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ARTICLE

Triple Talaq Verdict, End of Tyranny

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Abstract

The triple talaq tyranny is finally put to an end by the Supreme Court setting it aside which was the centuries old practice of instant triple talaq or 'talaq-e-biddat'. In the process of triple talaq, divorce takes place by pronouncing the word talaq three times in quick succession. The 3-2 verdict laid the foundation of the principle of equality among Muslim women paving way for gender equality in total. The majority Judges forming the Constitutional bench, called the practice arbitrary and disagreed it with the view that 'triple talaq' was an integral part of Islamic religious practice.

Introduction

But minority look at the court ruling in a different way for dealing with the triple talaq menace. Chief Justice JS Khehar and Justice S Abdul Nazeer maintained that personal law relating any religion, has constitutional protection and therefore, relied on appropriate law which would be enacted by the legislature machinery for curbing the practice of triple talaq. They however, stopped Muslim men from pronouncing talaq-e-biddat by issuing injunction which would be operative for a period of 6 months till legislation is enacted by the Government. In any way it is indeed the victory of Muslim women across the country. Union law minister Ravi Shankar Prasad quoted "it's not only a constitutional and legal victory but also a moral victory for Muslim women."

Many Muslim women have challenged the Triple Talaq in the court as against the principle of gender equality claiming their individual right against their personal law which did not prohibit Muslim men from deserting their wives whimsically and capriciously. In most of the cases complained woman are not even aware of the intention of their husband to dissolve the marriage and are taken at surprise when they are thrown out of their

matrimonial home for no fault of their own. They claimed the practice as disregarding both as per the Constitution and the Quran. The Judgment endowed the Muslim women with the hope for Justice.

Introduction

Triple talaq is a practice prevalent among the Sunnis belonging to Hanafi school of Muslim religion governed by Shariat Act. Triple divorce is recognized but disapproved form of divorce and is considered by the Islamic Jurists as an innovation within the fold of Shariat. It was however, a mere administrative measure of Caliph Umar to meet an emergency situation and not to make it a law permanently. But as years passed by, the rule of Triple divorce among Sunnis became a prevalent practice having sanctity neither from the Holy Quran nor by the Prophet Mohammad.

Triple Talaq can be pronounced at one sitting by uttering the words divorce thrice or 'I divorce thee thrice'. When given in writing it becomes irrevocable immediately without the necessity to follow the Iddat period. Once a couple gets separated, they cannot remarry unless the woman marries another man and then divorce him leaving behind no scope for reconciliation.

Versus under the Quran emphasize that every possible attempt must be made for reconciliation between the married couple before the completion of the prescribed period. Thus, 'Triple Talaq' lack sanction of the Quran. It is supported by Muslim Jurists solely as per their interpretation of Muslim Personal Law (Shariat Act, 1937) which is silent on Nikaha halala, polygamy and divorce. Majority of Muslim Nations have explicitly or implicitly banned triple talaq including our neighboring country Pakistan. The most ideal country for enforcing the law against Triple Talaq is Sri Lanka where Muslim population is confined to less than 10%. Sri Lanka's Muslim Marriage and Divorce Act, 1951, as amended up to 2006, doesn't recognize instant divorce. In India any reform in personal law is feared as derogatory to the Islamic practices and perceived as a threat to religious identity. The law of Sri Lanka requires a husband willing to divorce his wife to give notice of his intentions to a qazi (Islamic judge), who should attempt reconciliation between the couples over the next 30 days. It is only then the husband can give talaq to his wife in the presence of the qazi and two witnesses.¹

¹ Referred to in the online journal scroll.in by Azaz Ashraf
<http://scroll.in/article/806299/if-pakistan-and-21-other-counties-have-abolished-triple-talaq-why-shouldnt-india>

End of Arbitrariness

The arbitrary practice of triple talaq is finally struck down by the Highest Court of our country. In the view of Majority judges, Justice Rohinton F Nariman and Uday U Lalit:

“Triple Talaq alone is the subject matter of challenge but other forms of talaq are not...It is clear that this form of talq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation as to save it”.

Reconciliation between the Muslim married couple is the basic principle to be adopted in all forms of talaq under Muslim Law before Talaq is attained finality. The Holy Quran permits talaq in ‘extremely unavoidable situation’. Justice Kurian Joseph held that Instant Triple Talaq clearly violates the basic tenets of the Quran and consequently, it violates Shariat. He agreed with Justice Nariman on triple talaq not being an essential part of Muslim Personal Law.² Shariat Act is not a law regulating triple talaq. The purpose of the Shariat Act, 1937 was to curb un-Islamic and oppressive customs and usages and remove them from Muslim Personal Law. Triple talaq violated the basic principle of equal footing between man and woman and gender-justice being the central tenet of Quran. Hence it is not a part of Sharia and cannot be enforced under the Shariat Act.

Justice Rohinton Fali Nariman, Uday Umesh Lalit ruled triple talaq to be violating the right to equality of Muslim women and hence struck down section 2 of the 1937 Act [Muslim Personal Law Shariat Application Act, 1937] to be void to the extent that it recognizes and enforces triple talaq on the ground of it being manifestly arbitrary and does not proceed by an effort for reconciliation.

Talaq-ul-Sunnat (Revocable Talaq)

Talaq-ul-Sunnat is regarded to be the approved form of Talaq. It is called as Talaq- ul-Sunnat because it is based on the Prophet’s tradition (Sunna). As a matter of fact, the Prophet always considered Talaq as an evil. If at all this evil was to take place, the best formula was one in which there was possibility of revoking the effects of this evil. With this idea in mind, the Prophet recommended only revocable Talaq, because in this form, the evil consequences of talaq do not become final at once. There is possibility of compromise and reconciliation between husband and wife.

² Referred to in the Indian Express by Faizan Mustafa, vice-chancellor NALSAR

Talaq-ul-Sunnat is also called as Talaq-ul-raje. Only this kind of talaq was in practice during the life of the Prophet. This mode of talaq is recognized both by Sunnis as well as by the Shias. Talaq-ul-Sunnat may be pronounced either in Ahsan or in the Hasan form.

(i) Talaq Ahsan (Most Proper)

This is the most proper form of repudiation of a marriage. The reasons are twofold: First, there is possibility of revoking the pronouncement before expiry of the Iddat period. Secondly, the evil words of talaq are to be uttered only once. Being an evil, it is preferred that these words are not repeated.

In the Ahsan talaq there is a single declaration during the period of purity followed by no revocation by husband for three successive period of purity. In this form, the following formalities are required:

The husband has to make a single pronouncement of talaq during the Tuhr of the wife. Tuhr is the period of wife's parity i.e. a period between two menstruations. As such, the period of Tuhr is the period during which cohabitation is possible. But if a woman is not subjected to menstruation, either because of old age or due to pregnancy, a talaq against her may be pronounced any time.

After this single pronouncement, the wife is to observe an Iddat of three monthly courses. If she is pregnant at the time of pronouncement the Iddat is there till the delivery of the child. During the period of Iddat, there should be no revocation of Talaq by the husband.

Revocation may be expressed or implied. Cohabitation with the wife is an implied revocation of talaq. If the cohabitation takes place even once during this period, the talaq is revoked and it is presumed that the husband has reconciled with the wife.

When the period of Iddat expires and the husband does not revoke the talaq either expressly or through consummation, the talaq becomes irrevocable and final.

It may be noted that the characteristic feature of the Ahsan form of talaq is a single pronouncement followed by no revocation during the period of three month's Iddat. Therefore, where a husband makes any declaration in anger, but realising his mistake afterwards, wants to cancel it, there is sufficient time for him to do so. Single pronouncement of the evil words of talaq and sufficient opportunity to the spouses for reconciliation, are the two reasons for calling this form as the 'most proper' form of talaq.

(ii) Talaq Hasan (Proper)

This talaq is also regarded to be the proper and approved form of talaq. In this form too, there is a provision for revocation. But it is not the best mode because evil words of talaq are

to be pronounced three times in the successive Tuhrs. The formalities required under this form are as under:

The husband has to make a single declaration of talaq in a period of 'Tuhr.

(c) In the next Tuhr, there is another single pronouncement for the second time.

(d) It is significant to note that the first and second pronouncements may be revoked by the husband. If he does so, either expressly or by resuming conjugal relations, the words of talaq become ineffective as if no talaq was made at all.

(e) But, if no revocation is made after the first or second declaration, then lastly the husband is to make the third pronouncement in the third period of purity (Tuhr). As soon as this third declaration is made, the talaq becomes irrevocable and the marriage is dissolved and the wife has to observe the required Iddat.

(f) It may be noted that the important feature of Talaq Hasan is its revocability before the third pronouncement and its irrevocability after the third. In order to make an effective talaq, the words must be uttered three times in three consecutive period of purity.

In *Ghulam Mohyuddin v. Khizer*, a husband wrote a Talaqnama in which he said that he had pronounced his first talaq on 15th September and the third talaq would be completed on 15th November. He had communicated this to his wife on 15th September.

The Lahore High Court held that this was a Talaq Hasan. The Court observed that the Talaqnama was merely a record of the first pronouncement and the talaq was revocable. The Court further observed that for an effective and final talaq, the three pronouncements must actually be made in three Tuhrs-, only a mention of the third declaration is not sufficient.

(iii) Talaq-ul-Bidaat (Irrevocable)

(a) This talaq is also known as Talaq-ul-Bain. It is a disapproved mode of divorce. A peculiar feature of this talaq is that it becomes effective as soon as the words are pronounced and there is no possibility of reconciliation between the parties. The Prophet never approved a talaq in which there was no opportunity for reconciliation.

(b) Therefore, the irrevocable talaq was not in practice during his life. The Talaq-ul-Bid'at has its origin in the second century of the Islamic-era. According to Ameer Ali, this mode of talaq was introduced by the Omayyad Kings because they found the checks in the Prophet's formula of talaq inconvenient to them.¹⁸ Since then this mode of Talaq has been in practice among the Sunni Muslims.

(iv) Shia Law

(a) Under the Shia Law, an irrevocable talaq is not recognised.

(b) We have already seen that in a Bidat form there is no opportunity for the revocation of talaq. A Bid'at Talaq becomes final as soon as the words have been uttered and the marriage is completely dissolved. A Sunni husband, who wants to divorce his wife irrevocably, may do so in any of the following manners:

(c) The husband may make three pronouncements in a period of purity (Tuhr) saying: "I divorce thee, I divorce thee, and I divorce thee". He may declare his triple talaq even in one sentence saying: "I divorce thee thrice", or "I pronounce my first, second and third talaq."

(d) The husband may make only one declaration in a period of purity expressing his intention to divorce the wife irrevocably saying: "I divorce thee irrevocably" or "I divorce thee in Bain".

Plight of Women in the name of Religious Freedom

The danger of the triple talaq is pronounced in a spur of moment in a fight and closes doors for reconciliation but it violates the Quranic principles. The practice has even become more tyrannical as husbands are marrying the women half of their age via the triple talaq way. The first wife is simply forced to knock at the doors of courts because her personal law shook her conscience and protected triple talaq in the name of a ruthless tradition.

Police stations are flooded with complaints of Muslim women who are deserted by their husband by pronouncing instant talaq. Very often these women receive text messages, whatsapp messages ending the marriage instantly. In case the suffering women sought some relief under existing laws like section 125 of Crpc (The code of criminal Procedure), then Muslim Personal Law Board would defend the practice in the name of freedom of religion and their special identity. But freedom of religion is not based on patriarchal order of society. It is an extension of the right to equality itself. Freedom of religion is the right to practice within their religion what one believe in and what one chooses to propagate but what other members of the community disagree if forcefully imposed on them, hampering their right to be treated equal. All that cannot be given the constitutional safeguard because freedom of religion is an individual freedom of all the members of the religion.

Women behind the Case; Victory of Shayara Bano

It is indeed the victory of women who had been fighting atrocities by the draconian triple talaq. Shayara Bano, the main petitioner in the case now an MBA student had become the hope for the Muslim women across the Nation. Her father Mr. Iqbal Ahmed chose to fight for Justice when his daughter was subject to triple talaq by receiving talaqnama by post. Shayara was divorced by her husband of 15 years in December 2015 through a

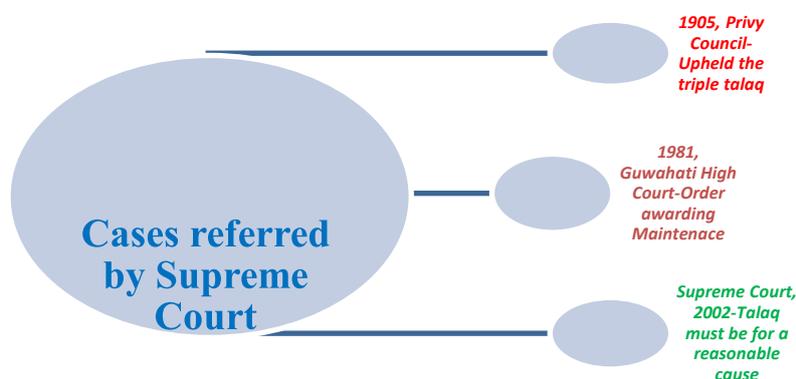
talaqnama that she received by post in her parents' home.³ Two months later she moved the Supreme Court arguing "the Muslim husband's right to ask for divorce by uttering talaq three times in a row is completely unilateral, unguided, and has no rationale. It cannot be identified with Muslim culture and is not a part of Muslim law."

In Delhi, a 28-year-old Muslim woman who has been fighting a case for over three years against her husband who claimed to have given her triple talaq, said that she would now move court again to get maintenance. Her husband has refused to maintain her on the ground that since he gave her triple talaq, he wasn't obliged to pay anything more, apart from mehar.⁴

There is sound of cheerfulness among the women throughout the country after winning the long battle against triple talak. The sense of pride and faith in the Indian Constitution and in our Justice system is restored by the verdict.

Past Talaq cases

Supreme Court judgment referred to several cases and court rulings while pronouncing this landmark judgment.



In Rashid Ahmad versus Anisa Khatun (Privy Council, 1905). In this case the petitioner Anita Khatun challenged the divorce because her husband Ghiyas-ud-din pronounced triple talaq in her absence though in the presence of two witnesses. And even after talaq they co-habited for 15 years and had 5 children. The Privy Council upheld the triple talaq.⁵

Jiauddin Ahmed versus Anwara Begum (Guwahati High Court, 1981) . The court ruled that "talaq-e-biddat without reasonable cause, reconciliation attempts and involvement of

³ Referred to in the Indian Express by Abantika Ghosh, Shalini Nair & Sarah Hafeez

⁴ Referred to in the Indian Express by Sreenivas Janyala & Kaunain Sheriff M

⁵ AIR 1932 PC 25

arbitrators would not lead to a valid divorce”, and the Magistrate Court ordered awarding Maintenance.

Shamim Ara versus State of U.P (Supreme Court) – The court observed that the correct law of divorce as ordained by Holy Quran is that talaq must be for a reasonable cause; and be preceded with the attempts of reconciliation between the husband and the wife by two arbiters.

Supreme Court has been disapproving this form of talaq for years. The prolonged battle for the rights of Muslim women finally opened the door for Muslim women living in fear since childhood, thinking that they could be divorced anytime by their husbands without assigning any reasons.

Under the Presidenship of Mutf Ateequr Rehman the resolution was adopted in a seminar held in Ahemdabad in 1973 that there is an urgent need to educate the Muslim masses about correct procedure of divorce and tell them that three times pronouncements in one sitting is an innovation (Biddat) and oppression against Muslim women. Muslims should avoid wrong procedure of divorce. The text of the resolution is as following:

Three pronouncements of divorce in one and same sitting, resulting in Mughallazzah divorce is not based on Ijma (consensus) and therefore is not final.

If a person says to his wife talaq, talaq, talaq and thereafter says that his intention was to pronounce only one talaq and he says he has used the word talaq three times for merely emphasizing it, then this will not be taken Mughallazah, (irrevocable). 6

Conclusion

‘The striking down of triple talaq by the Supreme Court is a reformatory step which would open the new gateways for transformation of women from the veil, put on by the conservative ideologies to the progressive ones. The judgment definitely marked the beginning of a new era of equality for Muslim women in the country,’ said the Prime Minister Narendra Modi.

"Judgment of the Hon'ble SC on Triple Talaq is historic. It grants equality to Muslim women and is a powerful measure for women empowerment."7

⁶ Referred to in the book on Mohammedan Law by Aqil Ahmad

⁷ Referred to in the Hindu Net desk

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