



POLITICS OF TALAQ-RECENT DEBATE

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ABSTRACT:

There are so many religious laws of Islam is made controversial in India, one such is triple Talaq. Interestingly, it may say that it is Islam which first provides the fundamental rights of women in socio-religious life but now it is not followed what actually instructed in the holy books. Different Muslim schools of thought opine differently in case of divorce system.

Recently demand is raised to abolish the Triple Talaq, showing the data on the marital status of Indians. It is argued that among Indian women Muslim women are more divorced due to Triple Talaq system. But what is actually propagating is not the fact in regarding the marital status of Muslim women in India. The present article tried to find out the concept, context and contest of the issue. It also made an attempt to find out the way to meet the problem on more scientific approach.

KEYWORDS: Talaq, shara, Muslim women, Khula.

INTRODUCTION

In Islam, marriage is **contract** between two willing parties and this is done on the basis of shara. Contract may break down (Talaq) in some important circumstances. Talaq means divorce which may be done when two parties or one party are/is not satisfied with each other.

Divorce in Islam is found to be two forms-(a) initiated by the husband called talaq and (b) initiated by the wife called (khula).

Talaq or Khula only may be conducted when one party or both parties disobey their essential duties (farz) stipulated in the Shara. And also it may be happened when one party or both do not like wholeheartedly. Therefore it is important to discuss the duties of husband and wife stipulated in the Shara are as follows;



The duties of husband:

(a) **Mahr:** The foremost financial right of wife over her husband is the mahr (dowry). The Quran states that "And give to the women (whom you marry) their Mahr (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart"¹.

(b) **Accommodation:** She has the right to have secure and comfortable lodging. As in the Holy Quran it says "Lodge them (the divorced women) where you dwell, according to your means".²

¹ . The Holy Quran: Sura al-Nisaa, Chp.4, Verse: 4

² . The Holy Quran: Sura al-Talaaq, Chp. 65, Verse: 6

(c) **Expenditure:** What is meant by spending is providing what the wife needs of food, clothing and other needs. She has the right to these things even if she is rich, because scripture says: “but the father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis”.³, “Let the rich man spend according to his means; and the man whose resources are restricted, let him spend according to what Allaah has given him”.⁴

Allah said in the Quran: “And for them (women) similar to what is upon them according to what is right...”.⁵ Commenting on this verse, Ibn Kathir wrote that the spouses have similar rights upon one another and each must do his or her best to fulfill the other's rights.

In the Farewell Pilgrimage, the Prophet (peace be upon him), stated: “...And beware of Allah concerning women. You have taken them as a trust from Allah and have made their bodies lawful to you by the word of Allah. You have the right upon them that they no allow anyone in your house that you dislike. If they do that, you may hit them in a way which does no harm. They have a right over you for sustenance and clothing according to what is right.”⁶ A woman is even allowed to take from her husband's property without his knowledge if he falls below this basic level of supporting her. In a hadith recorded in Muslim and Bukhari, the Prophet (peace be upon him) told Hind bint Utbah, after she complained that her husband, Abu Sufyan, was stingy and was not maintaining her and she asked if she could take from his property without his knowledge: “Take what is sufficient for you and your child according to what is customary.”⁷

Another hadith also states that when the Prophet (peace be upon him) was asked by a man, “What is the right of our wives upon us?”, he (peace be upon him) answered: “That he should feed her whenever he eats and cloth her whenever he clothes himself, that he not hit her face, that he not call her ugly and that he not boycott her except within the house.”⁸

Duties of wife:

(a) **The obligation of obedience.** Allaah has made the man a qawwaam (protector and maintainer) of the woman by taking care of her just as head of the family. Allaah says: “Men are the protectors and maintainers of women, because Allaah has made one of them to excel the other, and because they spend (to support them) from their means”.⁹

(b) **Making herself available to her husband.** One of the rights that the husband has over his wife is that he should be able to enjoy her (physically). If he marries a woman and she is able to have intercourse, she is obliged to submit herself to him according to the contract, if he asks her. That is after he gives her the immediate mahr, and gives her some time – two or three days, if she asks for that – to sort herself out, because that is something that she needs, and because that is not too long and is customary.¹⁰

(c) **Not admitting anyone whom the husband dislikes.** One of the rights that the husband has over his wife is that she should not permit anyone whom he dislikes to enter his house.¹¹

(d) **To guard his property.** The Prophet (peace be upon him) said: “The best women who have ridden camels are those of Quraysh. They are the tenderest to a young child and guard what their husbands own.”¹²

³ . The Holy Quran: Sura al-Baqarah, Chp. 2, Verse: 233

⁴ . The Holy Quran: Sura al-Talaaq, Chp. 65, Verse: 7

⁵ . The Holy Quran: Sura al-Baqarah, Chp. 2, Verse: 228

⁶ . Sahih Muslim: Hadith No.1218

⁷ . Sahih Muslim: Hadith No.1714 & Sahih al Bukhari: Hadith No.5364

⁸ . Abu Daud: Hadith No.2142, Sahih Abudaud: Albani: Hadith No.1859

⁹ . The Holy Quran: Sura al-Nisaa, Chp. 4, Verse: 34

¹⁰ . Sahih al Bukhaari, Hadith No.3065, Sahih Muslim, Hadith No.1436

¹¹ . Sahih al Bukhaari, Hadith No. 4899; Sahih Muslim, Hadith No.1026

¹² . Sahih al-Bukhari: Hadith No.4794, Sahih Muslim: Hadith No.2527

The mutual rights between spouses: Few rights are owed by Husband and wife to each other.

- (1) To forgive each other's small mistakes.
- (2) To provide emotional support in both happiness and sadness
- (3) To offer each other wholesome advice concerning obedience to Allah. As Allah's statement: "Live with them in kindness."¹³
- (4) To keep each other's secrets. The Prophet (s:) says: "The people of the worst stature with Allah on the Day of Judgment are men who confide in their wives, and wives who confide in their husbands, and then they spread each other's secrets around."¹⁴
- (5) To pass the night with one another. Women must tend to their husband's needs even if they don't feel that need themselves. The Prophet (peace be upon him) said: "If a man invites his wife to his bed and she refuses, and as a consequence he goes to sleep angry, then the angels curse her until she rises."¹⁵

Four important steps have been instructed by the holy Qu'ran before final Talaq

- Mutual understanding (advise them)
- Forsake them in bed
- Strike them {if she refuses to maintain her responsibilities [essential duties (farz)] mentioned above} the husbands are also instructed not strike their wife's face, not abuse her and strike very lightly as any limbs may not harm.
- Appointment of an arbitrator from husband's people and an arbitrator from wife's people
The Quran states that "But those (wives) from whom you fear arrogance – (first) advise them; (then if they persist), forsake them in bed; and (finally), strike them. But if they obey you (once more), seek no means against them. Indeed, Allah is ever exalted and grand. And if you fear a dissension between (the) two of them send an arbitrator from his family and an arbitrator from her family. If they both wish reconciliation, Allah will cause reconciliation between both of them. Indeed, Allah is All-Knower, All-Aware".¹⁶

If all these steps have been failed in vain, then talaq may be done with condition:

Talaq should not be given in the following time and conditions

1. At the time of anger
It was narrated on the authority of Ayesha that the Prophet said: There is no divorce under compulsion (ighlaq).¹⁷
2. At the time of drunkenness
The Quran states that "O believers! Approach not prayer while you are intoxicated, until you have so much sense that what you say, you understand,...."¹⁸
3. At the time of madness
4. At the time of sleeping
The Messenger of Allah said: "The Pen is lifted from three (i.e., their deeds are not recorded): (a) a child until he reaches puberty (b) an insane man until he comes to his senses (c) one who is asleep until he wakes up."¹⁹
5. At the time of menstruation

¹³ . The Holy Quran: Sura al Nisaa, Chp. 4, Verse:19

¹⁴ . Sahih Muslim: Hadith No.1437

¹⁵ . Sahih al Bukhari: Hadith No.3237, Sahih Muslim: Hadith No.1436

¹⁶ . The Holy Quran: Surah al Nisa, Chp. 4, Verse: 34-35

¹⁷ . Abu Dawud: Hadith No.2193 & Ibn Majah: Hadith No.2046

¹⁸ The Holy Quran: Surah al Nisa, Chp. 4, Verse: 43

¹⁹ . Abu Dawud: Hadith No.4403, and Ibn Majah: Hadith No.2041

The Quran states that “O Prophet! When you divorce women, divorce them at their ‘Iddah (prescribed periods) and count (accurately) their ‘Iddah”.²⁰

It is narrated that during the life of Allah's Apostle, Abdullah Ibn Umar had divorced his wife while she was menstruating. Umar bin al-Khattab asked Allah's apostle about that. Allah's Apostle and said, "Order him (your Son) to return her back (to wedlock life) and keep her till she is clean and then to wait till she gets her next period and becomes clean again, whereupon, if he wishes to keep her, he can do so, and if he wishes to divorce her he can divorce her before having sexual intercourse with her, and that is the prescribed period which Allah has fixed for the women meant to be divorced" .²¹

6. by force/ under pressure

The Prophet said (peace be upon him) that God exceeded my Ummah mistake and forgetfulness and what is done under force.²²

Process of Talaq

❖ Sunni Talaq (Proper way)

❖ Bid’ee Talaq (Wrong way)

System of sunni Talaq (Proper way)

(a) In this system talaq may be given continuously for three full menstrual cycles or three months (whose menses stopped or not started), without sexual relation or resume marital life. During this period wife should stay in husband’s house.

(b) After one talaq, if a husband does not give any further (second then third)) talaq and three menstrual cycles or three months are over without sexual relation or resume marital life, then talaq is done. During this period wife should stay in husband’s house.

In case of last talaq system, if the husband and wife are willing to resume they have to remarry.

Instructed by the Holy Quran that “Divorce is twice. Then, either keep (her) in an acceptable manner or release (her) with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep (within) the limits of Allah. But if you fear that they will not keep (within) the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers.”²³

The Holy Quran says “O Prophet, when you (Muslims) divorce women, divorce them for (the commencement of) their waiting period and keep count of the waiting period, and fear Allah, your Lord. Do not turn them out of their (husbands') houses, nor should they (themselves) leave (during that period) unless they are committing a clear immorality. And those are the limits (set by) Allah. And whoever transgresses the limits of Allah has certainly wronged himself. You know not; perhaps Allah will bring about after that a [different] matter. And when they have [nearly] fulfilled their term, either retain them according to acceptable terms or part with them according to acceptable terms. And bring to witness two just men from among you and establish the testimony for (the acceptance of) Allah. That is instructed to whoever should believe in Allah and the Last day. And whoever fears Allah - He will make for him a way out. And will provide for him from where he does not expect. And whoever relies upon Allah - then He is sufficient for him. Indeed, Allah will accomplish His purpose. Allah has already set for everything a (decreed) extent. And those who no longer expect menstruation among your women - if you doubt, then their period is three months, and (also for) those who have not menstruated. And for those who are pregnant, their term is until they give birth. And whoever fears Allah - He will make for him of his matter ease.”²⁴

²⁰ . The Holy Quran: Surah al Talaq, Chp. 65, Verse:1

²¹ . Sahih al Bukhari: Hadith No.4908 & Sahih Muslim: Hadith No. 1471

²² . Ibn Majah: Hadith No. 2045

²³ . The Holy Quran: Surah al Baqarah, Chp.2, Verse: 229

²⁴ . The Holy Quran: Surah al Talaq, Chp. 65, Verse: 1-4

Bid'ee Talaq (Wrong way)

Debate is raised in this case of Bid'ee talaq which is not the proper way of giving talaq in Islam. In this case triple talaq is given at a time. This system of talaq is legal to some school of thought where some schools of thought reject it. Therefore, it is highly controversial to the Muslim scholars.

Muslim Personal Law Board in India moves against the roar raised by this time to eradicate the triple talaq as they think that the process is unconstitutional and encroachment upon the personal rights (as religious freedom) of the Muslim. According to the members of the Board the problem of triple talaq may be solved within the fourfold of Islam. They raised their voice against the system to provide maintenance to wife after divorce, as in Islam marriage is just a contract.

Khula

Khula is the right of a woman in Islam to seek a divorce from her husband. In this system of divorce she should return the Mahr to her husband.

The waiting period (iddah) of a woman who seeks a divorce is one menstrual cycle or one month whose menses stopped.

Marital Status: Per 1,000 married people in India

Religion	Widowed	Separated	Divorced
Hindu	88.3	5.5	1.8
Muslim	72.7	4.8	3.4
Christianity	9.4	3.9	13.3
Sikh	88.2	4.2	2.8
Buddhist	100.3	9.5	4.3
Jain	79.6	3.1	2.6

Source: Census 2011

Separation & Divorce Status: Per 1,000 married people in India

Religion	Separation	Divorce	Total
Hindu	5.5	1.8	7.3
Muslim	4.8	3.4	8.2
Christianity	3.9	13.3	17.2
Sikh	4.2	2.8	7
Buddhist	9.5	4.3	13.8
Jain	3.1	2.6	5.7

Source: Census 2011

CONCLUSION

It may conclude that the triple talaq system is not the proper way to divorce Muslim women. But unfortunately a very few Muslims unknowingly follow which is raised to propagate as the main feature of Islamic way of divorce and Quranic way of talaq is shadowed under it. The media and politics made it very much crucial point rather than other important problems like backwardness of Muslim women, empowerment of minority women etc. It makes understand that Muslim women are oppressed only by triple talaq, they do not have any other problems only affected by religious bigotry and conservatism. It is not Islam, but unfair practice of the Muslim people made the condition worst. It may be solved if the Islamic shara is properly followed.

Compare with other religious community, it may be said that tripe talaq is not the problem of Muslim women in India. The above census report is clearly indicative in this direction. Moreover, it may state that if proper way and methodology is followed the rate of divorce must be reduced considerably.

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