



## THE EMERGING CONCEPT OF DIGITAL-TALAQ AND ITS VALIDITY WITH SPECIAL REFERENCE TO INDIA

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### ABSTRACT

The trouble of the digital talaq is appeared as fantastically sensitive a few of the Muslims, not best in India but elsewhere. The Holy Quran is very cautious in matters of divorce. A new developing trend amongst men using equipment and website like sms, facebook, electronic mail and whatsapp to divorce their wives is a very new debate amongst scholars. While Muslim activists argued that divorcing using usual gear is against Islamic teaching due to the fact Islam has set system of Talaq. But the reality which global is facing these days can't be ignored. The dispute has been highlighted through reports of some Muslims right away divorcing their other halves by means of mail, facebook or whatsapp. The article seriously appraises the „innovative virtual talaq” by using examining whether or not it is sanctioned by using the Holy Quran or the Sunnah and if there may be a consensus of opinion (ijma) on the effectiveness of triple divorce.

**Keywords; Talaq, Digital-Talaq, Iddat, Shariat.**

### INTRODUCTION

<sup>1</sup>The legal term for divorce in Islam is "Talaq". In its literal experience it means "undoing of, or release from a knot" . It is a ten-n utilized by many Muslim jurists to denote the discharge of a lady from a marital tie. The system of "Talaq" includes many, components, which are crucial to the proper and legitimate breakage of a marital bond. As part of this intricate manner, the Quran prescribes that, if a person makes a decision to repudiate his wife, he have to call guys of justice (preferably Muslims) to witness his action:"And take for witnesses. Two persons from among you, endowed with justice. And establish the evidenceMuslims in India are governed by using the Muslim Personal Law (Shariat).Under the Muslim Law a marriage is dissolved either through the death of the husband or wife, or by way of talaqAfter the demise of a wife, the husband may additionally remarry immediately . But the widow cannot remarry before a certain specified duration called Iddatexpires.Generally, each the events to the wedding agreement have an opinion for divorce, however the husbands proper in this appreciate is much more than that of the spouse. The husband can dissolve the wedding tie at his will. A talaq can also take place by way of mutual agreement. But the wife cannot divorce herself from her husband without his consent. She can of path purchase her talaq from her husband and might have the wedding dissolved through Tafweez delegation).Marriage may also be dissolved with the aid of judicial decree beneath the Dissolution of Muslim Marriage Act, 1939. Triple divorce (Talaq-ul-Bidat) is a diagnosed however disapproved shape of divorce and is considered by way of the Islamic jurists as an innovation inside the fold of Sharia . It commands neither the sanction of Holy Quran nor the approval of the Holy Prophet. Who can pronounce Talaq; As consistent with Islamic law, simplest the husband has a proper to pronounce Talaq. Under Talaq-e-tafweez, a husband may delegate the authority to the spouse to pronounce talk on his behalf. Shia - He

<sup>1</sup><https://www.scribd.com/document/442695362/Digital-Talaq-3-docx>

ought to be of sound thoughts and attained the age of puberty. It should be stated orally in the presence of two witnesses unless he's unable to speak. Further, Talaq have to no longer be stated beneath duress or compulsion otherwise Talaq is void. It need to be spoken in Arabic terms and strictly according to sunnat. Sunni - Only two requirements-sound thoughts, attained majority. A Talaq pronounced beneath compulsion or intoxication is effective. Triple Talaq; Triple talaq is also called Talaq-ul-Bidat. It came into vogue in the course of the second century of Islam. It has forms:

- (1) The triple announcement of talaq made in a length of purity, either in a single sentence or in three
- (ii) The other frame constitutes a single permanent profession of separate made in a period of tuhr or indeed something else.

This sort of talaq isn't recognized by the Shias. This shape of separate is condemned. It is considered unorthodox, since of its irrevocability. Declaration of triple talaq; Concurring to Muslim researchers, Talaq-ul-Bidat is as it were effective when a man expresses the word talaq thrice over a period of three sequential months. He has to declare talaq as it were amid the time of Turh (a woman's menses-free period). Once the words are spoken for the third time over a period of three months, the marriage is broken up right away. The divorced couple can remarry as it were after the lady has hitched and separated another man in the interim period.

This prepare of an mediating marriage is known as the Halala. The full procedure isn't taken after in India where just rehashing the word talaq three times leads to a valid separate. The predicament of Muslim ladies is exacerbated by the reality that Muslim law is open to interpretation by the Muslim clergy because it isn't codified. Muslim researchers have questioned the legitimacy of triple talaq because it does not discover specify within the Quran, which underpins the three-month strategy with an opportunity for compromise. A few Indian cases recommend that the divorce must be "for a sensible cause" but a mist of instability wins over Muslim personal law by and large. It is broadly seen that a Muslim man can separate his spouse simply by saying talaq (or talak – Arabic term for separate) to her three times at one sitting. But this strategy isn't acknowledged in many Muslims nations, such as Pakistan, Bangladesh, Malaysia, and Indonesia. In any case, it is recognized in India, but as it were by Sunni Muslims. Shia researchers see this triple talaq as a pagan pre-Islamic custom. A few fatwa's have expounded on when a triple talaq can be substantial. A recent fatwa indeed considers a triple talaq articulated by an intoxicated man as valid. Recently, ShayaraBano has recorded an appeal to the Preeminent Court of India requesting the abolition of triple talaq and polygamy beneath Muslim law in India. Different Muslim campaign groups who accept that these hones are biased in nature back the move. There is an contention to the impact that triple talaq violates Part- III of the Indian Constitution enrolling fundamental rights, in particular, discrimination and equality before law. The essence of the arguments sent within the case is that triple talaq is unconstitutional. The move was met with a solid resistance by the All India Muslim Individual Law Board. The Board argues that triple talaq may be a matter of culture and Islamic convictions. They see the appeal as an endeavor to meddled with Islam by the Hindu Patriot BJP government in India. The opposition is devout additionally contends that principal rights don't apply to the individual law of Muslims in India. They state that the Constituent Gathering purposely abstained from imposing a Uniform Gracious Code since the Get together was mindful of the contrasts in Muslim personal law. They demand that Muslim ladies as of now have satisfactory lawful security and cite legislation such as Muslim Women (Protection of Rights on Divorce) Act, 1986 in their defence. Whereas it is vital to regard the rights of devout and social minorities in a different and

secular nation like India, it is additionally basic to ensure that such hone don't manhandle basic human rights. Triple talaq decreases the capacity of Indian Muslim ladies to live with dignity. The prevailing hone ingrains fear and uneasiness within the minds of endless Muslim women who experience indeed slight troubles in their relational unions. Contentions are common to all marriages and numerous encounter a harsh fix. In any case, separate on the impulses and fancies of men are a disgraceful hone. Since triple talaq has been abolished in 22 Muslim larger part nations, it is difficult to see the ought to hold on to it. Muslim individual law is in require of a comprehensive review. Maybe, India can draw a strategy more appropriate to its Muslim populace by reflecting on the law in other Muslim states like its neighbours. Codification of Muslim law will too offer assistance to reduce the instabilities around it. Successful changes are essential and much anticipated in the territory of Muslim individual law.

### TRIPLE TALAQ ORIGINATION

Talaq-ul-biddat has its origin in the second century of the Islamic era. After two years of ruling, second caliph Umar enforced triple divorce, as per which no one will be permitted to take his wife back after pronouncing three divorces in one go. Author Umar Ahmad Usmani in his book named "Women's Rights in The Qur'an, Women and Modern Society" refers to the noted Egyptian historian Muhammad Husain Haykal's book 'Umar-al-Farouq' in which the author says that caliph Umar made such an (interpretation) for avoiding hassle and indeed it was need of the hour. Then author Umar Ahmad Usmani further quotes from Haykal's book to show why caliph Umar was constrained to enforce triple divorce. The author says that, when Arabs in the era of caliph Umar were conquering every part of the Gulf, after winning the battles they used to bring male and female slaves both with them to the land of Mecca and Medina. These women were very attractive and charming and the Arabs were captivated by their charm and wanted to marry them. However, these women insisted on the men giving irreconcilable divorce to their former wives. To satisfy them they would pronounce triple divorce in one go and pretend to having divorced their wives for good. From there, it is in practice.

### MEANING OF DIGITAL TALAQ

Islam is one of the most seasoned religions around the world nowadays and after Christianity it's the moment most taken after religion within the world. Regularly these days, Islam is criticized due to frequent terror assaults as a result of it's traditions of polygamy or Triple Talaq, but it gives everything in codified way. One can discover codified laws for marriage, separate, progression, family relationship etc. within the Sacred Quran and portrayal of different volumes of Hadees accessible. Separate laws which are endorse beneath Sacred Quran and Hadees are most of the times confused by the Muslims Researchers. Prophet Muhammad said that separate (talaq) ought to be dodged at any fetched unless and until it's outlandish to carry forward the bond of marriage. Talaq in its primitive sense implies dismissal. In its exacting meaning, it implies "setting free", "letting free", or taking off any "ties or restriction". In Sharia law, it implies opportunity from the servitude of marriage and not from any other subjugation. Within the legitimate sense it implies disintegration of marriage by the spouse utilizing fitting words. In other words talaq is renouncement of marriage by the spouse in understanding with the strategy laid down by Islamic law. There are two shapes of talaq (separate) in Islam:

- 1) Talaq-ul-Sunnat
- 2) Talaq-ul- Biddat.

Beneath Muslim law advanced talaq is talaq in which the husband repudiates the marriage by saying `talaq' three times through electronic plan. e.g. by sms, e- mail, facebook, whatsapp. Digital Talaq; In show situation with the later progression within the ranges of computer technology, have in changing the life of individuals. The communication is no more confined due to the limitations of geology and time. Data is transmitted and gotten broadly and more quickly than ever some time recently. These innovations moreover influenced the individual life of individuals as well as their individual law.

### **CONTROVERSIAL FATWA'S ON COMPUTERIZED TRIPLE-TALAQ'S**

As increasingly individuals procured cell (mobile) phones it was not long some time recently the triple talaq was being conveyed by phone or by sms (text messages). In November 2010, the DarulIfta (fatwa division) of the DarulUloomDeoband, a Sunni Islamic theological school in India evoked solid challenges by women's bunches when it ruled that a triple talaq articulated over the phone was substantial indeed on the off chance that the spouse might not listen it due to organize issues, and indeed on the off chance that no witnesses were display. It was not the as it were controversial fatwa that the DarulIfta had issued concerning the triple talaq. A month some time recently that it had ruled that the triple talaq said in joke was moreover substantial. Interests, the Muslim Individual Law Board states clearly that it does not recognize the legitimacy of separate through advanced media, which has no standing within the courts.

### **LEGITIMACY OF ADVANCED/DIGITAL TALAQ**

As the world is moving to the crest of digitalization where social media and other instruments of communication gotten to be a enormous portion of our lives. A unused developing trend among men utilizing devices and site like Confront book, sms and mail to separate their spouses is a very modern wrangle about among researchers. Whereas Muslim activists contended that separating utilizing regular tools is against Islamic educating since Islam has set strategy of Talaq. But the truth which world is facing these days can't be overlooked. Spouses in numerous cases sending emails and sms to their wives to separate (talaq) them and indeed through Skype and Facebook men separate their wives. Which is satisfactory in numerous districts like India, once a lady detailed that she had battle with her spouse and her spouse raged out of domestic in irate disposition but after a few days she contended with him on phone which appears just like the matter is getting to be settled whereas after a day or two of the phone call, she was messaged by her spouse approximately Talaq. She was greatly stunned that whether it is substantial or not? She once more got a stun to listen from her companion that the separate is valid if he composed this mail within the habitations of two witnesses. In another case spouse was sent a message on her phone, composed three times "I separate you", by her spouse. She claimed partition but her husband was in see that it was not said by him verbally but it was composed so it isn't valid. A researcher clarified to him, "In this guideline, being within the nearness of one's life partner isn't a pre- requisite for the issuing of talaq. Be that as it may, talaq had materialized by this action".

### **ALL INDIA MUSLIM INDIVIDUAL LAW BOARD AUTHENTICATES THIS.**

"We emphatically and exceptionally clearly assert that separate through computerized media such as email, facebook or WhatsApp isn't enforceable in the court of law. Islam and the Muslim Personal Law don't recognize this kind of practice," says advocate Abdul Rahim Quraishi, right hand common secretary at the All India Muslim Personal Law Board. "There are different shields to anticipate a separate in Islam. It is as it were when

there's no alternative that separate is allowed. A number of divorces within the community are happening for trivial reasons. We emphatically debilitate this and feel that minor battles do happen in every household and they ought to not lead to divorce," says Quraishi. Whereas it has continuously been to some degree simple for Muslim men to separate their spouses, the utilize of digital medium makes it nearly momentary. In both shapes of separate there's a period, iddat, during which the lady can claim nafaqah or maintenance. However, women don't have a chance to challenge the validity of the separate. They just got to accept their fate. It isn't fair Indian Muslim ladies who are enduring. In a few nations within the Center East and Malaysia, versatile gadgets have been utilized to conclusion relational unions by basically texting talaq, talaq, talaq. And some time recently the coming of versatile gadgets, there were occasions when phone calls, snail mail and indeed wires were utilized to communicate separate. The other point of see is that technology is fair and implies of communication so it doesn't matter whether a separate is expressed personally or through facebook, mail or Skype. In any case, the ease of such strategies has increased the occasions of separate. Muslim women are at the getting end.

## **<sup>2</sup>TRIPLE TALAQ JUDGMENT BY THE SUPREME COURT**

Commencing a historic hearing on a batch of six petitions and a suomoto PIL challenging the constitutional validity of triple talaq and nikahhalala among Muslims, the Supreme Court said it would first determine whether the practice is fundamental to Islam. The Supreme Court stated that, there are two-three things on our minds and the first is whether this (triple talaq) is fundamental to the religion (Islam). If it is fundamental to religion, possibly we should not be interfering, and the other aspect is whether triple talaq is sacramental and can be enforced as a Fundamental Right. Additional Solicitor General Tushar Mehta on behalf of Union of India said that Union is not on any side. We are on the side of gender justice, equality for women and dignity of women. Triple Talaq is against the dignity of women. There is also the issue of gender justice. When the Union of India talks of gender justice and equality of women, then irrespective of the religion, it would also include triple talaq. Amit Singh Chadha, who was appearing for ShayraBano, one of the first petitioners in the matter, opened the arguments against the practice of triple talaq among Muslims. He urged his arguments by stating that the Muslim men have absolute right to triple talaq and women have to comply with the provision of the Dissolution of Muslim Marriages Act, 1939, which says divorce granted by Muslim women can be contested by husbands up to the Supreme Court, but women have no legal recourse against triple talaq as they cannot question it. Men have the untrammelled right to pronounce triple talaq, but women's rights have been restricted. Senior Advocate Indira Jaising who was appearing for Bebak Collective, a Muslim organization, said that in case of divorces being granted through extra judicial mechanism, there should be a judicial oversight with deal with the consequences. Triple Talaq is violative of the right to equality of Muslim women guaranteed under Articles 14 and 15 of the Constitution to the extent that a Muslim man exercised power to declare unilateral divorce, but the Muslim woman has no control over such unilateral, arbitrary, extra-judicial divorce and her marital status. Former Union Minister and senior advocate Salman Khurshid was assisting the court in interpreting the holy book of Quran. He added, "Triple Talaq is a non-issue as it cannot take effect and considered to be complete without conciliation efforts between the couple. However, there is no adjudication to determine the validity of the grounds of talaq." Supreme Court bench asked him, "Is the reconciliation after the pronouncement of triple talaq in one go codified?" Salman Khurshid replied, "No" and further added that, if a man pronounces triple talaq even once and does not revoke it within the next three months, it constitutes valid

<sup>2</sup><http://www.legalservicesindia.com/article/2466/Triple-Talaq-Explained.html>

irrevocable divorce. KapilSibal, who was representing All India Muslim Personal Law Board said, Triple talaq is a non-issue as no prudent Muslim would wake up one fine morning and say 'talaq, talaq, talaq'. Either the Parliament can enact a law or it should be left to the community itself to deal and the court should not interfere on the issue. Justice Khehar, CJI of Supreme Court opined that there are schools of thought who say that triple talaq is legal, but it is the worst and undesirable form of dissolution of marriages among Muslims. Former Union Minister Arif Mohammad Khan replied to this and stated, "triple talaq is far from being fundamental and very far from being sacramental to Islam. It violates every good thing which Islam prescribes. What we are seeing in the form of triple talaq is similar to the pre-Islamic era practice where female infants were buried alive... Marriage is the only aspect which is extensively dealt in Holy Quran that lays down the procedure for divorce and various schools of thought have distorted the tenets of the holy book to their liking... Everything you need is in the Holy Quran. If you need more, then look at the life of the Prophet and if you still need more, then use your own good sense... We can change the law, but not the habits of the society. Untouchability was banished by the Constitution, but it stays with us." Salman Khurshid gave his opinion to this and said, "If thrice pronouncement of talaq is considered once, then 90% of the problem which is created by instant divorce in one sitting would be solved. If triple talaq is taken as only one talaq, then it would lose irrevocability and allow reconciliation efforts among couples during the three month iddat period." Farha Faiz who was one of the Petitioners busted on Muslim clerics and said that they are running a parallel judicial system like the trial courts and the high courts and the clerics are forcing Muslims not to go to the courts. If unstoppable, soon a day will come when there will be such courts (run by Muslim clerics) in every nook and corner. Attorney General Mukul Rohatgi continued to oppose triple talaq on the premise that it violated the fundamental rights of Muslim women. He further added that, personal law is law, it will have to be tested under Articles 13, 14 and 15. Articles 13 assert the supremacy of the Indian Constitution. Article 14 and 15 provide for equality before the law and prohibit discrimination on the grounds of religion, race, caste, sex or place of birth. Responding to the petitioner's contention that triple talaq is not Islamic and is against the mandate of the Holy Quran, Justice Kurian Joseph asked – "What if it is not part of personal law?" "That your Lordships will have to decide", Mukul Rohatgi responded. Attorney General Mukul Rohatgi argued that matters of personal law should be in conformity with the Constitution. As far as Hindus are concerned, various steps were taken to bring personal law in conformity with the Constitution. As far as Muslims are concerned, only the Acts of 1937 and 1939 are there, and a small change after the Shah Bano judgement. After the government made its submissions, KapilSibal began his arguments for the All India Muslim Personal Law Board. KapilSibal submitted that the issue is not triple talaq, it is patriarchy and it is there in every religion. All patriarchal societies are discriminatory. Even many Hindu laws are discriminatory. Attorney General Mukul Rohatgi replied and said, "If the practice of instant divorce (triple talaq) is struck down by the court, then the Centre will bring a law to regulate marriage and divorce among the Muslim community." Speaking for the All India Muslim Personal Law Board, KapilSibal equated the issue of triple talaq with the belief that Lord Ram was born in Ayodhya. "If I have faith that Lord Rama was born at Ayodhya, then it's a matter of faith and there is no question of constitutional morality. Triple talaq has been there since 637 AD. Who are we to say that this is un-Islamic. Muslims are practicing it for last 1,400 years. It is a matter of faith. Hence, there is no question of constitutional morality and equity.", said Sibal. Sibal was countering the arguments put forth by the opponents of triple talaq who have been arguing for the past two days, with the government also saying a new law to regulate marriage and divorce among the Muslim community would be

brought, if all forms of divorce, including triple talaq, are struck down. The AIMPLB counsel said the age-old practice was "part of my faith and you cannot determine what should be my faith. This is the question and this is the issue". He asked whether the court should decide the faith of over 16 crore people. The Muslim body said despite the existence of laws on dowry prohibition and guardianship, Hindu customs were being allowed to remain, like dowry is prohibited but gifts are allowed. "When it comes to Hindu law, you protect all customs, but when it comes to Muslim, you start raising questions over customs. Like when it comes to Dowry Prohibition Act or Guardianship Act you follow customs and protect them," he said. Arguing for Jamat-ulema-i-Hind, senior advocate Raju Ramachandran said that every citizen of India, whether male or female, has the option of being governed by the Special Marriage Act, 1954. In doing so, he argued they can opt out of personal law. When a person agrees to get married under his/her personal law, he or she is also making a conscious waiver of the right to be governed by the "secular non-religious" law or by a purely civil law. The consent of either party to a marriage is not just to marry a particular person, but to the particular law which will apply to the marriage i.e. whether it is personal law or enacted civil law. In such a situation, a person who consciously opts for the personal law cannot complain that the personal law is unfavourable or discriminatory. The Attorney General issued his rebuttal to the arguments made by KapilSibal on behalf of the All India Muslim Personal Law Board. He confirmed that the Centre is ready to take a leap forward and bring in legislation. This matter is not a majority vs minority. It's a tussle within the religion for rights of women. It's not 1,400 years of custom, but 1,400 years of deprivation. On 18 May, the Supreme Court reserved its judgement on triple talaq after six days of continuous hearings on a batch of petitions challenging the constitutional validity of triple talaq. On the final day, the counsels of several aggrieved women petitioners and women's rights organizations – including Anand Grover, Arif Mohammad Khan and Indira Jaising – demanded triple talaq to be declared illegal. Before concluding his arguments, KapilSibal told the Supreme Court that the All India Muslim Personal Law Board had decided to issue a circular to all qazis while finalising the nikahnama to advise husbands not to indulge in triple talaq unless under compelling circumstances. This was in response to the court asking the All India Muslim Personal Law Board to include in the marriage contract a provision enabling all Muslim women to say no to triple talaq. Responding to the Supreme Court's question on whether triple talaq was bad and sinful, KapilSibal said, "It may be bad, it may be sinful, but women accept it".

**Operative Part of the Judgement delivered by Hon'ble Supreme Court:**

**Majority View (Justices Kurian Joseph, Rohinton F. Nariman & Uday U. Lalit):** Justice R.F. Nariman opined that divorce breaks the marital tie which is fundamental to family life in Islam. Not only does it disrupt the marital tie between man and woman, but it has severe psychological and other repercussions on the children from such marriage. After the advent of Islam, divorce was permitted to a man if his wife by her indocility or bad character renders marital life impossible. In the absence of good reason, no man can justify a divorce for he then draws upon himself the curse of God. Indeed, Prophet Muhammad had declared divorce to be the most disliked of lawful things in the sight of God. The reason for this is not far to seek. It is clear, therefore, that Triple Talaq forms no part of Article 25(1) of the Constitution. This being the case, the submission on behalf of the Muslim Personal Board that the ball must be bounced back to the legislature does not at all arise in that Article 25(2)(b) would only apply if a particular religious practice is first covered under Article 25(1) of the Constitution. If a constitutional infirmity is found, Article 14 will interdict such infirmity. Positively speaking, it should conform to norms, which are rational, informed with reason and guided by public interest, etc. Applying the test of manifest arbitrariness to the case at hand, it is clear that Triple Talaq is a form

of Talaq which is itself considered to be something innovative, namely, that it is not in the Sunna, being an irregular or heretical form of talaq. Given the fact that triple talaq is instant and irrevocable, it is obvious that any attempt at reconciliation between the husband and wife by two arbiters from their families, which is essential to save the marital tie, cannot ever take place. It is clear that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. In our opinion, therefore, the 1937 Shariat Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression "laws in force" in Article 13(1) of the Constitution and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq."

Justice K. Joseph added, "What is held to be bad in the Holy Quran cannot be good in Shariat and, in that sense, what is bad in theology is bad in law as well....Merely because a practice has continued for long, that by itself cannot make it valid if it has been expressly declared to be impermissible. The whole purpose of the 1937 Act was to declare Shariat as the rule of decision and to discontinue anti-Shariat practices with respect to subjects enumerated in Section 2, which include talaq. Therefore, in any case, after the introduction of the 1937 Act, no practice against the tenets of Quran is permissible. Hence, there cannot be any Constitutional protection to such a practice. "He said the simple question that needs to be answered in this case is only whether triple talaq has any legal sanctity. "The Holy Quran has attributed sanctity and permanence to matrimony. However, in extremely unavoidable situations, talaq is permissible. But an attempt for reconciliation and if it succeeds, then revocation are the Quranic essential steps before talaq attains finality. In triple talaq, this door is closed, hence, triple talaq is against the basic tenets of the Holy Quran and consequently, it violates Shariat. Therefore, in any case, after the introduction of the 1937 Shariat Act, no practice against the tenets of Quran is permissible. Hence, there cannot be any Constitutional protection to such a practice. When issues of such nature come to the forefront, the discourse often takes the form of pitting religion against other constitutional rights."

### <sup>3</sup>ARGUMENTS AGAINST TRIPLE TALAQ

- It goes against the rights of equality and women's empowerment. It propagates the dominance of men over women.
- According to a study, 92% of Muslim women in India wanted the triple talaq to be banned.
- It gave men the right to arbitrarily divorce their wives without any valid reason.
- New-age technology has given birth to new modes of triple talaq such as through skype, text messages and email.
- Many Islamic countries have outlawed this practice including Bangladesh, Pakistan and Indonesia. There is no reason for a democratic and secular India to continue this lopsided practice.
- It goes against the constitutional principles of gender equality, secularism, right to life of dignity, etc. It goes against Article 14 (Right to Equality) and Article 15(1) which states that there shall be no discrimination against any citizen on the basis of gender, race, etc. and this kind of talaq is biased against the interests of women.

<sup>3</sup><https://byjus.com/free-ias-prep/triple-talaq-essay-upsc/>

- The constitution of India says that it shall strive to bring a uniform civil code for the entire country. Doing away with triple talaq will definitely be a step closer to the constitution-makers' dream of having a uniform civil code for all citizens.
- However, the National Commission of Women says that this matter cannot be linked to uniform civil code. Nevertheless, it should be banned in order to protect the interests of Muslim women.
- The Supreme Court has also declared that this practice is unconstitutional and not protected by Article 25 which regards the freedom of religion. Also in December 2016, the Allahabad High Court had said that no personal law board was above the constitution.
- Experts also opine that only the essential or integral features and aspects of a religion are protected by the Constitution. Triple talaq was not an integral feature of Islam.

### CHALLENGES IN BANNING TRIPLE TALAQ

- Religious groups infer the banning of a traditional practice sanctified by Sharia as interfering in the religious aspects of minorities.
- The courts should decide two things basically:
  - Whether personal law can be subject to the constitution or not
  - How to view the relationship between triple talaq and Muslim personal law.

#### Past rulings:

- In the Shah Bano case in 1985, the SC granted Shah Bano, a 62-year old woman the right to alimony from her husband.
- But in 1986, the government passed the Muslim Women (Protection of Rights on Divorce) Act which diluted the positive impact created by the Shah Bano case.
- In 2001, in the Danial Latifi & Anr versus Union of India case, the SC upheld the validity of the Shah Bano judgement.
- In August 2017, a five-judge bench of the SC declared the triple talaq as unconstitutional in a majority 3:2 judgement. This was the culmination of a petition filed by Shayara Bano, whose husband of 15 years had divorced her through a letter where he pronounced talaq three times, to declare the divorce as void.

The latest ruling is truly a watershed moment in women empowerment movement in India. The court has given progressive thoughts enshrined in the Constitution precedence over personal law in society.

### IS TRIPLE TALAQ IN CONGRUITY WITH ISLAMIC LAW?

Muslim law rests on the four-fold columns of the fiqh, namely : the Quran (kitab), the Sunnah (Hadiths) , the Ijma and Qiyas . A 'principle' to end up 'law' must discover a put within the above mentioned sources. In the event that the arrangement of a problem is given within the Quran then it is the ultimate ruling of Shari'ah. On the off chance that there's no clear composition within the Quran, we see at the conventions of the Prophet documented within the shape of hadiths by his companions. If the issue has no arrangement in either of the two at that point as it were is resort taken to Ijma. There is no Quranic premise to set up that three divorces on a single event will sum to an permanent separate; in truth the Prophet (PBUH) despised divorce and portrayed

marriage as his Sunnat. The Quran lays down as it were two kinds of divorces i.e. Talaq-Ahsan and Talaq-Hasan the same being in congruity with the dictates of Prophet (PBUH). The over two shapes are considered to be the foremost legitimate shapes of pronouncing the separate. The third frame i.e. Talaq-ul-Bidat, is considered to be the foremost sinful, innovated shape of separate because it is against the letter and soul of Quran and was disallowed by the Prophet (PBUH) himself. According to the Quran, a individual isn't gathered to separate his spouse when she is menstruating. When a muslim divorces his wife, he must separate them for the period of their iddah and hold up for three courses (feminine cycle). The endorsed time period of iddah is about three months and in case of pregnant ladies, the iddah period is till conveyance. During this period, the spouse can take them back in the event that they wish to (compromise). Divorce given for two times is revocable but it isn't so when made for a third time. As expressed by Prophet (PBUH) and described by Aisha "Once a Muslim lady has been separated by her husband thrice, she cannot remarry him unless and until she is hitched to another man (and such marriage must be culminated compulsorily) and divorces her so as to free her. It is only after this, she can wed her previous husband."

## CONCLUSION

Equality as cherished in Article 14 is the quintessence of vote based system and a essential highlight of the Constitution and it has been extended to incorporate concepts of non-arbitrariness and rule of natural equity. It could be a vital end product of Run the show of Law and its basic question is to secure everybody correspondence of status and of opportunity. A arrangement not illegal at the commencement of the Structure can be rendered unlawful by afterward advancements and considering, such as sexual orientation balance. In this way triple talaq which is advances sex disparity is liable to be struck down as unlawful. Article 21 lays down that "no individual should be deprived of his right to life and individual freedom but concurring to the strategy established by law." The Due handle specified over has two shapes (a) Substantive due process, wherein the law must be fair and reasonable and not subjective or onerous. (b) Procedural due process, wherein the wronged is given a reasonable right of hearing. The address of the Digital talaq's legitimacy has allegedly partitioned Islamic scholars. A part of the Samastha Kerala Jam-Iyyathul Ulama has said that the separate seem be allowed after discourse with both the man and lady, who have not been named in media reports. In any case, the All India Muslim Individual Law Board has negated this by clearly stating that "divorce through advanced media" isn't enforceable in a court of law. Creator see is that the innovation ought to be treated as fair that "a way of communication" and nothing beyond. But it is required for the man who is communicating the message to allow his legitimate contact address, without which the method is fragmented. In the interim, the lady gets three months to respond iddat amid which she can claim support. The Sharia treats innovation as a medium of communication, and once the message is communicated and verified, beneath the Sharia, it gets to be legitimate. The strategy of confirmation requires witnesses to be display during the separate method. Witnesses may be 4 a male relative or two female relatives.

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