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A STUDY OF TRIPLE TALAQ: THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) BILL

AUTHORED BY - DR. SARITA DEHARIYA MEHRA

Abstract

Woman is the historically oppressed section of the society. Indifferent from the culture, society, or time, women are denied their basic right. They are considered to be the weaker sex and thus are denied any indulgence in social, political and economic spheres. No society or culture as a whole is able to do justice with the women. The Islamic society is considered to be the one where women are provided with very less rights and liberties. Whether it may be hijab, burkah, issued with respect to adoption or practices like triple talaq, majority of Muslim women are always denied the freedom. Triple talaq was an issue which was witnessing very heated debates in the recent times all across the country. It was considered as a setback to the gender equality and women employment. The Supreme Court of India in Shah Bano Begum's case delivered a landmark judgment providing Muslim women a right to claim maintenance as prescribed under section 125 of Cr. P.C., but the same was overturned by the Muslim Women (Protection of Rights on Divorce) Act, 1986. This paper aims at discussing about the various aspects related to triple talaq, its history, its standing in Quran, international perspectives and the issue in India. It also discusses about the Supreme Court's Judgment in Shayara Bano case and the Muslim Women (Protection on Rights of Marriage) Act, 2019. The paper will discuss at length the issues pertaining to the Act and its.

Keywords: Triple Talaq Bill, Law, issues Muslim women.

Introduction

Talaq is Arabic word meaning divorce. Triple talaq is meant as an instant and irreversible divorce. It is an Islamic Divorce procedure . Triple Talaq is followed by Indian Muslims and people who follow Islam from different countries. In triple talaq, a Muslim husband gives divorce to his wife by uttering the word "talaq, talaq, talaq" at one go. Once it is spoken, the marriage stands void. It is applicable in both forms, oral and written. In most recent times, digital formats like sending over email, WhatsApp, is valid.

Objective of study

The point of discussion of this paper is to know about the realities relevant to triple divorce in muslims. The objective of this paper is to explain the real meaning of triple talaq. It answers the query that what does the Sharia law say about this issue and how does it safeguard the rights of women. Actually, there is the wrong perception about muslim women that they are deprived of their rights especially under the system of Talaq. The paper at hand also figure out the views of different sects on triple talaq. The precisely discusses the relevant case laws. Also, it explores the legislation on triple divorce, enacted in different states.

What is Triple Talaq?

Triple talaq, also called talaq-e-biddat, is a form of instant Islamic divorce that has been practiced by Indian Muslims. The practice of instant triple talaq was held unconstitutional by the Hon'ble Supreme Court in August 2017. The use and status of triple talaq in India have been a matter of controversy and debate. Those questioning this practice have raised issues of justice, gender equality, human rights, and secularism.

History of Triple Talaq

This divorce is one of the 1300 year old practice among Muslims, especially Sunni Muslims, In India, as per census 2011, this Divorce practice affects around 8% of Indian women population, especially women above the age of 60 years. It comes under the personal Law by Indian Muslims. Triple talaq is a practice of Divorce under Sharia Law (Islamic Law).

Triple Talaq Bill

- The triple talaq bill makes declaration of talaq-e-bidat in spoken, written or through SMS or WhatsApp or any other electronic chat illegal.
- Talaq-e-biddat refers to the pronouncement of talaq three times by a Muslims man in one sitting to his wife resulting in an instant and irrevocable divorce.
- The triple talaq bill also makes declaration of talaq-e-bidat cognizable offence that gives a police officer powers to arrest the offender without requiring a warrant.
- To check misuse of cognisable nature of the offence, the triple talaq bill makes declaration of talaq-e-biddat only if the complaint is filed by the aggrieved woman or any of her relation by blood or marriage.

- A Muslim man pronouncing instant triple talaq attracts a jail term of three years under the triple talaq bill. The accused under the triple talaq bill is entitled to bail, which can be granted by a magistrate . But the bail can be granted only after the magistrate has heard the aggrieved woman.
- The triple talaq bill also provides scope for reconciliation without undergoing the process of nikah halala if the two sides agree to stop legal proceeding and settle the dispute.
- Nikah halala refers to practice under which a divorced Muslim woman has to marry another man and consummate the marriage and get a divorce. Only then can she be eligible to remarry her former husband.
- Under the triple talaq bill, the divorced Muslim woman is entitled to seek custody of minor children. This would be determined by a magistrate.
- A woman divorced through talaq-e-biddat is entitled to demand a maintenance for her and her depended children under the triple talaq bill. The magistrate has the power to determine the amount of subsistence allowance.

Supreme Court agrees to examine Triple Talaq Law, issued notice to Centre

The Supreme Court ON Friday agreed to examine the validity of a newly enacted law which makes the practice of instant divorce through triple talaq among Muslims a punishable offence entailing imprisonment of up to three years. A Bench of justices N V Ramana and Ajay Rastogi issued notice to the Centre on a batch of petitions seeking to declare. The Muslim Women (Protection of Rights on Marriage) Act 2019 as "unconstitutional" on grounds that it allegedly violates the provisions of the Constitution, " We will examine this," the Bench told senior advocate Salman Khurshid, Who was appearing for one of the petitioners Khurshid said there were many dimensions, including making the practice a punishable offence and jail term of up to three years, which need to be examined by the top court. He said the petitioners were concerned about making the practice of triple talaq among Muslims an offence as the apex court had already declared it to be null and void, " If there is no such thing as triple talaq then what are they making an offence," he told the bench and referred to a five-judge Constitution Bench verdict which had declared the practice of triple talaq among Muslims as null and void.

Muslim Body Moves SC Law On Tripal Talaq

The request recorded by a Muslim board has tested the Constitutional legitimacy of the Muslim Women Act, 2019 on top of the position so as to it is obviously biased plus outrage Articles 20, 21, 14 plus 15 of the constitution. The All India Muslim Personal Law Board (AIMPLB) on Monday recorded a request in the Supreme Court testing the law which condemns moment triple talaq.

The Muslim Women Act 2019 makes talaq-e-biddat or some other comparative type of talaq having the impact of prompt and unavoidable divorce uttered through a Muslim husband annulled and unlawful. Any Muslim husband who articulates the illicit type of talaq upon his wife is to be rebuffed with detainment for a term which may stretch out to three years. The request by the AIMPLB and Kamal Faruqi has tested the constitutional legitimacy of the Act on the ground that it is clearly discretionary and outrages " Articles 14, 15, 20 and 21 of the constitution and makes baseless / improper impedance in the Muslim personal law as relevant to Hanafi Muslims." The decried Act is a criminal resolution having antagonistic effect on the life and individual freedom of those on whom punitive results are to be visited. It is the basic standard of law that any demonstration or oversight which is managed reformatory outcomes ought to be characterized with exactness and accuracy. A Muslim husband whose demonstration or exclusion might be chatted with reformatory outcomes ought to be characterized with exactness and accuracy. A Muslim husband whose demonstration or exclusion might be chatted with reformatory outcome must have reasonable notice of elements of act or oversight that is pronounced criminal so such individual can sort out his issues in such a manner to stay away from any contention with the law, the request said. Since Talaq-e-Biddat, the spite of such articulations, marriage endures. Along these lines, it was absolutely excess and silly to proclaim statutorily the act of Talaq-e-Biddat as void, the supplication said Furthermore, area 3 of the impugned Act likes wise experience interior logical inconsistency in such a case that any demonstration which is pronounced void has no presence according to law and it is excess and confecting to announce non-existent act illicit. The segment, in this manner, experience show mediation as it makes arrangement of law which is absolutely pointless, the request said in August 2017, the Supreme Court have strike behind the act of direct triple talaq. The Act be approved through Parliament on top of July 30. The Supreme Court had before consented to inspect the legitimacy of the recently established law on a clump of petitions which looked to proclaim the Act as illegal.

Conclusion

In conclusion, it can be said that the continuation of triple talaq in a secular and democratic republic like India was tantamount to a stain. By making a law against the practice of triple talaq, legally Muslim women will get equal rights with men, now women will not be afraid of Talaq. With the implementation of this law, organizations such as the Muslim Personal Law Board representing Muslims, will take a positive attitude towards other social reforms. Ultimately this law will protect the dignity of Muslim women, give them legal protection and give them the right to live with dignity.

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