt, their prescribed time is three months, and of those too, who have not had their course"*.

A Pronouncement made in the *ahsan* form is revocable during *iddat*. Such revocation may be either in express words or may be implied. Cohabitation with the wife is an implied revocation of *talaq*. After the expiration of the *iddat* the divorce becomes irrevocable.

### 2) *Hasan form*

In *hasan* form of *talaq*, the husband successively pronounces divorce three times during consecutive periods of purity (*tuhr*). No intercourse should have taken place during the period of purity in which a pronouncement has been made. As '*hasan*' in Arabic means proper, this is a form which puts an end to a barbarous pre-Islamic practice of divorcing a wife and taking her back several times in order to ill-treat her.

*Talaq* to be in *hasan* form the proceeding must satisfy the following condition:-

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<sup>24</sup>(1960) 30 BOM 537

- (i) There must be three successive pronouncement of the formula of divorce.
- (ii) In the case of menstruating wife, the first pronouncement should be made during a period of tuhr, the second during the next tuhr and the third during the succeeding tuhr.
- (iii) In the case of non-menstruating wife, the pronouncement should be made during the successive intervals of 30 days.
- (iv) No sexual intercourse should take place during these three periods of tuhr.

The above divorce is based on the following Quranic injunctions:-

*"Divorce may be pronounced twice, then keep them in good fellowship or let (them) go kindness" "So if he (the husband) divorces her (the third time) she shall not be lawful to him afterward until she marries another person"*

Such divorce becomes irrevocable on the third pronouncement.

(b) **TALAQ-UL-BIDDAT**

It came into vogue during the second century of Islam. It has two forms: (i) the triple declaration of talaq made in a period of purity, either in one sentence or in three, (ii) the other form constitutes a single irrevocable pronouncement of divorce made in a period of tuhr or even otherwise.

This type of talaq is not recognized by the Shias. It is approved only by Hanaffi Sunnis. This form of divorce is condemned and considered as disapproved mode of talaq. It is considered heretical, because of its irrevocability. It is irregular and sinful, though lawful, form of talaq where husband does not follow the approved form of talaq, neither pays any attention to the period of purity nor to the abstention from intercourse. According to Ameer Ali, the Omayyad monarchs finding that the checks imposed by the Prophet on the facility of repudiation interfered with the indulgence of their empire endeavoured to find an escape from the strictness of law and found loophole to affect their purpose.

Under the *talaq-ul-biddat*, once a definite complete separation has taken place parties so separated cannot remarry without the formality of the woman marrying another man and

being divorced from him. In *Sarabhai v Rabia*<sup>25</sup> it was held that *talaq-ul-biddat* is theologically improper. It has been maintained that this form of *talaq* is improper from the moral point of view.

In *Fazlur Rahman v Aisha*<sup>26</sup> the validity of this divorce was questioned. It was argued that this type of divorce is against the Quranic Law and the Court is bound not to give effect to the rule and it also opposed to a tradition of the Prophet. It was held that the Quran verses have been differently interpreted by the different Schools.

When *talaq* is in writing it becomes irrevocable immediately<sup>27</sup>. In *Rashid Ahmad v Anisa Khatoon*<sup>28</sup> the husband pronounced the triple *talaq* in the presence of witnesses, though in the presence of the wife. Four days later, *talaqnama* was executed which stated that the three divorces (irrevocable divorce i.e. *talaq-ul-biddat*) were given. It was not proved that there was re-marriage between the parties, or intermediate marriage and a subsequent divorce after actual consummation. The husband and wife lived together and five children were born to them. The husband treats his wife and children as legitimate. As there was no intermediate marriage, the bar to remarriage created by the divorce was not removed. Keeping in view, remarriage could not be presumed and the children born after the triple divorce were held to be illegitimate.

The words "I divorce Anisa Khatoon for ever and render" her *haram* for me: were repeated by the husband three times (*talaq-ul-bain*) which clearly showed an intention to dissolve marriage and it was confirmed by divorce deed. It was therefore, held that the divorce was valid one.

On the second point of revoking the divorce. Their Lordships observed"... According to Hanafi law of Sunnis, husband could not marry the wife after pronouncement to *talaq* unless another marriage of the wife had intervened. It was held that the fact of subsequent treatment of divorced wife as wife and birth of children during the

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<sup>25</sup>(1906) 30 BOM 537

<sup>26</sup>(1929) 8 Pat 690

<sup>27</sup>Mohammad Ali V. Fareedunnisa Begum, (1970) Pat 298

<sup>28</sup>*supra* at 15

subsequent period cannot undo the divorce and make children legitimate. "Thus the five children born after the triple divorce were held to be illegitimate.

It may be said that the Holy Quran only provides procedure for pronouncing *talaq* and it is emphasized that every possible attempt must first be made for reconciliation between the married couples before the completion of the prescribed period. In order to check hasty action and leave the door open for reconciliation of many stages, the right method of pronouncing divorce is as laid down in the Holy Quran and the tradition, i.e. if and when it becomes inevitable, it should be pronounced only when she is completely free from her menstruation and is in clean state and even if a dispute arise during monthly period, it is not lawful to pronounce divorce during that period. He should wait for her to cleanse herself and then should pronounce a single divorce, if he so likes. Then the wife should be left to observe *iddat*.

Professor Tahir Mahmood has summarized the Quranic procedure of divorce in the following words; the law of Islam says to the husband<sup>29</sup>

(a) *Talaq* is "worst of all permitted things" (*Abghad ul-Mubahat*); better avoid it; but if you find it necessary to have recourse to *Talaq*, then;

(b) Wait till the wife enters the period of *tuhr*, i.e., when she is not in her menstrual period (this will assure that you are not acting in a haste). During that period pronounce *Talaq* and do not make it irrevocable (*bain*) by your words:

(i) Revoke the *talaq*, if possible, before the expiry of wife's *iddat*.

(ii) If you have exercised your power of *talaq* in this way. Your behaviour has been the best

(iii) If you do not revoke it by that time at the expiry of *iddat* the marriage shall stand dissolved,

(iv) Now you cannot revoke the *talaq* at your pleasure, but after the expiry of her *iddat* you can remarry the same woman with her consent,

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<sup>29</sup>Hedaya, p.73

(c) If you have revoked the *talaq* pronounced by you for the first time, never pronounce it again since it is same "worst of all the permitted things". However, in case you find it necessary to pronounce *talaq* once again, then:

- (i) Avoid it until once again wife is free from her menstrual period.
- (ii) Pronounce *talaq* in her *tuhr*.
- (iii) Do not by your words; make also this second *talaq* irrevocable.
- (iv) Try to revoke this second *talaq* before the expiry of wife's *iddat*.
- (v) If you do not revoke it by then, at the expiry of wife's *iddat* the marriage will, once again, stand dissolved.

As before, now you cannot revoke the *talaq* at your pleasure, but after the expiry of her *iddat* you can remarry the same woman with her consent.

(d) If you have succeeded in preparing yourself to revoke the *talaq* (which you pronounced for a second time), never pronounced for a second time), never pronounce a *talaq* again "since it is worst of all the permitted things;" but again if you really find it unavoidable to pronounce a *talaq* then;

1. Wait for wife to be free from her second menstrual cycle (this will give you a last chance for a cool consideration).
2. If you now pronounce a *talaq* (for third time) you cannot revoke it any more, also you will not be able even to remarry your divorced wife right way: if you so wish you will have to pay a penalty which, due to human nature, you will never like the penalty of finding your wife in somebody else's bed and remarrying her only if and when she is lawfully free of marital bond; the penalty is known as "*halala*".
3. The moment you do so the marriage will stand dissolved.

If you have exercised your power of *talaq* in this way, your behaviour is still good (*Hasan*).

You cannot, however, contract a fresh marriage, right way, with your divorced wife. If you so desire, pay penalty of *halala* and fulfil your desire, but this you cannot do collusion with your divorced wife and the man she remarries after *iddat*, any such collusion will make penalty wholly ineffective, only if third person marries your divorced wife without any preconditions, consummates the marriage, and then divorces her willingly and not with intention of making her available to you. With her consent you can take her back by a fresh marriage.

This is the simple procedure of divorce in Islam which is unfortunately misunderstood by the majority of Muslims themselves due to their ignorance.

## **TALAQ-UL-BIDDAT**

### **(i) Triple pronouncement Divorce**

This *talaq* is defined in the Hedaya as a divorce where the husband repudiates his wife by three divorces in a one sentence or where he repeats the sentence separately thrice within a single *tuhr*. This form of *talaq* finds recognition with the Hanafis but not with the Shias.

In *Sara Bai v Rabia Bai*<sup>30</sup>. The Court recognized triple divorce on irrevocable footing.

In *Aisha Bibs v Qadir Ibrahim*<sup>31</sup>. the Court held that the words of divorce addressed to the wife, though, she was not present, were repeated three times as "I divorce forever and render *Haram* for me" which clearly showed an intention to dissolve the marriage, and followed it by executing a deed of divorce which stated that three divorces were given in the abominable form i.e. *biddat*, the *talaq* being addressed to the wife by the name and in the *biddat* form, the presence of wife is unnecessary.

In *Fulchand v NazibAli*<sup>32</sup>.Held that presence or absence of wife makes no difference so far as effectiveness of triple divorce is concerned. The Court speaking through Justice Venkta Subba Rao observed:

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<sup>30</sup>(1910) 3 Mad 22

<sup>31</sup>(1910)3 Mad 22

<sup>32</sup>(1909) 36 Cal 184

"We, therefore, hold that it is necessary for the wife to be present when the talaq is pronounced. Triple divorce to be effective, it is imperative that it should be addressed to the wife in particular sense."

The triple divorce pronounced at one time was condemned by the Jammu and Kashmir High Court nevertheless treated it effective and expressed helplessness regarding the bringing of any change by Judicial Interpretation.

In *Ahmad Giri v Mst. megha*<sup>33</sup> the Court observed "*Talaq-ul-biddat*" is the most prevalent form of obtaining divorce in India. Any change in this respect cannot be brought about by judicial interpretation. If there is a general desire among the Muslim Law can be brought out. In the words of Sayed Amir Ali. "Whether by general synod of Muslim doctors or by the direct action of the legislatures, it is impossible to say".

In *Yusuf v Sowramma*<sup>34</sup> the court observed that it is popular fallacy that a Muslim male enjoys, under Quranic Law, unbridled authority to liquidate the marriage. The Holy Quran expressly forbids a man to seek pretext for divorcing his wife so long as she remains faithful and obedient. He further observed about the state of affairs in India, that Muslim law as applied in India has taken a course contrary to the spirit of what the holy Prophet or Holy Quran laid down and the same misconception vitiates the law dealing with the wife's right to divorce."

In *Rahmatullah v State of U.P. and others*<sup>35</sup>, the Lucknow Bench of Allahabad High Court observed that " *talaq-ul-Biddat* or *Talaq-i-Bidai*, that is, giving an irrevocable divorce at once or at one sitting or by pronouncing it in a *tuhr* once in an irrevocable manner without allowing the period of waiting for reconciliation or without allowing the will of Allah to bring about reunion, by removing differences or cause, of differences and helping the two in solving their differences, runs counter to the mandate of Holy Quran and has been regarded as helpful by all under Islam Sunnat. To be sinful the court further observed that the mode of *talaq* giving unbridled power to the husband cannot be

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<sup>33</sup>AIR 1955 J&K

<sup>34</sup>AIR 1971 Ker 261

<sup>35</sup>1994 (12) Lucknow Civil Decision p.463



deemed operative as same has the effect of perpetuating discrimination on the ground of sex that is male authoritarianism.

In *Aga Mohammad v Koolsoom Bibi*<sup>36</sup> the Privy Council held that it would be wrong for courts on a point of this kind to put their own construction on the *Quran* in opposition to express ruling of commentators of such great antiquity and high authority.

But as we have seen that in majority of the cases the Court has either regretted its action or found it helpless to pronounce verdict in opposition to the earlier rulings. In some cases the Court felt the need to reform but did not give verdict against the established law on triple divorce is good in law but bad in theology.

#### (ii) **One Irrevocable Talaq**

The husband may make a single pronouncement during a *tuhr*, clearly indicating an intention to dissolve the marriage irrevocably. In such cases an irrevocable divorce is affected.

### (2) **IMPLIED TALAQ**

#### (a) **Ila**

#### (b) **Zihar**

### **ILA**

Besides *talaq*, a Muslim husband can repudiate his marriage by two other modes, that are, Ila and Zihar. They are called constructive divorce. Though not prevalent in India, Ila is another form of *talaq* where the husband takes an oath not to have sexual intercourse or refrains himself from the sexual intercourse with his wife. Followed by this oath, there is no consummation for a period of four months. After the expiry of the fourth month, the marriage dissolves irrevocably. But if the husband resumes cohabitation within four months, Ila is cancelled and the marriage does not dissolve. Ila stands cancelled. Under *Ithna Asharia* (Shia) School, Ila does not operate as divorce without order of the court of law. After the expiry of the fourth month, the wife is simply entitled for a judicial

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<sup>36</sup> (1897) 24 IA 196

divorce. If there is no cohabitation, even after expiry of four months, the wife may file a suit for restitution of conjugal rights against the husband. It is necessary that the husband be a major and sound mind.

**In *Bibi Rehana Vs. Iqtidar-uddin***<sup>37</sup>, after the marriage ceremony was over, the parents of the boy pushed him into a room where his wife was waiting for him. It appears from the facts of the case that the husband was not interested in that marriage. Immediately after entering into the room he took a vow in the presence of his wife that he would never have sexual intercourse with her. Soon after giving this statement he came out of the room and repeated the vow in the presence of his mother and his mother's sister. His father then came out of another room and he once more repeated that vow. The Court refused to accept the version of the husband. The Court said that the husband has failed to establish that there had been a divorce in the *Ila* form.

*Ila* is cancelled by:-

- (1) The husband resuming sexual intercourse within the period of four months, or
- (b) Verbal restriction thereof. *Ila* is not a practice in India.

### **Zihar**

In *Zihar* the husband may compare his wife with his mother or any other female relation within the prohibited degrees of relations. The uttering of *Zihar* does not by itself dissolve marriage but its legal effect is that sexual intercourse between them because unlawful till he has expiated himself by performing penance. The wife can also claim judicial separation or regular divorce. The comparison is to heap disrespect on the wife. In Shias two witnesses are required to testify to *Zihar*.

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<sup>37</sup>(1943) All 295

### **Ingredients of Zihar**

1. Husband must be sane and adult.
2. He compares his wife to his mother or any other female within prohibited degrees
3. Then the wife has a right:-
  - (a) To refuse to have sexual intercourse with him till he has expiated himself from penance prescribed by law, such as-
    - (i) Freeing a slave
    - (ii) Fasting, for two months
    - (iii) Feeding, sixty poor persons
  - (b) To apply to the Court for an order requiring him either to perform penance or to decree her a regular divorce.

After the expiry of fourth month the wife has following rights:

- (i) She may go to the court to get a decree of judicial divorce
- (ii) She may ask the court to grant the decree of restitution of conjugal rights.

Where the husband wants to revoke Zihar by resuming cohabitation within the said period, the wife cannot seek judicial divorce. It can be revoked if:

- (i) The husband observes fast for a period of two months, or,
- (ii) He provides food at least sixty people, or,
- (iii) He frees a slave.

According to Shia law Zihar must be performed in the presence of two witnesses.

**Ila** and **Zihar** are the modes of **talaq by conduct** and not by words.

#### **(4) TALAQ BYMUTUAL CONSENT**

##### **(a) Khula**

##### **(b) Mubarat**

#### **KHULA**

The word *khula*, in its original sense means “to draw” or “dig up” or “to take off” such as taking off one’s clothes or garments. It is said that the spouses are like clothes to each other and when they take *khula* each takes off his or her clothes, i.e., they get rid of each other. In law it is said to signify an agreement between the spouses for dissolving a connubial union in lieu of compensation paid by the wife to her husband out of her property. Although consideration for *Khula* is essential, the actual release of the dower or delivery of property constituting the consideration is not a condition precedent for the validity of the *khula*. Once the husband gives his consent, it results in an irrevocable divorce. The husband has no power of cancelling the ‘*khula*’ on the ground that the consideration has not been paid. The consideration can be anything, usually it is *mehr*, the whole or part of it. But it may be any property though not illusory. *Khulais talaq* at the instance of the wife.

According to Fatwa-i-Alamgiri, when married parties disagree and are apprehensive that they cannot observe the bounds prescribed by the divine laws, the woman can release herself from the tie by giving up some property (*iwaz*) in consideration of which the husband is to give her *khula*. Tyabji says that the marriage may be dissolved by an agreement between the parties for the consideration paid or to be paid by the wife to the husband. Such an agreement where the wife alone is desirous of having the marriage dissolved is called *khula*.

In Baillie's *Imameca*, the following have been held to be valid conditions for *khula*:

- (i) Puberty
- (ii) Sanity
- (iii) Freedom of choice

(iv) Intention on the part of husband

(v) Abstinence for one menstrual period from connubial intercourse

(vi) Some version on the part of the women towards her husband.

However, under Shia law. The following four conditions are required.

(a) The husband must be adult,

(b) He must be sane,

(c) He must exercise the right of divorce without any compulsion, i.e. his consent should be free,

(d) He should have an intension to exercise his right of divorce.

Mulla considers *khula* as divorce by mutual consent but Paras Diwan differs saying that it would be proper to call it a divorce at the instance of the wife.

**In *Moonshee Buzul-ul-Raheem v Luteefut-on-Nissa***<sup>38</sup> it was held that divorce by khula is complete from the moment the husband repudiates the wife. There is no period during which such a divorce can be repudiated.

In ***Mst. Balaquos Ikram v Najmal Ikram***<sup>39</sup>, it was held that the Muslim Law the wife is entitled to Khula as of right if she satisfies the conscience of the Court that it will otherwise mean forcing her into a hateful union.

### **Essential of Khula**

- a. There must be an offer from the wife.
- b. The offer must be accepted with the consideration (evaz) for the release
- c. The offer must be accepted by the husband.

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<sup>38</sup>(1861) MIA

<sup>39</sup>(1959) 2wb 321

As regard the property which can be given in consideration of the release by the husband. All agree that it can be everything that can be given as dower.

If the wife agrees to pay something or give something by way of consideration for her release but after being divorced by her husband fails to fulfil her promise. In such a case the divorce does not become invalid and the husband has a right to claim the consideration, because as soon as an offer for Khula is accepted. It becomes an irrevocable divorce ( *talaq-ul bain*) and the wife is bound to observe *Iddat*.

### **MUBARAT**

In Mubarat, the outstanding feature is that both the parties are equally desirous of the divorce. Thus, the proposal may emanate from either side.

Among the Sunnis when the parties to marriage enter into a mubarat all mutual rights and obligations come to an end. The Shia law is stringent though. It requires that both the parties must bona fide find the marital relationship to be irksome and cumbersome. Among the Sunnis no specific form is laid down, but the Shias insist on a proper form. The Shias insist that the word mubarat should be followed by the word *talaq*, otherwise no divorce would result.

They also insist that the pronouncement must be in Arabic unless the parties are incapable of pronouncing the Arabic words. Intention to dissolve the marriage should be clearly expressed. Among both, Shias and Sunnis, mubarat is irrevocable. Other requirements are the same as in khula and the wife must undergo the period of *iddat* and in both the divorce is essentially an act of the parties, and no intervention by the court is required.

The Hedaya refers to the word *mubara'at* as meaning an act of freeing one from another mutually. It is mutual discharge from the marriage tie. While in khula the request proceeds from the wife to be released and the husband agrees for certain consideration usually the *Mehr*, In mubarat apparently both are happy at the prospect of getting rid of each other khula and mubarat are irrevocable divorce and it is necessary for a wife to observe the period of *iddat* and she is entitled to maintenance.

In *Jani v Mohd. Khan*<sup>40</sup>. It was held that Mubara'at is also a form of dissolution of the marriage contract, it signifies a mutual discharge from marriage claims. In this form, the aversion is mutual as both the sides' desire separation. Thus it involves an element of mutual consent

#### **KHULA VS MUBARAT**

1) *Khula* is a "redemption" of the contract of marriage while *mubarat* is a "mutual release" from the marriage tie.

2) In *khula* the offer is made by the wife and its acceptance is made by the husband. In *mubarat* the two may make an offer and the other accepts it.

3) In *khula*, a "consideration" passes from wife to the husband. In *mubarat* the question of consideration does not arise.

4) In *khula* the aversion is on the side of the wife while in *mubarat* there is mutual aversion,

#### **(4) DELEGATED DIVORCE (*Talaq-e-Tafweed*)**

This kind of *talaq* is unique to Muslim law and has no parallel in other systems and finds favour in both important schools of Muslim, i.e. the Shias and Sunnis. According to Baillie. As a man may in person repudiate his wife so he may commit the power of repudiating her to herself or to third party. That is, the husband may delegate the power of divorce to his wife. He may do so at the time of the marriage contract or at any time he likes, the husband has the power to delegate his own right of pronouncing divorce to the wife.

In *Buffatin v Salim*<sup>41</sup>. a stipulation that under certain specified conditions the wife can pronounce divorce upon herself has been held to be valid, provided, first, that the option is not absolute and. secondly, that the conditions are necessary and not opposed public policy.

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<sup>40</sup>AIR 1970 J&K 154

<sup>41</sup>AIR 1950 Cal 304

In *Mirjan Ali v Maimuna Bibi*<sup>42</sup>, the mere happening of the contingency is not sufficient the wife must clearly establish first that events entitling her to exercise her option have occurred, and secondly, that she actually exercised her option.

The delegation of the power to divorce is technically called tafweez. Tafweez is three kinds.

- 1) Ikhtiar(choice)giving her the authority to talaq herself,
- 2) Ambriyad leaving the matter in her own hand, and
- 3) Mashiat (pleasure) giving her the option to do what she likes.

In *Mohd. Khan v Shahmali*<sup>43</sup>, there was a prenuptial agreement according to which the defendant agreed to live in the plaintiff's parental house if he would leave that house he would pay a certain specified sum to the plaintiff in default of which condition would operate as divorce. It was held that the condition was not unconscionable and opposed to public policy; violation of such a term would operate as divorce between the husband and wife.

In *Mangila Bibi v Noor Hossain*<sup>44</sup> it was held that once the husband in Kabinama unilaterally delegates unconditional power to wife to give him divorce ex parte and at her will, she can validly exercise the power to pronounce divorce.

## **(5) TALAQ BY COURT'S ORDER**

### **(a) Lian**

### **(b) Fashq**

## **LIAN**

The right of a wife to get a divorce on the husband's imputing a false charge of adultery is known as lian. The Quran and Hadith both guarantee dissolution of marriage by way of lian. If the husband has falsely and baselessly charged the wife with adultery. Islam

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<sup>42</sup> AIR 1949 Assam 14

<sup>43</sup> AIR 1972 J&K 8

<sup>44</sup> AIR 1992 Cal 92



guarantees to the wife a right to such dissolution of her marriage. According to Tyabiji, if a Muslim adult husband who is of sound mind, makes a statement that his wife has been guilty of adultery he gives his wife an option of applying to the court to put the husband upon the alternatives of (a) retracting his statement, or (b) swearing four times by God that she is guilty of adultery, and imprecating upon himself the curse of God if he accuses her falsely

The mere charge levied by the husband will not dissolve the marriage automatically. A dissolution decree by a court is necessary for the termination of marriage. In *Zafar Husain v Ummat-ur-Rahman*<sup>45</sup> the wife of the plaintiff alleged that her husband had stated before several persons that she had illicit intercourse with her brother and imputed fornication to her. Among other grounds a plea was taken that the law of the lian had no place in Anglo-Mohammedan law and must be considered obsolete. It was held that the *Qazi* of Mohammedan law was replaced by the Court and a Muslim wife is entitled to bring a suit for divorce against her with adultery. It was said that the charge of adultery of the wife made by the husband could not be the ground of divorce by the wife<sup>46</sup>. The Doctrine of lian was applicable to British India to this extent that a Muslim wife is entitled to bring a suit and obtain a decree for dissolution of marriage on the ground that her husband has charged her with adultery. The husband can apologise for the false charge made by him against his wife. In *Nurjahan v M.K. Ali*<sup>47</sup> it was held that in India the doctrine of lian has not become obsolete.

### **Features of Lian**

- a) Husband (adult and sane) charges his wife (adult and sane) of adultery or denies the paternity of her child.
- b) Such charges is false. If such charges is proved to be true, decree for the dissolution of marriage would not be granted in favour of the wife.
- c) Such false charges does not *ipso facto* dissolve the marriage, it only gives an opportunity to the wile to move the Court to dissolve the marriage. The

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<sup>45</sup>6 AIR 1919 All

<sup>46</sup> Jauri Beebee v. Sheikh Moonshee Baparee, (1865) 3 Wr 93

<sup>47</sup> AIR 1977 Cal 90

marriage continues till the decree is passed.

- d) She must file a regular suit for a dissolution of marriage. Mere "application" is not enough. No such suit will lie if the marriage was irregular.
- e) The judicial separation due to Lian is irrevocable.
- f) Lian is applicable only to *sahih* marriage not to *fasid* ones.

### **RETRACTION OF CHARGE**

The Muslim Law permit the man to retract the charge. The retraction must be (i) Bona fide and not a mere device for defeating suit for dissolution, (ii) unconditional, and (iii) made at or before the commencement of hearing and not after the close of evidence.

Three conditions are necessary for a valid retraction:-

- (i) The husband must admit that he has made the charge of adultery against the wife.
- (ii) He must admit that the charge was false, and
- (iii) He must make the retraction before the end of trial<sup>48</sup>

### **FASHQ**

The term Fashq in Arabic means cancellation, revocation, abrogation. It means cancellation of marriage on account of physical defects in husband or wife. It is dissolution of marriage by qazi (Law Courts). Before the passing of the Dissolution of Muslim Marriage Act. 1939, a Muslim woman was not allowed to seek dissolution of her marriage, however she could apply for dissolution under the doctrine of Fashq on the following grounds;

- (a) Irregular marriage
- (b) *Khyar-ul-bulugh*
- (c) Marriage within prohibited degrees

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<sup>48</sup>M.Ali Mohammed v. Hazara Bai, AIR 1955 Bom 469

- (d) Post-marriage conversion of the parties to Islam
- (e) Impotency of husband
- (f) Lian

In *Janki Amma v Padmanabhan*<sup>49</sup>, in a suit for dissolution of marriage on husband's petition, orders were passed by the Munsif and allowing dissolution. When this order of dissolution was in force, the first accused married with second accused. The single Bench of the Travancore Cochin High Court held that the decree declaring the first marriage void was in existence when the accused contracted the second marriage and therefore, it cannot be said that he had a culpable guilty knowledge that he was doing something unlawful<sup>50</sup>.

In *K.C. Moyin v Nafeesa*<sup>51</sup> the court held that under no circumstances could a Muslim women unilaterally repudiate a marriage by Faskh, it had no legal sanction without seeking the intervention of the court.

Finding no option to repudiate undesired marital bonds, Muslim women were forced to renounce their faith. With the passing of the Dissolution of Muslim Marriage Act, 1939, a women married under Muslim law was entitled to obtain a decree for dissolution on the grounds provided under the Act.

The Act was made applicable to all Muslims in India who may otherwise adhere to the Hanafi, Shafii., Ithna, Ashari or Ismaili law. The Act was made applicable to the whole of India except the State of Jammu and Kashmir where a parallel enactment was in force<sup>52</sup>"

"There is no provision in the Hanafi Code of Muslim Law enabling a married Muslim woman to obtain a decree from the Courts dissolving her marriage in case the husband neglects to maintain her makes her life miserable by deserting or persistently ill-treating her or certain other circumstances. The absence of such a provision has entailed

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<sup>49</sup>1954 Ker L T 977

<sup>50</sup>Ismail v. Khodeeja Umma. (1958) Ker L T 1042

<sup>51</sup>AIR 1973 KER 176

<sup>52</sup>Jammu and Kashmir State Dissolution of Muslim Marriage Act, 1942

unspeakable misery to innumerable Muslim women in British India. The Hanafi jurists, however, have clearly laid down that in cases in which the application of Hanafi law causes hardship, it is permissible to apply the provisions of the Maliki, Shafii or Hanabali law. Acting on this principle the Ulema have issued fatwas to the effect that in cases enumerated in clause 3, Part A of this Bill, a married Muslim woman may obtain a decree dissolving her marriage. A lucid exposition of this principle can be found in the book called Heelat-un-Najeza published by Maulana Ashraf Ali Sahib (Thanvi) who has made an exhaustive study of "provisions of Maliki law which under the circumstances prevailing in India may be applied to such cases.

As the courts are sure to hesitate to apply Maliki law to case of a Muslim woman, legislation recognising and enforcing the above-mentioned principle is called for in order to relieve the sufferings of countless Muslim women".

The Act consolidates and clarifies the Muslim law relating to suits for dissolution of marriage by women but recourse to ordinary process of the civil courts of the country must be taken. An appeal against an order of the subordinate court is competent under Section 96 of the code of civil procedure.

### **3.3 GROUNDS OF DIVORCE (TALAQ) UNDER MUSLIM LAW**

Under the Dissolution of Muslim Marriages Act 1939, Section 2 mentioned grounds by which a Muslim woman may obtain a decree of divorce, these are

- (i) That the whereabouts of the husband have not been known for period of four years.
- (ii) That the husband has neglected the wife or failed to provide for her maintenance for period of two years
- (iii) That the husband has been sentenced to imprisonment for a period of seven years or upwards; but no decree can be passed on this ground unless the sentence has become final

- (iv) That the husband has failed to perform, without reasonable cause, his marital obligation for period for Three years;
- (v) That the husband was impotent at the time of the marriage and continues to be so Before passing a decree on this ground the Court shall, on application by husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if he does not satisfy, no decree shall be passed on this ground.
- (vi) That the husband has been insane for a period of two years or is suffering from leprosy or virulent venereal diseases;
- (vii) That she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage at the age of 18 years (i.e. before attaining 18 years) Provided that the marriage has not been consummated
- (viii) That the husband treats her with cruelty, that is to say:-
  1. Habitually assaults her to makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
  2. Associates with women of evil repute or leads an infamous life, or
  3. Attempts to force her to lead an immoral life, or
  4. Disposes of her property or prevents her exercising her legal rights over it. Or
  5. Obstructs her in the observance of her religion profession or practice, or
  6. If he has more wives than one, does not treat her equitably in accordance with the injunctions of the Koran.

In *ParakkattilAbu v. Pachiyath Beekkutty*<sup>53</sup> wife filed a suit dissolution of marriage on the ground of cruelty and inequitable treatment. She complains about the conduct of her husband remarrying after 25 years of matrimonial life with 2 children born in the wedlock. Such re-marriage was without the consent or approval of the wife. She felt that

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<sup>53</sup> AIR 2011 Ker 38

she was being treated inequitably after the second marriage of the husband. The court held that wife's assertion regarding inequitable treatment only matters in such cases.

- (ix) On any other ground which is recognized as valid for the dissolution of marriages under Muslim law:

Provided that-

- (a) No decree shall be passed on ground (iii) until the sentence has become final;
- (b) Decree passed on ground (i) shall not take effect for a period of six months from the date of such decree and if the husband appears either in person or through an authorized agent within that period and satisfies the court that he prepares to perform his conjugal duties, the court shall set aside the said decree; and
- (c) Before passing a decree on ground (v) the court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent and if the husband so satisfies the Court within such period, no decree shall be passed on this said ground.

In *Mohd. Abdul Zalil Ahmed v Marina Begum*<sup>54</sup>, a wife filed an application for divorce under the dissolution of Muslim Marriages Act.1939. The main grounds for relief were husband's failure to perform, without reasonable cause, his marital obligation and cruelty i.e... Physical torture and ill-treatment making her life miserable.

The Act was passed to give certain rights to married woman and was not against the tenets of the Quran. The grounds for dissolution of marriage under Section 2 are, inter alia, the husband failed to perform, without reasonable cause, his marital obligation for period of three years, the husband treats her with cruelty, that is to say. Habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment.

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<sup>54</sup> AIR (1999) Gauhati, 28

After the wife's petition, both parties filed a joint petition for a decree in terms of the application filed by the wife. The family court, however, did not allow this on the ground that mutual consent was not ground available under the Act. Against this husband went in appeal. The Gauhati High Court, allowing the petition, held that even though there is no provision for divorce by mutual consent under the Muslim Act of 1939, it should be borne in mind that the parties can compromise on such matter and a decree may be passed in terms of the compromise if otherwise it does not militate against the grounds as reinforced in Section 2 of the Dissolution of Muslim Marriages Act, 1939, The husband in this case has already remarried and the wife's marriage has been fixed up. Without divorce, she could not have married again. In view of this, the court held, "it will not be just and proper to keep her hanging in the air." A decree for divorce was accordingly passed.

In *Yusuf V Sowramma*<sup>55</sup>, a girl of 17 years was married to the appellant-defendant, who was twice of her age. After having lived for a month in her husband's house, she went back to her parents and lived separately for over two years. During this period the appellant admitted his failure to maintain his wife but alleged that he was willing and anxious to keep her with him. Mr. Justice Krishna Iyer rejected the husband's plea and upheld the decree for dissolution of marriage. The court held that a Muslim woman under Section 2 (ii) of the Act can sue for dissolution of the marriage that she not as a fact been maintained even if there is a cause for it. In the opinion of the Court, the reason why the husband has not maintained the wife for statutory period of two years is immaterial. The wife is entitled to decree for the dissolution of her marriage on this ground if the husband does not maintain her for two years, although during this period she lives separately from him without any reasonable excuse. It is submitted that this view is not correct

In *Fasal Mahmud v. Ummatur Rahim*<sup>56</sup>, the Court held that "the Act was not intended to abrogate the general law applicable to Mohammedans, and the husband, cannot be said to have neglected or failed to provide maintenance for his wife unless under the general

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<sup>55</sup>AIR 1971 Ker 261

<sup>56</sup>AIR 1949 Peshwar

Mohammedan law he is under an obligation to maintain her". The wife's suit for divorce was dismissed as it was found that she was neither faithful nor obedient to her husband.

This case was followed by the Bombay High Court<sup>57</sup>. But the Sind High Court has taken different view in *Mst Nur Bibi v. Pir Bux*<sup>58</sup>. It was laid down that where a husband has failed to provide maintenance for his wife for a period of two years immediately preceding the suit, the wife would be entitled to a dissolution of her marriage under Section 2 (ii) of the Act in spite of the fact that on account of her conduct in refusing to live with her husband, she would not have been entitled to enforce any claim for maintenance against the husband in respect of the period during which the husband has failed to maintain her

The husband cannot defend the suit merely on the ground that he was unable to maintain her due to his poverty, tailing health, unemployment, imprisonment or any other ground,, such as, personal properties of his wife, unless it is submitted, that her conduct has been such as to disentitle her to maintenance under Muslim Law..

In *Noor Jahan Bibi v. Kizam Ali*<sup>59</sup>, one Noor Jahan filed a suit against her husband Kazim Ali who charged her that she was of bad character and she was enamoured of one Asghar Ali and committed adultery with him. It was held by the court that the doctrine of Lien has not become obsolete under the Muslim Law and therefore a Muslim wife can bring a suit for divorce against her husband on the ground that her husband has charged her with adultery falsely, by virtue of Section 2(xi) of the dissolution of Muslim Marriages Act. 1939

### 3.4 IDDAT

In Islam, *iddah* or *iddat* (*period of waiting*) is the period a woman must observe after the death of her spouse or after a divorce, during which she may not marry another man. Its purpose is to ensure that the male parent of any offspring produced after the cessation of

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<sup>57</sup>Bai Fatma V. Munna Miranji, AIR 1957 Bom 453

<sup>58</sup>AIR 1950 Sind 8

<sup>59</sup>AIR 1977 Cal 90



a *nikah* (marriage) would be known. The length of *iddat* varies according to a number of circumstances.

It is incumbent upon a woman whose marriage has been dissolved by divorce or death of her husband to remain in seclusion and to abstain from marrying another man for a certain period. This is known as the period of *iddat*. The most approved definition is given by Fyzee. According to him, *Iddat* is the term by completion of which a new marriage is rendered lawful. Ameer Ali says that it is "an interval which the woman is bound to observe between the termination by death or divorce of one matrimonial alliance and the commencement of another."

The object of *iddat* is to ascertain the pregnancy of a wife so as to avoid confusion a parentage

#### **1. Iddat of widow hood**

When a person dies leaving a widow she is prohibited from marrying before the expiration of 4 months and ten days.

*"And if those of you who die, leave wives behind, the women should abstain (from marriage) for four months and ten days."*<sup>60</sup>

The waiting period (*Iddah*) of a widow is four months and ten days;

- 1) The *iddat* has to be continued for four months and ten days even if delivery interferes;
- 2) During this period, the woman is not to marry another man;
- 3) During this period, a person may declare his intentions of marrying the widow - in a socially acceptable manner - or he may keep such intentions to himself, yet he should not make a secret commitment of marriage with the widow; and

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<sup>60</sup>(Al-Baqarah 234)

4) The time and place of the marriage-contract should be finalized and committed to only after the period of four months and ten days has expired.

## 2. Iddat of pregnant woman

If the widow is pregnant at the death of her husband the iddat will not terminate until delivery or miscarriage. If delivery or its miscarriage comes before 4 months and ten days, the remaining period will have to be observed.

## 3. In Case of Talaq

1. The period of iddat in cases of talaq is three courses, if the woman is subject to menstruation: otherwise three lunar months. If the woman is pregnant at the time of divorce, the iddat will not terminate till delivery. If marriage is not consummated no iddat is required. If marriage is not consummated no iddat is required. The waiting period for a divorced woman is three menstrual cycles
2. The waiting period of a woman after menopause (no longer having her menstrual cycle) is three months;
3. The waiting period of a girl who has not had her menstrual cycle is three months;
4. The waiting period for a pregnant woman is until after they deliver the child.
5. If marriage not consummated no iddat is required.

The husband is free to marry again immediately after a divorce, but the woman must observe *iddah* that is wait for 3 lunar months before she can remarry after divorce, to establish paternity, in case she discovers she is pregnant. In case of death of her husband, the *iddah* period is 4 lunar months and 10 days before she can start conjugal relations with another Muslim man.

#### 4. In irregular marriages

If consummation has not taken place, the marriage is irregular and parties have separated, there is no iddat. But if consummation has taken place the wife is bound to observe iddat.

### 3.5 LEGAL CONSEQUENCES OF TALAQ (DIVORCE)

The legal consequences on the rights and obligations of the parties follow from divorce:-

(1) The parties become entitled to contract another marriage. If the marriage was consummated, the wife may marry another husband after the completion of her Iddat, if the marriage was not consummated, she is free to marry immediately.

(2) If the marriage was consummated, and the husband had four wives at the date of divorce including divorced wife, he may marry another wife after completion of the iddat of the divorced wife

(3) Dower becomes immediately payable, if the marriage was consummated, the wife is entitled to immediate payment of the whole of the unpaid dower.

(4) If the marriage was not consummated, and the amount of dower was specified in the contract, she is entitled to a present of three articles of dress.

(5) Where a marriage is dissolved upon the apostasy of the wife, she is entitled to whole of the dower if the consummation of marriage has taken place, Dissolution of Muslim Marriage Act, 1939 does not affect any right which a married woman may have under Muslim Law to her dower or any part thereof on the dissolution of marriage<sup>61</sup>.

(6) Mutual rights of inheritance cease after the divorce becomes irrevocable.

(7) Cohabitation becomes unlawful after the divorce has become irrevocable

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<sup>61</sup>Section 5 of Dissolution of Muslim Marriage Act, 1939

(8) The children born out of such an intercourse are illegitimate

(9) Remarriage between divorced couple is not lawful where the husband has until the following course is adopted:

- a) The wife should observe Iddat.
- b) After observing Iddat, she should be lawfully married to another husband.
- c) This intervening marriage must be actually consummated.
- d) The second husband must pronounce divorce or die
- e) The wife should observe *iddat* after this divorce or death.

A marriage without the fulfilment of the above conditions is irregular, not void. But mere cohabitation between divorced couple without the fulfilment of above conditions is void, and the children of such union are illegitimate as was held in ***Rashid Ahmed v. Anisa Khatun***<sup>62</sup>

(10) The wife becomes entitled to maintenance during *iddat* of divorce but not during the *iddat* of death.

### **3.6 Distinction between Sunni and Shia Laws of Talaq**

Under Sunni Law, *talaq* is easier to be given than under Shia law. According to Sunnis, *talaq* may be given orally or even in writing but the Shias do not recognize *talaq* in writing unless the husband is physically incapable of pronouncing it.

- (1) Under Sunni Law, no witnesses are required to be present at the time of pronouncing *talaq* while under Shia Law, the presence of two male witnesses is necessary,
- (2) Under Shia Law, intention is a necessary ingredient which is dispensed with under Sunni Law. Hence a *talaq* pronounced under intoxication or compulsion, or

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<sup>62</sup>AIR 1932 PC 25

in jest is invalid under Shia Law because under such circumstances man does not do what he intends, but in Sunni Law, even such *talaq* is valid and effective.

- (3) Sunni Law recognizes *Talaq-ul-sunnat* and *Talaq-ul-biddat* both, where Shia Law permits *Talaq-ul-sunnat* only.

**CHAPTER-4**  
**CONCEPT AND PRACTICE OF TRIPLE TALAQ UNDER MUSLIM**  
**PERSONAL LAW IN INDIA**

**4.1 Meaning and nature of triple talaq**

Triple-talaq is a form of *talaq-ul-bidat* in which the husband may pronounce the three formulae at one time and it is irrelevant that wife is in state of tuhr or not. It is denoted in Arabic as *mugallazah* means very hard- divorce which is most disapproved and which does not conform to *talaq-ul-sunnat* theseparation then effectively after the woman has fulfilled her *iddat* or period of probation.

**4.2 Origin of triple talaq**

According to Asghar Ali, the Islamic Shariah which was formulated more than hundred years after the death of the prophet and had evolved under complex influences of various civilizations and took away what was given to women by the prophet and the quran the issue of triple divorce in one sitting illustrates this very well. It was practiced during the Jahiliyah period (times of ignorance) before the advent of Islam.

The triple divorce was not allowed during the prophet's lifetime during the first caliph Abu Bakr's reign and also for more than two years during the second caliph Umar time. Later on Hazart Umar permitted it on account of a peculiar situation. When the Arabs conquered Syria, Egypt, Persia etc they found women there much more beautiful than their own women and hence were tempted to marry them. but those women did not know about Islam's abolition of triple of triple talaq in one sitting, and therefore insisted that before marrying them the men should pronounce talaq thrice to their existing wife which they readily accepted to do so (as they knew that islam has abolished triple talaq and that would not be effective) and even after marrying with the Syrian or Egyptian women they

would also retain their earlier wives. When the Egyptian and Syrian women discovered that they had been cheated, they complained to Umar, the Caliph, to enforce triple talaq again in order to prevent its misuse by the Arabs. He had complied with their demands to meet an emergency situation and with an intention to enforce it permanently, but later on jurists also declared this form of divorce as valid and gave sanction to it.

Triple *talaq* came into being during the second century of Islam when the Umayyad monarch, finding that the check imposed by the Prophet on the facility of repudiation interfered with the indulgence of their caprice; they endeavoured to find an escape route from the strictness of law. Umayyad practice which gave validity to these divorces

#### **4.3 DEVELOPMENT OF TRIPLE TALAQ**

This method of divorce considered from a legal point of view is *talaq al-bidai* or *talaq al-bidat*, unorthodox divorce. It is so called because it is not approved by Muslim jurists and is considered an undesirable innovation. Any divorce which does not conform to *talaq al-Sunnah* is called *talaq al-bidat*. It is the most disapproved form of divorce and it is highly condemned and even declared sinful but nevertheless it is considered legally effective. Moreover, it assumed many other forms in the second century and came to be recognized as an effective divorce.

This disapproved form of divorce is called *talaq al-bain* (irrevocable) and may be given in writing. Such a bill of divorcement comes into operation immediately and severs the marital tie.<sup>63</sup>

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<sup>63</sup> Mohammad Ali vs Faridunisa Begum, AIR 1970 P 298

#### **4.4 REPETITION OF THREE PRONOUNCEMENTS OR TRIPLE TALAQ**

The most prevalent method of exercising talaq al-bidah under the sunni law now a days is to pronounce three talaqs at the same time. It is not necessary that the husband should repeat pronouncement three times in order to constitute an irrevocable divorce. The triple repetition is merely one of the many forms by which a divorce can be effected and the same result can be obtained by any other method recognised for the purpose. Husband can effect such a talaq even by one pronouncement if he make it clear that he was pronouncing a talaq al-bain,that is an irrevocable divorce. Thus, to effect such talaq may husband say ,’’you are repudiated thrice’’ he can also convey his intention of of pronouncing three divorces by saying ,you are divorced so many times’’ and showing three fingers at the same time which will result in talaq al-bidai.<sup>64</sup>

In the talaq al –bidah, the divorce is effective from the moment of pronouncement or the execution of the writing of divorce (talaq-naamah).<sup>65</sup>

#### **4.5 TALAQ-UL-BAIN IS THAT DIVORCE WHICH CANNOT BE REVOKED.**

It is constituted for the following six reasons

- (a) Divorce against a wife with whom there has been no intimacy.
- (b) Divorce against a wife who is past child bearing age.
- (c) Divorce against a wife of such a tender age that she is not subject to menstrual courses. This age is fixed at nine years.
- (d) Divorce against a wife who has obtained a khula divorce for consideration.
- (e) Divorce against a wife who has been thrice repudiated with two intermediate revocations.
- (f)

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<sup>64</sup> IBN nujaym ,3<sup>rd</sup> al-bahr al-raaiq 259(1311a.h.

<sup>65</sup> wilson r.k.;anglo- mohammadon law ss 61 &63 (1908)



#### 4.6 DIVORCE CONSIDERED WITH REGARD TO EFFECT

Divorce with regard to its effect can be divided into the following two main classes:

**(a) *Rajai* (revocable)**

(a) *Rajai* or revocable divorce is such as does not immediately dissolve the marriage but leaves with him the power of the husband to revoke it within the prescribed period of *iddah* and thus to maintain the marriage.<sup>66</sup> *Talaq-ul-hasan* amounts to revocable divorce. It is only on the expiry of the period of *iddah* such a divorce becomes an irrevocable divorce.<sup>67</sup>

**(b) *Bain* (irrevocable)**

*Bain* literally means separation as it separates the parties and leaves no right to resume conjugal relations except by renewing the marriage. *Bain* or irrevocable divorce is such that it immediately dissolves the marriage on the very pronouncement of divorce.<sup>68</sup> It does not leave any discretion with the husband to cancel it.

*Talaq-ul-bain* or irrevocable divorce is further divided into two classes, namely,

(a) *talaq-ul-mughallazah*

(b) *talaq-ul-khafeef or ghair-mughallazah*

The word *Mughallazah* means "very hard" but here it conveys the idea of finality and we call it final divorce or absolute divorce under the Muslim law, a husband can remarry his wife if he had divorced her revocable only once or twice and the period of *iddat* has expired, but she becomes absolutely forbidden to him after the pronouncement of third divorce so that he cannot remarry her unless and until she

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<sup>66</sup>An analytical study of triple talaq (By Furqan Ahamad)

<sup>67</sup>Ibid.

<sup>68</sup>al-kaasaane supravol.2<sup>nd</sup> p. 180

marries another person is dissolved after consummation. This rule is based on a verse in the *Quran* wherein it is stated:

*"So if he (the husband) divorces her (the third time) she shall not be lawful to his after wards until she marries another husband....."*

The *Mughallazah* divorce shall become effective as soon as the third pronouncement of *talaq* is made.<sup>69</sup>

#### **4.7 Schools of Islamic law on triple talaq**

##### **Definition**

Three pronouncements are made in a single *tuhr* (state of purity) either in one sentence e.g. I divorce thee thrice; or three sentences, e.g., I divorce thee, I divorce thee, I divorce thee, this is called *talaq-ul-baain*. Hidayyah, an authoritative source of Sunni school defines this divorce 'where he repeats the sentence, separately thrice within *tuhr* (state of purity).'

#### **NATURE AND EFFECTS OF TRIPLE TALAQ IN VARIOUS SCHOOLS**

Nature and effects of triple *talaq* pronouncement of *talaq* on a single occasion according to various schools of jurisprudence.

##### **SUNNI SCHOOL**

Classical schools of Sunni Islamic jurisprudence have no material difference regarding the effects of triple *talaq* in respect of procedure.

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<sup>69</sup>burhauddi marghiaane, the hedaya (trans) Charles Hamilton 73 (1979)

## HANAFEE SCHOOL

Abu Hanafee has stated that the three pronouncements shall amount to three separate divorces so that they shall result in a *mughallazah* or final *talaq*. The explanation that the husband has used three pronouncement simply for the sake of emphasis cannot change the nature of divorce *mughallazah talaq* would be effected and would be good in law though it may be bad in religion <sup>70</sup>. The expression good in law means that effect to by a qadi or the court.<sup>71</sup>The hanafee jurists consider it to amount to *mughallazah talaq*, even though it called *bidat* or innovation.<sup>72</sup>

## MAALIKEE SCHOOL

A husband may use the word and in the pronouncement of the divorce as when says ,I divorce you and divorce you and divorce u’’ .he may on the other hand ,not use it when he says I divorce you ,divorce u ,divorce u’’.in the former case the pronouncement shall amount to three talaqs or to *mughallazah talaq*.<sup>73</sup>

According to imam malik, be considered from three aspects:

1. When the husband merely repeats the words you are divorced three times or as or as, when he says, you are divorced, divorced, divorced. In such a case if the husband explains that he had repeated the words three times merely to emphasise the *talaq* then his explanation that he repeated the word *talaq* to make more emphatic would not be

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<sup>70</sup> Ahmad k.n muslim law of divorce 86 (1978)

<sup>71</sup>Ibid

<sup>72</sup>Ibid

<sup>73</sup>Mohammad bin ahmad,2<sup>nd</sup> jawaahir al uqud 134(1955)

accepted.<sup>74</sup> This is irrespective of the fact whether the marriage has been consummated or not.<sup>75</sup>

2. If the husband did not repeat the divorce to lay emphasis but intended three *talaqs* or repeated the *talaq* without any intention at all then three *talaqs* shall be effected. <sup>76</sup>if the husband pronounces three *talaqs* on different occasions but in the same *tuhr* then also the same result shall follow.

3. If the husband repeats the *talaq* while giving a conditional *talaq* pertaining to one matter like when he says, if u speak to a then you are three times divorced “in such a case his explanation shall be accepted. if the repetition relate to different things as when he says ,if u go out of this house then u are divorced ,if u speak to A then u are divorced. If u do not take ur meals then u are divorced .then in such as case three *talaqs* shall be effected on the fulfilment of all the conditions.

### **SHAFAAE SCHOOL**

Shafae law holds that if a marriage has been consummated and the husband repeats three pronouncement of *talaq* against his wife whether using or without using a conjunctive word like and but without intending three divorces and merely to lay emphasis on the first pronouncement, a single *talaq* shall be effected .if he pronounces the three pronouncements intending or without any definite intention, three *talaqs* shall be effected.<sup>77</sup>If the marriage has not been consummated then only one *talaq* shall be effected under such circumstances.<sup>78</sup>

### **HANBALEE SCHOOL**

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<sup>74</sup>Ibid

<sup>75</sup>al-shaaraanee abdul wahab ,2<sup>nd</sup> al mizaan al kubraa 137 (1279)a.h.

<sup>76</sup> Ibn qudamah 7<sup>th</sup> al-mughnee' 198(1376 a.h)

<sup>77</sup> Mohammad bin ahmad note 12 at134;al sharani, note 138

<sup>78</sup> ibid

*Imam Ahmad Ibn –Hanbal* has laid down the following rules; if the husband does not use the word and in the repetitions as when he says, *talaq, talaq, talaq* or ‘divorce you, divorce you, divorce you and the second and third pronouncements are used simply for emphasis then only one *talaq* shall be effected if the marriage has not been consummated and if it has been consummated then three *talaqs* shall be effected.<sup>79</sup>

If the husband uses the word and when he says you are divorced and divorced and divorced, then if he used the second and third time to emphasis the first pronouncement then only one divorce shall be effected irrespective of the fact whether the marriage has or has not been consummated. But if he used the three pronouncement without intention to emphasise the first pronouncement, one *mughallazah* divorce shall be effected.<sup>80</sup>

### **SALAFEE SCHOOL (*Al-Hadith*)**

Among the Sunni sects Salafee School (people of traditions) accept three *talaqs* at a single sitting as one and the progressive group of Muslim jurists like Ibn Tymiah etc, suggested that three *talaqs* should legally be taken as one.<sup>81</sup>

### **SHIA SCHOOL**

Under the Shia school (both Ithanaa Ashree and Faatimid law) the pronouncement of three *talaqs* whether by one sentence or one after another when there is no intermediate revocation constitutes triple *talaq* which is considered to be irregular.

### **EFFECT OF TRIPLE TALAQ**

There is a great controversy regarding the effect of triple pronouncement of the divorce at one and the same time. The difference in the opinion of jurists is due to the difference in

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<sup>79</sup>ibid

<sup>80</sup>Ibn tymiyah,3<sup>rd</sup> fataawaa 14(1328a.h)

<sup>81</sup>Wasilat al najaat,371(1364)a.h

their interpretation and application of the law. One class of the jurists is of the opinion that no leniency is to be shown in the application of laws so that people should not take undue advantage on that account. *Abu Hanifa* and *Malik*, therefore, hold the three repetitions of divorce to be final. The other Jurists explained that *Allah* wants to treat people leniently so that they may not be put to hardship, and also to minimize the chances of separation. Hence, they hold three repetitions to amount to one only. Ibn Rushid has explained that Islam believes in golden mean. There is great controversy regarding the effect of triple divorce at one and the same time.

Under the most of the classical schools of *Sunni* Islamic Jurisprudence there is no material difference regarding the effect of 'Triple Divorce' in substance, however, there is some slight difference only in respect of procedure. According to *Hanafi* jurists this result in a *Mughallaza* divorce though they call it an innovation. Whereas the *Shafii* holds that if a husband repeats three pronouncements of divorce but without intending, only for the emphasis it will result in a single divorce but if he pronounces the three divorces intending or without any intention, it shall result in three divorces. More or less same view is held by the *I-Janibali* School. *Maliki* differ in their view in the sense that they make a distinction between various expression used in the pronouncement of divorce. The only progressive group is the *Ahl-ehadis* sect who accepts three divorces at a single sitting as one only. Whereas in *Shia* law there is general consensus of opinion that the divorce in single sitting should be counted as one and the *Imamia* sect go so far as to say that such a divorce is no divorce at all.<sup>82</sup>

#### **4.8 Judicial decisions on triple talaq**

In the case of **Sarabai v Rabia Bai**<sup>83</sup> the court recognizing the triple talaq as irrevocable divorce and held that the divorce should have been pronounced three times in one sitting. The facts of this case were that Haji Adam Sddique, a Kutchi memon of the Hanafee sunni sect, took with him two witnesses and went to the qazi and there pronounced divorce to his wife (plaintiff) in her absence. He had a *talaqnama* written out by the qazi,

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<sup>82</sup>K.N.Ahmad, *Muslim Law of Divorce* 85 (Kitab Bhawan, New Delhi, 1978).

<sup>83</sup>ILR (1905) 30 Bom 537

which was signed by him and attested by the witnesses. Haji Adam Siddique then took steps to communicate the divorce and make over the iddat money to the plaintiff, but she evaded both. He died soon after this the plaintiff thereupon filed suit alleging that she was still the wife of Haji Adam Siddique and claimed maintenance and residence.

The Bombay high court overruled the contention of the plaintiff and held that the divorce should have been pronounced three times and further held that a talaq-bain as in this case, took immediate effect on the mere writing.

(B) In the privy council case **Aneesa Khatoon v Rasheed Ahmad**<sup>84</sup> the decision appears to be harsh one Ghiyasuddin pronounced triple *talaq* to his wife Aneesa khatoon in the presence of witness, the wife being absent four days later he executed a deed of divorce which stated that the three *talaqs* were given in the abominable form there was no remarriage between the parties nor was there any proof of any intermediate marriage the couple afterwards lived together and five children were born. Ghiyasuddin treated Aneesa as his wife and the children as legitimate. In this case privy council held agreeing with the conclusions of the subordinate judges of the lower court, that the pronouncement of the triple talaq, taken by the respondent constituted an immediately effective divorce and they judges of privy council were satisfied that the learned judges of high court have erred in treating the divorce as ineffective, because as pointed out by the learned judges the validity and effectiveness of an irrevocable divorce. In the bidat form would not be affected the Privy Council overruled the High Court decision that the divorce was sham to satisfy his father and the actual intention was not present.

The judicial committee of the Privy Council stated as follows:

The divorce called talaq may be either irrevocable (bain) or revocable (rajai). A talaq bain while it always operates as an immediate and complete dissolution of the marriage bond, differs as too one of its ulterior effects according to the form in which it is pronounced. A talaq bain may be effected by words addressed to the wife clearly

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<sup>84</sup> supra at

indicating an intention to dissolve the marriage (a)once followed by abstinence from sexual intercourse, for the period called the *iddat*,(b)three times during successive intervals of purity between successive menstruations no intercourse taking place during any of the three intervals (c)three times at shorter intervals or in immediate succession (d)once by words showing a clear intention that the divorce shall immediately irrevocable. The first named of the above method is called *Ahsan* (best), the second one is *Hasan* (good) the third one is said to be *Bidat* (sinful).

(C) Jammu and Kashmir High Court in **Ahmad Giri v Mst Megha**<sup>85</sup> held that the triple *talaq* becomes effective and irrevocable, the moment it is given. *Talaq i biddat* had been pronounced by the husband in the presence of two witnesses in 2009 and it was sent to the wife under a registered cover addressed to her ,though she refused to take delivery of the fact that she had been divorced. In this case the court went to the extent of saying that even the pronouncement of triple *talaq* is not necessary, if the intention to make divorce effective and irrevocable at once apparent.

(D) Revocation of divorce is not permissible except when the divorce is *rajai* (revocable), where a husband pronounces a divorce to the wife at the same time in three separate sentences the divorce is in the form of *bain* and here he has no right to revoke it as it was laid down by the Allahabad High Court in **Amiruddin v Mst.khatoon Bibi**<sup>86</sup>

Where the dispute was whether was whether the conjugal rights between the husband and wife still subsisted.Mst khatoon bibi,the plaintiff –respondent filed the suit for recovery of her dower ,her maintenance during the period of *iddat* and her movables in the possession of her husband Amiruddin ,the defendant appellant and ultimately this appeal arose. Mst khatoon Bibi had been lawfully married to Amiruddin and she has lived as his wife upto 8<sup>th</sup> September 1913 her counsel pleaded that Amiruddin divorced her at railway station at Allahabad as she was going with her parents at Mahoba against his wishes but her husband denied the divorce and advocated that the words used by him at the railway station did not in any law have effect of a valid divorce and in any case he

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<sup>85</sup>AIR 1955J&K

<sup>86</sup>AIR 1917 ALL 343



had the option of revocation which he exercised within the prescribed period. The court of first instance rejected all the pleas of the defendant appellant and held that the words used by the husband at the Allahabad railway station on 8<sup>th</sup> September, 1913 were sufficient for valid divorce under the Mohammedan law. It was further held that he did revoke the divorce but he had no option of revocation as he had pronounced triple *talaq* which was irrevocable.

*Talaq-ul-Bidat*, as its name signifies, is the heretical or irregular mode of divorce, which was introduced in the second century of the Mohammedan era it was then that the Ommeyad monarchs, finding that the checks imposed prophet on the facility of repudiation interfered with the indulgence of their caprice endeavoured to find an escape from the strictness of the law, found in the pliability of the jurist a loophole to affect their purpose.

(e) Learned judges referred a short but fruitful judgement of Bombay High Court in re- ***Abdul Ismailji v. Husenbii***<sup>87</sup> which is as follows;

“Talaq al-Bidah or irregular divorce, which is effected by three repudiations at the same time, appears from the authorities to be sinful, but valid and it was recognized as valid by this court in re kaalsam Purbhai and his wife Hirabai.<sup>88</sup>

(f) In the case of ***Saliha Bibi v Sheikh Gulla***<sup>89</sup> where the question was whether the divorce was valid in law, Madhya Pradesh high court reversed the judgement of the trial court the additional district judge approved the testimony of Mahmud ali, and observed;

It is well settled that under the Mohammedan law in order to divorce a wife, the pronouncement has to be made thrice since this was not done, it is difficult to hold that mst. Hidayat Bi validly divorced.

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<sup>87</sup> (1883)ILR 7 BOM,180

<sup>88</sup>(1871)8 BOM H.C REP 95 CR CA

<sup>89</sup>AIR 1973 M.P 207

Madhya Pradesh High court in restoring the decree passed by the learned trial judge held that *talaq-ul-bain* is a recognized form of divorce among the Hanafee's effected by clear words of marriage dissolution intent address to wife. Triple repetition is not a necessary condition for irrevocability effect.

(g) Even in the absence or presence of wife does not affect the irrevocability of triple talaq as held in *Aisha Bibi v Qadir Ibrahim*<sup>90</sup> the court observed;

Where the words of divorce addressed to the wife, though she was not present, were repeated three times by the husband as follows, I divorced a forever and render her haram for me which is clearly showed an intention to dissolve the marriage and followed it by executing a deed of divorce.....which stated three divorces were given in the abominable form bidah, the talaq being addressed to the wife by name and in the bidah form the presence of wife is not necessary.

(h) Justice Venkatasubba Rao stated in *Kathuyamma v Marakkar*<sup>91</sup> as

It is not necessary for the wife to be present when the talaq is pronounced.

(i) Madras high court held in *Abdul Khader v Azeza Bibi*<sup>92</sup> that a talaq given in the absence of wife would be effective only when it becomes known to her . The facts of the case were that Azeza Bibi was legally married with M Abdul Khader and they were living as husband and wife for two and half years .after that her husband neglected her and divorced and talaqnama was written and executed in the presence of Qazi attested by two witness .but the divorce had not been communicated to the wife. The learned judge Kuppuswami Ayyar held that it is not necessary for the husband to divorce in the presence of his wife but essential thing is that it should come to her knowledge.

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<sup>90</sup> (1910) ILR 33 MAD 22

<sup>91</sup> AIR 1931 MAD 647

<sup>92</sup> AIR 1944 MAD 227

(i) In 1931 the madras high court took another view in *kathiyumma v Urathel Marakkur*<sup>93</sup> and said that there could be a valid talaq in the absence of wife but it come into operation only from the date on which the comes to of it. The learned judge referred a passage from Ameer Ali's book;

"It is not necessary for the husband himself to pronounce the talaq in the presence of the wife but it is necessary it should come to her knowledge. if a talaq is given by a letter ,it will take effect on the receipt of the letter by the wife .if the letter reaches father and he tears it into pieces there will be no talaq unless the father transacts all her business ,is in fact her agent, and resides in the same house with her. if the father should inform the wife of the receipt of the letter and deliver to her the torn pieces thereof ,the talaq will take effect only if the letter can be read and understood."

Courts have till now recognized 'triple talaq' as an irrevocable divorce,if pronounced in a single breathe therefore, it is lawful for a man who has divorced his wife to marry her again after she had followed the procedure of Halala. It means that the divorced wife must marry another man and there must be consummation of the marriage and,whoon his own will divorce her.

It brings to the conclusion that the courts are taking a liberal view on the subject of talaq al –bidah and effect of triple talaq and the courts are inclining towards the view taken by the progressive scholars that the triple pronouncement in a single breathe amount to one divorce. The correct law of talaq as ordained by holy Quran is; talaq must be for a reasonable cause.

*If ye fears a breach, between them twain, Appoint two arbiters, one from his family, And the other from hers; If they wish for peace, God will cause Their reconciliation; For God hath full knowledge, And is acquainted, With all things.*

- Holy Quran under Sura IV, verse 35

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<sup>93</sup> AIR 1931 Mad 647

It must be preceded by an attempt at reconciliation between the husband and wife by two arbiters, one chosen by the wife from her family and the other by the husband and from his family if their attempts fail, talaq may be effected.

#### **4.9 TRIPLE TALAQ: AN ODE TO INJUSTICE**

During the reign of the second khalifa of Islam, Hazrat Umar, legend has it that there was a sudden spurt of talaqs in Arabia. It is believed that the Arabs conquered Iraq, Syria, Egypt, the women prisoners from these regions were brought to Mecca and Medina.

These women prisoners were very attractive and charming and the Arabs were captivated by their charm and wanted to marry them, they should divorce their existing wives instantaneously by pronouncing three divorce in one sitting.

The condition was readily acceptable to the Arabs because they knew that in Islam divorce is permissible only twice in two separate period of tuhr and its repetition in one sitting is unislamic, void and shall not be effective. In this way, they could not only marry these women but also retain their existing wives.

This fact was reported to the second Caliph Hazrat Umar. The Caliph then in order to prevent the misuse of the religion by the unscrupulous husbands decreed that even repetition of the word talaq, talaq, talaq would dissolve the marriage irrevocably. It was, however a mere administrative measure of the Caliph to meet the emergency situation and not to make a law permanent. But unfortunately the Hanafi Jurists later on at the strength of this instant administrative order of the second Caliph declared this form of divorce valid and also paved religious sanctions to it.<sup>94</sup>

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<sup>94</sup> Aqil Ahmad, Mohammedan Law, Central Agency, 24th Edition, 2013, page 174

#### 4.10 FORMS OF TRIPLE TALAQ

Talaq-e-biddat means 'talaq of the wrong innovation' The Shias do not recognise this type of talaq. This mode of talaq is prevalent only among the Sunni Muslim. Under Sunni School (Hanafi sect), a divorce pronounced under compulsion, or in a state of voluntary intoxication, or to satisfy or please one's father or some other person, or in jest, is valid. Even talaq pronounced inadvertently by a mere slip of tongue, is valid.<sup>95</sup>

Triple Talaq has two forms: three declarations at one time, or one irrevocable declaration.

1. **Triple Declaration:** It consist of three pronouncements in a single tuhr either in one sentence (" I divorce thee thrice") or in three separate sentence. Talaq becomes irrevocable immediately, it is pronounced, irrespective of the Iddat. As the talaq becomes irrevocable immediately, it is called talaq-i-bain. This form of talaq is condemned. It is considered heretical because of its irrevocability.

2. **Single Irrevocable Declaration:** It consist of a single pronouncement made during a tuhr clearly indicating an intention irrevocably to dissolve the marriage e.g. "I divorce thee irrevocably" or "i had divorced thee in *Talaq-i-bain*"<sup>96</sup>

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<sup>95</sup> Ibrahim B Sayed, Triple Talaq, Islamic Research Foundation International, Inc., visit [www.irfi.org/articles/articles\\_151\\_200/triple\\_talaq.htm](http://www.irfi.org/articles/articles_151_200/triple_talaq.htm)

<sup>96</sup> Dr.A.K Jain, Law Guide for LL.M Entrance , Ascent PUblications, 5th Edition, page 671

undue advantage on that account. Abu Hanifa and Malik, therefore, hold the three repetitions of divorce to be final. The other Jurists explained that *Allah* wants to treat people leniently so that they may not be put to hardship, and also to minimize the chances of separation. Hence, they hold three repetitions to amount to one only. Ibn Rushd has explained that Islam believes in golden mean. There is great controversy regarding the effect of triple divorce at one and the same time.<sup>97</sup>

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<sup>97</sup>K.N.Ahmad, *Muslim Law of Divorce* 85 (Kitab Bhawan, New Delhi, 1978).

#### 4.11 IMPLICATIONS OF TRIPLE TALAQ ON MUSLIM WOMEN

India is one of the few countries that recognises oral and Triple Talaq. Muslims in India are governed by The Muslim Personal Law (Shariat) Application Act! 937 which has no mention of this unilateral mode of divorce. According to oral or Triple Talaq, Muslim men can divorce their wife by simply uttering *talaq* thrice... In the last couple of years, Muslim men have increasingly been using digital media to divorce. What makes the situation very difficult is that the Muslim Personal Law is not codified, which means it is open to interpretation by local clergymen.

The direct victims of this unilateral mode of *talaq* are the Muslim women who suffer on many accounts, in the name of the religion because their husbands can not only give divorce on whimsical grounds but also that when she wanted to go back to him he hid behind the facade of the acknowledged fact that such divorce is irrevocable.

In the startling case of *Nagma Bibi v. State of Orissa*<sup>98</sup>, the deplorable condition of Muslim women gets reflected further. The woman in this case had been divorced by her husband in a drunken state. Next morning he realised he had committed a terrible mistake and wanted his wife back. She also wanted his wife back. She also wanted to go back to him but the community leaders are preventing them from doing so. They forcibly sent her with her three children to her father's house. It was suggested that Nagma Bibi will have to marry again to someone else and only upon being divorced by that man can she re-marry her first husband. This practice is called Halala. The fact noted here is that there is massive discrimination against the Muslim women by the community leaders themselves on grounds of un-Islamic practices like Halala or Triple talaq.

Nowhere in the Holy Quran there is given any recognition to Triple *Talaq* as it gives indefinite unilateral power in the hands of the men. Thus they are directly giving a

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<sup>98</sup> (2014)5 SCC 567

thrashing blow to the woman for them in no manner could free themselves from the traps of their husband as there is no such form of divorce available to them. A liberal and practical interpretation should be given to cure this malady in personal law.

Such injustice further emphasises on the dire need of Article 44 of the constitution<sup>99</sup> which speaks of Uniform Civil Code to become a reality. When there are Acts to protect the rights of all religions even minorities like Parsis who make a small population be deprived from equal laws and rights. In this 21st century everything is so advanced that in a recent case a man divorced his wife through skype then why even today are we ardently following practices which act as a sword hanging on the neck of Muslim women only. When neither the Prophet nor the Quran distinguishes between men and women then why the fate of Muslim women should be sealed by the hands of Muslim men alone.

Lastly, digression from normal format of divorce, Talaq-ul-biddat scars the very essence of Article 21 of Indian Constitution, the right to life and personal liberty. Personal liberty is necessary for a healthy overall development of the units of society. It is imperative to mention that the Personal Laws that falls outside the ambit of Article 13 of the constitution, and therefore the question of declaring any part of the Personal Law of any section of the population of this country as being void on the account of inconsistency with the rights guaranteed under Part III of the constitution, does not arise.

In sharp contrast to Muslim personal law, the Constitution of India guarantees to all citizens the fundamental right to equality under Article 14, and the fundamental right to freedom from discrimination on the grounds, inter alia, of religion and sex under Article 15. In recognition of the conflict between the principle of equality and the discrimination sanctioned by personal law, Article 44 of the Constitution directs the state to enact a Uniform Civil Code (UCC).

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<sup>99</sup>Article 44 of The Constitution of India, 1950 reads as "Uniform Civil Code for the Citizens: The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."



The issue of 'triple divorce' is regarded as highly sensitive among the Muslims, not only in India but also elsewhere the holy Quran is very cautious in matters of divorce. Three *talaqs* have to be spaced over a period of 3 months to give husband and wife for reconciliation without the intervention of relatives and friends .moreover talaq can be pronounced when the wife is in a state of *tuhr* i.e. after menstruation. Yet, despite clear marital life in one breathe. The practice of triple *talaq* is wide spread among the Sunni Muslims and has legal validity even then the jurists call it a Triple Talaq (*talaq-e – biddat*) innovative form of divorce .the dispute has been highlighted by reports of some Muslims instantly by mail, over the telephone, and even through mobile phone text messages. Different theories of divorce prevailing in the contemporary Muslim world and what checks and restraints have been imposed by Islam over the exercise of husband, s power of talaq.

“The triple talaq is a sword hanging over the heads of married Muslim women” said Sebha Farooqui, secretary of the Delhi state unit of the all India democratic women, association. The AIDWA resolution argues that not only is the practice of triple talaq is discriminatory and just towards the wife and thus against constitutional principles, and also contrary to Islam. Triple talaq said in one sitting is a part of one interpretation oof the Koran. Triple talaq according to the resolution .has been prescribed or limited in number of countries across the world, for eg in Pakistan, Indonesia, Iraq, turkey and Tunisia and it is only in India that Muslim women have untrammelled freedom to pronounce triple talaq. Muslim women in the personal sphere, as victims of communalism and terrorism, and as a section deprived of basic rights of citizenship. in the Indian context ,when one talks of the status of Muslim women, the focus variably falls on triple talaq in one sitting, polygamy, ,*Ijab*, triple talaq called to be dangerous triangle."

Women in rural areas are most victimized through violation of their basic rights and also domestic violence with no access to education. Most rural Muslim women have no idea about the courts and the laws and even Quran, says about women rights the need of the hour is too take these cases and help women get their due rights .they become easy

victims and run pillar to post when men desert them, dump triple talaq and irresponsibly use polygamy as their birth right.<sup>100</sup>

#### **4.12 Legal and Religious Aspect of ‘Triple-Talaq’**

In Islam, law cannot be dealt with as a separate aspect from religion. J. Mahmood in *Govind Dayalv. Jnayatullah*<sup>101</sup> held, “it is to be remembered the Hindu and Mohammedan Laws are so intimately connected with religion that they cannot readily be served from each other.”

The above judgment is totally applicable in the case of “*Triple Talaq*” either the three pronouncement should be treated as one revocable divorce or three divorces. For this problem both legal and religious aspect are the same and the two aspect only deal with the problem whether three divorces in single breath should be taken as one or three.

#### **Position of Triple-Talaq under Basic Source of Islamic Jurisprudence**

When the triple divorce is seen in the light of the four basic sources of Islamic jurisprudence, we see that a principle to become a law has to be supported by the Quran, Hadith, Ijma, and Qiyas. If the solution of the problem is given in the Quran it is the final ruling of *sharia*, if there is no clear exposition of it in Quran we examine the traditions of Prophet (PBUH), and if the solution is there it must be taken as rule of *sharia*. If the problem finds no solution in either of those, we refer to general consensus of opinion or Ijma and if the problem has been solved by Ijma it will also become rule of Islamic Law.<sup>102</sup>

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<sup>100</sup>A critical appraisal of divorce in Islamic law by nehlauddin ahmad(article)

<sup>101</sup>(1895)7 All. 775. 781; 4 Furqan Ahmed, *Truffle Talaq: An Analytical Study with Emphasis on Soda-Legal Aspect* 86 (Regency Publication, New Delhi, 1994).

<sup>102</sup>*Supra* note 6 at 41.

#### 4.13 ROLE OF INDIAN JUDICIARY: JUDICIAL APPROACH TOWARDS TRIPLE TALAQ UNDER MUSLIM LAW

The view of judiciary on the subject of triple divorce has to be analysed critically so as to determine how the judiciary has examined the controversy of *triple-talaq* prevalent in the Muslim world.

'Triple Divorce' is recognized and enforced by Indian Judiciary from inception, as early as in 1905 in the case of *Sara Bai v. Rabia Bai*<sup>103</sup> the Bombay High Court recognized 'triple divorce' on irrevocable footing.

Further the Privy Council also in the case of *Saztid Rashid Ahinad v. (Mst) Anisa Khatun*<sup>104</sup> recognized 'triple divorce' pronounced at one time as validly effective.

In *Ahmad Giri v. Begha*<sup>105</sup>, the court for the first time counted the role of intention as very important factor in determining the effectiveness of the divorce. However, the court refused to bring about any change in existing form of *talag-ul-biddat*:

The basic reason for this attitude of the judiciary could be due to the fact that judiciary in British India believed that the Muslims in India have faith that their law is of 'divine' origin, therefore is infallible, immutable and unchallengeable. There was reluctance among the judiciary on the account that a decision should not hurt the feeling of the general Muslim. In spite of realizing the deficiency they could not contribute meaningfully.

But later on a change in trend can be seen in the attitude of the judiciary. Through the study of true Islamic law and writing of many authors like Ameer Au, Yusuf Ali, it was contradicted that the law of divorce in Islam gave arbitrary and whimsical power to husband to divorce his wife. As it has been already mentioned that the true Islamic philosophy of '*Talaq*' as enunciated in Quran reveals that there is no scope of arbitrary

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<sup>103</sup> ILR (1905) 30 Bom 537

<sup>104</sup> AIR 1932 PC 25.

<sup>105</sup> AIR 1955 J&K 1.

and easy divorce in Islam. As far as judiciary is concerned, it has shown its disfavour towards the unilateral mode of talaq but found itself helpless to pronounce verdict as it did not want to interfere with the Quranic injunctions and Muslim Personal Laws.

The Privy Council in **Agah Khan v. Koolsoom Bi**<sup>106</sup>, held that:

*"It would be wrong for the courts on a point of this kind to put their own construction on the Quran in opposition to express ruling of commentators, of such great antiquity and high authority."*

In **Rahmatullah v. State of U.P.**<sup>107</sup> and other, Justice H.N Tilhari of Allahbad High Court, declared Triple Talaq Invalid and observed:

*"Talaq-ul-Biddat is, giving irrevocable divorce at once or at one sitting or by pronouncing it in one tuhr in an irrevocable manner without allowing the period of waiting for reconciliation or without allowing the will of Allah to bring the parties together, by removing differences or causes, of differences and helping the two in solving the problem, runs counter to mandate of Holy Quran and has been regarded a, while all under Islam-Sunnat, to be sinful."*

The Learned Judge further observed that the mode of talaq which gives unbridled power to the husband cannot be deemed operative as same has the effect of perpetuating discrimination on the ground of sex that is male authoritarianism.

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<sup>106</sup>(1897) 24 Ia. 160.

<sup>107</sup>1994 (12) Lucknow Civil Decision, pg.463

In *Rukaiya Khatoon's*<sup>108</sup> case, the Division Bench stated that the correct law of talaq as ordained by Holy Quran is-

1. That, the talaq must be for a reasonable cause; and
2. that, it must be preceded by an attempt of reconciliation between the husband and the wife by the two arbiters.

Therefore the court held that any contravention to the above rules is invalid.

However, such reforms should be brought by the legislator and through judicial law-making or judicial activism.

#### **4.14 SUPREME COURT ON MUSLIM PERSONAL LAW, AIMS TO END GENDER BIASES**

##### **Validity of Talaq Comes Under Lens**

With Muslim women at a disadvantage under the Muslim Personal Law with no safeguard against arbitrary divorce and polygamy, the Supreme Court has now decided to examine the validity of such practices saying that it amounts to violation of women's fundamental rights.

A bench of Justices a R Dave and A K Goel said laws dealing with marriage and succession are not part of religion and the Muslim Personal Law has to evolve with the changing times. The bench said it is high time for the judiciary to examine these issues which the court had earlier refrained from venturing into on the ground that it was a policy matter to be decided by the government and the legislature. It said these are not merely a policy matter but relate to protection of fundamental rights of Muslim women guaranteed by the Constitution. Referring to an earlier apex court verdict, the bench said practice of polygamy is injurious to public morals and can be banned just like the practice of sati was banned.

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<sup>108</sup>1994 (12) Lucknow Civil Decision, pg.463

"It was pointed out that in spite of Constitutional guarantee, Muslim women are subjected to discrimination. There is no safeguard against arbitrary divorce and second marriage by her husband during currency of the first marriage, resulting in denial of dignity and security to her," the bench said.

"In **Javed vs State of Haryana**<sup>109</sup>, a Bench of three judges observed that practice of polygamy is injurious to public morals and can be superseded by the state just as practice of 'sati'. It was further observed that conduct rules providing for monogamy irrespective of religion are valid and could not be struck down on the ground of violation of personal law of Muslims," the bench said.

The court passed the order while adjudicating a woman's plea seeking share in ancestral property of her father under the Hindu Succession Act. During the hearing of the case, the lawyers pointed out the discrimination faced by Muslim women in matrimonial disputes.

Taking 'suo motu' cognizance of alleged discrimination faced by women under Muslim Personal Law, the court ordered that matter be treated as PIL and asked the Chief Justice of India to constitute an appropriate bench to look into the issue of gender discrimination under Muslim Personal Law.

It is pointed out that the matter needs consideration by this court as the issue relates not merely to a policy matter but to fundamental rights of women guaranteed under Articles 14, 15 and 21 and international conventions.

The bench said that the constitution bench earlier did not address the issue of discrimination under Personal Law but it held that the Article 21 included right to live with dignity which supports the plea that a Muslim woman could invoke fundamental rights in such matters.

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<sup>109</sup>(2003 (8) SCC Pg. 369

The Supreme Court bench issued notice to attorney general and National Legal Services Authority seeking their response on the issue.<sup>110</sup>

### **SHAYARA BANO CASE<sup>111</sup>**

A division bench of the Supreme Court, recently has put the case of triple talaq back in the court of the Central government to deal with the vexatious problem ruining the lives of Muslim women.

Shayara Bano, a Muslim woman hails from Uttarkashi, Uttarakhand. She was married in 2001. Her husband divorced her on 10th October 2015. She lives with her husband now. They had two children out of this wedlock. In March 2016 she filed a petition in the Supreme Court of India challenging the concept of triple talaq, *nikah halala* and polygamy among Muslim men. She has filed the petition in the Supreme Court, asking it to declare the practices of *talaq-al-bidat* (instantaneous triple-talaq), *nikah halala* (bar against remarriage with divorced husband without an intervening marriage with another man), and polygamy under Muslim personal laws as illegal, unconstitutional, and violative of Articles 14, 15, 21 and 25 of the Constitution. The petitioner has alleged that her husband illegally divorced her after frequently subjecting her to cruelty. "The divorce was given, by following the triple-talaq procedure". The petition was filed challenging the triple talaq provision in the Muslim personal law for grant of divorce, the Supreme Court on Monday sought the response of the Centre over the said issue. Notably, various scholars have said that *talaq-e-bidat* has no foundation in the holy Quran of the Muslims.

In fact, many Islamic nations, including Saudi Arabia, Pakistan and Iraq, have banned or restricted such practices, while they continue to vex not only Indian Muslim women like the petitioner but also the society at large.

The Muslim community of India has itself been clamouring for reform and ban of oppressive practices that have no basis in Islam or the Holy Quran.

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<sup>110</sup>Supreme Court 25th October, 201

<sup>111</sup> (2016)SC

The Muslim Personal Law Board, however, keeps insisting on the validity of triple talaq in India.

Recently, AIMPLB decided to thwart any attempt an intervention by the Centre, or "any authority", in the muslim personal law. The Supreme Court has accepted the board as a party in the case. Now, the board will seek an intervention in the Shayara Bano case.

#### **4.15 Effect of Triple-Talaq on Society**

In Islam marriage has been regarded as an important function which an ideal Muslim whether male or female should perform firstly in order to save the society from unchastely and to build up a healthy society.<sup>112</sup>

This practice of *talaq* has deleterious effect on women; breaking of a marriage contract has emotional and financial concerns. Often it is not interest of women, which are at stake, but those of their children as well.<sup>113</sup>

The trauma of *triple-talaq* is rife in the reality of women. For example Sameera, a resident of Dounгри, married a Moulana in 2001. When she fell ill after her marriage and was advised to go to a specialist, her husband was reluctant to spend money on her medical expenses and refused to take her back. A month later, he called from Lucknow and pronounced *triple-talaq* on the phone.<sup>114</sup>

In another situation, Amira was refused entry into the house along with her children by her husband on returning from visit to her mother house. Her husband claimed he had divorced her by pronouncing *triple-talaq*, while Amira did not even know of it.<sup>115</sup>

Another is the high profile case of Najma Bibi from Orissa, where the husband divorced his wife in inebriated condition only to regret it later, brought to the forefront the

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<sup>112</sup>*Supra* note 3 at 485.

<sup>113</sup>Seema Durray, "Muslim Law of Divorce in India: A legal Reflection", in Imtiaz Ahinad (ed.) *Divorce and Remarriage Among Muslim* 397 (Manohar, New Delhi, 2003).

<sup>114</sup>Manoj Nair, "Two Women recall 'triple Talaq trauma'", *Mid Day*, July 21, 2004.

<sup>115</sup>*Ibid*



regrettable consequences of the *triple-talaq* practice.<sup>116</sup>

The scholars of Muslim law, who consider three divorces at a time as one, argue that in our present social set up religion has been relegated to such an extent that religious values have become eclipsed. It has ceased to be a way life, a guiding source and an inspiration. This is because we have neglected our prime duty to learn, explore and acquire religious knowledge.<sup>117</sup>

But to this distortion of the true Islamic law of divorce has now come a refreshing fatwa from some Indian theologians:

*“If a man who has pronounced a triple-talaq say he did it either in ignorance of law or merely to put emphasis on his words, his marriage remains intact until the expiry of his wife’s iddat- during this period he can unilaterally revoke the talaq, if he has not done so within that time, any time later he can marry her with her consent.”*<sup>118</sup>

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<sup>116</sup>In this case Nazrna Bibi’ s husband divorced her in May 2004, following a quarrel in an inebriated condition. Later her husband regretted his decision and the couple continued to stay together. However, village elders objected to their living together after the Talaq. The couple went to the local Maulvi and obtained a ‘fatwa’ nullifying the divorce. This was not accepted to them who physically assaulted the couple.

<sup>117</sup>*Supra* note 6 at 73.69

<sup>118</sup>See, *supra* note 12 at 11.

## CHAPTER-5

### HALALA

#### 5.1 Definition:

*"After pronouncing Talaq, the wife becomes haram for the husband. If he wants to remarry the same months and 13 days. However, Halala-fixing is strictly prohibited in Islam. Maulana Khalid Rashid Firangimahali woman, the rules are set-once the mandatory Iddat period of three months and 13 days gets over, the woman has to get married to someone else. This marriage has to be consummated. After the second husband divorces the woman, the first husband is free to marry her once again after three."*

Allah Says in the Holy Quran Chapter 2 Surah Baqarah verses 229-230:

**229 A divorce is only permissible twice:** *after that the parties should either hold together on equitable terms or separate with kindness. It is not lawful for you (men) to take back any of your gifts (from your wives) except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah there is no blame on either of them if she give something for her freedom. These are the limits ordained by Allah; so do not transgress them. If any do transgress the limits ordained by Allah such persons wrong (themselves as well as others).*

**230 So if a husband divorces his wife (irrevocably) he cannot after that remarry her until after she has married another husband and he has divorced her.** *In that case there is no blame on either of them if they reunite provided they feel that they can keep the limits ordained by Allah. **Such are the limits ordained by Allah** which He makes plain to those who understand.*

Surah of Abu-Dawood Hadith 2189 Narrated by Abu Hurayrah:

The Prophet (saws) said

*"There are three things which, whether undertaken seriously or in jest, are treated as serious: Marriage, divorce and taking back a wife (after a divorce which is not final)."*

According to the Sharia if husband divorced with the word "*Talaq*" then he can revoke the divorce within the *Iddat* period or the couples can remarry again after *iddat*. However, after the third *talaq* they neither can unite with in the Iddah period nor a new *nikah* can be done with the same man after *iddat* until the ex-wife marries another man, to ensure that divorce is not taken lightly.<sup>[3]</sup>She cannot go back to this husband who has divorced her three times as she become *haram* (totally prohibited) for him, unless she marries another person who out of his own free will divorces her. This rule is given by the Shariat to reduce the occurrence of three divorces and to protect the honour of the woman. *Nikah halala* cannot be done as a condition or intention to make her lawful to her ex-husband. *Nikah Halala* is used mainly in countries that recognize the triple *talaq*.

## **5.2 PRE-PLANNED HALALA**

Sunan of Abu-Dawood Hadith 2071 Narrated by Ali Ibn AbuTalib

The Prophet (saws) said:

*"The Curse of Allah be upon the one who marries a divorced woman with the intention of making her lawful for her former husband, and upon the one for whom she is made lawful!"*

The relevant point here is that a Halala cannot be planned in advance, as a Nikah between her and the second husband with an understanding of a divorce afterwards will not be valid. If she does so, it will be an illegitimate relationship with the second husband and with the first husband also with whom she comes to live after a pre-planned Halala. The Prophet has cursed both such men who perform Halala and for whom Halala is performed. The second Caliph Hazrat Umar ruled during his reign that he will punish with stoning to death, those who perform a pre-planned *halala*.

Imam Sufian Sauri says: "If someone marries a woman to make her *halala* (for her ex-husband) and then wants to keep her as wife, he is not permitted to do so unless he solemnises a *nikah* afresh, as the previous *nikah* was unlawful". Pre-Planned *halala* is considered as impermissible. *Halala*-fixing is nowhere mentioned in Islam. The provision is made for "*ittifaqan Talaq*" by the second husband - meaning the woman can remarry the first husband if the second husband genuinely divorces her and the move is not carried out under a well-calculated strategy. The way it is followed today, the practice is totally against the spirit of Islam.

However, in spite of considering planned *halala* to be impermissible many Ulamas say "if it is done, the *halala* will be valid".

### 5.3 CONSEQUENCES OF HALALA

The prophet said:

*"Any woman who asks her husband for a divorce when it is not absolutely necessary, the fragrance of paradise will be forbidden for her."*

When a Muslim man – not a woman – wants to divorce his wife he simply has to say *Talak (or Talaq), Talaq, Talaq* (I divorce you) three times. And that's it. He can then remove the woman from his premises and leave her on the street. The woman has no say in anything, no rights to property, compensation or even her own children should the husband not grant any of these to her.

Should a woman, however, want to get divorced she has to go through a lengthy legal process through the Shariat courts which in 95% of the cases will deny to grant her a divorce. Most women seek divorce from being subjected to brutal violence or rape on a regular basis. And in majority of cases, their divorce plea is rejected because Shariat legalizes any form of treatment the husband wants to subject his wife or children to.

They are not considered individuals, but his *property*, like animals. As his property he can do pretty much anything he likes with them – including kill them. This lenience is not

always observed should a Muslim be a foreign born Muslim living in another Muslim country, or a non-Muslim residing or working in a Muslim country.

Islamic divorce laws for women gives her very little freedom and no actual rights. Before a woman processes her divorce appeal – which is a great stigma to a woman, not a man, and she'll avoid it to a last resort – they start with counselling. In counselling a male imam who is an authority on the Shariat will explain to the couple, most likely the wife, what the Shariat and the Quran demands of her.

If she complains of beatings or rape, for example, the imam will give guidelines how she could improve her behaviour to correlate to Quranic texts so her husband will be more pleased with her and perhaps ease on the beatings and rapes.

The husband need not attend counselling although he may sometimes be asked to.

### **Muslim Male Cruelty Leading to Begging and Prostitution -**

To understand the severity of the situation for Muslim women and how cruel and demoralizing these laws are when the women are discarded like an old pair of shoes, we have to grasp that most of them have never been permitted by their male guardians to get a higher education, or to work. They have neither skills nor experience to gain a job and have been brought up with a sense of indecency if being seen in public places or employment. After a divorce they are completely lost and helpless. They don't have a leg to stand on once their husbands have divorced them, and if they don't have families able to care for them they end up making ends meet by begging and prostitution.

They are generally not aware of their social rights or where to turn for help, and resort to begging and prostitution for survival.

Sharia courts can slightly differ between one Islamic countries to another, but overall they are pretty much the same.

## **Sexual atrocities on women**

### **A Wife Must Have Sex with another Man Before She Can Remarry Her Husband**

Islamic Shariat disallows a couple remarrying after having been through three divorces. Some Sunni schools view a triple *talaq*, when the husband saying “I divorce you” three times in a row, as equivalent to three single *talaq*. Other Sunnis and Shia treat that as a single divorce, arguing that the Islamic prophet Muhammad did so.

Should the husband have uttered *Talaq, Talaq, Talaq* during an argument or to punish his wife he can't just return to being married again if he changes his mind. Couples cannot remarry until the ex-wife marries another man, to ensure that divorce is not taken lightly. Forced to marry another man she has to have sex with him since the main objective a Muslim male marries is to have a sex slave. A Muslim husband can demand sex from his wife by force fully against her will, which is why private surveys have revealed that rape within a Muslim family is a very common event, and the average percentage of marital rape cases range over 80%. She cannot go back to this husband who has divorced her three times, unless she marries another person who out of his own free will divorces her. This rule is given by the *Shariah* to reduce the occurrence of three divorces and to protect the honour of the woman. *Nikah Halala* cannot be done as a condition or intention to make her lawful to her ex-husband.

### **5.4 Nikah Halala- The Mockery of the Injunction of Quran**

The way *halala* is practiced today is nothing but a fraud in the name of religion. It is, to say the least, institutionalizing degradation of women, which The Qur'an intensely detests. Far from sanctioning such vulgar practice, spirit of the Holy Qur'an dictates that such corrupt practices, if any in the society, are stamped out. The social structure of the Islamic society rests on the foundation stone of marriage which enables two individuals to enter into a socially recognized relationship. They, the man and the woman, do this knowing full well the biological, moral, social and economic consequences and

responsibilities. It is why Allah blesses all those efforts that cement this bond further. Yet, taking cognizance of the diversity of human nature which can harm the sacred bond of the marriage, Allah has laid down norms that could enable them sever this bond amicably and honourably without inviting any stains on the integrity and stigma on the social reputation if there is an irretrievable breakdown of the relationship. It is why the Holy Qur'an laid down the procedure of *talaq* (divorce) in the most elaborate manner. But the small minds that tampered with the process of *talaq* by legitimizing the triple *talaq* at one go for petty reasons—saw in *halala* a handy tool to reconnect the severed bonds in the clumsiest manner. Lo and behold! The unstable minds who today pronounce three *talaq* on petty and preventable reasons, take the easy recourse to *halala* to enable the ex-husband to take her back in marriage.

*"And if he divorces her finally, she shall thereafter not be lawful unto him unless if she marries another man. If (by chance this marriage also breaks) and the present husband divorces her, there shall be no sin upon either of them (the first husband and the divorced wife) to remarry—provided that both of them think that they will be able to be within the bounds set by Allah: and these are the bounds of Allah which He makes clear unto people of innate knowledge."*

This verse from Quran implies a warning that the conjugal and marital bonds will be cut as underfed and the return will not be possible. At least not within foreseeable future, as she will be *halala*, i.e., lawful for the first husband only if she gets married to another person, shares a conjugal relationship with him and gets divorced through the same elaborate process. It will be a mockery if the former husband, realizing his mistake of discarding and divorcing his wife unmindful of the consequences, stage-manages a marriage of his former wife to another person in order to contrive legitimacy for his reunion with her. It is simply inconceivable from the Quranic point of view as it reduces the women to the status of a plaything who can be discarded through stupid and rapid-fire utterances of *talaq* and brought back to himself after a one-night stand with a stranger.

In fact, the *halala* is the obnoxious corollary of the allowance of triple *talaq* that has found favour with the today's interpreters. One farce has led to another sham.

Although this practice was introduced as a warning to the married couple to make them realise the sanctity of the word *Nikah*. But due to uncodified laws on the issue it turned into a disrespectful practice against women resulting into harrowing experience for them.

Some victims have been subjected to *halala*, an excruciating two to eight times. Sometimes a close friend of the husband or even the brothers oblige. Holding a placard that says *Halala* is nothing but the vilest of rapes. A Veiled Crime.

Interestingly, *halala* is also fraught with risks for the men now- there are instances where the second husband has violated the terms of fixed *halala* and refused to part with the woman, often because she was prettier than his own wife. "So caution is the key word".

If a man divorces his wife and then wants her back, let him also pay the price for his sin, let him be flogged, skinned or even sodomised. Why is it always expected from a woman to pay for no mistake of her? Why should the poor woman be made to suffer instead? What kind of justice is this? Even animals do not mate on order.



## CHAPTER - 6

### POSITION OF MUSLIM WOMEN IN ISLAM

The status of women in Islam constitutes no problem. The attitude of the Quran and the early Muslims bear witness to the fact that woman is at least as vital to life as man himself, she is not inferior to him nor she is one of the lower species had it not been for the impact of foreign cultures and alien influences, this question would never arise among the Muslims. The status of women was taken for granted to be equal to that of man. It was matter of course, a matter of fact and no one then considered as problem at all.

In order to understand what Islam has established for women, there is no need to deplore her plight in the pre Islamic or in the modern world today. Islam has given woman rights and privileges which she has never enjoyed under other religious and constitutional systems. This can be understood when the matter is studied as a whole in a comparative manner, rather than partially. The rights and responsibilities of woman are equal to those of man but they are not identical with them equality and sameness are two quite different things. This difference is understandable because man and woman are not identical but they are created equals.

This distinction between equality and sameness of paramount importance. Equality is desirable, just fair or not; but sameness is not. People are not created identical but they are created equals with this distinction in mind, there is no room to imagine that woman is inferior to man there is no ground to assume that she has less important than he just because her rights are not identical the same as his.

The fact that Islam give her equal rights but not identical –shows that it takes her into due consideration, acknowledges her, and recognizes her independent personality. Woman in Islam is something unique, something novel, something that has no similarity in any other system. But the deteriorating position of Muslim women is a matter of concern.

## **6.1 Attitude of Islam with regard to woman**

1. Woman is recognized by Islam as a full and equal partner of man in the procreation of mankind by this partnership she has an equal share in every respect. She is entitled to equal to equal rights; she undertakes equal responsibilities and in her there are as many qualities and as much humanity as there are as many qualities and as much humanity as there are in her partner.

2. She is equal to man in bearing personal and common responsibilities and receiving rewards for her deeds. She is acknowledged as an independent personality in possession of human qualities and worthy of spiritual aspirations.

3. Woman is equal to man in the pursuit of education and knowledge. When Islam enjoins the seeking of knowledge among Muslims, it makes no distinction between man and woman.

4. Islam grants woman equal rights to contract ,to enterprise to earn possess independent personality her life ,her property , her honour are as sacred of man if she commits any offence her penalty is no less or more than of mans in a similar case. if she is wronged or harmed ,she gets due compensation equal to what a man in her position would get.

5. Status of women in Islam is unprecedentedly high and realistically suitable to her nature. Her rights and duties are equal to those of man but not necessarily or absolutely identical with them. If she is deprived of one thing in some aspect ,she is fully compensated for it with more things in many other aspects .the fact that she belong to female sex has no bearing on her human status or independent personality. it has no basis for justification of prejudice against her or injustice to her person. Islam give her as much as is required of her. Her rights match beautifully with her duties.

Islam disapproves of divorce immensely, and in this connection it has cautioned its followers to be very careful,and has pointed out the steps that the spouses have to take for reconciliation in the event of disagreement between them. Islam has permitted only the

divorce to be given on one occasion, but a very large number of Muslims is unaware of these teachings of Islam and because of the moral and social corruption giving three at one and the same time, and feel sorry afterwards. In this situation an urgent necessity is felt to educate the people about the Islamic teachings concerning divorce.

*"Nikah* is that strong relationship which binds man and woman. This relationship leaves deep impressions on the social life. Islam wants this relationship should be stronger. In other words husbands and wife have the relationship of hand and glove."<sup>119</sup>

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<sup>119</sup>Article, (talaq when and how the Islamic point by Shams Pirzadah)

## CHAPTER-7

### EFFECT OF TALAQ ON MUSLIM WOMEN

Islam disapproves of divorce immensely, and in this connection it has cautioned its followers to be very careful, and has pointed out the steps that the spouses have to take for reconciliation in the event of disagreement between them. Islam has permitted only the divorce to be given on one occasion, but a very large number of Muslims is unaware of these teachings of Islam and because of the moral and social corruption giving three at one and the same time, and feel sorry afterwards. In this situation an urgent necessity is felt to educate the people about the Islamic teachings concerning divorce.....

*"Nikah* is that strong relationship which binds man and woman. This relationship leaves deep impressions on the social life. Islam wants this relationship should be more strong. In other words husbands and wife have the relationship of hand and glove."<sup>120</sup>

Generally husband divorce their wives on petty altercations. It is their emotional decision and not although out or well considered decision, while divorce is a decision, which cuts the bond that tied the two hearts together besides giving divorce entails creating a lot of problems;

1. After deep and intimate association, separation becomes a means of mental depression and unrest for both the partners. Their hearts are wounded in other words divorce is an operation which separates the two hearts that were linked together by love, and is well known men resort to surgical operation only in emergency cases. Nobody considers it desirable in ordinary circumstances. Therefore no recourse should be had to his operation divorce unless when it becomes absolutely necessary.

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<sup>120</sup>Article, (talaq when and how the Islamic point by Shams Pirzadah)

2. It creates the problem of a second marriage for the woman in our present day society very few people can be found who would be willing to accept divorced women as their wives. As a result of this mentality, divorced woman have generally to pass their remaining days without getting married. During the time when the quran was being revealed. Marriage with the divorced women was not considered objectionable, but our present day society considers it otherwise and therefore in the event of a divorce, a woman has to face considerable difficulties.

3. The question of livelihood for the woman crops up .modern civilization has made the problem of housing so difficult that to provide housing accommodation for an individual has become a very difficult manner. the woman may either go to the house of her parents or her brother ,in the big cities where generally an entire family is living only in one room .to make arrangement for the living of one more individual create more difficulties for that family. in addition to this, there is the problem of providing maintenance to the divorced woman, who should providing maintenance for her and how although shariah has placed the responsibility of maintenance on the shoulders of the near relatives, however in the modern society where people have forgotten their duties and have careless about fulfilling their responsibilities, the question of sustaining herself poses a serious problem to the divorced woman.<sup>121</sup>

Therefore Muslims should realize that difficulties are created by divorce in the present day conditions and what harmful effects on the society.

4. If there is a child, then the question of bringing it up is tackled .first of all the separation of the mother and father affects the children psychologically, and besides the problem of facing the children under the mother care becomes disputable.

Islam declared divorce to be an undesirable act.

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<sup>121</sup>Article (Talaq when and how Islamic point by Shams Pirzadah)

“To Allah the most undesirable thing among the lawful things is divorce”<sup>122</sup>.....

Divorce affects the couple economically, mentally, emotionally and physically. Divorce also influences the current and future relationships. Divorce exhibits a higher level of depression and anxiety than do individuals who are married, and those divorced also tend to have poorer self-concepts and exhibit more systems of psychological distress compared with those who are married. Divorced women in India suffer emotional problems that consequently leads to following:

### **7.1 Physical outcomes**

Divorced individuals also have more health problems and higher mortality rates than married or other non-divorced persons. Divorce exhibits more risk-taking behaviours e.g. elevated rates of drugs and alcohol use and abuse.

### **7.2 Relationship outcomes**

Relationships and social networks are influenced in various ways by divorce. Divorced individuals generally experience more social isolation and have smaller social networks than do married individuals. In countries where divorce is still stigmatized, social isolation is more extreme. Divorced women experience discrimination in employment opportunities and future marital conflicts. Relationships affected by divorce and have a significant impact on children.

Most research regarding divorce and its impact on adults has assumed a deficit perspective. Divorce is bad and has negative effects on family's. This results shows negative outcomes. Cross culture studies that investigate the potentially positive effects of divorce that divorce can increase self-confidence, self-efficacy, wellbeing and relief from a bad marriage. Despite variations in the structure and function of families in different countries, divorce is experienced by an increasing number of families. The research literature on divorce, its effects on aging parents is not large, and most reports

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<sup>122</sup>Muslim Law as applied in India by Dr. R.K. Sinha

between generations rather than relationships qualities and how they change over time, nevertheless the existing literature indicates that divorce is a stressful process that effects on divorcing individuals and their children as well as their parents. The divorce process has a stressful beginning, but over a period of time the situation for most stablised most parents provide assistance needed to children the stressors on the older people had diminished<sup>123</sup>.

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<sup>123</sup>Book of Divorce (dealing with divorce made easy) by. Leela Kirloskar

## CHAPTER-8

### MAINTENANCE UNDER MUSLIM LAW AND UNIFORM CIVIL CODE

#### 8.1 MAINTENANCE FOR MUSLIM WOMEN

A Muslim woman has to go through a lot more than just the divorce procedure. They have to fight to get their basic right of maintenance from their husband in order to maintain themselves. Muslim Law passively considers male to be superior to the woman. It is believed that a man can take care of himself whereas the woman cannot, in other words it is deduced that a woman cannot be self-reliant. In Muslim law, wife is preferred over all the other persons (even the young children & other necessitous relations). However, the woman's right and husband's obligation exists only if the wife remains faithful to her husband and obeys all his reasonable orders.

Nonetheless, the wife does not lose the right to maintenance if she refuses access to her husband on legal grounds such as her illness or if the marriage cannot be consummated i.e. cannot be concluded by the sexual intercourse because of her old age, illness, his minority or faulty organ. However if the wife being too young for sexual intercourse, lives with her parents, she does not possess any right for maintenance.

The wife also possess the right to claim maintenance on the account of a pre/ante-nuptial agreement i.e. maintenance in the event of ill treatment. Along with this, the wife also gets the privilege of being entitled to a special allowance called *Kharch-i-pandan* or *guzara* under such agreement. Muslim law provides provisions for the right to maintenance if the wife stays separately due to cruel behaviour or non-payment of prompt dower. But a wife cannot claim any maintenance during widowhood or *Iddat* because of her entitlement to inheritance.

In the *Mohd. Ahmed Khan v. Shah Bano Begum*<sup>124</sup>, there was a Muslim women who was divorced by her husband when she was 68 years old and was the mother of five children. She filled a case in the court for granting of maintenance by the court. She was given maintenance by the Supreme Court under section 125 of the Cr.p.c even after the

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<sup>124</sup>(1985) 2 S.C.C 556



*iddat* period was over. Under the Muslim personal law a divorced women could be awarded maintenance only during the *iddat* period and not latter. In case if she wants maintenance than she will have to be given maintenance by the other relatives according to the Muslim personal law. This judgment of awarding maintenance to Muslim women under section 125 of the Cr.p.c which is a secular section of the law was widely criticised by the Muslim community throughout the country.

The Supreme Court of India mitigated the effect of Muslim laws that limited the maintenance payable to a divorcée. It held that, regardless of any previous payment of maintenance by a divorced man to his former wife during her *iddat* period and payment of her *mehr*, a former wife could still seek additional maintenance from her ex-husband under Section 125 of the Cr.p.c, which permits courts to order maintenance payments for financially destitute women. In its decision, the Court quoted certain passages from the Qur'an in support of the position that a divorced man has an obligation to materially support his former wife. This decision triggered massive protests amongst conservative Muslim Indians, who viewed the decision as a deliberate attempt to undermine "their" personal laws and were outraged that a secular court tried to support its decision with references to the Qur'an. Fundamentalist Muslim leaders even pressured Shah Bano, to withdraw her support for the Court's decision in her favour. Despite acclaim for the decision from women's rights advocates, including from some Muslim women's groups, many Muslim leaders lobbied for legislation to overturn the Court's decision. As a result, without any consultation with either women's groups or moderate Muslim leaders, the national government hastily passed the Muslim Women Act of 1986, which limited a Muslim man's duty to pay maintenance to his former wife to her *iddat* period.

Prior to this landmark case, Divorced Muslim women did not have right to maintenance. This in the point of fact handicapped the situation of Muslim women as the husband according to Muslim law possesses the Authority to divorce from his wife whenever he wants whereas the woman lack this right. Hence, the said case led to the enactment of Muslim women (protection of rights on divorce) Act, 1986 which enables a divorced Muslim to have a reasonable and fair provision of maintenance from her husband and from the relatives who are entitled her property after her death after *Iddat*.

The Muslim Women (Protection of Rights on Divorce) Act 1986 was passed after the famous Shah Bano case<sup>125</sup>, when the government gave in to the demand of the predominantly male and patriarchal Muslim leadership in India that objected to Section 125 of the Criminal Procedure Code (Cr. p. c) being applied to Muslim women in India, as it was considered interference in the religious matters of Muslims. The Act denied divorced Muslim women the right to claim maintenance from their former husbands, previously available to them under the aforementioned section.

### **8.2 Maintenance of Muslim Women Under Section 125 Of The Cr.p.c, 1973**

Section 125 of the Cr.p.c is basically secular in nature. Due to the secular nature of this act this does not affect the various personal laws and also the personal laws do not affect this section. If any Muslim women seek compensation under the section 125 and she will be awarded maintenance by the respected court only if she is not remarried. "If the wife exercises her right under the Mohammedan Law and refuses to live with her husband on the ground of non-payment of dower, cannot enforce her right to maintenance under this act." The Muslim women in case if she is granted maintenance will be in the form of the monthly allowances.

### **8.3 Maintenance under the Muslim Women Act, 1986**

After the historic judgment of the Shah Bano case<sup>126</sup>, what followed the judgment were the critics of the outcome of the judgment of the impact of the judgment on the Muslim personal law. According to the Muslim community if this judgment was accepted than in that case there personal law was suppressed and was superseded by the Hindu law which allowed the women's right to maintenance life long as there was no *iddat* period in the Hindus.

The Indian government which was the congress party at that time was under pressure from the Muslim community to bring a law which would overrule this judgment. So the government under the pressure and in order to save its Muslim vote bank brought the law The Muslim Women (Protection of Rights on Divorce) Act, 1986.

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<sup>125</sup>supra at 86

<sup>126</sup>Ibid

According to this act a Muslim women is to be awarded maintenance by her husband only during the *iddat* period and not after that. But in case if she is financially not independent and needs maintenance than in that case her relatives who would get the share of her property will award her with maintenance. In the scenario where she does not have any such relatives than the State *Waqf* Board has to pay her the maintenance. So in a way the personal law of the Muslims was saved and the new law prevented any conflict between the two major communities of the country. The divorced wife is also entitled to unpaid dower and all such properties which were given to her during her marriage by her husband, his relatives, friends or her relatives. She also has an option to use the Sections 125-128 of the Cr.p.c, 1973. Finally the cases pending under the provisions Sec. 125-127 shall be disposed by the Magistrate.

The Act while nullifying the Shah Bano ratio, tried to restrict the divorced Muslim woman's right to maintenance up to the *iddat* period only. A classic example of how political considerations ate into the rights of a section of the people, the Constitutional validity of the Act was challenged on the ground of being violative of Article 14, 15 and 21. The basic question raised by right activists was the necessity of enacting an Act, completely segregating a section of the population, while a secular remedy was already available under Section 125 of the Code of Criminal Procedure. In the face of this burning controversy, the Supreme Court in the case of *Daniel Latifi v. Union of India*<sup>127</sup> approached a middle path and held that reasonable and fair provisions include provision for the future of the divorced wife (including maintenance) and it does not confine itself to the *iddat* period only. The Constitutional validity of the Act was also upheld.

The *Danial Latifi*<sup>128</sup> judgment remains the final case law in this regard. However the debate has still not been put to rest. In the light of the contentions and arguments raised, we must thus critically examine the judgment.

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<sup>127</sup>(2001) 7 SCC 740

<sup>128</sup>Ibid

#### **8.4 A Critical Analysis:**

The most controversial question which has been politically significant in the recent past in the background of a secular constitution and the concept of welfare state is that whether or not a divorced Muslim woman after divorce post iddat period is entitled to maintenance by her husband or not. The iddat period is generally considered to be three menstrual courses if she is subject to menstruation, three lunar months if she is not subject to menstruation or if she is pregnant at the time of her divorce the period between her divorce and the delivery of child or the termination of pregnancy, whichever is earlier. Generally it is taken to be three months .

A divorced Muslim woman is entitled to maintenance from her husband during the period of *iddat*, after that Muslim personal law though nowhere expressly permits maintenance after divorce but it also does not prohibits, specifically or impliedly, it anywhere. In fact interpretation of the Holy Quran shows that the Islam as a religion calls for providing maintenance to a divorced woman on a reasonable scale, and this is a duty of every righteous god fearing person. But this interpretation was highly debated upon and was considered as out of purview of the court as the court it had decided that they would not be interpreting the religious texts, when it was so discussed in the case of **Mohd. Ahmed Khan v. Shah Bano Begum**<sup>129</sup> .

Smt. Kapila Hingorani and Smt. Indira Jaisingh, the Counsels standing on behalf of the petitioners contended that the expression 'wife' as included in the purview of the Section 125 of the Code of Criminal Procedure is a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried. The religion professed by a spouse or the spouses has no relevance in the scheme of these provisions whether they are Hindus, Muslims, Christians or the Parsis, pagans or heathens. This provision is not a part of the civil law applicable selectively to parties belonging to a particular religion but a criminal remedy applicable to all on a secular basis, the basis there being, neglect by a person of sufficient means to maintain these and the inability of these persons to maintain

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<sup>129</sup>supra at 86

themselves. The very spirit of this provision was the moral edict of law and morality could never be clubbed with religion. It was also further contended that Section 125 of the Code of Criminal Procedure is a provision made in respect of women belonging to all religions to avoid vagrancy after marriage and exclusion of Muslim Women from the same results in discrimination between women and women and so violating Article 15 of the Constitution. There is a violation of not only equality before law but also equal protection of laws and thus violating Article 14 which in turn inherently infringes Article 21 as well as basic human values.

The five judge bench of the Supreme Court consisting of Mr. G.B. Pattanaik, Mr. S. Rajendra Babu, Mr. D.P. Mohapatra, Mr. Doraiswamy Raju and Mr. Shivaraj V. Patil upheld the Constitutional validity of the Act.

The forward step taken by the same Court in the Shah Bano in the face of religious fanaticism was undone as the Court in the rationale said that, "Legislature does not intend to enact unconstitutional laws". While it accepts social reality of a male dominated society, it fails to take recognition of the fact that the Act is inherently discriminatory. This can be very well proved by the fact that it brings within its purview only 'divorced woman who has been married according to Muslim law and has been divorced by or has obtained divorce from her husband in accordance with the Muslim law. But the Act excludes from its purview a Muslim woman whose marriage is solemnized either under the Special Marriage Act, 1954 or a Muslim woman whose marriage was dissolved either under Indian Divorce Act, 1969 or the Special Marriage Act, 1954.

The Act does not apply to the deserted and separated Muslim wives. Section 4 of the Act makes the relatives of the Divorced woman or the state wakf board responsible for the maintenance of the Divorced woman. But reality is that it is quite improbable that she will get sustenance from the parties who were not only strangers to the marital relationship which led to divorce. Also, wakf boards would usually not have the means to support such destitute women since they are themselves perennially starved of funds and the potential legatees of a destitute woman would either be too young or too old so as to be able to extend requisite support. Furthermore, the Court fails to answer the necessity

of an Act, segregating Muslim women completely when a secular remedy is already available under the Section 125 of the Code of Criminal Procedure. Hindu women have their right to maintenance recognized under the Hindu Adoptions and Maintenance Act, 1956 but that no way bars her from claiming maintenance under Section 125 of the Code of Criminal Procedure.

So why, this discrimination, the Court fails answer that. The justification of the law being non-discriminatory based on a reasonable classification and so not violative of Article 14 of the Constitution of India (as given in Danial Latifi judgement) does not hold good because a law for maintenance to divorced women was already in force and available to every women of India, irrespective of their caste, creed, religion. The proposition put forward that the Act in spirit tries to respect the provisions in the Personal Law does not hold good as it being a codified Law, has to pass the acid test of the Constitution, which it miserably fails. Another, fact to be noted is that Section 5 of the Act gave option to the parties to the divorce, the husband and the wife, to decide mutually to be governed either by Sections 125-128 of the Cr.p.c or the provisions of the Act.

But the main criticism levelled against this section was that which Muslim husband would like to go through the rigours of the Cr.p.c provisions when he can be governed by a much easier law. The Section 7 of the Act also provided that the pending applications under the Cr.p.c were to be dealt within the purview of this Act. But Gujarat High Court has held in the case of *Arab Ahemadhia Abdulla v. Arab Bail Mohmuna Saiyadbhai*<sup>130</sup> that a divorced Muslim woman can directly move to the Court under the Cr.p.c provisions.

His controversy still remains. The interpretation provided by the judiciary in the Danial Latifi case fails to satisfy the minds of the reasonable people, as there are glaring defects on the face of it. But we should also keep in mind the social perspective. On one hand where it upholds the Constitutional validity of the Act, it also interprets the provisions of the Act in favour of the divorced Muslim women.

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<sup>130</sup>AIR, 1988 Guj 141

The Court could envisage that the country at such a juncture of Economic and Social growth, could not bear the burden of aftermath of another Shah Bano. But keeping in mind the changing times and the constantly evolving meaning of Article 21 of the Constitution, which has been held to include the 'right to live with dignity' under the case of *Olga Tellis v. Bombay Municipal Corporation*<sup>131</sup> and *Maneka Gandhi v. Union of India*<sup>132</sup>, it is a duty of the society to make sure that the divorced Muslim wife have the provision to maintain herself with dignity and is not led to destitution and vagrancy. The Personal law may connote a different thing but keeping the changing society in mind, it should be open to interpretation only for positive changes. That only can help us achieve the objectives of Social Justice laid down both expressed and implicitly in our Constitution.<sup>133</sup>

## 8.5 UNIFORM CIVIL CODE

The Indian constitution provides an article for the Uniform Civil Code. The founding fathers of the constitution made the constitution in such a way keeping in mind the diversity of the country and the need for a Uniform Civil Code. But the Uniform Civil Code has not yet been adopted due to the opposition from a major section of the minorities in the country mainly the Muslim community.

The Muslim community opposes the whole idea of UCC because they believe that if the UCC rules are made than in that case the Muslims laws and traditions will not be considered and the Hindu laws and tradition would take over their personal laws. Also one more argument which comes in forward whenever there is talk of the UCC is that the Muslim laws are not so much moderate as compared to the Hindu laws so in a way in order to modernize the whole state and the society of the India by bringing the UCC to provide equality the Hindu law being considered modern will supersede the Muslim personal law.

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<sup>131</sup>AIR 1985 SC

<sup>132</sup>1978 AIR 597

<sup>133</sup> <http://www.legalserviceindia.com/article/1141-Danial-Latifi-v.-Union-of-India.html>

Bringing the UCC in action will be a good thing. But the UCC should be flexible in nature i.e. it should not overtake the personal laws of any religion. Also the individuals should be given choice so as to whether they want to follow the personal laws or the UCC. I would like to illustrate by giving a very simple example, say for example a couple is given a choice so as to marry under their personal law or under the UCC. If they marry under the personal law then in case of a divorce and maintenance they should be dealt with their religious law but in case they choose the UCC they should be dealt with the UCC. So in a way the formation of the UCC would be in such a way keeping in mind that more number of people would follow and adopt for UCC only if the UCC is not violating any one's personal laws and is practically secular in nature.



## CHAPTER -9

### CONCLUSION AND SUGGESTIONS

Islam is a religion with a very practical outlook. It realizes the importance of institution of marriage but also regards that there can be certain situations and circumstances in which relations between the parties to marriage becomes so strained that, it is not possible for them to continue with such relationship. In Islam though divorce is permissible it is detestable, and should be resorted to only in extreme circumstances which is permitted by the irretrievable breakdown theory of the modern world.

Under Islam the relationship between the husband and wife is pious and private and it is not conducive to bring it outside the home, this is the reason that Holy Quran ordains that before the proceeding for divorce can be started there should be steps taken by members of both the families to have reconciliation between the spouses and when all these efforts fail then only *talaq* should be pronounced. Further the Quran has in detailed laid down the rules and condition to be followed by the husband while pronouncing divorce on his wife. It has been wrongly interpreted by many authors, jurists as well as courts that Islam gives arbitrary, unilateral and unbridled power to the husband to divorce his wife. A Muslim husband cannot divorce his wife at any time or for any reason or for no reason. This was the practice which prevailed in the Pre-Islamic Arabia, and was criticized by Prophet of Islam (PBUH) as against justice, and demeaning to the women. And therefore to eradicate this, the Prophet (PBUH) introduced reform in the divorce laws, but today the Muslims have reverted to same practice which was abhorred by the Prophet (PBUH). The true law of *talaq* is not as easy as it has been practiced by majority of Muslim.

It has been well argued that this form of unilateral triple divorce has no Quranic injunction, further it cannot be traced in the traditions of Prophet as most of the traditions quoted in the favor of *triple-talaq* are either weak or are not authentic , moreover even if triple pronouncement is there it has been interpreted as one. By going into the historical

background it has become amply clear that this form of divorce only came into the practice after the death of Prophet (PBUH), during Umayyad reigns to meet certain exigencies and was for that period only.

The Prophet (PBUH) also gave the best declaration for women's right in his farewell speech on the occasion of his last *hajj*. He demanded that husbands should treat their wives with kindness and gentleness. Men are to know that their women are their partners. Islam recognizes the duties and responsibilities of both partners and, hence, emphasizes that man is the "Head", while the woman is the "Heart" of the family. Both are needed and both are complementary to one another.

The Muslim of today have totally forgotten the teachings of the Holy Prophet (PBUH) as well as true spirit of the Islamic law which gave women equal status as men as rights in all the domain of human life social, political, economic as well as in the family.

So, to eradicate this practice it is necessary that firstly the legislature should take a step forward and make laws in consonance with the true Islamic law of divorce and to follow the precedent of other Muslim countries who have reformed the *triple-talaq* in one form or the other. Secondly it is very important the Muslim community in general should be acquainted with the proper method of divorce. And also to be made aware that resorting to this method of *triple-talaq* is a sin. This can be done by mass education through the medium of press and media. But the most important thing for the evaluation of law is that law should be assessed in a society where it is grown and developed; only then the utility of law can be understood. Justice Abdur Rahim and many other jurists have formulated this opinion. There is a famous saying about law is that 'He does not know the law who does not know the spirit of law'. However, whether it is interschool divergence or reform in the family law it should be first social only then legal, because the society should internalise the law otherwise there is no use of law. The reform politics will never help in the development of society until the members of society are not taking them seriously.

Thus it can be concluded that this need not be mentioned that the Muslims are required to follow the teachings of Holy *Quran* and *Hadith* rather than the rule imposed by a Caliph

over people for a certain period of time to prevent them from deceiving the women and making mockery of law *of Allah*. The rule or the law was for people of that time whereas the *Quran* and *Hadith* are applicable for all times and all people. Almost all the Islamic Scholars whether belonging to Ahlehadis, Shia, Hanafior any other school of thought agree that this practice is either *Haramor Biddatso* Muslims must not allow this to corrupt their society.

1. If reconciliation method fails regarding divorce between husband and wife this measure proved to be ineffective, and proves to be no sign of reconciliation then husband can use his right of giving divorce, and it is definitely better to free the wife from the bond of *nikah* than keeping her suspended indefinitely. Islam has kept the avenue of divorce open for man in order that man may lead a righteous life and there should be no difficulty for in to keep within the bounds of morality. Similarly Islam has given the right of *khula* to woman and also approach the court of law for dissolving her marriage in order that she may also be able to keep within the religious and moral bounds.

The best procedure of divorce is that the husband should give one divorce to his wife and that too when she is in a state of cleanliness and had not an inter course with her

2. Reconciliation efforts should be taken before divorce. If the dispute has arisen between husband and wife and their living together as husband and wife is becoming difficult, in such a situation the direction of Islam is that the decision to give divorce should not be taken immediately but all efforts should be made for reconciliation between the two disputants, and it became necessary, even to take disciplinary action.

The method of achieving divorce is unusual, because the word itself accomplishes the person .it is not mediated by a legal agency, placing the control of the relation in the hands of the husband, who can end the marriage at any time. people who are married both in the eyes of Islam and in the eyes of nation must be sure to terminate the marriage in both realms, as taxes and other legal statuses are often affected by divorce .no matter where the *talaq* occurs, it is important to fully comprehend the relevant rules concerning divorce to make sure both the husband and wife have their rights upheld. It is true that

Muslim women can't divorce their husbands by saying I divorce you but they can request their husband to divorce them of course final word is still left to the husband.

The husband also has such an elder to advise and help him in his marriage. So if the marriage is not going well, the elders are usually informed and everyone will get together and discuss what the issues are. This is a good way to protect the woman's rights and also to advise to advise the husband and wife so that they don't take any rash decisions that they might regret later.

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