

# Banning of triple talaq : Chaos in the Society

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## ABSTRACT

This Article is about “Banning of triple talaq: Chaos in the Society.” Making triple Talaq unconstitutional is one of the most historic moves taken by the Supreme Court of India. Now debate revolves around triple Talaq in connection with Shayara Bano’s case and other related petitions, as well as suo-moto PIL which was decided by the Hon’ble Supreme Court of India. Subsequently, the Indian Parliament has enacted new legislation related to triple Talaq, and the pronouncement of Talaq by a Muslim husband upon his wife shall be declared void and illegal. Such pronouncement shall be made punishable with imprisonment of up to three years and liable for a fine.

However, despite such drastic changes Hon’ble Supreme Court has not pondered the issue of polygamy. Certain aspects about the victimized Muslim Woman who needs protection through liberal rights discourse are not considered. The difficulties Muslim women had to face with this form of Talaq and how this form of Talaq was not valid, along with how Muslim men made a mockery of their laws, needs to be seen. Thus, the constitutional validity of the Muslim Women Act 2019 will also be discussed. The origin of Talaq lies in marriage. Therefore, to achieve the goal of new legislation, the Muslim Woman (Protection of Rights on Marriage) Act, 2019, the codified law relating to marriage needs to be enacted.

Furthermore, while enacting such types of legislation, other aspects, viz. Mehr and maintenance will also be revisited. It ensures financial security so that Muslim Woman is not left helpless after the death of their husband or after the termination of their marriage. Finally, the analysis will be made about whether making triple Talaq unconstitutional is a bane or boon for a Muslim woman.

## INTRODUCTION

The Quran is the foundation of Islamic law. Talaq and marriage are the two extremes of existence. One may bring delight, while the other may bring misery. Marriage is a thing where the Talaq’s origin lies. In the Islamic tradition of triple Talaq, a Muslim man might legally divorce his wife by saying the word ‘Talaq. In recent years, the ‘ announcement may be made orally, in writing, or electronically via phone, SMS, email, or social media.

The husband did not have to give a reason for the divorce, and the wife did not need to be present when it was announced. Only the wife should observe the period of iddat. During the period of iddat, it is ascertained that whether the wife is pregnant or not,

then if she is not pregnant, the divorce becomes irrevocable. In the recommended practice, a waiting period was required before each pronouncement of Talaq, during which reconciliation was attempted. However, making all three pronouncements in one sitting had become common. While the practice was frowned upon, it was not prohibited. A divorced woman could only re-marry her divorced husband if she first married another man, a practice called nikah halala. The practice of talaq-e-bidet is said to have been around since the period of Caliph Umar, more than 1400 years ago. The Supreme Court described it as “manifestly arbitrary” and said it allows a man to “break down a marriage whimsically and capriciously.”

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Triple Talaq is also largely disapproved by Muslim legal scholars. Many Islamic nations, including Pakistan and Bangladesh, have barred the practice, although it is technically legal in Sunni Islamic jurisprudence. Triple Talaq, in Islamic law, is based upon the belief that the husband has the right to reject or dismiss his wife on reasonable grounds. Hadith said Talaq is one of the most disliked Acts believers can perform. Islam tolerates Talaq by making provisions under highly unfavorable conditions only as a last resort. In the words of Prophet Mohammed, 'of all the lawful things, Talaq is the most hated by Allah'. Triple Talaq is a form of marriage dissolution in Muslim Law, whereby a husband can give the divorce to his wife by stating Talaq three times in one row. The wife's presence is not required. She can be given Talaq without assigning a valid reason.

### Muslim Males and Talaq

Where the efforts of mediation by arbitrators do not bring a positive result, then the husband can opt to pronounce single Talaq. When the husband decides to pronounce Talaq, he should pronounce it during tuhr (Period between two menstruation), having no sexual intercourse, followed by abstinence from sexual intercourse for the period of Iddat. Husband may revoke the Talaq within the Iddat period (The following three successive menstruation periods). This mode of pronouncement of Talaq is called Talaq-e- Ahsan. During the iddat period, neither the husband should drive the wife out of the house nor should she leave unless they are committing a clear immorality. He may revoke Talaq expressly or impliedly.

The wife may try to attract her husband so that he could think about revoking Talaq. In case, Talaq is not withdrawn within the iddat period. It will become final and irrevocable. Now Talaq-e-ahsan converts as Talaq-e-bain, and marriage would stand dissolved. A Muslim man can divorce his wife by uttering Talaq once in three months. This practice is called Talaq-e-Hasan. If couples don't live together, divorce gets formalized after the third utterance in the third month. However, if co-habitation occurs after the first or second utterance, parties are assumed to have reconciled, and the first or second utterance becomes null and void. Post the divorce; the wife is not allowed to re-marry for a specific time. This

period is called Iddat. The objective of iddat is to ensure that the Woman is not carrying any offspring in her womb. Husband and wife cannot marry each other after the third month of abstinence or 'Third Iddat'. With this, a woman must marry and divorce another man. After divorcing her second husband, she can marry her former or first husband.

### Triple Talaq and Shayara Bano case

The practice of triple Talaq has been prevailing since ancient times in India. Mrs. Shayara Bano of Allahabad, whose husband divorced her through Triple Talaq, filed a writ petition under Article 32. In her submission, she wrote, "This practice of Talaq-e-Biddat (unilateral Triple-Talaq) which practically treats women like chattel is neither harmonious with the modern principles of human rights and gender equality, nor an integral part of the Islamic faith." Muslim women have been given Talaq over Skype, Facebook, Whatsapp, and even text messages. There is no protection against such arbitrary divorce. Article 25 of the Constitution confers that the right to practice, profess, and propagate religion is "subject to the provisions of Part III," which means that it is subject to Articles 14 and 15 which guarantee equality and non-discrimination. In other words, under our secular Constitution, the right to the freedom of religion is subject to and, in that sense, subservient to other fundamental rights such as the right to equality, the right to non-discrimination, and the right to a life with dignity. Three kinds of Talaq are being practiced by Muslims, viz. Talaq-e-Biddat, Talaq-e-Hassan and Talaq-e-Ahsan. Only the latter two find relevant in the Quraan. In the recent Judgment of the Hon'ble Supreme Court in the Shayara Bano case, Talaq-e-Biddat i.e., the pronouncement of Triple Talaq, is declared unconstitutional. Subsequently, the Indian Parliament enacted The Muslim Women (Protection of Rights on Marriage) Act, 2019, to protect the victims of Triple Talaq.

### Effect of Triple Talaq Judgment

In 2017, the Supreme Court struck down instant triple Talaq in a landmark 3: 2 verdict. Three of the five Judges on the Constitution Bench called the practice un-Islamic and arbitrary and disagreed with the view that triple Talaq was an integral part of religious practice. The ruling of the Supreme Court is truly the

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water shade moment in the women empowerment movement in India. The Court has given progressive thoughts enshrined in the Constitution over personal law in society.

Though triple Talaq is banned by the historical pronouncement of the Hon'ble Supreme Court, society has been affected at large. No doubt, due to the pronouncement of this Judgment, the whole Muslim community is shocked and is now aware of pronouncing instant triple Talaq. There is chaos in society. The Muslim people are becoming afraid and are now thinking about how the marriage will be dissolved if it harms them. On the other hand, Muslim Indian women still face the repercussions of the instant divorce law, which was banned, as men continue to disregard the Supreme Court ruling against the triple Talaq Islamic practice. While prohibiting the Sharia Islam practice was encouraged by activists at the time of the verdict, some Muslim women are now claiming that the ruling left them in limbo. Due to the ban on triple Talaq, Muslim men are not pronouncing triple Talaq against their wives. However, instead of pronouncing triple Talaq, Muslim males have evolved a new trick and started to contract another marriage instead of pronouncing Talaq to their wives. In Muslim law, there is a system of polygamy. Hence Muslim males can quickly marry another woman without having any impediment of law. On the other hand, women cannot re-marry without a legally valid divorce.

There should be new enactment to prevent the practice of polygamy in the Muslim religion. After the pronouncement in Shayara Bano's case, the practice of pronouncement of Triple Talaq decreases. It is noticed from the electronic and print media and social activists of the Muslim religion that the practice of pronouncement of Triple Talaq is minimized due to punishment provided in the Muslim Women Act 2019. There is chaos among the Muslim people that if there is a ban on triple talaq pronouncement, what recourse should be taken to dissolve the Muslim marriage? Though other modes of Talaq are available in Muslim law, the Muslim people are well versed with triple Talaq only. Now they think that they became remedy less due to the recent pronouncement. Per Contra, it is also seen from the societal discussion that the wrongdoers in the Muslim community, though have avoided the pronouncement of Triple Talaq they, have obtained a new way to bypass the provision in

the Muslim Women Act, 2019. The pattern created by the wrongdoers is that instead of pronouncing Triple Talaq, they have started marrying other women. It means that the victims of Triple Talaq are now becoming the victims of subsequent marriages performed by their former husbands. Therefore, to get the fruits of the Muslim Women Act 2019 and to give correct meaning to the pronouncement in Triple Talaq, the existing enactment of marriage laws should be revisited. It is also necessary to enact new legislation for the actual welfare of Muslim women.

### Muslim marriage- a civil contract

In Islam, marriage is a civil contract. The wife is an independent party to the marriage, and no one can pressure her, and the Woman is free to refuse or to consent to marriage. The world has not seen any such incident where a woman has agreed or consented to marry a person who has already performed marriage with her thrice and pronounced Talaq after every marriage. This misconception spread due to the misuse of the procedure pronouncement of Talaq to dissolve the marriage. The pronouncement of Talaq is restricted to thrice, but it does not mean that husband has the right to pronounce Talaq thrice at once. It is a restriction imposed upon the husband, but some husbands presume it is their right to pronounce Talaq thrice at once.

Generally, a Muslim husband has a dominant role as compared to Muslim Wife. Ours is a male dominating Society. So far as Muslim Personal Law is concerned, female has not been given much more beneficial provisions. It is a Muslim belief that man is physically and intellectually superior to Woman. Muslim males have been given the power to pronounce Talaq or divorce unilaterally on their wives without any cause, at their whim. In Khula and Mubara'at forms, Muslim women can get a divorce with the consent of their husbands. Muslim Women forgo their claim to dower or give him some money or property in consideration of his agreeing to dissolve the marriage. In Shayara Bano v Union of India, Triple Talaq is declared unconstitutional to protect the rights of married Muslim women and to prohibit unilateral divorce by pronouncing Talaq by their husbands to provide for matters connected in addition to that or incidental thereto, The Muslim Women Act, 2019 Act come into force on the 19th day of September 2018.

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In India, most of the Talaq are pronounced by Muslim male by Triple Talaq, and it is communicated to the wife by written Talaqnama. It may be only the record of the fact of an oral Talaq, or it may be the deed by which the divorce is affected.

### Muslim Women (Protection of Rights on Marriage) Act, 2019

While declaring triple Talaq unconstitutional, the Hon'ble Supreme Court has directed the Government of India to enact new law regarding triple Talaq. After that, the Parliament enacted new legislation titled "Muslim Women (Protection of Rights on Marriage) Act, 2019."

Section 3 of the Act says that any pronouncement of Talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or any other manner, shall be void and illegal. Furthermore, Section 4 of the Act provides punishment. It states that any Muslim husband who pronounces Talaq referred to in Section 3, upon his wife shall be punished with imprisonment for a term which may extend to three years and shall also be liable to a fine. Similarly, Section 5 of the Act provides subsistence allowance to wives and dependent children. In this scenario, if any husband is convicted under this Act, the question of his wife's maintenance arises. The said Act was so much criticized at the time of enactment because, at one time, it provided harsh punishment for contravention, but on the other side, maintaining a wife became very difficult.

### Relation between Talaq, Marriage, Mehr, and Maintenance

Other talaq-related issues must be taken into account when debating the topic. Marriage is the root of the Talaq. The Hon'ble Supreme Court did not highlight the question of triple talaq usage among the Muslim community when it decided on the triple talaq issue in Shayara Bano's case. The only way to end triple Talaq is by codifying marriage law. Another crucial factor in Muslim marriages is the mehr. It is necessary to consider how the mehr is required to be paid in a Muslim marriage. Muslim women must pay the sum known as "mehr" as a sign of respect during or after their marriages and before their husbands pass away or file for divorce. Greater faith is placed

in the marriages than in the husband and wife's union, remaining unbroken until death. However, the victim lady may have several issues if the marriage regrettably ends in divorce. Therefore, if the Mehr amount is determined in Muslim marriages according to the parties' financial status, a Muslim man who wants to pronounce Talaq must pay the Mehr amount and maintenance during the iddat period to compensate the victim woman. This is how Muslim Women can be safely protected without indulging in court proceedings.

### Conclusion

As we know, the ceremonies performed in Muslim marriages are altogether different. The Muslim Woman is considered inferior to the male. Even she could not stand before him, who would be her husband after a few minutes. It is essential to the validity of marriage that there should be a proposal made by or on behalf of one of the parties to the marriage and an acceptance of the proposal by or on behalf of the other in the presence of witnesses. While performing Muslim marriages, 'two male' or 'one male and two female witnesses must be present. Here also, there is discrimination between male and female witnesses. The law considers one male equal to two females. This amounts to gender discrimination.

The conflicts over the rights of minority women are best dealt with by creating new representative bodies with special provisions to ensure that women are sufficiently represented. In Shah Bano's case, this would have meant creating a new mechanism to administer Muslim personal law instead of simply recognizing the Muslim Personal Law Board as the legitimate representative of the Muslim community. Creating a new mechanism is more sensitive to the political reality of Muslims in India; it consists of widely dispersed groups characterized by significant differences. It would also make some provision to ensure that Muslim women have some access to the institutions which make the rules which govern their lives.

As discussed above, the concept of mehr in Islamic law benefits women. It ensures financial security so that women are not left helpless after the death of the husband or after the termination of the marriage. It also checks on the husband's capricious

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use of divorce. It is also believed that the mehr is a pivotal custom in the marriages of Muslims. In Muslim marriages, a very meager amount is decided as a mehr amount. As we know, the mode of deferred dower is used many times instead of prompt dower. The word dowry in Hindu marriages has a different meaning than the word dower used in Muslim marriages. Dowry may be before marriage, at the time of marriage, or after the marriage. It is used to harass Women, whereas dower is a mark of respect for Women. Dowry is the greed of in-laws, whereas dower is decided for the benefit of Women. However, in the current scenario, it is necessary to determine the Mehr/dower amount as per the economic condition of a husband. It should be a reasonable amount. The amount of dower should be fixed by the codification of Muslim law. There should be a lower cap, not an upper cap, for deciding the amount. As stated above, the mehr might not be paid at the time of marriage; then, there is no prejudice to either side. If, unfortunately, the marriage tie ends as per prevailing law, the Talaq between the parties can only be affected once and if payment of Mehr amount and maintenance of the iddat period is made. Therefore, the Muslim Woman must be benefited if such type of paramount factor of Mehr is added into law.

After the 2017 judgment of the Supreme Court, Triple Talaq was declared unconstitutional under Muslim law. When two people enter into a marital relationship, they might not know each other as well as they got to know each other after living together. And after that, if there is no compatibility between the two, living apart is the best choice. Bad relations may spoil the life of both individuals, and under Muslim law, Talaq is an ancient practice and is not recognized as a sinful act, unlike under Hindu law. After declaring the pronouncement of triple Talaq unconstitutional, many Muslim males thought they had no right to dissolve the marriage. However, other modes of triple Talaq are still available. But due to a lack of knowledge and fear of the law, Muslim males started to perform second marriages instead of giving valid Talaq to their wives. This Act created chaos in society due to the pronouncement in the triple talaq case. The victims of Talaq are now becoming victims of their husband's second marriage.

There is an impact of Talaq on the right of maintenance also. The laws on maintenance under Muslim Law and other personal laws are different.

Under Muslim Law, the prime duty of a man is to take care of his wife. However, his duty is extended to his children and other blood relatives. He is duty-bound to take care of his minor son. He must also care for his major son only under special circumstances. In the case of a daughter, he has to provide maintenance to her until she gets married. We can see the poor position of the wife striving for maintenance, which is her right. We can also state that Muslim Law's maintenance provisions differ from other Personal laws. We need more efforts and contributions from the judicial system and legislation to improve wives' conditions under Muslim law. Several acts and laws have been enacted but have yet to make much difference in poor condition of the wives.

Both Hindu and Muslim personal laws feature provisions for maintenance that aim to guarantee that no one is denied a dignified life owing to a lack of financial means. Both faiths acknowledge the responsibility of family members to provide for those in the family who are entitled to it. Judicial declarations have modified and enlarged the Hindu Law of maintenance. However, there have been few revisions or disagreements over the legitimacy of a classical law. The Muslim Law on maintenance has been the topic of several legal disputes that the courts have resolved. Other family members' rights to maintenance have been protected in both personal laws on a nearly equal footing. Although much has changed in both throughout the years, the goal remains the same: to protect the rights of family members.

Thus, banning Triple Talaq is only a legislative action and will not ensure societal change if Muslims aren't educated or enlightened about this. So also, the practice of polygamy should be avoided. The new marriage laws are also necessary. The provision of mehr is to be revisited to achieve the goal of uplifting Muslim women. There should be codified laws relating to marriage, mehr, maintenance, and ultimately on Talaq to benefit Muslim women to change their status in society.

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