

Muslim Women's Activism in Indian Politics

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ABSTRACT

Triple talaq, or instant divorce, is a contentious Islamic legal practice that permits a husband to end a marriage by swiftly repeating the word "talaq" (divorce) three times. Discussions on this practice have been triggered by legal, social, and gender views. Legally speaking, there has been much debate over the legitimacy and constitutionality of Triple Talaq. Some contend that it is a basic freedom guaranteed by religious liberty, while others see it as discriminatory and against the rights of women. In this continuing debate, the Indian Supreme Court's historic ruling in 2017 that declared Triple Talaq illegal was a major turning point. Triple Talaq has significant social ramifications for women's empowerment and family dynamics. Critics contend that it exposes women to financial and emotional risk, which frequently results in poverty and social exclusion. On the other hand, advocates argue that it offers a quick fix for unworkable marriages, even if it comes at the price of women's independence. The intricacies underlying Triple Talaq are further clarified by gender viewpoints. Some contend that it upholds unequal power dynamics in marriages and patriarchal traditions, while others say that human agency and cultural factors need to be taken into account. It takes a sophisticated examination of overlapping elements like human rights, tradition, and religion to fully comprehend Triple Talaq. This paper examines the complexities of the Triple Talaq dispute and emphasizes the need for all encompassing strategies that take into account its legal, social, and gender dimensions. The paper examines two cases of Muslim women's activism in defiance of triple talaq.

Keywords: Triple Talaq, Shah Bano, Shayara Bano, Activism, Law.

"Talaq" refers to renunciation or refusal. According to Islamic law, this means a final or immediate escape from the bonds of marriage. Muslim marriages are civil contracts, but the husband has additional rights over his wife. A woman cannot divorce at any time, but a man can. According to Islamic law, a husband can dissolve his marriage by saying talaq three times in a row via text message, Facebook, Skype (Gattaiah 2017). Triple talaq is the term for this. Women are not required to appear; they can obtain talaq without providing a convincing defense. In Islamic law, there are three different forms of divorce or talaq: Ahsan, Hasan, and Talaq-e-Biddat, also referred to as triple or rapid talaq. Ahsan and Hasan can be altered, but the price cannot. The practice of triple talaq originated from the Hanafi school of Islamic law, which is mostly adhered to by the Muslim community in India. By speaking "talaq" three times, a Muslim male can divorce his wife; however, women cannot pronounce triple talaq and must file for divorce in accordance with 1937 Sharia law. Many Muslim countries, including Bangladesh, Indonesia and Pakistan, prohibit triple talaq divorce. Talaq has been called a "one-sided engine of oppression" (Kushwaha 2018, 1). As Justice Krishna Iyer gleefully observed, "more sin is committed against Islamic law than sin" (AIR

1971 Ker.261). Almost a century ago, in *Moonshee Buzloor Ruheem V. Shumsoonn* (MIA 551, 1867), the Privy Council ruled that "the Islamic marriage law favours the stronger sex as in some ancient community" where the husband could arbitrarily dissolve the marriage. Even *Moonshee Buzul-Ul-Raheem V. In Luteefut Oon-Nissa* (MIA 397, 1861) it is said that divorce by talaq is a peculiar act in which a man renounces his wife at some stage of life of his own accord and for some reason." a century ago.

Sunni Muslims have practiced triple talaq for 1,400 years. However, this is not mentioned in the Qur'an and Sharia. According to the Qur'an, marriage should be unlimited in duration, and couples should ideally be based on love, and all-important decisions affecting both parties should be mutually agreed upon. The Qur'an allows the husband to divorce if conjugal peace cannot be achieved; However, this decision should not be rushed and the community is asked to intervene by appointing arbitrators from the two economies to try to reconcile. The Qur'an offers two other ways to prevent hasty divorces: first, it imposes two three-month waiting periods before the divorce takes effect, giving the husband time to change his mind. Second, if a man vows not to marry, it would result in automatic divorce with the option to break the vow within four months. The Qur'an changed the sex-based divorce practices of pre-Islamic Arabia, although many patriarchal aspects continued and even flourished in later times. Before the advent of Islam, divorce was governed by unwritten customary law in the Arab world, which varied by region and tribe and was enforced by the parties' authorities.

Although they did not require court approval or justification from the husband, classical jurists generally classified the declaration of talaq as prohibited and condemned if it was not for good reasons, such as the impossibility of living together due to an irreconcilable conflict. The jurist has set limits on what constitutes a legal refusal, such as the need to make a statement voluntarily and without coercion. The wife has the right to payment of all Mahr of Talaq if it has not been paid before. If she was pregnant, her husband must take care of her financially until the end of the waiting period or until the child is born. He is also entitled to arrears of alimony and alimony, which according to Islamic law must be paid regularly during the marriage. It may contain the phrase "you are Haram to me" or "Triple Talaq" which is the declaration of Talaq repeated three times.

While some legal schools categorize a triple talaq delivered in one meeting as a "major" divorce, others classify it as a "minor" divorce because it follows Islamic divorce traditions rather than Quranic 2 principles. Although it is a recognized legal divorce procedure in Sunni law, Muhammad forbade its usage, and Omar, the second caliph, punished those who followed it. Because she is not protected from her husband's arbitrary divorce and second marriage while the first marriage is still legal, she is deprived of security and dignity. Given that the issue pertains to the fundamental rights of women protected by Articles 14, 15, and 21 as well as international treaties and alliances, they urged that the case be brought before the Supreme Court (Gattaiah 2017). To address issues related to triple talaq, *nikah halala* and polygamy, they urged the court to file a suo motu PIL and send it to the concerned court as directed by Hon. Chief Justice of India (Fatima 2019). After that Shayara Bano of Allahabad filed a suit under Article 32 which was divorced from her husband by Triple Talaq.

Several eminent scholars have argued that Talaq-E-Biddat (Unilateral Triple-Talaq), which essentially treats women as property, is inconsistent with current understandings of gender equality and human rights

and is not a core component of the Islamic faith. (Tiwari 2017; Kumar and Singh 2018; Banka 2019). There is no defense against such a strange divorce. Muslim women are bound by the unquestionable authority of their husbands and over them hangs the guillotine of divorce, always ready to fall." He also said that in matters of marriage, divorce and inheritance, the legislature has not done enough to protect equality and dignity. of women in general and Muslim women in particular (Kalindri 2019).

Justice Minister Mukul Rohatgi said in the same issue that "gender equality, gender equality and a decent and dignified life is a constitutional goal" (Kalindri 2019). points argued that three contentious practices triple talaq, nikah halala, and polygamy—have a detrimental impact on Muslim women's social standing and sense of dignity. They render them less equal and more susceptible to men in their community, women from other groups, and Muslim women living outside of India. According to the "provisions of Part III" of the Constitution, freedom to practice, preach, and promote one's religion is subject to Article 25. This means that Articles 14 and 15, which protect equality and prohibit discrimination, also apply. Put another way, our secular constitution states that religious freedom is secondary to other essential rights, which include the right to equality, the freedom from discrimination, and the right to a life deserving of respect.

Thus, after the hearing, the court ruled by a majority of 3:2 that triple Talaq is unconstitutional. It then gave the central government a deadline of 22 February 2018 to pass the laws. A Muslim man seeking a quick divorce faces three years in jail under the Protection of Muslim Women on Divorce Act, 2017, which was drafted by the federal government on Supreme Court directives. The parliament has not yet approved the bill. The Supreme Court ruling overturned years of discriminatory personnel laws.

Proponents of triple talaq believe that Islamic personal law does not discriminate. It gives Muslim women equal opportunities to seek divorce from their husbands. But the truth is another story. It is not often that a Muslim woman divorces her husband. Zarina Bhatti, herself a victim of a similar divorce, recalls, "As a Muslim woman, it was very difficult for me to ask for a divorce, unlike a Muslim man who could happily divorce by saying 'divorce you' three times." it is extremely difficult for a Muslim woman to ask for a divorce without her husband's consent. She remembers that when her husband heard that she had filed for divorce, he became angry. He found it personally derogatory because he grew up in a patriarchal environment. However, divorce through khula took place. In the book, Zarina writes: "One day he called his friend and gave him a piece of paper on which he wrote: 'I divorce my wife Zarina by khula' three times according to the requirements of Islamic personal law." He explains that Khula "means that divorce is granted at the request of the wife and in such a case the husband is not legally bound to pay mehr or maintenance." Women only have to pay the agreed amount if they file for divorce. divorce (Kalindri 2019). Personal law serves individuals from diverse religious origins in India and is applied according to an individual's religion. Muslim women have long battled for equal rights for men and women under Islamic law, which governs property rights, divorce, and marriage. Among the Muslim community, the Muslim Personal Law Council is a well-known and influential organization. There has been much praise and criticism for this regime. This body has consistently opposed amendments to Islamic personal law that it feels would go against the core tenets of Islam. Furthermore, the majority of the board members are men. However, the Koran is against a government that is solely based on a patriarchal structure. Many Muslim women have taken up their cause because they believe that Muslim women should have the freedom to marry, divorce, and inherit property. It has been decided that the contentious Islamic divorce custom known

as quick triple talaq, or Talaq-e-Biddat, is arbitrary and violates Islamic law. The practice was ruled to be in violation of Article 14 of the Constitution, which safeguards the right to equality, by the Supreme Court. Personal law includes marriage, divorce, inheritance and succession, child support, child custody and adoption. Although it has nothing to do with religion, personal law is still traditionally considered religious. Personal laws have historically been used to preserve gendered interpretations of key religious traditions and discriminatory features to maintain conventional male privilege. Therefore, all personal laws - whether from Hindu, Muslim, or Jewish sources - in family matters such as marriage and divorce are severely biased against women because they are created through male-centric interpretations of scriptures and customs.

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Indian Constitution, which forbids discrimination against women by the state, are irreconcilable with the equality ideals they uphold.

The impact of triple talaq on Muslim marriages

The petition, signed by some 50,000 Muslim women and men, demands that polygamy and triple talaq, which allows a husband to divorce by saying the word three times in front of at least two people, but not always the woman, be banned because they are incompatible marriage with sanctity. It also received support from the National Industrial Security Academy (NISA) (Gattaiah 2017), a women's organization based in Kozhikode, which sought to declare unconstitutional certain provisions of Islamic personal law relating to polygamy, triple talaq and unequal inheritance. an expression used to describe a person who dies without leaving a will) and nikah halala (prohibition of remarriage with a divorced man without a previous marriage).

The petition further argued that Muslim men should only be permitted to have a maximum of four wives, as this was unjust. It was also observed that Islamic personal laws' inheritance regulations gravely violate the right to equality by requiring a bereaved Muslim lady to divide her fortune with her father's siblings, when the deceased left behind only one sibling. The Muslim women's advocacy group Bharatiya Muslim Mahila Andolan (BMMA) has also started a campaign against triple talaq, claiming that the Quran does not sanction it. A BMMA survey indicates that 92% of Muslim women are opposed to this repulsive behaviour.

Not only are these practices against the Koran, which has been outlawed in many Muslim countries, but they also go against the fundamental protections of democratic rights, which is why they must end. Three Supreme Court rulings and the 2002 Shamim Ara v. State of UP ruling led to the legal declaration of triple talaq's unconstitutionality. This did not, however, put an end to the practice; according to Banka (2019), many Muslim women were either forced to accept the court rulings or were unaware of them because of pressure from extremist groups. For many women, being cast out of the family was extremely painful. In actuality, Muslim women's rights are infringed upon in the pretext of minorities' constitutional rights. Not whether a religious community has the right to uphold its own set of holy commandments, but rather whether a group has the right to abide by laws that infringe upon the constitutional rights afforded to all people, is the question at hand.

It is an encouraging development that Muslim men and women are now involved in a field previously dominated by activists. According to recently released 2011 census statistics, triple talaq appears to have increased the proportion of female divorcees among Muslims to five per 100, compared to 2-3 per thousand for Hindus, Sikhs and Jains. These patterns, like those observed in the previous census, result from a complex network of social and religious influences. Hindus may legally have the right to divorce, but they may still view divorce as a negative. This may be because, unlike Muslims, Hindus had a divorce rate of 5.5 per thousand married people, but a divorce rate of only 1.8 per thousand. In the issue of Triple Talaq, the constitution did not officially recognize such a divorce and neither does the Quran. Such behaviour goes against the core values of Islam, which include women's dignity, moral conscience and gender justice and equality. However, the court reserved its right to rule on the issue of triple talaq as it felt it was more about fundamental rights than legislation. Their protest is against gross injustice; it's a fight for a core value, not wanting to stay married. Undoubtedly all personal laws must be just and equal to men and women; As a result, the beneficial aspects of all personal laws must be respected, while the negative aspects must be ignored. Therefore, the uniform code - if and when it is adopted - must be different from the private laws of each religious group. It must be based on agreement between all religious groups and adhere to modern standards of freedom, equality, reason, justice and humanism for all people, regardless of gender. Many Muslim women have been actively involved in activism against triple talaq, and the following sections discuss two such seminal cases of activism by Muslim women.

Shah Bano Case

One of the more complex issues related to the rights of minorities is represented by Shah Bano: what to do when granting minority autonomy threatens to worsen the situation of routinely oppressed groups in a minority culture? (Weldon 1991) The case of Shah Bano, also known as Mohd. Ahmad Khan Vs. Shah Bano Begum and Ors. (1985), is considered a turning point in the struggle for equality for Muslim women in India. It allowed thousands of women to claim rights that had previously been denied. After his marriage to Shah Bano Begum (respondent) in 1932, Mohd Ahmed Khan (appellant), a lawyer by profession, had three sons and two daughters. In 1975, then 62-year-old Shah Bano Begum and her children were evicted from her husband's house. He filed a complaint in the Court of First class Magistrate, Indore in 1978 and demanded Rs. 500 per month as per Section 125 of the CrPc.

After that her husband gave her an irrevocable triple talaq and used it as an excuse not to pay maintenance when they were no longer husband and wife and they paid maintenance of Rs. 200 per month for almost two years. In addition, he gave the court a total of Rs. 3,000 was raised at the time. In 1979, the judge ordered maintenance from the husband of Rs. 25. In 1980, Shah Bano MP asked the High Court to revise the maintenance and the High Court agreed, increasing it to Rs. 179 per month. The husband then filed a special leave application with the Supreme Court to oppose this application. Shah Bano's appellant, Mohd Khan, argued that the courts could not interfere in matters decided under Muslim personal law because it would violate the "Muslim Personal Law (Application of Sharia Law, 1937)" and that such matters should only be decided by of Sharia. The All India Muslim Personal Law Council supported this contention.

The Supreme Court ruled in the case of Shah Bano Begum that a Muslim woman who is divorced and unable to maintain her children cannot be denied maintenance for herself and her children due to Triple Talaq if she was unable to do so. at the time of her husband's rejection or divorce. There were a lot of

backlashes against the Supreme Court's decision in the Shah Bano case. During this time, Muslim women, regardless of marital status, were deprived of basic freedom, which is against human rights and basic humanity.

Muslim women are valued less than women of other cultures. Compared to other women, they lacked education and independence. Their faith and knowledge of many sects weakened due to the great challenges and problems they faced. Apart from these restrictions, people were not allowed to work or pursue higher education. It was natural for them to struggle to make ends meet because they had to deal with all these problems when they were young. Therefore, alimony or child support was necessary.

The case of Shah Bano was a standard case like other maintenance cases that happened and the judgment of the Supreme Court was also comparable to other cases. However, the case stood out as an important criminal case because of two facts that emerged. The spiritual criticism of religious personal laws was the first bare truth; The question of whether a uniform civil code applies to all religions and their practices was another naked truth.

In 1985, the Supreme Court decided whether the CrPC, which applies to all Indian citizens regardless of religion, could be invoked in that particular situation. Moreover, CrPc would have priority over personal laws.

CJI Y.V. Chandrachud upheld Shah Bano's maintenance orders passed by the High Court under the CrPC. Simply put, the Supreme Court raised child support. He submits that the purpose of Section 125 was to serve the needs of the needy category of persons (AIR 1985 SCR (3) 844). So what would be the effect if a parent, child or neglected spouse followed another faith.

Like the Shah Bano case that roiled India's social and political landscape in the late 1970s, the Shayara Bano case has brought Muslim women's activism against triple talaq back to the fore in recent years, as analysed in the next section.

Shayara Bano case

On August 22, 2017, a 3:2 majority of five judges of the Supreme Court found that practice unconstitutional. Shakara Bano was married to Rizwan Ahmed for 15 years, but they divorced in 2016 through instant triple talaq (talaq-e-biddat). He then filed a writ petition in the SC arguing that the following three practices should be declared unconstitutional because they violate Articles 14, 15, 21 and 25 of the Constitution.

- Talaq–e-biddat
- Polygamy (multiple marriages women)
- Nikah - halal.

Shayara Bano and Rizwan Ahmed were married for fifteen years. She was part of a group of women who endured dowry harassment and domestic violence. He unilaterally divorced in 2016 with a quick triple talaq. He then petitioned the Supreme Court. The petition stated that several fundamental rights, including freedom of conscience and religion guaranteed under Article 14 (equality before the law) under Articles 15 (non-discrimination), 21 (right to life with dignity) and 25 (right to freedom of religion). conscience)

violated Islamic instant triple talaq, polygamy practices and Nikah Halala personal law.

Women's rights groups including Bebaak Collective and Bhartiya Muslim Mahila Andolan (BMMA) as well as the Union of India endorsed Bano's argument that these acts ought to be regarded as unlawful. They also requested that the court acknowledge the application of basic rights to personal law. The All India Muslim Personal Law Board (AIMPLB) contended that the uncodified personal law of Muslims is immune against constitutional judicial review and that the court lacks jurisdiction to consider constitutional challenges to Muslims' personal rights because they are fundamental Islamic practices protected by Article 25 of the Constitution.

On February 16, 2017, the court sought written responses from Shayara Bano, the Union of India, various women's rights organizations and the All India Muslim Personal Law Board (AIMPLB) on challenges and issues related to polygamy, -halala and talaq-e bidat.

Nikaha halala, which is sometimes referred to as tahle marriage, is a kind of marriage in which a woman gets triple talaq, gets divorced again, gets married to someone else, and then gets married again to her first husband. On February 16, 2017, the All India Muslim Personal Law Board (AIMPLB), the Union of India, Shayara Bano, and many women's rights organizations were asked to respond in writing to the court over the aforementioned matters, which included polygamy, Nikah Halala, and Talaq-e biddat. In light of the fact that these practices violate Ms. Bano's petition, the Union of India, particularly women's rights organizations like Bebaak Collective and Bhartiya Muslim Mahila, Andolan (BMMA), have lent their support. However, the AIMPLB contended that these are some fundamental aspects of Islam and that, in accordance with Article 25 of the Constitution, uncodified Islamic personal law is not subject to the idea of judicial review as defined by Article 13 (2) of the constitution. On March 30, 2017, the Supreme Court granted Shayara Bano's petition after a five-judge constitution bench was assembled. On August 22, 2017, a majority decision of the five-judge Constitution Bench declared that the practice of triple talaq was unlawful.

The court made its final decision after examining the following points. Amit Chandha, counsel for the petitioner, highlighted important points such as triple talaq which is completely against the principle of Quran and is not recognized by Islamic personal laws (Sharia law) hence it does not get any legal sanctity. Muslim women who were subjected to Triple Talaq finally got justice from the court. The Court explained that the principles of equality - especially in relation to gender equality - are more than just lofty ideals.

Must be the final attempt at mediation between the parties, with mediators serving as both parties' representatives. The husband typically disregards these guidelines. Thus, it is already prohibited. State of Bombay v. Narasu Appa Bench, a case that is currently before the Bombay High Court, asserts that personal law—rather than state law—is a source of religion because it does not incorporate the idea of "laws in force." In Sri Krishna Singh v. Mathura Ahir, the Supreme Court provided an affirmative response on this question (1980).

It was later canceled in 1996 in Masilamani Mudaliar and others Vs. The Idol of Swaminathaswami Thirukoil and by a decision (1997) of the Ahmedabad Women's Action Organization Union of India, it was reinstated. The significance of Shayara Bano's case went beyond her direct claims; it provided a means

to determine the constitutional validity of a personal right.

Conclusion

This paper has demonstrated and analysed two instances of Muslim women's activism in Indian politics. Both Shah Bano and Shayara Bano challenged their respective divorce by the triple talaq before the court. The existence of triple talaq historically deprived Muslim women of all those rights which were enjoyed by their counterparts belonging to other religions. The 2017 Supreme Court judgement restored the India's secular principles and the Indian government's unwavering and much-needed commitment towards the implementation of the Uniform Civil Code. As I have examined in this paper, Muslim women have faced multiple challenges and discrimination as a result of triple talaq. The ban of triple talaq can go a long way in ensuring women's equality and women's rights.

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