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## A STUDY OF EFFECTS OF TRIPLE TALAQ AND POSITION OF WOMEN IN ISLAM

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### ABSTRACT

*The attitude of the Quran and the early Muslims bear witness to the fact that woman is at least as vital to life as man himself, she is not inferior to him nor she is one of the lower species had it not been for the impact of foreign cultures and alien influences, this question would never arise among the Muslims. The status of women was taken for granted to be equal to that of man. It was matter of course, a matter of fact and no one then considered as problem at all. This distinction between equality and sameness is of paramount importance. Equality is desirable, just fair or not; but sameness is not. People are not created identical but they are created equals. With this distinction in mind, there is no room to imagine that woman is inferior to man there is no ground to assume that she has less importance than he just because her rights are not identical to his.*



**KEY WORDS :** *foreign cultures and alien influences , something novel.*

### INTRODUCTION

The fact that Islam give her equal rights but not identical –shows that it takes her into due consideration, acknowledges her, and recognizes her independent personality. Woman in Islam is something unique, something novel, and something that has no similarity in any other system.

#### Attitude of Islam with regard to woman

1. Woman is recognized by Islam as a full and equal partner of man in the procreation of mankind by this partnership she has an equal share in every respect. She is entitled to equal to equal rights; she undertakes equal responsibilities and in her there are as many qualities and as much humanity as there are as many qualities and as much humanity as there are in her partner.<sup>1</sup>
2. She is equal to man in bearing personal and common responsibilities and receiving rewards for her deeds. She is <sup>1</sup>acknowledged as an independent personality in possession of human qualities and worthy of spiritual aspirations.
3. Woman is equal to man in the pursuit of education and knowledge. When Islam enjoins the seeking of knowledge among Muslims, it makes no distinction between man and woman.
4. Islam grants woman equal rights to contract ,to enterprise to earn possess independent personality her life ,her property , her honour are as sacred of man if she commits any offence her penalty is no less or more than of mans in a similar case. If she is wronged or harmed, she gets due compensation equal to what a man in her position would get.<sup>2</sup>

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<sup>1</sup>Rights of Muslim Women by Syed Jalauddin Omari

<sup>2</sup>*Ibid.*

5. Status of women in Islam is un-precedently high and realistically suitable to her nature. Her rights and duties are equal to those of man but not necessarily or absolutely identical with them. If she is deprived of one thing in some aspect, she is fully compensated for it with more things in many other aspects. The fact that she belongs to female sex has no bearing on her human status or independent personality. It has no basis for justification of prejudice against her or injustice to her person. Islam gives her as much as is required of her. Her rights match beautifully with her duties.<sup>3</sup> "Nikah" is that strong relationship which binds man and woman. This relationship leaves deep impressions on the social life. Islam wants this relationship should be more and more strong. In other words, husbands and wife have the relationship of hand and glove."<sup>4</sup>

### POSITIVE EFFECTS OF DIVORCE

1. If reconciliation method fails regarding divorce between husband and wife, this measure proved to be ineffective, and proves to be no sign of reconciliation. Then husband can use his right of giving divorce, and it is definitely better to free the wife from the bond of nikah than keeping her suspended indefinitely. Islam has kept the avenue of divorce open for man in order that man may lead a righteous life and there should be no difficulty for him to keep within the bounds of morality. Similarly, Islam has given the right of khula to woman and also approach the court of law for dissolving her marriage in order that she may also be able to keep within the religious and moral bounds.

The best procedure of divorce is that the husband should give one divorce to his wife and that too when she is in a state of cleanliness and had not an intercourse with her.

### Reconciliation efforts should be taken before divorce

If the dispute has arisen between husband and wife and their living together as husband and wife is becoming difficult, in such a situation the direction of Islam is that the decision to give divorce should not be taken immediately. But all efforts should be made for reconciliation between the two disputants, and it became necessary, even to take disciplinary action.....

The method of achieving divorce is unusual, because the word itself accomplishes the person. It is not mediated by a legal agency, placing the control of the relation in the hands of the husband, who can end the marriage at any time. People who are married both in the eyes of Islam and in the eyes of nation must be sure to terminate the marriage in both realms, as taxes and other legal statuses are often affected by divorce. No matter where the talaq occurs, it is important to fully comprehend the relevant rules concerning divorce to make sure both the husband and wife have their rights upheld.

It's true that Muslim women can't divorce their husbands by saying I divorce you. But they can request their husband to divorce them. Of course, final word is still left to the husband.

The husband also has such an elder to advise and help him in his marriage. So if the marriage is not going well, the elders are usually informed and everyone will get together and discuss what the issues are. This is a good way to protect the woman's rights and also to advise the husband and wife so that they don't take any rash decisions that they might regret later.

### NEGATIVE EFFECTS OF DIVORCE

Generally, husbands give divorce to their wives on petty altercations. It is their emotional decision and not although out or well considered decision, while divorce is a decision<sup>5</sup>, which cuts the bond that tied the relationship of Nikah. Besides, giving divorce entails creating a lot of problems;

1. After deep and intimate association, separation becomes a means of mental depression and unrest for both the partners. Their hearts are wounded. In other words, divorce is an operation which separates the two hearts that were linked together by love, and is well known men resort to surgical operation only in

<sup>3</sup> *Ibid.*

<sup>4</sup> Article, (talaq when and how the Islamic point by Shams Pirzadah)

<sup>5</sup> Muslim Law as applied in India by Dr. R.K. Sinha

emergency cases. Nobody considers it desirable in ordinary circumstances. Therefore no recourse should be had to his operation divorce unless when it becomes absolutely necessary.

2. It creates the problem of a second marriage for the woman in our present day society very few people can be found who would be willing to accept divorced women as their wives. As a result of this mentality, divorced woman have generally to pass their remaining days without getting married. During the time when the Quran was being revealed. Marriage with the divorced women was not considered objectionable, but our present day society considers it otherwise and therefore in the event of a divorce, a woman has to face considerable difficulties.

3. The question of livelihood for the woman crops up .modern civilization has made the problem of housing so difficult that to provide housing accommodation for an individual has become a very difficult manner. the woman may either go to the house of her parents or her brother ,in the big cities where generally an entire family is living only in one room .to make arrangement for the living of one more individual create more difficulties for that family. in addition to this, there is the problem of providing maintenance to the divorced woman, who should providing maintenance for her and how although shariah has placed the responsibility of maintenance on the shoulders of the near relatives, however in the modern society where people have forgotten their duties and have careless about fulfilling their responsibilities, the question of sustaining herself poses a serious problem to the divorced woman.<sup>6</sup>

Therefore Muslims should realize that difficulties are created by divorce in the present day conditions and what harmful effects on the society.

4. If there is a child, then the question of bringing it up is tackled .first of all the separation of the mother and father affects the children psychologically, and besides the problem of facing the children under the mother care becomes disputable.

Islam declared divorce to be an undesirable act.

"To allah the most undesirable thing among the lawful things is divorce <sup>7</sup>..... <sup>8</sup>

Divorce affects the couple economically, mentally, emotionally and physically. Divorce also influences the current and future relationships. Divorce exhibits higher level of depression and anxiety than do individuals who are married, and those divorced also tend to have poorer self-concepts and exhibit more systems of psychological distress compared with those who are married. Divorced women in India suffer emotional problems.<sup>7</sup>

Physical outcomes: divorced individuals also have more health problems and higher mortality rates than married or other non-divorced persons. Divorce exhibits more risk –taking behaviours e.g.elevated rates of drugs and alcohol use and abuse.

Relationship outcomes: Relationships and social networks are influenced in various ways by divorce .divorce individuals generally experience more social isolation and have smaller social networks than do married individuals. In countries where divorce is still stigmatized .social isolation is more extreme. Divorced woman experience discrimination in employment opportunities and future marital conflicts. Relationships affected by divorce and have a significant impact on children.

Most research regarding divorce and its impact on adults has assumed a deficit perspective divorce is bad and has negative effects on families.This result shows negative outcomes. Crossculture studies that investigate the potentially positive effects of divorce that divorce can increase self <sup>9</sup>confidence, self-efficacy, well-being and relief from a bad marriage. Despite variations in the structure and function of families in different countries,divorced is experienced by an increasing number of families. The research literature on divorce's effects on aging parents is not large, and most reports between generations rather than

<sup>6</sup>Article (Talaq when and how Islamic point by Shams Pirzadah)

<sup>7</sup>Muslim Law as applied in India by Dr. R.K. Sinha

8. Muslim Law as applied in India by Dr. R.K. Sinha

9. Right of Muslim Women by Syad Jalaluddin Omari

relationships qualities and how they change over time, nevertheless the existing literature indicates that divorce is a stressful process that effects on divorcing individuals and their children as well as their parents. The divorce process has a stressful beginning, but over a period of time the situation for most stabilized<sup>10</sup>

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### Effect of triple talaq

The issue of 'triple divorce' is regarded as highly sensitive among the Muslims, not only in India but also else where the holy Quran is very cautious in matters of divorce. Three talaqs have to be spaced over a period of 3 months to give husband and wife for reconciliation without the intervention of relatives and friends. moreover talaq can be pronounced when the wife is in a state of tuhur i.e. after menstruation. Yet, despite clear quranic injunctions to the contrary, immediate triple divorce is permitted, destroying marital life in one breath. The practice of triple talaq is wide spread among the Sunni Muslims and has legal validity. Even then the jurists call it a triple talaq (talaq-e -biddat) innovative form of divorce. the dispute has been highlighted by reports of some Muslims instantly by mail, over the telephone, and even through mobile phone text messages. Different theories of divorce prevailing in the contemporary Muslim world and what checks and restraints have been imposed by Islam over the exercise of husband's power of talaq.

The Delhi state unit of the all India democratic women's association argues that not only is the practice of triple talaq is discriminatory and just towards the wife and thus against constitutional principles, and also contrary to Islam. It is only in India that Muslim women have untrammelled freedom to pronounce triple talaq. Muslim women in the personal sphere, as victims of communalism and terrorism, and as a section deprived of basic rights of citizenship. In the Indian context, when one talks of the status of Muslim women<sup>11</sup>, the focus variably falls on triple talaq in one sitting, polygamy, ijab. Triple talaq called to be dangerous triangle.

Women in rural areas are most victimized through violation of the basic rights and also domestic violence with no access to education. most rural Muslim women have no idea about the courts and the laws and even Quran, says about women's rights the need of the hour is to take these cases and help women get their due rights. they become easy victims and run pillar to post when men desert them, dump triple talaq and irresponsibly use polygamy as their birth right.

### Legal and Religious Aspect of 'Triple-Talaq'

In Islam, law cannot be dealt with as a separate aspect from religion. J. Mahmood in *Govind Dayal v. Jnayatullah*<sup>12</sup> held, "it is to be remembered the Hindu and Mohammedan Laws are so intimately connected with religion that they cannot readily be served from each other."

The above judgment is totally applicable in the case of "Triple Talaq" either the three pronouncement should be treated as one revocable divorce or three divorces. For this problem both legal and religious aspect are the same and the two aspect only deal with the problem whether three divorces in single breath should be taken as one or three.

### Position of Triple-Talaq under Basic Source of Islamic Jurisprudence

When the triple divorce is seen in the light of the four basic sources of Islamic jurisprudence, we see that a principle to become a law has to be supported by the Quran, Hadith, Ijma, and Qiyas. If the solution of the problem is given in the Quran it is the final ruling of *sharia*, if there is no clear exposition of it in Quran we examine the traditions of Prophet (PBUH), and if the solution is there it must be taken as rule of *sharia*. If

<sup>10</sup>Book of Divorce (dealing with divorce made easy) by. Leela Kirloskar  
11.a critical appraisal of divorce in Islamic law by nehaluddinahmad(article)

<sup>12</sup>(1895)7 All. 775. 781; 4 Furqan Ahmed, *Truffle Talaq: An Analytical Study with Emphasis on Soda-Legal Aspect* 86 (Regency Publication, New Delhi, 1994).

the problem finds no solution in either of those, we refer to general consensus of opinion or Ijma and if the problem has been solved by Ijma it will also become rule of Islamic Law.<sup>13</sup>

### Role of Indian Judiciary

The view of judiciary on the subject of triple divorce has to be analyzed critically so as to determine how the judiciary has examined the controversy of *triple-talaq* prevalent in the Muslim world.

'Triple Divorce' is recognized and enforced by Indian Judiciary from inception, as early as in 1905 in the case of *Sara Bal v. Rabia Bai*<sup>14</sup> the Bombay High Court recognized 'triple divorce' on irrevocable footing. Further the Privy Council also in the case of *Saztid Rashid Ahinad v.(Mst) Anisa Khatun*<sup>15</sup> recognized 'triple divorce' pronounced at one time as validly effective.

In *Ahmad Giri v. Begha*<sup>16</sup>, the court for the first time counted the role of intention as very important factor in determining the effectiveness of the divorce. However, the court refused to bring about any change in existing form of *talaq-ul-biddat*:

The basic reason for this attitude of the judiciary could be due to the fact that judiciary in British India believed that the Muslims in India have faith that their law is of 'divine' origin, therefore is infallible, immutable and unchallengeable. There was reluctance among the judiciary on the account that a decision should not hurt the feeling of the general Muslim. In spite of realizing the deficiency they could not contribute meaningfully.

But later on a change in trend can be seen in the attitude of the judiciary. Through the study of true Islamic law and writing of many authors like Ameer Au, Yusuf Ali, it was contradicted that the law of divorce in Islam gave arbitrary and whimsical power to husband to divorce his wife. As it has been already mentioned that the true Islamic philosophy of '*Talaq*' as enunciated in Quran reveals that there is no scope of arbitrary and easy divorce in Islam.

### CONCLUSION

Islam is a religion with a very practical outlook. It realizes the importance of institution of marriage but also regards that there can be certain situations and circumstances in which relations between the parties to marriage becomes so strained that, it is not possible for them to continue with such relationship. In Islam though divorce is permissible it is detestable, and should be resorted to only in extreme circumstances which is permitted by the irretrievable breakdown theory of the modern world. So, to eradicate this practice it is necessary that firstly the legislature should take a step forward and make laws in consonance with the true Islamic law of divorce and to follow the precedent of other Muslim countries who have reformed the *triple-talaq* in one form or the other. Secondly it is very important the Muslim community in general should be acquainted with the proper method of divorce. And also to be made aware that resorting to this method of *triple-talaq* is a sin. This can be done by mass education through the medium of press and media. But the most important thing for the evaluation of law is that law should be assessed in a society where it is grown and developed; only then the utility of law can be understood.

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<sup>13</sup> *Supra* note 6 at 41.

<sup>14</sup> ILR (1905) 30 Bom 537

<sup>15</sup> AIR 1932 PC 25.

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