

ANALYSIS OF MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE BILL, 2017)

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Abstract

The Bill makes all presentation of talaq, incorporating into composed or electronic shape, to be void (i.e. not enforceable in law) and illicit. It characterizes talaq as talaq-e-biddat or some other comparable type of talaq articulated by a Muslim man bringing about moment and unavoidable separation. Talaq-e-biddat alludes to the training under Muslim individual laws where profession of the word 'talaq' thrice in one sitting by a Muslim man to his better half outcomes in a moment and irreversible separation.

A Muslim women against whom talaq has been announced, is qualified for look for subsistence recompense from her significant other for herself and for her needy kids. The measure of the recompense will be chosen by a First Class Magistrate. In this line this research paper attempts to analyse the on-going debate on the implications of Muslim Personal Law in India and suggests various solution to empower Muslim women. Therefore, certain anomalies need to eradicate by giving a true essence of Holy Quran for the benefit of the Muslim women's rights.

The study is doctrinal in nature. Only secondary sources have been referred for this study. Secondary sources include Books, journals, Newspapers and Articles. It is been concluded with that a, Public opinion needs to be guided into favouring such liberal

judgments and certain uniform codified laws which help in an important way to nullify to some extent the inequities in the existing personal Muslim laws.

Keywords: muslim women, talaq, fundamentalism, personal law, marriage

Introduction:

Generally human rights are equated with more freedom and progress. However it becomes pertinent to note that conferring rights do not always result in emancipation. The major reason behind this exclusionary nature of human rights is the universal assumption on which it is based. The darker side of human rights most apparently manifests itself in case of women as they are caught at the intersection of community identity and the narrative of modernity. One such universalistic subject is the image of thoroughly victimised Muslim women who is in need of protection through the liberal rights discourse.

The current debate around triple talaq, centred on the Sharaya Bano and several batches of petitions as well as Supreme court's own *suo moto* PIL considers certain aspects of Islamic personal laws which amount to gender discrimination and hence violates the constitution misses the point of intersectionality. As per the liberal understanding of rights for empowerment of women we need to subordinate the category of religion and culture. However constitutional rights would remain a dead letter if we do not understand the manner in which identity politics unfolds especially in case of women.

The whole triple talaq issue has become a battleground for the culture versus modernity debate. It is important to realize that women's experiences cannot be understood in these reductive binaries as "she" is produced from the very power relations which subordinate them. In this paper the author deals with the question of triple talaq in the light of the recent petition filed in the Supreme Court for declaring such talaq invalid.

It is been inferred that there is an already existing legal precedent established by the apex court with respect to triple talaq which should be followed instead of resorting to a confrontational approach which may become hegemonic to Muslim women themselves. The author shall advocate that taking cue from third wave feminism, the identity of Muslim women must be understood at the intersection of gender and religion.

OBJECTIVES:

- To know about the rights of muslim women
- To study the impact of criminalising triple talaq
- To analyse protection of rights on marriage for muslim women
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REVIEW OF LITERATURE:

Guhapriya writes that unlike other religion where marriage has been traditionally viewed as sacrament, under muslim law marriage is a civil and social contract, sanctioned by prophet as talaq-e-ahsan, talaq-hasan, talaq-e-biddat in her article names The study of impact of tiple talaq

Faizan argues that minority view of chief justice J.S. Khehar and justice Abdual Nazeer was that triple talaq is a valid form of divorce under muslim law and right to follow personal law is an integral part of freedom of religion.

Marriage Under Muslim Personal Law:

In Muslim law, marriage is a contract having as its object, the procreation and legislation of children. Marriage contracts are often reduced to writing in the form of a kabinnama. But failure to prove the Kabinnama cannot possibly be held to disprove the marriage. In the case of the marriage under the Muslim law, it is to be noticed that neither writing nor any religious ceremony is essential. All that is necessary is that there should be a proposal and an acceptance in the presence of witness([Munir 2011](#)).

Marriage may be established by direct proof or by indirect proof i.e. by presumption drawn from certain factors. It may be presumed from acknowledgement of legitimacy in favour of child or the fact of the acknowledgment by the man of the woman as his wife or from prolonged cohabitation combined with other circumstances. It is true that the presumption does not apply if the conduct of the parties is inconsistent.

Further, one of the most important and well established principle of Islamic law is that nikah cannot be performed without the free consent of the bride. She has a right to agree or refuse certain terms and condition in marriage. However, issue is that how to ensure the free consent of the Muslim women because many Muslim women who do not want to give the

consent some time forced by family to give the consent. Therefore, there is need to apply all the holy verses of Quran in letter and spirit. [\(Bhatnagar 1987\)](#)

Property Rights Of Indian Muslim Women:

Much like those of women of any other country, property rights of Indian Muslim women have evolved out of continuing struggle between the status quoist and the progressive forces. Indian Muslim women always used to get fewer rights in terms of right to property in comparison to male. As we know Muslims personal law have not codified their property rights of Muslim women neither the Shias nor the Sunnis. However, Mahr is an important concept in Islamic law which is directly connected with the right to property of the Muslim women and empowerment of the women. Mahr is basically is called as a gift which becomes due from a Muslim husband to his wife on marriage as a token of respect symbolising his sincerity and love for her. The subject matter of mahr can be money or any other thing having value, depending upon the acceptance of the wife. Upon the object or property given as a mahr, the ownership lies exclusively with the women. Further, the grant of absolute ownership of the mahr property to the Muslim wife shows the revolutionary measure adopted by Muslim personal law to vest women with the property rights to ensure them an equitable marital status. Hence, married Muslim women who had been ever deprived of status of marriage have such property rights which are exclusively vested in her property rights. [\(Bhatnagar 1987\)](#)

Case Mohd. Ahmad Khan v. Shah Bano Begum AIR 1985 SC 945

In instant case court went into the details of various authorities and translation of the verses of the holy Quran in support of the view that a Muslim Woman who has been divorced by her husband has all right to be maintained even after the period of Iddat. Further court upheld that provision of the maintenance under section 125 of the Cr.P.C is not dependent on the religion of the spouses. It is a secular law applicable to all irrespective of the religion. Therefore, the judgment evoked unprecedented debate and controversy on the Muslim woman's rights to claim maintenance from the husband after divorce. It ultimately led to the enactment of the Muslim women (Protection of rights on Divorce) Act 1986 [\(Mullally 2004\)](#).

Case Rashida Khatun V. SK islam AIR 2005

The parties to the proceeding are Mohammedans belonging to the Islamic faith and are governed but their personal law. In instant case as to the validity of the marriage, it was argued that in a muslim marriage no rituals and functions are necessary and the muslim marriage being a civil contract, consent of respondent to marry the petitioner and thereafter cohabitation with her was sufficient to prove her status as his wife. Therefore, court upheld that there was no acceptance of the offer to marry, but there was only an assurance to marry in the future and therefore mere cohabitation with such of assurance does not constitute the factum of marriage. [\(Ozpineci et al. 2001\)](#)

Reforms In Muslim Personal Laws

It will be recalled that in the late 50s when the former Justice V. R Krishna Iyer was law minister in Kerala, he had introduced a Bill seeking to amend the inheritance laws which discriminate against the Christian women in that state. He failed in his effort because he was opposed not only by the Christian establishment but also by Muslim leaders and other member of opposition. The reason is obvious. Any success in reforming the laws governing one religious community is bound to pave the way for similar reform in the laws applicable to other religion [\(Munir 2011\)](#)

There is crying need for a comprehensive legislation to be drafted under the guidance. Islamic law is so progressive that it can become basis for a Uniform Civil Code. However, conservative Muslim society dragged the Quran pronouncement to its own level and introduced, through human reasoning many measure, which curbed women's rights. Despite reforms in other countries women have not got full measure of equality, which the ulma theoretically concede. [\(Mahmood 1977\)](#)

The Muslim Women (Protection Of Rights On Marriage Bill), 2017

- The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was introduced in Lok Sabha by the Minister of Law and Justice, Mr. Ravi Shankar Prasad on December 28, 2017.
- The Bill makes all declaration of talaq, including in written or electronic form, to be void (i.e. not enforceable in law) and illegal. It defines talaq as talaq-e-biddat or any other similar form of talaq pronounced by a Muslim man resulting in instant and

irrevocable divorce. Talaq-e-biddat refers to the practice under Muslim personal laws where pronouncement of the word 'talaq' thrice in one sitting by a Muslim man to his wife results in an instant and irrevocable divorce.

- Offence and penalty: The Bill makes declaration of talaq a cognizable and non-bailable offence. (A cognizable offence is one for which a police officer may arrest an accused person without warrant.) A husband declaring talaq can be imprisoned for up to three years along with a fine.
- Allowance: A Muslim woman against whom talaq has been declared, is entitled to seek subsistence allowance from her husband for herself and for her dependent children. The amount of the allowance will be decided by a First Class Magistrate.
- Custody of minor children: A Muslim woman against whom such talaq has been declared, is entitled to seek custody of her minor children. The determination of custody will be made by the Magistrate. [\(Pandey 2017\)](#)

Criticism of The Bill:

Real reactions of the bill are as per the following:

It is meddling with the religious precepts of the Muslims. Notwithstanding, since Muslims themselves have distinctive understandings and Talaq-e-bidat is something disliked by everybody, there is no significant weight in this resistance.

Criminalizing talaq-e-biddat does not address the issue of one-sided talaq, which men can even now articulate over a time of three months under the individual law. So the contention set forth to oblige this peculiarity is that as opposed to acquiring another enactment that only criminalizes moment talaq, the legislature ought to revise the current Dissolution of Muslim Marriages Act, 1939.

The Act expects ladies to approach the court for separate. It ought to be made sexually unbiased so that even men need to approach the court for a separation. In spite of the fact that the feedback is very much established yet bringing an enactment to at any rate boycott moment triple talaq is an appreciated move and demonstrates the eagerness and try of government to push forward toward avoidance of provocation of ladies. [\(Munir 2013\)](#)

Remarkable Provisions:

The key arrangements of this bill are as per the following:

- This demonstration is appropriate in whole India with the exception of Jammu and Kashmir
- Any profession of (talaq-e-bidat) by a man upon his better half, by words, either talked or composed or in electronic frame or in some other way at all, might be void and illicit.
- Whoever articulates triple talaq to his better half might be rebuffed with detainment for a term which may degree to three years and a fine.
- A wedded Muslim lady upon whom talaq is articulated, might be qualified for get from her better half such measure of subsistence remittance for her and ward youngsters as might be dictated by the Magistrate.
- A wedded Muslim lady should be qualified for authority of her minor youngsters in case of declaration of talaq by her significant other, in such way as might be dictated by the Magistrate.
- The offense of articulating triple talaq should be a cognizable and non-bailable offense. [\(Molla 2017\)](#)

The Bill nearly uncovers the thought process of the Center in taking an interest in the battle against triple talaq through this Bill. There has all the earmarks of being one motivation on the Bill, spare the ladies from the Muslim men. The men are painted as the culprits of wrongdoing, a wrongdoing that is falsely made for this situation and place an explanation behind the men to be defenseless against self-assertive capture. The account comes as a gross abuse of a dynamic judgment.

The Bill is tabled excessively near the Government inaction on viciousness against the religious minority and ideally won't be passed in the light of the restriction of the ladies it impacts. According to the standard, the Government is asked to send the Bill to a Standing Committee, or hold more extensive interviews including ladies gatherings and record the voices of the Civil Society. The present Bill was drafted with no instruct from the group regarding ladies survivors of triple talaq, and if the Center has depended upon any information or ladies' voices then that ought to be made accessible in the general population space. [\(Pandey 2017\)](#)

There is a great deal of vulnerability on who the Bill serves, as the Muslim ladies are not for the Draft. It is anyway evident that the Bill includes legitimate logical inconsistencies inside the body of the content and is profoundly imperfect. To purify the Bill of any character governmental issues, one-sided stories of marking Muslim ladies or men, it ought to be sent for discussions to individuals with lived understanding and not individuals with a plan or male centric after effects. ([Bhatnagar 1987](#))

Conclusion:

The inquiry remains that in the case of announcing the act of triple talaq unlawful would enhance the state of Muslim ladies more than the nullification has done. Further such a move would pit the privileges of a Muslim lady against her social and social accepts. Understand that character subversion is an exceptionally complex marvel. The issue with personality legislative issues is that it doesn't extraordinary distinction yet is somewhat molded by the very contrast. Drawing upon the post-current grant the subjectivity of the Muslim ladies must be comprehended to be built inside the same socio-social setting. For instance, devout Islamic ladies may challenge man centric administrations of Quaranic elucidation home, while in the meantime articulating a kind of worldwide solidarity. It must be comprehended that the personality of a Muslim lady is characteristically connected to her Muslim-ness and can't be stripped from it. In this way the law changes can't consider the straight story of exploitation through the male centric Muslim people group yet rather likewise needs to give space to declaration of multilayered personalities like these.

Subsequently, after the talk of every above viewpoint it can be reason that, popular conclusion should be guided into favouring such liberal judgments and certain uniform systematized laws which help in a vital method to invalidate to some degree the disparities in the current individual Muslim laws. Accordingly, there is have to dispatch a mindfulness battle against the abuse of a different Muslim women rights identifying with marriage, separate, property rights and so forth polygamy.

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