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TRIPLE TALAQ: HISTORICAL PERSPECTIVE AND RECENT TREND

Nahid Anjum[1] & Dr Rajesh Kumar Garg[2]

[1]Research Scholar, Centre of Legal Studies, Shobhit University, Meerut

[2]Research Supervisor, Centre of Legal Studies, Shobhit University, Meerut

[2]Former Dean, Faculty of Law, CCS University, Meerut

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ABSTRACT

In India, the practice of triple talaq is being followed in society with the support of traditions; but it is not acceptable in society due to the violation of rights of others. In civilized society, gender equality should be the most important aspect and integral part. An expressed provision has been made in the Constitution of India, but it is not being implemented strictly; a strict implementation of these provisions is much needed. Shayara Bano vs. Union of India case has sparked and heated the topic of gender biased practices in the Islamic Laws and set a level of awareness as to how individual fight for their rights.

KEYWORDS: *Triple Talaq, Constitution of India, Holy Quran.*

INTRODUCTION

Talaq is a method by which can husband dissolve the marital relation. Hanafi school of Sunni law recognized two kinds of talaq- Talaq-ul-Sunnat and Talaq-ul-Bidaat. Talaq-ul-Sunnat is talaq which is performed according to the traditions assigned by the Prophet or the rules laid down in Sunnah. In fact, it is the procedure that seems to have been approved at the beginning of the ministry of Prophet and consequently is considered as proper form of divorce. This form of Talaq also approved in Shia School of Law. The Talaq-ul-Biddat, as its name indicated, is irregular mode of divorce, it has introduced in the second century of the Muslim era. It was then that the Omeyyade monarchs, there finding that the checks imposed by Prophet on the facility of repudiation interfered with the indulgence of their caprice, endeavoured to find an escape from the strictness of the law, and found in the pliability of the jurists a loophole to effect their purpose.

Triple talaq, it is a form of Talaq-ul-Biddat where a husband can utter trice the word ‘talaq’ at one go, and it is irrelevant, whether the wife is in the state of tuhr or not. It is signified in Arabic as Mugallazah, means talaq which is very hard; it is most disapproved and also not in the line with Talaq-ul-Sunnat.

“The triple talaq was not allowed during the Prophet’s lifetime even during the first Caliph Abu Bakr’s reign and also for more than two years during the second Caliph Umar’s time. Later on Caliph Umar permitted it on account of a peculiar situation. When the Arabs conquered Syria, Egypt and Persia, etc., they found out 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 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 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 divorce again in order to prevent its misuse by the Arabs. He had complied with their demands to meet an emergency situation and not with an intention to enforce it permanently, but later on jurists also declared this form of divorce as valid and gave sanction to it."[1]

"Thus we see that triple talaq came into being during the second century of Islam when Umayyads 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 strictness of law. It must be noted that it was not Holy Quran but the Umayyad practice which gave validity to these divorces."[2]

According to most jurists, triple talaq should not be effected as it is against the spirit of Islam and of the Holy Quran. Abdur Rahim is more acrimonious when he says "it may remark that interpretation of the law of divorce by jurists especially of the Hanafi school is one flagrant instance where, because of literal adherence to mere words and certain tendencies toward subtleties they have reached a result in direct antagonism to the admitted policy of law in subject."[3]

"Such talaq is lawful, although sinful in Hanafi law, but in Ithna Ashari and Fatimi law it is not permissible. According to Tyabji, by a deplorable development of the Hanafi law the sinful and the most abominable forms have become the most common for men have always molded the law of marriage so as to be most agreeable to them."[4]

"During the reign of the second Khalifa of Islam, Hazrat Umar, legend has it that there was a sudden spurt of talaqs in Arabia. Men were divorcing their wives without assigning any rhyme or reason. Angered by the inhuman manner in which people were interpreting the Quran, the Khalifa ordered that any man found giving his wife talaq should have his head severed."[5]

TRIPLE TALAQ UNDER HOLY QURAN

The verse of Holy Quran relied upon, is verse 2:229, "Divorce must be pronounced twice and then (a woman) may be retained in honor or released in kindness. And it is not lawful for you that ye take from women aught of that which ye have given them, except (in the case) when both fear that they may not be able to keep within the limits (imposed by) Allah. And if ye fear that they may not be able to keep the limits of Allah, in that case it is not sin for either of them if the woman ransom herself. These are the limits (imposed by) Allah. Transgress them not. For whose transgresses the Allah's limit, such are wrong doers." Accordingly Imam Razi[6], "Divorce two times, this is, divorce on two separate occasions." He further says, "A lawful divorce is that given separately because the existence of two is only possible when there is space between once and the other." Hence, it can be said that if pronouncement of talaq twice in one go, cannot be accepted as valid divorce then how three pronouncement can be valid. Also in the holy Quran it is stipulated that when divorce can be granted it should be given for a stipulated period of Iddat. "O Prophet when ye (men) put away women, put them away for their (legal) period and reckons the period, and keeps your duty to your Allah, your Lord." One who divorces thrice at a time does not take into account that iddat because with the pronouncement of first talaq the Iddat starts, but in the case of the second and the third the Iddat has not been taken into account, although for every talaq it is necessary to have regard for the Iddat.

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1. Furqan Ahmad, "Understanding the Islamic Law of Divorce", 43 JILI 484 (2003).
2. Ibid, p. 491.
3. Abdul Rahim, "Principles of Muhammadan Jurisprudence", All-Pakistan Legal Decision, Lahore, 1958.
4. Faiz Badrudin Tyabji, "Muslim Law", N.M. Tripathi Ltd, Bombay 4th edition 1968.
5. Allama Samsani, "Falsafa Shariat-ul-Islam" : Beirut.
6. An Iranian Sunni Muslim theologian and philosopher.

JUDICIAL PRONOUNCEMENTS ON 'TALAQ-UL-BIDDAT'

"Rashid Ahmad vs. Anisa Khatun : The primary issue that came to be adjudicated in the above case, pertained to the validity of 'talaq-ul-biddat' pronounced by Ghiyas-ud-din, a Sunni Mohammaden of the Hanafi school to his wife Anisa Khatun. He pronounced triple talaq in presence of witnesses but in the absence of his wife. Anisa Khatun received Rs. 1000 in payment of 'dower' on the same day which was confirmed by a registered receipt. Thereafter Ghiyas-ud-din executed a 'talaqnama' narrating the divorce. The 'talaqnama' is alleged to have been given to Anisa Khatun. Anisa Khatun the respondent in this case challenged the validity of the divorce, firstly for the reason that she was not present at the time of pronouncement of divorce. And secondly, that even after the aforesaid pronouncement, cohabitation had continued and subsisted for a further period of fifteen years, i.e., till the death of Ghiyas-ud-din and Anisa Khatun. According to Anisa Khatun, Ghiyas-ud-din continued to treat Anisa-Khatun as his wife and the children born to her as his legitimate children. It was also the case of Anisa Khatoon that the payment of Rs. 1000 was a payment of prompt dower and as such not payment in continuation of the talaq-ul-biddat, pronouncement by Ghiyas-ud-din."[7]

"The Privy Council while considering the validity of talaq-ul-biddat and legitimacy of child born to Anisa Khatoon held as: Their Lordships are of opinion that the pronouncement of the triple talak by Ghiyas-ud-din constituted an immediately effective divorce, and, while they are satisfied that the High Court were not justified in such a conclusion on the evidence in the present case, they are of opinion that the validity and effectiveness of the divorce would not be affected by Ghiyas-ud-din's mental intention that it should not be a genuine divorce, as such a view is contrary to all authority. A talaq actually pronounced under compulsion or in jest is valid and effective."[8]

"The respondents sought to found on the admitted fact that for about fifteen years after the divorce Ghiyas-ud-din treated Anis Fatima as his wife and his children as legitimate, and on certain admissions of their status said to have been made by appellant No. 1 and respondent pro forma No. 10, who are brothers of Ghiyas-ud-din, but once the divorce is held proved such facts could not undo its effect or confer such a status on the respondents."[9] "While admitting that, upon divorce by the triple talaq, Ghiyas-ud-din could not lawfully remarry Anis Fatima until she had married another and the latter had divorced her or died, the respondents maintained that the acknowledgment of their legitimacy by Ghiyas-ud-din, subsequent to the divorce, raised the presumption that Anis Fatima had in the interval married another, who had died or divorced her, and that Ghiyas-ud-din had married her again, and that it was for the appellants to displace that presumption. In support of this contention, they founded on certain dicta in the judgment of this Board in Habibur Rahman Chowdhury vs. Altaf Ali Chowdhury (1921) L.R. 48 I.A. 114. Their Lordships find it difficult to regard this contention as a serious one, for these dicta directly negative it. The passage relied on, which related to indirect proof of Muhammedan marriage by acknowledgment of a son as a legitimate son is as follows: It must not be impossible upon the face of it: i.e., it must not be made when the ages are such that it is impossible in nature for the acknowledge to be the father of the acknowledgee, or when the mother spoken to in an acknowledgment, being the wife of another, or within prohibited degrees of the acknowledgor, it would be apparent that the issue would be the issue of adultery or incest. The acknowledgment may be repudiated by the acknowledgee. But if none of these objections occur, then the acknowledgment has more than a mere evidential value. It raises a presumption of marriage a presumption which may be taken advantage of either by a wife-

[7]. AIR 1932 PC 25.
[8]. Rashid Ahmed vs. Anisa Khatun AIR 1932 PC 25; Ameer Ali's Mohammedan Law, 3rd edn., vol.2, Himalayan Publishing House, Nagpur, 1985, p. 518; Hamilton's Hedaya, vol. 1, p. 211.
[9]. Rashid Ahmed vs. Anisa Khatun AIR 1932 PC 25.

claimant or a son-claimant. Being, however, a presumption of fact, and not juris et de jure, it is like every other presumption of fact capable of being set aside by contrary proof."[10]

"The legal bar to re-marriage created by the divorce in the present case would equally prevent the raising of the presumption. If the respondents had proved the removal of that bar by proving the marriage of Anis Fatima to another after the divorce and the death of the latter or his divorce of her prior to the birth of the children and their acknowledgment as legitimate, the respondents might then have had the benefit of the presumption, but not otherwise."[11]

"Their Lordships are, therefore, of opinion that the appeal should be allowed, that the decree of the High Court should be reversed, and that the decree of the Subordinate Judge should be restored, the appellants to have the costs of this appeal and their costs in the High Court. Their Lordships will humbly advise His Majesty accordingly."[12] As a conclusion the Privy Council upheld the lawful, 'talaq-ul-biddat', pronounced by husband in the absence and without the knowledge of the wife, even though husband and wife cohabited for fifteen long years after which five children were born.

"Jiauddin Ahmed vs. Anwara Begum: The respondent Anwara Begum had petitioned for maintenance under Section 125 of the Code of Criminal Procedure. Her contention was that she had lived with her husband for about nine months, after her marriage. During, that period, her husband began to torture her and even used to beat her. It was therefore, that she was compelled to leave his company and start living with her father who was a day labourer. Maintenance was duly granted by the First Class Magistrate, Tinsukia. Her husband, the petitioner Jiauddin Ahmed, contested the respondent's claim for maintenance, before the Gauhati High Court, on the ground that he had divorced her, by pronouncing divorce by adopting the procedure of talaq-ul-biddat. The challenge: It is in above circumstances that the validity of talaq-ul-biddat and the wife's entitlement to maintenance came up to be considered by the Gauhati High Court, which examined the validity of the concept of talaq-ul-biddat. The High Court laid down reliance on verses 128 to 130, contained in section 19 of sura 'IV' and verses 229 to 232, contained in sections 29 and 30 of Sura 'II' and thereupon referred to the commentary on the above verses by Scholars and the views of the jurists with pointed reference to talaq. Furthermore, the High Court also placed its reliance on verse 35 contained in section 6 of Sura 'IV' and again referred to the commentary on the above verse by Abdullah Yusuf Ali, an Islamic scholar. The conclusion: The conclusion as recorded by the High Court leaves no room for any doubt that talaq-ul-biddat pronounced by the husband without reasonable cause and without being preceded by attempts of reconciliation and without the involvement of arbitrators with due representation on behalf of husband and wife would not lead to a valid divorce. Moreover, the High Court also concluded that Jiauddin Ahmed had mainly alleged that he had pronounced talaq but had not established the factum of divorce by adducing any cogent evidence. Having concluded, that the marriage between parties was subsisting, the High Court upheld the order awarding maintenance to the wife, Anawara Begum."[13]

"Must. Rukia Khatun vs. Abdul KhaliqueLaskar: Rukia Khatun was marrried to Abdul KhaliqueLaskar. The couple lived together for about three months, after their marriage. During that period, the marriage was consummated. Rukia Khatun alleged that after the abovementioned period her husband abandoned and neglected her. She was allegedly not provided with any maintenance and as such had been living in penury for a period of about three months, before she

[10]. Ibid.
[11]. Ibid.
[12]. Ibid.
[13]. (1981) 1 Gau LR 358.

moved an application for grant of maintenance. The petitioner's application for maintenance filed under Section 125 of Code of Criminal Procedure, was rejected by Sub Divisional Judicial Magistrate, Hailkandi. She challenged the order rejecting her claim of maintenance before Gauhati High Court. The respondent, the husband contested the claim for maintenance by asserting that even though he had married the petitioner but he had divorced her on 12-04-1972 by way of talaq-ul-biddat and had thereafter even executed a talaqnama. The husband also asserted that he had also paid dower to the petitioner. The claim of wife was declined on the ground that she had been divorced by the husband. The challenge: It is in the above circumstances that validity of the divorce pronounced by the husband by way of talaq-ul-biddat and wife's entitlement to maintenance came up for consideration. The consideration: The first point was to be decided whether the opposite party divorced the Petitioner. The equivalent of the word 'divorce' is talaq in Muslim law. What was considered to be as valid talaq was considered by Bahrul Islam J. as that the word talaq carries the literal significance of 'freeing' or the 'undoing of knot'. Talaq means divorce of a woman by her husband. Moreover the case of Ahmed Kasim Molla vs. Khatun Bibi was also relied on in order to come to the conclusion. The conclusion: The High Court listed several essential ingredients of a valid talaq under Muslim law. 'Firstly' talaq has to be based on some good cause and must not be at the mere desire, sweet will, whim and caprice of the husband. Secondly it must not be a secret. Thirdly, between the pronouncement and finality there must be a time gap so that the passions of the parties may calm down and reconciliation may be possible. Fourthly, there has to be a process of arbitration wherein the arbitrators are representatives of both the husband and the wife. If the above ingredients do not exist talaq would be considered as invalid. For the reason talaq-ul-biddat pronounced by the husband did not satisfy all the ingredients as a valid divorce, the High Court concluded that the marriage was subsisting and accordingly held the wife to be entitled to maintenance."[14]

"Masroor Ahmed vs. State (NCT of Delhi)[15] Aisha Anjum was married to the petitioner Masroor Ahmed on 02-04-2004. The marriage was duly consummated and a daughter was born to them. It was alleged by the wife that her husband's family threw her out of her matrimonial home on account of non-fulfillment of dowry demands. While the wife was at maternal home the husband filed a case for restitution of conjugal rights before the Senior Civil Judge, Delhi. During the course of the above proceedings the wife returned to the matrimonial home to the company of her husband whereupon the matrimonial cohabitation was restored. Once again there was discord between the couple and the husband pronounced talaq-ul-biddat on 28-08-2006. The wife alleged that she had later come to know about the fact that her husband had divorced her by way of talaq-ul-biddat in the presence of the brothers of Aisha Anjum and that the husband had lied to the court when he had sought her restitution from the Court by making out as if the marriage was still subsisting. It was her claim that she would not have agreed to conjugal relations with him had she known the divorce and therefore her consent to have conjugal relation with Masroor Ahmed was based on fraud committed by him on her. She therefore, accused her husband for having committed the offence under Sec 376 of IPC., i.e. Offence of rape. She also claimed maintenance from her husband under Sec 125 of Code of Criminal Procedure Code. During the pendency of the above proceedings the parties arrived at an amicable settlement." the position expressed by High Court in paragraph 12 of the judgement crystallises the challenge. Paragraph 12 is as follows: "Several questions impinging upon Muslim law concepts arise for consideration. They are (1) What is the legality and effect of a triple talaq? (2) Does a talaq given in anger result in dissolution of marriage? (3) What is the effect of non-communication of the talaq to the wife? (4) Was the purported talaq of October 2005 valid? (5) What is the effect of the second nikah of 19.4.2006?" considering the validity

[14]. (1981) 1 Gau LR 375.
[15]. 2008 (103) DRJ 137.

and effectiveness of talaq-ul-biddat, the High Court recorded that "There is no difficulty with talaq ahasan and talaq hasan. Both have legal recognition under all fiqh schools, Sunni or Shia. The difficulty lies with triple divorce which is classed as bidaat(an innovation). Generally speaking the Shia schools do not recognise triple talaq as bringing about a valid divorce. There is however difference of opinions even within the sunni schools as to whether the triple talaq should be treated as three talaqs, irrevocably bringing to an end the marital relationship or as triple talaq, operating in much the same way as an ahasan talaq." The High Court arrived on following decision: "It is accepted by all schools of law that talaq-ul-bidaat is sinful. Yet some schools regard it as valid. Courts in India have also held it to be valid. The expression bad in theology but valid in law is often used in this context. The fact remains that it is considered to be sinful. It was deprecated by prophet Muhammad. It is definitely not recommended or even approved by any school. It is not even considered to be a valid divorce by Shia schools. There are views even amongst the Sunni schools that the triple talaq pronounced in one go would not be regarded as three talaqs but only as one. Judicial notice can be taken of the fact that the harsh abruptness of triple talaq has brought about extreme misery to the divorced women and even to the men who are left with no chance to undo the wrong or any scope to bring about a reconciliation. It is an innovation which may have served a purpose at a particular point of time in history but, if it is rooted out such a move would not be contrary to any basic tenet of Islam or the Quran or any ruling of the Prophet Muhammad."

"Shayara Bano vs. Union of India[16] Shayara Bano, the petitioner was married to Rizwan Ahmed for about fifteen years. Rizwan Ahmed, the husband in 2006 divorced her through talaq-ul-biddat due to which Shayara Bano, the petitioner, filed a Writ Petition in the Supreme Court which challenged the constitutional validity of three practices namely talaq-ul-bidat, polygamy, nikah-halala which violated Articles 14, 15, 21, 25 of the Constitution of India. On 16 February, the court in its order demanded written submissions from Shayara Bano, the aggrieved petitioner, the Union of India, women' rights bodies and the All India Muslim Personal Law Board (AIMPLB) on the issue of talaq-ul-biddat, nikah-halala and polygamy. The petitioner's plea was supported by The Union of India and Bebaak Collective and Bhartiya Muslim Mahila Andolan (BMMA) whereas the AIMPLB argued that Muslim personal law is uncodified and hence not subject to constitutional judicial review. Furthermore, AIMPLB contended that these practices are essential parts of the Islamic religion and also protected under Article 25 of the Constitution. After Shayara Bano's petition was accepted, a constitutional bench of five judges was formed by the Apex Court. The challenge: The challenges before the Court was to decide whether or not the practice of talaq-ul-biddat one of the essential practices of the Islamic religion and also that whether or not such practices are in violation of the fundamental rights guaranteed under the Indian Constitution? In order to come to the conclusion the Holy Quran and the Hadiths were referred to. Also laws of Arab states, Southeast Asian States, Sub-continental States were relied upon. Furthermore several judicial pronouncements such as Rashid Ahmad vs. Anisa Khatun, Jiauddin Ahmed vs. Anwara Begum, Must. Rukia Khatun vs. Abdul Khalique Laskar, Masroor Ahmed vs. State (NCT of Delhi) etc. were considered. The Lordships had arrived to the conclusion that the legal challenge raised at the behest of the petitioners must fail on the judicial front. But as it may, the question still remains that whether this is a fit case to exercise the jurisdiction under Article 142. It was held that talaq-ul-biddat is gender discriminatory and Muslim husbands had been injuncted from pronouncing talaq-ul-biddatas a means for severing their matrimonial relationship. The instant injunction shall in the first instance be operative for a period of six months. If the legislative process commences before the expiry of six months and a positive decision emerges towards redefining talaq-ul-biddat as one or alternatively,

[16]. LNIND 2017 SC 415.

if it is decided that the practice of triple talaq be done away with altogether, the injunction would continue, till the legislation is finally enacted, failing which the operation shall cease to operate."

"Syed Ziauddin vs. Parvez Sultana[17], Parvez Sultana was a science graduate and she wanted to take admission in a college for medical studies. She needed money for her studies. Syed Ziaudddin promised to give her money provided she married him. She did. Later she filed for divorce for non-fulfillment of promise on the part of the husband. The court granted her divorce on the ground of cruelty. Thus we see the court's way of attributing a wider meaning to the expression cruelty."

"Zubaida Begum vs. Sardar Shah[18], a case from Lahore High Court, the husband sold the ornaments of the wife with her consent. It was submitted that the husband's conduct does not amount to cruelty."

"Aboobacker vs. Mamukoya[19], the husband used to compel his wife to put on a sari and see pictures in cinema. The wife refused to do so because according to her beliefs this was against the Islamic way of life. She sought divorce on the ground of mental cruelty. The Kerela High Court held that the conduct of the husband cannot be regarded as cruelty because mere departure from the standards of suffocating orthodoxy does not constitute un-Islamic behaviour."

"Itwari vs. Asghari[20], the Allahabad High Court observed that Indian Law does not recognize various types of cruelty such as 'Muslim cruelty', 'Hindu cruelty' and so on, and that the test of cruelty is based on universal and humanitarian standards; that is to say, conduct of the husband which would cause such bodily or mental pain as to endanger the wife's safety or health."

"Umar Bibi vs. Mohd. Din[21] it was argued that the wife hated her husband so much that she could not possibly live with him and there was total incompatibility of temperaments. On these grounds the court refused to grant a decree of divorce." But twenty five years later in "Noorbibi vs. PirBaksh[22], again an attempt was made to grant divorce on the ground of irretrievable breakdown of marriage. This time the court granted the divorce."

REASONS TO BAN THE PRACTICE OF TRIPLE TALAQ

Triple Talaq is Banned in various Islamic Nations

Unlike India many Islamic countries banned the practice of triple talaq. Egypt was the first nation to reform in divorce system according to Holy Quran in 1929. Pakistan also make it according to Egypt in 1959. Sri Lanka passed the Srilankan Marriage and Divorce (Muslim) Act, 1951 as the 'most ideal legislation on divorce (Triple Talaq)'. Bangladesh also took step against triple talaq. The divorce process in Turkey can initiate only in the condition if the marriage was registered at the Vital Statistics Office. Then civil court observe the whole process of Talaq. In Indonesia, the process of talaq can be executed by the court decision. Iraq was the first Arab country to replace Sharia court from the government run personal causes court.

[17]. Syed Ziauddin vs. Parvez Sultana (1943) 210 IC 587.
[18]. Zubaida Begum vs. Sardar Shah, [1] (1971) KLT 663.
[19]. Aboobacker vs. Mamu koya, AIR (1960), Allahabad 684.1
[20]. Itwari vs. Asghari, AIR(1945), Lahore 51.
[21]. Umar Bibi vs. Mohd. Din, AIR (1971), Kerala, 261.
[22]. Noorbibi vs. Pir Bux, AIR 1950 Sind 8.

Against Fundamental Rights under the Constitution of India

Triple talaq or Talaq-ul-Biddat is the most disapproved and rejected forms of talaq. This form of talaq is unconstitutional as it is disadvantageous to natural justice and various fundamental rights enshrined under Part III of the Constitution of India. In so far as the right of the husband to give talaq to his wife expressly the Supreme Court has held that such talaq shall not be valid if it is opposed by wife; if it was not given for a reasonable reason; and there was no attempt for compromise between the parties.

Against the Spirit of Holy Quran

As per Quran, triple talaq can be classified as a non-essential and non-integral part of Islam.

Disapproved by Islamic Scholars

"Maulana Abul Ala Maududi, founder of Jamaat-e-Islami had said, "If people knew that triple divorce is superfluous and even a single talaq would dissolve the marriage, of course, leaving room for revocation during the next three months and remarriage thereafter, innumerable families could have been saved from disruption. Maulana Ashraf Ali Thanvi, renowned graduate from Darul Uloom Deoband, had recommended the Quranic method of talaq. A man pronounces a revocable talaq. He reconciles and resumes cohabitation. A few years later under some provocation he pronounces a revocable talaq again. On recovering from provocation he resumes cohabitation again. Now two talaqs are over. Thereafter whenever he pronounces a talaq it will be counted as the third talaq which will dissolve the marriage forthwith, Maulana Wahiduddin Khan, another noted scholar said a man uttering talaq to his wife three times in a row contravenes the sharia, which is a sin. If he was known to be in an emotionally overwrought state at the time, his act may be considered a mere absurdity arising from human weakness. Considering the facts that triple talaq is un-Islamic, negated by highly regarded Islamic scholars, that such a practice has been invalidated in many Muslim-dominated nations and that it blatantly violates provisions of Constitution of India, the practice of triple talaq must be pronounced as unconstitutional.**"**[23]

CONCLUSION

In India, the practice of triple talaq is being followed in society with the support of traditions; but it is not acceptable in society due to the violation of rights of others, hence the practice of triple talaq has gone against the rights given by the Constitution of India.

A man can divorces his wife through phone call, through text message or through whatsapp and break the marital relation; another person ended his marital relation in drunken state. These incidents clearly indicated that this practice should be stopped, the result of this misconduct not only ruins the life of a woman rather it shatters the dreams of the children and affects the future life of that man.

Triple Talaq is against the spirit of Islam according to Quran and Article 25 and 26 of Constitution of India are equally meant for men and women, whatever be the sect, it goes against the equality which is provided in Article 14 of the Indian Constitution. The practice of triple Talaq is symbolizes the subjugation, suppression and subordination of human rights of Muslim women.

23. Islamic scholars: Triple talaq an unfortunate act, Times of India NewsTNN / Updated: May 14, 2017, retrieved from https://timesofindia.indiatimes.com/india/islamic-scholars-triple-talaq-an-unfortunate-act/articleshow/58664239.cms,

Sharia law prevailing in India is not living upto the evolving standards of gender justice, now society have to change this. Indian society has to be taken forward from the grip of orthodoxy, this is the time freedom, empowerment and literacy for Muslim women also, from which she has deprived. Some of the steps to be taken for the betterment of Muslim women and to eliminate the evil practice of triple talaq.

Codification of the Muslim Personal Law

For gender justice in Muslims there is urgent need to codify the Muslim Personal law and hence it may now be undertaken seriously by the jurists and Muslim scholars and ulema. And need to take strict actions in the cases where Islamic Laws violate the democratic rights given to the women by the Constitution.

Uniform Civil Code

To encouragement the implementation of Uniform Civil Code for the eradication of many orthodox traditions, wrong practices and evils ideologies and it will help to promote the rights of Muslim women and also in strengthening the integrity of nation.

Give Priority to Gender Equality

In civilized society, gender equality should be the most important aspect and integral part to provide rights to women enshrined under the Constitution of India. An expressed provision has been made in the Constitution of India, but it is not being implemented strictly; a strict implementation of these provisions is much needed. Shayara Bano vs. Union of India case has sparked and heated the topic of gender biased practices in the Islamic Laws and set a level of awareness as to how individual fight for their rights. Religious laws in a democratic country cannot take away the right to equality guaranteed by the Constitution of India. Therefore, it is needed to respect both the genders with a equal denominator along with the rights provided to them under the Constitution of India.

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