

Legal and Constitutional Validity of Triple Talaq



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Abstract

Triple talaq in India has been a subject of controversy and debate. Many have raised questions regarding justice, gender equality, human rights and secularism in this matter. It has involved the Supreme Court of India and also the Government of India including the matter of introducing uniform civil code. The Indian Supreme Court on August 22, 2017 had deemed instant triple talaq (talaq-e-biddah) to be unconstitutional. Three out of the five judges in the panel said that the practice of triple talaq is unconstitutional and the other two judges declared the practice to be constitutional while asking the government to stop the practice by enacting a law.

The NDA Government formulated a bill called The Muslim Women (Protection of Rights on Marriage) Bill, 2017 and raised it in the Parliament which was passed on 28 December 2017 by the Lok Sabha. The bill declares instant triple talaq (talaq-e-biddah) illegal in any form whether spoken or in writing or by electronic means such as email, SMS and WhatsApp, giving punishment upto three years in jail for the husband. MPs from RJD, AIMIM, BJD and AIADMK protested against the bill, calling it arbitrary in nature and a false proposal, while Congress supported the Bill in the Lok Sabha. The bill faced huge opposition in the Rajya Sabha. Many Opposition lawmakers called for it to be sent to a select committee for proper scrutiny. The bill got finally passed by Lok Sabha on 27th December 2018 with a strong support.

This article also puts main emphasis on the legal and constitutional validity of triple talaq in India.

Keywords: Add AIM OF THE STUDY and KEYWORDS here.

Introduction

The Honourable Court has intervened on the difficulty of triple talaq and has tried to interpret the verses within the Quran.

¹In Yusuf v. Sowramma, Justice Krishna Iyer viewed that the Muslim male has more powerful as compared to women for dissolution of the marriage. The holy Quran prohibit Muslim man to divorce his wife as long as she is faithful and obedient. He further observed that, the teaching of Prophet and the verses of Holy Quran has taken a contrary and a misconception prevails with dealing with the wife's right of divorce. The court took the notice of gender discrimination and thus the court observed that there is a need for codification of law relating to Muslim marriages and divorce which will be in pace with the Constitution of India. Justice Krishna Iyer observed that: "Since infallibility is not an attribute of the judiciary, the view has been ventured by Muslim jurists that the Indo-Anglian judicial exposition of the Islamic law of divorce has not exactly been just to the Holy Prophet or the Holy Book. The view that the Muslim husband enjoys an arbitrary, unilateral power to inflict instant divorce does not accord with Islamic injunctions. "The judiciary has interpreted the verse of Quran and also taken note of the views of different schools of Islam while deciding the cases with respect to triple talaq". The above observation of courts indicate on how the Muslim community needs to be educated about the correct procedure of divorce and pronouncing talaq in one sitting is oppressive against women. Chapter IV verse 35 of Quran which says, "Any if you fear a breach between the two, appoint an arbiter from his people and an arbiter from her people. If they desire agreement, God will effect harmony between them."

²In Rashid Ahmad v. Anisa Khatun, Anisa Khatun challenged the validity of the divorce on two grounds, Firstly, she was absent at the time of pronouncement of divorce, Secondly, cohabitation had continued and subsisted for the further period of fifteen years i.e. till the death of gyiyas-ud din and five children were born to Gyiyas-ud-din and Anisa Khatun. The

payment of one thousand paid to Anisa Khatun as prompt dower. The court held that pronouncement of the triple talaq by Gyyas-ud-din (husband) constituted an instant effective divorce and validity and effectiveness of divorce would not be effected by resumption of cohabitation between the parties.

In Mohamed Ahmed Khan v. Shah Bano,- Ms. Bano claimed the maintenance under the Cr.P.C after getting divorced from her husband Mohd. Ahmed Khan. Under the personal laws (Muslim Law), she was entitled to get maintenance only during the period of iddat, but she can obtain maintenance through her life according to the provision of Cr.P.C. The court held that High Court and the Supreme Court passed their judgments in the favour of Ms. Shah Bano. This judgment was opposed by the AIMPLB, as they claimed that decree of Personal laws was not within the jurisdiction of the courts. In order to reverse the judgment of the Supreme Court, The Government of India passed 'The Muslim Women (Protection of Rights on Divorce), 1986'. According to this legislation, Muslim women were entitled to a 'fair and just' amount of money within the 'iddat' period, beyond which, the husband was to have no liability. The Chief Justice Chandrachud further observed that talaq confers upon the husband, "the privilege of being able to discard his wife whenever he chooses to do so for reasons that are good, bad or indifferent; indeed for no reason at all". However, some of the Sunni clerics have mentioned that the practice of triple talaq gained recognition and was sanctioned during the reign of second Caliph Omar. The reason for this practice to be sanctioned by Caliph Omar in certain cases was to help women come out of a bad marriage where their husband was delaying to give divorce by misusing the procedure provided in the law. It was for the protection of women that this practice gained sanctity in the 7th century, which was later, misinterpreted by the Mulla's who used this to suit their anti-women and patriarchal goals. Hence the practice of triple talaq in one sitting is a sinful form of divorce that suppresses women's rights and violates equity or equal justice in the society.

In the landmark judgment of Shamim Ara v. country of U.P.³, the Supreme Court held that two conditions of a valid talaq must be satisfied. Firstly there should be a reasonable cause for talaq. Secondly, there should be some efforts made by the arbiters for reconciliation between husband and wife. If the above two conditions are not fulfilled, the talaq is not valid and recognized.

In Masroor Ahmed v. State (NCT of Delhi) and Anr⁴, the Delhi High Court held that there should be clear intention to divorce her wife in triple talaq. Talaq Ahsan and Hasan both have legal recognition under Sunni and Shia law. But the difficulty lies with talaq-e-biddat which is not recognized by Shia. The court further observed that a triple talaq (talaq-e-biddat) be regarded as one revocable talaq because this would provide ample opportunity to the husband to revoke the same during the iddat period. It is the duty of family members of the spouses could make sincere efforts to bring reconciliation between the parties.

In the case of A.S. Parveen Akthar v. Union of India⁵, the Supreme Court upheld the validity of triple talaq. This judgment violates the fundamental rights i.e. Article 14, 15 and 21 that is an integral part of Constitution. Triple talaq is against the right of equality which is mentioned under article 14 of the Indian Constitution. Supreme Court has rightly pointed out that personal law conferring inferior status on women is considered as an anathema to equality. Article 14 embodies the principle of nondiscrimination. The divorce given by husband unilaterally is against the principles of non-discrimination which is a significant provision of the Constitution of India. The practice of triple talaq is cruel, discriminatory and against Part III of the Constitution. Article 15(1) of the Constitution prohibits the state from discriminating against any citizen on the ground of religion, race, sex, or any of them. Muslim women are subjected to discrimination and are facing cultural emotional abuse. Such form of talaq is against article 15 on the basis of religion and sex as well as it discriminates the women itself. Article 21 of the Constitution provides the right to life and liberty except by the procedure established by law. The right to life guaranteed under Article 21 includes right to livelihood. Derogating from the normal format of divorce, triple talaq damages the essence of Article 21.

In Shayara Bano and Ors. v. Union of India (UOI)⁶ and Ors case, the validity of Section 2 of Muslim Personal Law (Shariat) Application Act, 1937 and Articles 13, 14, 15, 21, 25 and 142 of Constitution of India was challenged. The petitioner approach to court to declare the triple talaq to be unconstitutional and void. The honourable Supreme Court declared the practice of Triple Talaq as unconstitutional by 3:2 majority. The Supreme Court has consulted and cited the laws of 19 countries including Egypt, Pakistan, Turkey and other nation-states from the Arab peninsula, South-East Asia, and South Asia that have abolished triple talaq. Arab countries such as United Arab Emirates, Egypt, Kuwait, Algeria, Iraq, Jordan, Lebanon, Libya, Morocco, Sudan, Syria, Tunisia, and Yemen have enacted laws against the practice of triple talaq.

Bench headed by Chief Justice J.S. Khehar and other justices U.U. Lalit, S. Abdul Nazeer, Kurian Joseph, and R.F. Nariman, and heard seven petitions including the five individual petitions filed by Muslim women challenging the practice of triple talaq. Primarily, the women contended that the practice of triple talaq is unconstitutional.

J.S. Khehar, C.J.I. and S. Abdul Nazeer (minority view) observed that "exercise of 'talaq-e-biddat', has the sanction and accredited with the aid of the religious denomination which practiced it, and as such, there could be no doubt that the practice, changed into a part of their private law. After tested Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, the confined purpose of the aforesaid provision turned into to negate the overriding effect of usages and customs over the Muslim 'personal regulation'-'Shariat'. The Shariat Act, neither lays down nor proclaims the Muslim 'personal regulation' as 'Shariat'. There has been a similar

divergence of norms, of their respective schools. The Shariat Act did not form the norms as were to be relevant to Shias and Sunnis, or their respective schools. The Shariat Act acknowledges the Muslim personal Law as the rule of decision in the same way as cited below Article 25. Article 25 curved up the supremacy and enforceability of 'private law' of all religions. Muslim personal law 'Shariat' as the body of law, turned into spread by the Shariat Act, and what had grown to be ambiguous changed into clarified and formed. Muslim personal law 'Shariat' could not be taken into consideration as a state enactment. The essential rights cited in Articles 14, 15 and 21 areas against country moves. A task under these provisions Articles 14, 15 and 21 could be invoked only in opposition to the state. It was animated to keep in mind, that Article 14 forbids the state from acting arbitrarily. Likewise, Article 15 prohibits the state from taking discriminatory movement on the grounds of religion, race, caste, sex or location of beginning, or any of them. The mandate of Article 15 requires the country to deal with all of us equally. Even Article 21 is a safety from state movement, inasmuch as, it prohibits the kingdom from depriving all of us of the rights ensuring to them, as rely on life and Muslim personal law 'Shariat' could not be examined on the touchstone of being a country action. Muslim personal law 'Shariat' is an issue of non-personal law of Muslims to be traced from four resources, particularly, the (Quran) and the (hadith) the 'ijma' and the 'qiyas'. Talaq-e-biddat is an exercise amongst Sunni Muslims of the Hanafi School. Non-public regulation being a count of spiritual religion, and not existence nation sign, there has been no doubt of its being violate of the provisions of the constitution. Rohinton Fali Nariman, J. found that "Muslim Marriage is a contract, May additionally below positive instances, be terminated. Apparently, earlier than the time of the prophet Mohammad, the Arab was simply open to repudiate his wife on a small craze, however, after the arrival of Islam, divorce became authorized to a person if his wife by means of her indocility or bad individual renders marital existence not possible. In the absence of suitable reason, no man may want to justify the divorce. Triple Talaq is instant and irrevocable, it is apparent that any strive at reconciliation among the husband and wife by using two arbiters from their families, that's important to workshop the marital bond, cannot ever take area. Additionally, as understood with Privy Council in Rashid Ahmad, such Triple Talaq is valid despite the fact that it is not for any reasonable reason which view of the law not holds nicely after Shamim Ara. This being the case, it is clear that this form of Talaq is painfully arbitrary within the sense that the marital bond may be broken changeably and originally by way of a Muslim man without any attempt at reconciliation with the intention to store it. This form of talaq is held to be the violation of the essential right under Article 14 of the constitution of India.

In Ahmedabad girls motion group (AWAG) v. Union of India⁷, PIL was filed for address two issues i.e. Muslim male has a right of four marriages, along

with the right to divorce, under the concept of Talaq, and the husband has a right to divorce by declaring the term 'Talaq', without judicial approach, and this may happen without the consent of wife. The court held that Indians citizens have been governed by personal laws, regardless of the time period and interference by the court would lead to several undesirable consequence because the verdict of personal laws was beyond the jurisdiction of the courts. The petition was dismissed.

In my opinion, consequently, the 1937 Act, in so far as it seeks to recognize and implement Triple Talaq, is inside the meaning of the expression "legal guidelines in pressure" in Article 13(1) and need to be struck down as being void to the extent that it recognizes and enforces Triple Talaq. Because we have declared section 2 of the 1937 Act to be void to the extent indicated above at the tighter ground of it being obviously arbitrary. I do not find the want to go into the ground of discrimination in these cases, as changed into argued with the aid of the discovered attorney standard and people helping him Kurian Joseph, J. and U.U. Lalit J. found that "the constitution offers the assurance to freely profess, exercise and propagate the faith of its personal choice as a fundamental proper. Article 25(2) empowers the territory to make regulation in two contingencies notwithstanding the freedom granted below article 25(1). Article 25(2) set up that not anything in this circular shall affect the operation of any present regulation or prevent the state from making any regulation or limiting any financial, economic, political or another secular pastime which may be related to spiritual practice reform or the throwing open of Hindu no secular establishments of a public character to all training and Sections of Hindus. The freedom of religion under article 25 is absolute right beside the above-mentioned exception. Kurian Joseph, J. and U.U. Lalit J. further observe that they may be no longer agreed that triple talaq changed into a necessary part of a spiritual exercise. The whole reason of the 1937 Act turned into to declare Shariat as the rule of the selection and to stop anti-Shariat practices with recognizing to subjects enumerated in part two which include talaq. Therefore, in any case after the creation of the 1937 Act, no practice towards the views of Quran changed into permissible. Therefore, there could not be any Constitutional safety to this sort of practice and hence, opposition with the Chief Justice for the constitutional safety given to triple talaq.

Introduction of The Muslim Women (Protection of Rights on Marriage) Bill 2017 In Lok Sabha And Raja Sabha

Union law Minister Ravi Shankar Prasad introduced the Muslim Women (Protection of Rights on Marriage) Bill, 2017 seeking the practice of triple talaq to be criminalized in the Parliament. Talaq is an Islamic practice that permits men to divorce their wives straight away through pointing out 'Talaq' (divorce) thrice. Union Law Minister Ravi Shankar Prasad said the bill that the Muslim Women (Protection of Rights on Marriage) Bill, 2017 will act as

a deterrent due to the fact that there had been a hundred instances of triple talaq even after the landmark judgment of the honourable Supreme court delivered in August this year. He stated that while 22 Islamic nations, inclusive of Pakistan and Bangladesh, had regulated triple talaq, there was no powerful regulation in India. Prime Minister Narendra Modi and Congress president Rahul Gandhi were absent in Lok Sabha when the bill was passed in Lok Sabha.⁸ The Minister turned down demands from the leader of the Congress within the Lok Sabha Mallikarjun Kharge to refer the bill to the Parliamentary standing Committee on law and Justice members from the Rashtriya Janata Dal, the CPI (M), the Samajwadi party, the All India Majlis-e-Ittehad-ul Muslimeen and the All India Muslim League, as also parties considered near the BJP, which includes the Biju Janata Dal and the AIADMK, hostile the bill, announcing it becomes arbitrary and a faulty notion being surpassed in haste. No longer having BJD and AIADMK on board will impact the bill's clean passage inside the Rajya Sabha because the opposition has more numbers than the NDA. E.T. Mohammed Basheer of the Indian Union Muslim League and Asaduddin Owaisi of the AIMIM alleged that through the bill the government becomes trying to bring in a Uniform Civil Code. Sushmita Dev, also raised key questions to the government that who might pay the subsistence allowance prescribed in the bill to the Muslim wife if the husband went to jail. Ms. Dev asked on behalf of party that "In law, you have to prove mens rea or guilty intention. If the husband says I had no intention but I was upset, I was angry, what happens then," BJP MP Meenakshi Lekhi made an impassioned appeal in favour of the bill and attacked the Congress by reminding the party that it had opposed the Shah Bano judgement of the Supreme Court in 1986. "They were opposed to an allowance of Rs. 125 in the Shah Bano case and our Muslim sisters and the country suffered. After a gap of 30 years, there is an opportunity to correct it," stated Ms. Lekhi. Members against the bill voiced three major worries, arguing that the competition to the bill can be classified as expressing three principal worries. Maximum of the opposing parties argued that the bill had felony flaws and became being passed in hurry. Apart from Congress, other parties that took this position covered CPM, Samajwadi party, Rashtriya Janata Dal or even parties pleasant to the BJP like the Biju Janata Dal and AIADMK had been coming under this group. Despite being 2nd largest opposition party in Lok Sabha, Trinamool Congress members didn't participate in the debate even though they were present. Many party who in principle supported the bill expressed issues approximately making the civil trouble of instant divorce a crook offense and with little scope of reconciliation. "Every family dispute should not result in a criminal action," said Supriya Sule of the Nationalist Congress Party" stated Supriya Sule of the Nationalist Congress party. Some other political parties like Badruddin Ajmal's AIUDF, Asaduddin Owaisi of AIMIM and the Kerala-based Indian Union Muslim League that the bill turned into

politically prompted and encroached on Muslim personal law.⁹

Should to the triple talaq bill be dispatched to a pick out Committee or now not? This question created the trouble inside the Rajya Sabha, forcing an adjournment of the house for the day. The Muslim Women (Protection of Rights on Marriage) Bill, 2017 popularly called the triple talaq invoice, became moved inside the house on Wednesday soon after it reconvened at 3 p.m. moving the bill, Law Minister Ravi Shankar Prasad said triple talaq become getting used regardless of the supreme court banning it. Trinamool Congress member Sukendu Sekhar Roy moved a motion for an amendment in Rule a hundred twenty-five and sought that the bill is dispatched to a standing Committee. "We think the Bill is faulty. It requires suggestions from different stakeholders," he said. Congress member Anand Sharma too moved a movement to send the bill to a select Committee. His motion became supported by many opposition parties, which includes the Trinamool Congress, the AIADMK, the DMK, the CPI, the CPI (M) the RJD and the BSP. Even before the bill turned into considered, a heated verbal exchange became witnessed within the house with participants elevating a series of a factor of Orders. While Mr. Prasad again rose to speak, the opposition participants objected to the Minister and chief of the house Arun Jaitley speaks after a Bill is moved, claiming it changed into unparalleled. However, Deputy Chairman P.J. Kurien clarified the Minister concerned and the leader of the house has the right to explicit their views. Appealing to the Congress to support the Bill, Mr. Prasad stated "Triple talaq is continuing notwithstanding the supreme court banning it... This Bill is necessary." Mr. Jaitley argued that the motions moved by Mr. Sharma and Mr. Roy cannot be taken up because it was in conflict with the rulebook. Mr. Jaitley's speech turned into interrupted numerous times. "The whole country is watching that in the other House you supported the Bill and in this House, you are opposing it," he said pointing at the Congress members. The Treasury Bench placed forth the argument that the ultimate court's ban on triple talaq became valid till 6 months, which ends up on February 22, and this Bill was necessary to protect married Muslim women. The opposition members were a firm in their stand that they are prepared to support the bill but the bill is faulty and needs a second look. At one stage, leader of Opposition Ghulam Nabi Azad recommended the house could vote on the issue. "If the majority's view is not heard in this House, where will it be heard?" Mr. Azad quipped. Amid din, the Chair determined each motion is legitimate however the members on both the edges endured their protests. The residence became adjourned for the day.¹⁰

3-Muslim Women (Protection of Rights of Marriage) Bill, 2017

The Muslim Women (Protection of Rights on Marriage) Bill, 2017 introduced by Union Law Minister Ravi Shankar Prasad in Lok Sabha to declare the practice of triple talaq as criminal act. Talaq is an Islamic practice that allows men to divorce their wives immediately by declaring 'Talaq' (divorce) thrice.

Object of Bill

The Supreme Court on 22nd August, 2017, in the *Shayara Bano v. Union of India and others*, in a majority judgment of 3:2, set apart the exercise of talaq-e-biddat (3 pronouncements of talaq, at one and the equal time) practiced by Muslim husbands to divorce their wives. This landmark judgment gave a boost to free up Indian Muslim female from the age-vintage practice of the capricious and eccentric method of divorce, by using a few Muslim male, leaving no room for reconciliation.

The petitioner within the above-mentioned case challenged the validity of talaq-e-biddat that the said exercise is discriminatory and against the dignity of Muslim female. The judgment vindicated the situation taken through the authorities that talaq-e-biddat is towards constitutional morality, the dignity of women and the standards of gender equality, as also towards gender fairness guaranteed under the constitution. The All India Muslim non-public regulation Board (AIMPLB), which changed into the seventh respondent in the above case, in their affidavit, inter alia, contended that the judiciary has not any power to decide subjects of religious practices which include talaq-e-biddat, however for the legislature to make any law at the same. They had also submitted inside the Supreme Court that they might difficulty advisories to the members of the community against this practice. In spite of the Supreme Court setting aside talaq-e-biddat, and the warranty of AIMPLB, there had been reports of divorce by way of talaq-e-biddat from many parts of the country. It's miles seen that setting aside talaq-e-biddat with the aid of the ideally suited court has now not laboured as any deterrent in bringing down the wide variety of divorces by way of this exercise among Muslims. Its miles, consequently, felt that there is a need for state action to give impact to the judgment of the Supreme Court and to redress the grievances of sufferers of illegal divorce. It is proposed to provide for some issues like subsistence allowance from the husband for the livelihood and daily supporting needs of the wife, in case the husband declared triple talaq. The Muslim wife would also be have right of minor children's custody. In order to prevent the continued harassment towards married Muslim women due to talaq-e-biddat, pressing appropriate legislation is necessary to offer some comfort to them. The bill proposes in June to declare triple talaq to be void and illegal in view of the honourable Supreme Court verdict. The rules could help in making the bigger Constitutional goals of gender justice and gender equality of married Muslim women and assist sub serve their essential rights of non-discrimination and empowerment.¹¹

The Validity of Triple Talaq

The bill offers that any pronouncement of talaq via someone upon his wife, with the aid of phrases, either spoken or written or in electronic shape or in any other way in any respect, will be void and unlawful. Whilst a Muslim husband announces talaq upon his spouse in contravene of section 3 will be punished with imprisonment for a term which may make bigger to a few years and fine.¹²

Subsistence Allowance

The bill says that without prejudice to the generality of the provisions contained in another law for the time being in force, a married Muslim female upon whom talaq is reported, will be entitled to obtain from her husband such amount of subsistence allowance for her and established children as can be determined by the magistrate.¹³

Custody of Minor Children

Notwithstanding anything contained in every other law in the meanwhile in force, a married Muslim girl will be entitled to custody of her minor children in the occasion of pronouncement of talaq by her husband, in such manner as may be determined by the magistrate.¹⁴

Cognizable and Non-Bailable Offences

1. the Bill makes declaration of talaq a cognizable offence, attracting up to three years' imprisonment with a fine. (A cognizable offence is one for which a police officer may arrest an accused person without warrant.) The offence will be cognizable only if information relating to the offence is given by: (i) the married woman (against whom talaq has been declared), or (ii) any person related to her by blood or marriage.
2. The Bill provides that the Magistrate may grant bail to the accused. The bail may be granted only after hearing the woman (against whom talaq has been pronounced), and if the Magistrate is satisfied that there are reasonable grounds for granting bail.
3. The offence may be compounded by the Magistrate upon the request of the woman (against whom talaq has been declared). Compounding refers to the procedure where the two sides agree to stop legal proceedings, and settle the dispute. The terms and conditions of the compounding of the offence will be determined by the Magistrate.¹⁵

CONCLUSION

Muslims in India are categorized into two main sects, Shias and Sunnis. India comprises of a majority of Sunnis who recognize the practice of '*Talaq-e-biddat*' i.e. Triple *Talaq*, whereby, a Muslim man may arbitrarily and whimsically break his marital ties without making any attempt of reconciliation with his wife. Recently on 22.08.2017, the Supreme Court of India in a judgment, *Shayara Bano Vs. Union of India*, by a majority of 3:2, has set aside this arbitrary and discriminative practice of Triple *Talaq* in India based on the following logic and reasoning.

The Supreme Court has discussed that the Muslim Personal Law (Shariat) Application Act, 1937 (the "1937 Act") was enacted to bring to an end all the unholy, oppressive and discriminatory customs and usages in the Muslim community. The Court reasoned that the said 1937 Act also defies the tenets of Quran by upholding several customs and usages which include Triple *Talaq*. The 1937 Act has recognized and enforced all forms of *Talaq* including Triple *Talaq* and thus, Triple *Talaq* has been held to be a legal form of divorce in India, as applicable to

Sunnis. In the recent Judgment, the Supreme Court has arrived at the following conclusion:

Article 25(1) of the Constitution of India

It has been brought to the notice of the Supreme Court that most of the Muslims in India belong to the Hanafi school of Sunni Muslims, which has always supported the practice of Triple *Talaq* in India. But at the same time, this School has also described Triple *Talaq* as a sinful form of divorce. The Supreme Court has, therefore, held that Triple *Talaq* does not form a part of the Fundamental Rights provided under Article 25(1) of the Constitution i.e. Freedom of conscience and free profession, practice and propagation of religion.

Article 14 of the Constitution of India

The Supreme Court has discussed that in the practice of Triple *Talaq*, an instant, irrational and irrevocable *Talaq* is given by a Muslim husband to his wife, where no attempt is made to reconcile, which is essential to save the marital tie. In various cases, the Supreme Court has negated statutory laws on the ground of being arbitrary i.e. when they are 'not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favoritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment' and therefore violative of Article 14 of the Constitution. In view of the above, the Supreme Court has held Triple *Talaq* to be violative of Article 14 of the Constitution.

Article 13 of the Constitution of India

The Supreme Court has, further, discussed that as the 1937 Act is a pre-Constitutional law, it would be covered by the expression "laws in force" in Article 13(3)(b) of the Constitution and would be declared void, by virtue of Article 13(1) of the Constitution, if found to be inconsistent with the Fundamental Rights laid down in Part III of the Constitution, to the extent of such inconsistency. Therefore, since Triple *Talaq* has been held to be violative of Article 14 of the Constitution, the Supreme Court has declared Section 2 of the 1937 Act to be void to the extent that it recognizes and enforces Triple *Talaq*.

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, economical 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. J. 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, Hanafi or any other school of thought agree that this practice is either Haram or Biddat so Muslims must not allow this to corrupt their society.

Triple Talaq is often known for its controversy through the world and it is noted that the custom is banned in the Muslim-majority countries of Saudi Arabia, Morocco, Afghanistan and Pakistan. There are many instances where Muslim clerics flout the Supreme Court ban on triple talaq by using the term "talaq-e-bain" to divorce the wife unilaterally. So, in such cases, Triple Talaq in some form or other name will continue to happen even after this bill because such laws by their nature are difficult to enforce. Any form of divorce will continue to exist with some other name till the Muslim clergy does not change in its nature.

Endnotes

1. AIR 1971 Ker 261
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3. "CASE COMMENT: Shamim Ara and the Divorce Politics of a Secular and Modern India" available at <https://shariasource.blog/2016/10/28/case-commentary-shamim-ara-and-the-divorce-politics-of-a-secular-and-modern-india/> (visited 30th march 2019)
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