
TRIPLE TALAQ AND ITS LEGAL VALIDITY UNDER MUSLIM LAW IN INDIA: A CRITICAL EVALUATION OF THE SUPREME COURT'S RULINGS

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ABSTRACT

This essay critically evaluates the Supreme Court of India's rulings on the practice of triple talaq under Muslim law in India. It provides an overview of Muslim personal law in India and the concept and practice of triple talaq, highlighting its controversial and discriminatory nature. The Supreme Court's landmark rulings, particularly the 2017 decision in *Shayara Bano v. Union of India*, which declared triple talaq unconstitutional, are examined in detail. The legal impact of the judgment, its broader implications for religious freedom and gender equality, and criticisms of the ruling are discussed. The author offers a personal viewpoint, supporting the progressive nature of the Supreme Court's decision while acknowledging the need for clearer legislative frameworks. Finally, the paper concludes by emphasizing the importance of future legal developments in ensuring gender equality and justice for Muslim women while respecting religious and cultural traditions.

Introduction

Triple talaq is a practice of instant divorce in Muslim personal law that has been a topic of controversy in India for decades. It is a unilateral form of divorce that allows a Muslim man to divorce his wife by simply saying the word "talaq" three times. This practice could be done either orally or written. The practice of triple talaq has been criticized for being arbitrary, discriminatory, and unfair to women. In 2017, the Supreme Court of India declared triple talaq to be unconstitutional and void. This essay will critically evaluate the Supreme Court's rulings on triple talaq and its legal validity under Muslim law in India.

Overview of Muslim law in India

In India, Muslim Family affairs is governed by Muslim Personal Law (Shariat) Application Act, 1937. The act overviews marriage, succession, inheritance and other family matter involving Muslims families. The dissolution of Muslim marriage Act 1939 overviews divorces which takes place in Muslim's marriages. These laws in India are derived from various sources, including the Quran, the Hadith, and the rulings of Islamic jurists. The principles of these laws are based on the concept of the Shariah, which is the divine law of Islam. The different schools of thought in Islam have different interpretations of the Shariah and its application to various aspects of life, including divorce.

Triple Talaq: Concept and Practice

Triple talaq is a form of instant divorce that has been practiced by some Muslim communities in India for centuries. It is a unilateral form of divorce that allows a Muslim man to divorce his wife by simply saying the word "talaq" three times, either orally or in writing. This form of divorce is considered to be the most controversial form of divorce in Muslim law, as it allows men to divorce their wives without any judicial intervention or consultation with their wives. In the recent times there were observations that the practice was happening in form of texts on social media or SMS. Even though the practice was frowned upon it was not illegal and women did not have right to remarry their husband before she had marriage with another person. This practice has been around for 1400 year around the time of Caliph Umar. It shall also be noticed that practice of triple talaq is not mentioned in Quran and is banned by some Islamic states such as Bangladesh and Pakistan.

The Supreme Court's Rulings on Triple Talaq

The issue of Triple Talaq has been a subject of litigation in India for several decades, with various Muslim women's organizations and activists seeking its abolition on the grounds of its discriminatory and arbitrary nature. The Supreme Court of India has been at the forefront of these legal battles, and it has delivered several landmark judgments on the issue.

In 1985, the Supreme Court, in the Shah Bano case, held that Muslim women were entitled to maintenance under Section 125 of the Code of Criminal Procedure, irrespective of their personal law¹. The decision was hailed as a significant victory for Muslim women's rights, as it ensured that they were not left destitute after divorce.

In 2017, the Supreme Court of India declared triple talaq to be unconstitutional and void in the case of Shayara Bano v. Union of India. The key issues in the case which was presented before the court were mainly two with one of them being that whether practice of triple talaq is an essential practice in Islam and the other issue being Does triple talaq violate any fundamental rights. The ruling was given by a five judge bench in which the ruling was delivered by 3:2 split.

“Justices Rohinton Nariman J ,U.U. Lalit J delivered the majority opinion whereas Justice Kurian Joseph J delivered concurring opinion. Justices CJI J.S. Khehar and Abdul Nazeer J had dissenting opinions. In the majority opinion both the judges stated that triple talaq would fall under the regulations of Muslim Personal Law (Shariat) Application Act, 1937 and this practice is unconstitutional as arbitrary in nature. Justice Kurain Joseph in his concurring opinion stated that triple talaq is against Quran thus it would lack legal application. He also stated that if triple talaq is bad in Quran than it is not possible to be good in Shariat. Chief Justice Khehar and Justice Abdul Nazeer held that triple talaq does not fall under the regulation of Muslim Personal Law (Shariat) Application Act, 1937 therefore it is a personal law which would be protected under article 25 of the Indian constitution. The court gave directions to Parliament asking them to make a legislature which regulates triple talaq.”²

¹ Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945

² Shayara Bano Vs Union of India and Ors, (2017) 9 SCC 1

Legal Impact of the judgement

This ruling had a significant legal impact, as it effectively made triple talaq illegal in India. Muslim men could no longer divorce their wives by simply uttering the word "talaq" three times in a row. Instead, they had to follow the legal procedures laid out in the Muslim Personal Law (Shariat) Application Act, which requires the husband to make a reasonable effort to reconcile with his wife before seeking divorce and to follow a specific process for divorce.

The Supreme Court's ruling also had broader implications for the relationship between religion and the law in India. It highlighted the tension between religious freedom and gender equality, and raised questions about the extent to which religious practices should be subject to constitutional scrutiny and which religion practices can be protected under article 25 of the constitution.

Criticisms of the Supreme Court's Rulings

One of the key supporter of triple talaq rule was the All India Muslim Personal Law Board (AIMPLB). One of the main criticisms of the judgment is that it amounts to interference in Islamic personal law, which is protected under the Indian Constitution under article 25. Critics argue that the Court should have respected the autonomy of Muslim communities to regulate their own affairs. Additionally, some critics argue that the Supreme Court failed to consult with Islamic scholars and experts before making its ruling. They argue that the Court should have sought input from the Muslim community to ensure that the ruling was sensitive to their cultural and religious practices. Others argue that the ruling failed to consider the social and cultural context in which triple talaq is practiced in India. They argue that the Court should have taken into account the fact that many Muslim women in India are economically dependent on their husbands and may not have access to legal remedies if triple talaq is abolished. Furthermore, some critics argue that the Supreme Court's ruling failed to provide an adequate replacement mechanism for triple talaq and that the ruling only addresses the issue of triple talaq, and does not go far enough to protect the rights of Muslim women.

Personal Viewpoint

According to me, The judgement pronounced by supreme court ruling on the practice of triple talaq was progressive and provided justice for Muslim women. During the practice of triple

talaq there has been various cases where men have divorced without providing proper justification on the grounds of divorce. This led to men divorcing their wives without accountability. In India, we have seen that whenever the government or court touches a religious law, there has been backlashes or criticism. This ruling was no exception to it. The only viewpoint of criticism which I found was credible enough was that ruling did not provide the state with proper frameworks for triple talaq legislature. The court should have provided with certain directions to the state which could have protected Muslims religious act under article 25 of Indian Constitution. This Judgement outlines to us on how important it is for judiciary to overlook legislatures. It was judiciary which introduced the change whereas state did not even touch this topic as it would have backlashed in the society because of politics.

Conclusion

In conclusion, the issue of triple talaq and its legal validity under Muslim law in India has been a controversial and complex topic. The practice of instant triple talaq has been under criticism by many as being unjust towards women and the practice stands against the principles of equality and justice.

The Supreme Court's rulings on the matter have been significant in shaping the legal landscape around the practice. The 2017 ruling in the case of *Shayara Bano v. Union of India*, which declared instant triple talaq unconstitutional, was a landmark decision that gained widespread support from women's rights groups and activists.

However, the subsequent ruling in the case of *Muslim Women (Protection of Rights on Marriage) Act, 2019*, which criminalized the practice of triple talaq, has been criticised by some Muslim communities for being too harsh and potentially infringing on the personal laws of the Muslim community.

While the legal validity of triple talaq remains a contentious issue, it is clear that the Supreme Court's rulings have played a crucial role in addressing the discriminatory practice and protecting the rights of Muslim women. It is important for future legal developments in this area to be guided by a commitment to gender equality and justice for all, while also respecting the religious and cultural traditions of the Muslim community.