

## **A COMPREHENSIVE STUDY OF LEGAL EVOLUTION OF TRIPLE TALAQ IN INDIA**

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### **Abstract**

The concern of rights of women under Muslim Law remains most debated especially in relation of maintenance, inheritance and triple talaq. Among this practice the instant divorce also regarded as, triple *talaq*, has recently drawn significant public and legal attention. This Islamic practice permits a Muslim male to pronouncing the term of talaq to his wife in three successive times. In the case of Shayra Bano, the Apex Court of India delivered a historic judgement on August 22, 2017, and struck down the legality of practice of talaq-a-bidat with a majority of 3:2. Furthermore, in this case minority view was also noted and recommended that the Union Government enact appropriate legislation to regulate divorce procedures in accordance with Shariat law. The object of this research is to study and examine various legal dimensions and implications with practice of *Talaq-a-Biddat*.

**Keywords:** Triple Talaq, Shariat Law, Quran, Legal Aspect, Judicial Analysis

### **Introduction**

Since the core issue pertains to the breakdown of marriage through ‘talaq’ of Muslim law, this is essential to comprehend the idea within proper discourse. Islamic law recognizes three main forms of divorce. ‘Talaq’ associated with divorce that is commenced by Muslim male spouse. ‘Khula’ sought by wife, and ‘mubarat’ occurs when both spouses agree to part ways mutually. Among the forms of ‘talaq’ initiated by the husband, it can be classified such: *talaq-a-ahsan*, *talaq-a-hasan*, and *talaq-a-bidat*. This has been argued before the Court that both *talaq-a-ahsan* and *talaq-a-hasan* are follows the aligns of Hadith and Quran. Among these, *talaq-a-ahsan* is regarded as best mode of pronounce talaq and *talaq-a-hasan* is also admissible as reasonable method. In contrast, *talaq-a-biddat* lacks endorse from both Quran and Hadith, therefore this is not regarded as an integral root of Islamic belief or practice.

The present legal challenge centres around *talaq-a-bidat*. It has been submitted that this form of unilateral and instantaneous divorce, pronounced thrice in one sitting, has already been declared invalid and unconstitutional. Consequently, there was no legal necessity for enacting the Impugned Act. The Supreme Court, notably, refrained from endorsing any criminal penalties for such pronouncements. Despite this, the Act in question treats the declaration of *talaq* as a cognizable offense, criminalizing an act that had already been deemed void before law. Importantly, the legislature imposes criminal liability even though the marital bond remains intact after such a pronouncement.

### **Legal Status and Implications of Triple Talaq in India**

Since the question pertains for termination of marriage through ‘talaq’ in Islamic law, this is crucial to grasp the basis within its religious and legal framework. Islamic jurisprudence

outlines three primary methods of divorce: ‘talaq’, commenced by husband; ‘khula’, sought by wife; and ‘mubarat’, which occurs when both spouses mutually consent to separate.

‘Talaq’ pronounced by husband may be classified into three forms; “*talaq-a-ahsan*, *talaq-a-hasan*, and *talaq-a-biddat*”. It has been contended in court that the first two forms are approved form of divorce and these are aligned with the doctrines of Quran and Hadith. Thus, former is widely accepted as the most just and considerate method, while the latter is also seen as acceptable. However, “*talaq-a-biddat*”, which involves an instant triple pronouncement of divorce, lacks scriptural backing and is thus viewed as inconsistent with Islamic teachings.

The current legal debate focuses around the practice of “*talaq-a-biddat*”. It has been argued that this form of divorce, being already invalidated and declared unconstitutional by the judiciary, required no further legislative intervention. Despite this, the law in question referred to as the Impugned Act criminalizes the pronouncement of such a divorce, classifying it as a cognizable offense. This criminalization has been criticized, particularly because the Supreme Court did not advocate for penal consequences, and the marriage is still legally considered intact even after such a pronouncement. Although the practice was considered improper, it was never explicitly banned. A woman who had been divorced could not return to her former husband unless she married another man first and that marriage ended a process known as *nikah halala*. “*Talaq-ul-biddat*, also referred to as “*talaq-ul-bain*”, stems from the term ‘*biddah*’, meaning innovation. This indicates that the practice did not originate from the early Islamic period but was introduced later. The Quran does not mention or endorse the concept of an arbitrary, one-time pronouncement of triple talaq. Historical sources trace the emergence of this practice in era of Caliph Umar in the 7th century, long after the passing of Prophet Mohammad.

This type of divorce, commonly referred to as *instant divorce*, is not approved by either the Quran or the Hadith. This is also known as ‘*Triple Talaq*’, because it involves the Muslim man declaring the word “talaq” three successive times at one sitting, thereby immediately and irreversibly ending the marriage. The wife is given no opportunity to question the reasons or intentions behind the pronouncement, leaving her without any explanation or justification. In such cases, even the matter of maintenance is often disregarded. As a result, this form of divorce is widely criticized for being unjust and unequal.

The most notable issue regarding the nature of ‘*Triple Talaq*’ is that its constant dissolution of marriage and there is no chance of reconciliation by either spouse. This lack of fairness has led many Islamic nations to ban the practice, recognizing it as discriminatory towards women. In India, its acceptance was limited to certain Sunni schools of thought.

Even Islamic teachings, including those of the Prophet and the Quran, disapprove of “*Talaq-ul-Biddat*,” labelling it a sinful method of ending a marriage. Despite this, it continued over centuries merely due to its historical presence. However, practices that were introduced over 1,400 years ago need not be maintained if they no longer serve the values of justice and equality. Given that ‘*Triple Talaq*’ was problematic even in its time of origin, there is little justification for its continuation in the modern era.

“*Talaq-ul-Biddat*”, which involves delivering an irrevocable divorce in a single sitting or during one period of purity (*tuhr*), without providing the opportunity for reconciliation or respecting

the waiting period prescribed by Islamic principles, stands in contradiction to the teachings of the Holy Quran. This form of divorce ignores the divine intention of allowing time and space for resolving disputes and restoring harmony between spouses. Across the Islamic tradition, particularly under the Sunnah, this practice is widely considered sinful and contrary to the spirit of Islamic marital guidance.

### **Several forms of Triple Talaq**

The term *talaq*, derived from Arabic, is commonly understood as divorce. Literally, it signifies the act of untying a knot or releasing someone from a bond or obligation. In a legal context, *talaq* refers to breakdown of marital relationship by husband, either explicitly or implicitly, and it may take immediate effect or unfold over time. It denotes the husband's exclusive right to end the marriage through a clear and definitive declaration. Essentially, it is a one-sided process of breaking the marital tie, in which the assent of wife or participation is absent.

In Islamic law, *talaq* represents the authority granted to a Muslim man to unilaterally end the marriage. This right is acknowledged in the Quran, the most revered text in Islam. The Prophet Muhammad, however, discouraged the misuse of divorce and approved only those forms of *talaq* that were consistent with Islamic principles particularly *talaq-ul-Sunnat*, which aligns with the prophetic tradition. Islamic jurisprudence recognizes that *talaq* may be delivered in several forms, each governed by specific rules and intentions.

**Talaq-ul-Sunnat** refers to divorce form in Islam which is align with the doctrines and practices (*Sunnah*) of Prophet Mohammad. This is considered the most proper, ethical, and religiously approved method of ending a marriage in Islamic jurisprudence. Talaq-e-Sunnat, furthermore, can be divided into two groups:

- **Talaq-a-Ahsan** is considered as the most appropriate and commendable mode of *talaq* in Islamic law. In this mode, husband issues a single declaration of " *talaq*" during a spell of *tuhr* where wife is not under menstruation cycles. Following this pronouncement, the couple must observe a mandatory waiting period that is regarded as *iddat*.

The *iddat* period generally extends for three monthlies if the woman menstruates, or three lunar months if she does not. During this time, the husband is allowed to cancel the *talaq*, either by resuming consummation acts or by orally. If no revocation occurs within this period, the divorce becomes final and irrevocable after *iddat* ends.

It is important to note that the husband cannot issue the pronouncement during menstruation and must do so when no sexual relations have taken place during the *tuhr*. If the *iddat* expires without reconciliation, the marriage is officially dissolved. The couple may remarry in the future, but if this form of *talaq* has already been pronounced three times, reconciliation is no longer permissible. In such a case, the woman must marry another man and obtain a valid divorce from him (a process referred to as *halala*) before she can remarry her former husband. Among all the forms of *talaq*, "*Talaq-e-Ahsan*" has highly and most regard due to alignment with the doctrines of justice, patience, and possibility of reconciliation.

- **Talaq-a-Hasan** is another recognized and accepted mode of divorce under Muslim law is which is widely practiced among Muslims. It is considered a commendable form of divorce and shares several similarities with *Talaq-e-Ahsan*. However, unlike *Ahsan*, which

involves a single pronouncement, *Hasan* requires the husband to declare talaq for three consecutive times throughout the spell of purity (*tuhr*).

In this method, husband pronounces *talaq* once during a *tuhr*, refraining from any marital relations during that time. After each of the first two pronouncements, there is an opportunity for revocation either verbally or through resumption of cohabitation. If reconciliation does not occur and the third declaration is made during another *tuhr*, the talaq becomes binding and unalterable. After third declaration, the wife must follow the required period i.e. iddat period. The key distinction between the *Hasan* and *Ahsan* methods lies in the timing of the *iddat*. In *Talaq-a-Ahsan*, *iddat* begins immediately after the first pronouncement, whereas in *Talaq-e-Hasan*, it starts only after the final, third declaration. Importantly, *Talaq-e-Hasan* does not allow the husband to engage in a cycle of repeated divorces and revocations. If divorce is revoked twice and then issued a third time, such nikah is considered permanently terminated, regardless of the time elapsed between the pronouncements.

Both *Talaq-a-Ahsan* and *Talaq-a-Hasan* are collectively referred to as *Talaq-ul-Sunnat*, the only modes of divorce that were endorsed by Prophet Muhammad. Notably, the distinguished Islamic jurist Mahmood criticized the evolution of multiple talaq methods, suggesting that they were mistakenly introduced and propagated by traditional scholars. He argued that the Quran does not explicitly categorize forms of divorce but rather outlines a clear and ethical procedure. Citing Quran (2:229), he emphasized that divorce should be pronounced only twice, after which the couple must either live in mutual kindness or part ways amicably. According to him, the third talaq finalizes the separation, and there is no requirement for it to be issued in consecutive *tuhurs* it may be declared at any point during the marriage unless reconciliation

### **Talaq-ul-Biddat**

Such kind of talaq can be understood as triple talaq and it is considered as final and irrevocable form of talaq. Talaq-ul-Biddat grants the power to the husband by pronouncing constantly three times talaqs. It is also regarded instant dissolution of marriage under Muslim law. This form is not approved under the Islamic law unlike the first two forms are approved and sanctioned by the Quran and Hadiths. Even such form of talaq is not approved by the Prophet Mohammad. In recent times, such kind of talaq undergone highly debated and controversy, and it's time to judicial scrutiny.

### **Nikah Halala**

Nikah Halala is a practice observed by certain Sunni Muslim groups, where a divorced Muslim woman wishing to marry again her former husband must first wed another man, consummate that marriage, and then have it ended before returning to her previous spouse. Essentially, this means a woman must be intimate with a stranger to restore her earlier marriage. This practice is often viewed as dishonourable and unfair, not only by those outside Islam but also by many Muslims themselves. If the woman fails to marry and consummate a new marriage before returning to her former husband, any children from the remarriage may be considered illegitimate. Additionally, if a divorced woman lives with her ex-husband after triple talaq without undergoing this process, it is regarded as sinful and socially unacceptable. Women bear

the brunt of these harsh customs, especially in countries like India where such practices are common and often lead to social stigma.

### **Legal Status in India**

Nikah Halala is neither expressly legal nor illegal under Indian statutory law. However, it is a recognized but debated religious practice under Islamic Law, which continues to be utilised within India through the “*Muslim Personal Law (Shariat) Application Act, 1937*”. But this has been highly condemned by Indian several activists for women's rights. There have been calls for legal reforms to address its exploitation and to keep the significance of Muslim women. Furthermore, the status of Nikah Halala can be criticised in several ways;

- It is not codified or regulated by Indian law.
- Courts have not specifically outlawed it but have criticized its misuse.
- It exists in a legal grey area not directly protected as a right, nor criminalized.

### **Judicial Review and Development of Triple Talaq**

Talaq-a-Bidat, people also know on the name of ‘Triple talaq’. This is associated as a sinful and irregular mode of talaq. It was introduced by the Omeyyad dynasty as a way to circumvent the rigid requirements of Islamic divorce laws. In *Sarabai v. Rabia Bai*, case the court noted that Talaq-ul-Biddat is theologically unsound and consistently held that such mode of talaq is morally objectionable.

The case of “*Mohammad Ahmad Khan v. Shah Bano Begam*” stands as a significant milestone within valid discourse surrounding “Triple Talaq” in India. Commonly referred as "Shah Bano Case," it sparked widespread controversial and remains one of the most debated cases in Indian's history. This judgment holds a significant value in the battle of equality and justice for Muslim women's rights.

Shah Bano's courageous stand against the practice of immediate divorce exemplified resilience and determination. Rather than accepting her fate in silence, she chose to challenge not only her husband but also the societal norms that supported him. Despite facing community backlash and personal hardship, she refused to be silenced and became a symbol of resistance against patriarchal oppression. Her legal battle ultimately led to significant reform and opened the door to broader discussions on gender equality under Muslim law.

In a later landmark case, “*Shayra Bano v. UOI*”, the Apex Court critically analysed the usage of Triple Talaq. Court observed that because this form of divorce is both immediate and irreversible, it prevents any possibility of reconciliation between the spouses a process that is essential to preserving marital harmony. Citing earlier judgments like *Rashid Ahmad v. Annisa Khathuun*, where Triple Talaq was upheld even without a valid reason, the Court noted that such interpretations are no longer legally or socially acceptable, especially in light of the precedent set in “*Shamim Ara v. State of Uttar Pradesh*.”

The bench manifested the usage of triple talaq is inherently arbitrary, allowing a Muslim husband to terminate his marriage one sided even not any valid cause. It also infringes Article 14 of our Constitution that secures the idea of right to equality. Accordingly, Court ruled that the “*Muslim Personal Law (Shariat) Application Act of 1937*”, to that extent which validates and enforces ‘triple talaq’ qualifies as a "law in force" under Article 13(1) and is therefore



unconstitutional. The specific provision Section 2 such Act was struck down on narrower basis of manifest arbitrariness, without delving into arguments of gender discrimination raised by the Attorney General and others.

### **Triple Talaq: Legal Evolution**

**Historical Evolution:** Triple Talaq is a practice of divorce under Islamic law where husband can exercise his rights to grant divorce to his wife by pronouncement of word talaq in three times consecutively. Such privilege has been exercised among Muslim men on the formation of Shariat law, which is a religious personal law for Muslims. However, this form of divorce was highly condemned for being arbitrary in nature and biased against Muslim women.

**Supreme Court Judgment (2017):** In *Shayra Bano v. UOI*, (2017), with five-judge Constitutional Bench declared the practice of ‘Triple Talaq’ as ultra vires. The judgement was delivered with a 3:2 majority, marking a significant action toward gender equality and reform for Muslim law. It was found that ‘Triple Talaq’ breaches fundamental rights which secures under “Article 14 that talks about Right to Equality, Article 15 which talks about Prohibition of Discrimination, and Article 21 which signifies about Right to Life and Personal Liberty of our Constitution. Importantly, bench also ruled that ‘Triple Talaq’ is not a needful religious practice under Muslim Law, and therefore, it does not deserve secure under constitutional right to religious liberty.

### **Conclusions**

The legal journey of “Triple Talaq” in our nation holds a significant point that approach to personal laws and gender justice. Historically rooted in Islamic personal law, the usage of *Talaq-e-Biddat* permitted Muslim husband to unilaterally and instantaneously talaq their wives, often without any reasonable cause or reconciliation process. Over time, this practice was widely criticized for being patriarchal, biased and arbitrary against women in Islamic. The demand for reform intensified with increasing awareness and advocacy by groups for women rights and legal experts.

The verdict of *Shayra Bano v. UOI*, holds a significant value with the majority of 3:2 “Triple Talaq” was found ultra vires and it breaches the Articles 14, 15, and 21 of Indian Constitution. This judgment not only struck down a regressive practice but also set an example for judicial interference in realm of personal law when fundamental rights are at stake.

Following such judgment, the Indian legislature drafted “*The Muslim Women (Protection of Rights on Marriage) Act, 2019*”, that build the usage of instant ‘Triple Talaq’ as law breaking. Such legislation provided valid remedies, including maintenance and custody rights, and aimed to empower women through valid recourse. Although the criminalization of a civil matter raised concerns about overreach and potential misuse, the broader consensus viewed it as a necessary step toward justice and equality.

The evolution of the Triple Talaq debate reflects India's commitment to upholding constitutional values over patriarchal traditions. It also signals a growing momentum for reforming personal laws such way which regards both secular freedom and gender justice. However, the path ahead requires continuous engagement with the Muslim community, legal scholars, and reformist voices to assure that such betterments are inclusive, regardful, and

progressive. Ultimately, this legal transformation of ‘Triple Talaq’ serves not merely as a victory for Muslim women but also as broader affirmation of our Constitution’s promise of gender justice and equality for all.

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