

**Topic: Triple Whammy**

Topic  
Introduction

The egregious practice that many **Muslim men employ to divorce** their wives instantaneously and **without their consent**, merely by uttering the word ‘**talaq**’ **thrice**, was rendered **legally invalid** by the ‘*Shamim Ara vs State of U’P*’ judgment of 2002 and subsequent orders from various High Courts. But this has not stopped the practice; many Muslim women are unaware of the judgments or have had to accept such pronouncements owing to pressure from conservative sections. Many women have undergone severe trauma after being thrown out of their homes. The conservative **All India Muslim Personal Law Board (AIMPLB)** that seeks to wield influence on questions of Muslim personal law has, predictably, found it an occasion to air its regressive views on the issue. In a counter-affidavit, the Board has defended the practice in terms that are **shocking** even by its own standards. It claims that the custom is a way out to avoid long-running court proceedings and that, in the absence of triple talaq, a husband may resort to murdering or burning alive his wife because of the time-consuming legal proceedings that might otherwise be involved. It further claims that “**Indian society is patriarchal**”, and that “personal laws of all communities are aligned with the patriarchal notion”. It defends the right to grant divorce to the husband alone, “Because men have greater power of decision making” and uses a dubious line of argument on gender ratio to justify the practice of polygamy.

The AIMPLB, **a body with no legal status**, has long argued that divorce under Islamic law is undesirable and that triple talaq is a sin; however, it maintains it is a valid and effective form of laying a marriage asunder. *In truth*, there is no sanction for the triple talaq in the Koran, which has laid down elaborate injunctions on divorce, in stark contrast to the immediate and irrevocable nature of the triple talaq. This practice has been either explicitly derecognized in Muslim-majority countries such as Indonesia, Iran and Tunisia or implicitly in countries such as Pakistan, which provides for a **mandatory arbitration** procedure after the pronouncement of talaq. The Supreme Court must not be swayed by the arguments put forth by the AIMPLB, which has held that “personal laws cannot be challenged”. Considering the clear and elaborately laid-down norms on marriage in the Koran that grant **equal rights to the husband and wife** to pursue divorce proceedings and the right to equality guaranteed in the Indian Constitution, it is high time that the Supreme Court ruled this practice as illegal. The Court took note of "an important issue of **gender discrimination**" against Muslim women. "There is no safeguard against arbitrary divorce and second marriage by her husband during currency of the first marriage, resulting in denial of dignity and security to her", the Bench ordered. The SC on an earlier occasion observed that, "practice of polygamy is injurious to public morals and can be superseded by the State as just as practice of 'Sati'".

**Key Questions before SC**

The major question is whether to **review this matter in the light of the Constitution or within the framework of whether triple talaq constitutes an essential religious practice**. Taking up the Constitution question will raise the broader question of all practices under several religious laws of marriage and inheritance, a lot of which may be seen as not being strictly in conformity with the Constitution.

The SC is well aware that once a Bench decides that a practice seen inside personal law is violative of the Constitution, it opens a '**Pandora's box**' for a range of unconventional and apparently other unconstitutional elements from other personal laws to go. Hence the SC has asked the All India Muslim Personal Law Board on **17 May 2017**, if it was possible to include in the '**Nikahnama**'(Marriage Contract) a **provision enabling Muslim women to say 'NO' to triple talaq**. SC asked-" Is it possible to pass a resolution to all 'Qazis' to include this condition (giving right to women to say 'no' to triple talaq).

### **The stand of Centre**

The AG representing the Centre said, the issue was not about majority versus minority, but about **men versus women**. He argued-" this is an intra- minority tussle between men who have been dominant over ages, have been the breadwinners, and women who have been weak". He further contended that - "Court is the guardian of fundamental rights of our citizens. None of us are ecclesiastical, hence test is on Constitution. As far as the Hindus Laws are concerned practices like **Sati, untouchability and Child marriage** have been done away with. However the CJI pointed out that this was done by way of legislation and not through any judgment. The AG argued-" the Court cannot say there is no legislation, so we are powerless."

### **Religious Interpretations**

CJI quoted a religious book, in this context and remarked-" Anything "**biddat**" is sinful. You recite in every Friday prayer that "**talaq-e-biddat is a great sin**". **Biddat refers to anything which was not originally part of the Quran** but was added by scholars who interpreted it. Mr. Kapil Sibal, who represented the Muslim personal Law Board argued that only a ' minuscule portion ' of Muslims currently practice triple talaq but challenging its constitutional validity could even lead to a backlash in the community which may seek it as **an infringement on its rights**. Consequently they would end up supporting practices like polygamy and triple talaq. Meanwhile the influential Muslim organization, **Jamiat Ulma-i-Hind** has taken a stand at variance with that of All India Muslim Personal Law Board that triple talaq is part of the Koran. According to them it is included in the **Hadith and both Koran and Hadith are authentic sources** of Islamic jurisprudence. It was argued at SC that **Verse no- 230 of Chapter Baqra of the Holy Koran** has been cited as a reference to triple talaq. Hadith essentially is a compilation of actions, habits etc., of Prophet Mohammed that is taken as a precedent in determining Muslim personal laws.

### **Stand taken by Muslim Community**

AIMPLB told SC on 18 May, 2017 that it would enable Muslim brides to include in the 'Nikahnama' a provision allowing them to say NO to triple Talaq. The Board further announced-" We will send an **advisory to all 'Qazis'** stating that they should **avoid instant triple talaq**. However, on 30 March 2017, Dar ul Uloom the leading Islamic Seminary , considered one of the most prestigious after Cairo based Al Azhar, issued a '**fatwa**' that as part of the nikahnama, it would be '**durust**' (**proper**) to incorporate the condition that the woman will never be given an oral and instantaneous triple talaq."If it is uttered thrice at one sitting, it would be correct to treat it as one utterance'. Moreover, **enhanced Alimony** could be seen as a disincentive for breaking this clause, eg; of **Rs 50,000/- may be deemed multiplied 10 times, upto Rs 5,00,000/-** in case the condition is violated.

## **Conclusion**

Justice Sohail Aijaz Siddique, former Chairman of the National Commission for Minority Educational Institutions, is of the view that-"It is important that the issue gets resolved without allowing for dragging all Muslim practices in the dock and trying to isolate them as violative of the Constitution and good sense". Although, the decision makers should expand the horizon of their beliefs and culture, explore different social and marital structures in other religions and countries, finding a well rounded solution that would secure the sanctity of the Muslim marriage. An in-depth and practical scrutinizing, free of orthodox perceptions but enriched with original Islamic faith is needed to fathom this practice of triple talaq. More than a religious debate, it calls for a family planning summit on the Islamic leaders and Qazis.

### **Read further:**

<https://www.quora.com/What-is-this-triple-talaq-issue-all-about>

<http://www.livemint.com/Politics/1a11a8yQxmyuAjDDNKhGJ/The-thorny-issue-of-triple-talaq.html>

<http://timesofindia.indiatimes.com/india/triple-talaq-matter-of-faith-like-ramas-birth-place-muslim-board/articleshow/58703291.cms>

<http://timesofindia.indiatimes.com/india/cleric-triple-talaq-is-a-mockery-of-islam/articleshow/58602245.cms>