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TALAQ-UL-BAIN (TRIPLE TALAQ) – AN OVERVIEW¹

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ABSTRACT:

“When you divorce a woman and they fulfill the term of their iddat, either take them back on equitable terms or set them free on equitable terms, but do not take them back to injure them or to take undue advantage, if anyone does that he wrongs his own soul.”²

Muslim Law is purely based on the concept of saving marriage rather than breaking it and even utterance of the word talaq is considered as sinful in the Muslim community. If parties to the marriage are unhappy then marriage can be dissolved by talaq. The unilateral power of one partner (husbands) under Islamic law for the dissolution of marriage makes talaq different from the divorce, where both partners have the right to dissolve a marriage. Holy Quran and sharia laws have clear provisions regarding talaq where three talaqs to be spaced over a period of three months, to give husband and wife a chance to reconcile with the intervention of relatives and family members. Moreover, it can be pronounced only when the wife is in the state of tuhr (purity).

Talaq-ul-Bain is considered as harsh as well as highly sensitive where the third talaq will constitute Talaq-ul-Bain which is irrevocable. Pronouncing talaq in single breath or instant talaq is not permissible by the Holy Quran or by Prophet Mohammed thus making it sinful and forbidden form of Divorce. Despite clear Quranic provisions, triple talaq is misused and the wrong perception of people, who are pronouncing it through phones, emails etc., and hence destroying marital homes instantly. Muslim Personal Law Boards and relevant authorities shall look into the complexity of the issue of instant talaq and hence bringing in the strict following of the provisions under Holy Quran, which can only be achieved by collective efforts from all the Muslim groups and not to mold the provisions of talaq under Holy Quran for their own benefits.

INTRODUCTION: Islam with 1.8 billion followers known as “Muslims” has evolved as one of the greatest religion. The term “*nikah*’ or marriage in Islam is a contract between husband and wife in which the underlying permanent relationship between both based on mutual consent. Marriages under Islamic law is both contractual as well as a sacrament,

² Holy Quran Chapter 2; verse 231 pg.1

whereas dissolution of marriage a *sin*. Islam disapproves divorce to great extent and lays down a proper procedure for dissolution if at all needed. Pronouncing of *talaq*, in one sitting is alien to the Islamic laws. According to Prophet Muhammad pronouncing of *talaq* one sitting be it one time or hundred times will be considered as one. Nevertheless, wrong practices of “*triple talaq or talaq in one go*” are still prevailing from the time of ignorance to modern times.

DIVORCE IN ISLAM: “Talaq” the word denotes repudiation or dissolution of marriage in Muslim law. Initially, no marriage is solemnized to break, but unfortunate circumstances, the communication gap between husband and wife lead to it. Financial aspects or various other reasons results in dissolution of the marriage. Muslim law does not support the breach of marriage contract or dissolution of marriage and insists upon the continuity of marriage. According to Prophet Muhammad among the things permitted by law, divorce is the worst. And hence it must be avoided and not encouraged. But sometimes it's unable for both the parties to continue with the union of marriage, hence making them opt for the dissolution.

FORMS OF DIVORCE UNDER MUSLIMS LAWS:

There are two categories for divorce under Muslim law.

- 1) Judicial
- 2) Extrajudicial

JUDICIAL CATEGORY: Under Judicial category, divorce can be granted by the court of law, by obtaining a decree for dissolution of marriage by women under the Dissolution of Muslim Marriage Act, 1939. Section 2 of Dissolution of Muslim Marriages Act, 1939 entitles a woman to obtain a decree of divorce for dissolution of marriage under following grounds:

- a) Whereabouts of a husband not known for four years.³
- b) Husband failed to provide maintenance for two years.⁴
- c) Husband sentenced to imprisonment for a period of seven years or more.⁵
- d) Husband failed to perform, without reasonable cause marital obligations for a period of three years.⁶

³ Section 2(i)

⁴ Section 2(ii)

⁵ Section 2(iii)

- e) Husband was impotent at the time of the marriage and continues to be so.⁷
- f) The husband has been insane for the period of two years or suffering from leprosy and any virulent venereal diseases.⁸
- g) That she got married before the age of 15 years and she repudiates the marriage before attaining the age of 18 years.⁹
Provided that the marriage has not been consummated;
- h) Husband treats her with cruelty¹⁰.
- i) Or any other grounds which is recognized as valid for dissolution of the marriage under Muslim Law.¹¹

In *Itwari vs Smt. Asghari And Others*¹² Allahabad High Court have observed that Indian Laws does not recognize various types of cruelty like “Muslim”, “Hindu” or so and that the test of cruelty is based on universal and humanitarian standards; that is to say, conduct of the husband which would cause such bodily or mental injury to wife which endangers her safety and health.

EXTRAJUDICIAL: This type of *talaq* is further classified into:

- a) TALAQ E AHSAN:** Considered to be the most proper form of talaq, talaq e ahsan a single pronouncement by the husband to wife following her three mensurational cycles or 90 days of iddat period. Talaq e ahsan is revocable; however, the third pronouncement of such talaq makes marriage dissolute. The time gap between three menstruations is given to husband and wife to reconcile either among themselves or with the help of relatives.
- b) TALAQ E HASAN:** It is pronounced in the same manner as talaq e ahsan, but in three successive pronouncements in a period of three months. If after two pronouncements or first there is resumption of cohabitations then the marriage stands

⁶ Section 2(iv)

⁷ Section 2(v)

⁸ Section 2(vi)

⁹ Section 2(vii)

¹⁰ Section 2(viii)

¹¹ Section 2(ix)

¹² A.I.R. 1960 All 684 (India).

unbreakable and it's not revoked, if not marriage stands dissolved. Muslims regards talaq e hasan as the proper form.

- c) **TALAQ E BIDAT:** Considered as the most irregular and is irrevocable. Three simultaneous pronouncements of the word talaq at the same time making the marriage dissolved between husband and the wife. And the divorce is effective forthwith.

Talaq by mutual consent between both the spouses called Mubarat. In this form of divorce, both husband and wife can be free from the concept of marriage by mutually agreeing to the same.

Khula is another form of divorce where the wife asks for the dissolution of marriage from the husband and claiming maintenance for her and her children if any during such period and after that.

CONCEPT OF TRIPLE TALAQ: Surah al Baqarah verse 227-230 explains well about the concept of the divorce under Islamic law. Pronouncement of the talaq three times or 15 times at a time will be considered as a single pronouncement only. Pronouncing talaq talaq talaq at one go or by messaging does not make marriage dissolved under the Islamic law and considered as Bidat. Prophet Muhammad quoted that “among all lawful things divorce is the most hated one by Allah”. The concept of the spontaneous talaq is alien to the Islamic laws and there's no verse in the Holy Quran which says that instant talaq is valid or accepted.

CONCEPT OF TALAQ UNDER HOLY QURAN: As per the verse in Surah Baqarah the act of divorce has to happen on three separate occasions. And according to most of the Muslim clerics divorce given under verge of anger is not binding.

Verse 227 explains as to the concept of talaq as, if they decide upon divorce, then Allah is a knower and all hearer¹³.

¹³ Holy Quran Chapter 2; verse 227.

Verse 228: It explains that divorced women shall wait {about their marriage} for three menstrual periods, and it is not legal for them to camouflage what Allah has formed in their wombs if they believe in Allah and the last day. It is also mentioned that their husbands have the superior right to take them back in that period if they wish for reconciliation. And they (women) have privileges (over their husbands as regards living expenses) alike (to those of their husbands) over them (as regards obedience and respect) to what is sensible, but men have a degree (of responsibility) over them. And Allah is Almighty, All-wise¹⁴.

Verse 229: When divorce is pronounced the second time either husband takes her back in marriage or releases her with kindness. Mahr given during this period cannot be taken back by the husband unless both think it's unable for them to keep limits ordained by Allah on them¹⁵.

Verse 230: Third pronouncement of the talaq makes dissolution of marriage complete, and the wife will no longer be lawful for her husband until she marries again to another person and divorces him to remarry her first husband¹⁶.

As per the above-mentioned verses from the Holy Quran, it reveals that nowhere it is mentioned that a husband can divorce her wife by pronouncing talaq in one sitting hence making it invalid according to the provisions. Despite clear Quranic provisions, triple talaq is misused and the wrong perception of people, who are pronouncing it through phones, emails etc., and hence destroying marital homes instantly.

MUSLIM PERSONAL LAWS: Shariah and Islamic Laws are part of the Muslim personal law. In turn personal law dealing with the affairs of the community professing Islam governed by Muslim Personal Law (Sharia) Application Act, 1937 with the aim to formulate Islamic Law for Muslims. And it deals with marriage, succession, charities, inheritance etc. The Dissolution of Muslim Marriage Act, 1939 deals with the dissolution of marriage by Muslim women. The Muslim Women (Protection of Rights on Divorce) Act, 1986 deals with the rights of the Muslim women divorced by their husband and the matters connected

¹⁴ Holy Quran Chapter 2; verse 228.

¹⁵ Holy Quran Chapter 2; verse 229.

¹⁶ Holy Quran Chapter 2; verse 230.

therewith. The above laws are not applicable to those Muslims who have married under the Special Marriage Act, 1954.

SUPREME COURT ON TRIPLE TALAQ ISSUE: Supreme Court in page no 395 verdicts by a majority of 3:2 in *Shayara Banu vs Union of India & Others*¹⁷ after due consideration, held talaq e bidat or triple talaq as arbitrary hence “Unconstitutional”, “Illegal” and “void”.

MAJORITY VIEW: Justice Kurian Joseph, Justice Lalit and Justice Nariman delivered the majority judgement. Justice Kurian quoted “no Constitutional protection can be granted to the concept of Triple Talaq, as it is against the tenets of the Holy Quran”. And what is held to be bad in Holy Quran cannot be good in Shariah, and in that sense what is bad in theology is bad in law as well.

According to Justice Nariman, it is manifestly arbitrary, unreasonable and contrary to the rule of law and would violate Article 14 of the Constitution. Further continuing with his judgement Justice Nariman quoted “divorce breaks marital tie which is fundamental to family life in Islam. Not only it disrupts with the family tie between man and woman, but it has severe psychological and other repercussions on the children from such marriage”.

MINORITY VIEW: According to Justice Khehar practice of talaq e bidat is constituent of personal law and hence has a stature equal to other fundamental rights conferred under part III of Indian Constitution, Article-25 (freedom of religion), Article-14 (right to equality), Article-15 (prohibition of discrimination) and Article-21 (right to life), hence not violative. Further continuing with his statement Justice Khehar quoted “the practice which is existence and accepted by all for over 1400 years cannot, therefore, be set aside, on the ground of being violative of the idea of the Constitutional morality, through judicial intervention. Improvements to ‘personal law’, in India with an orientation to publically unacceptable practices in dissimilar religions, have come only by way of legislative interference”.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE), BILL 2017: After Supreme Court’s verdict on triple talaq a bill was

¹⁷ (2017) 9 S.C.C. 1 (India).

formulated and introduced in Parliament by the name The Muslim Women (Protection of Rights on Marriage), Bill 2017, which was passed by Lok Sabha on 28 December 2017.

HIGHLIGHTS OF THE BILLS:

- a) It made instant talaq illegal and void, be it any form spoken, written, electronic means like email, WhatsApp or any other manner whatsoever.
- b) Defining talaq e bidat as this is pronounced by Muslim men resulting in instant and irrevocable divorce.
- c) Declaration of instant talaq was made a cognizable and non-bailable offence with an imprisonment of 3 years and fine for Muslim men pronouncing it.
- d) Entitled divorced Muslim women maintenance from their husband by giving her the power to approach a magistrate for the same.
- e) Bill ensured gender justice for married Muslim women helping them maintaining their fundamental rights.

SUPREME COURT ON UNIFORM CIVIL CODE: Supreme Court declined to intervene into the sensitive issue over the desirability of bringing in the Uniform Civil Code as envisaged under Article 44 of the Constitution leaving the matter to the parliament and excluding judiciary from taking any initiative. Supreme Court further held that judicial door is open to the women victims of instant talaq for them to question the validity of the divorce procedure under Muslim Law, and the court will see if there's any violation of the fundamental rights. While dealing with the Public Interest Litigation filed by activist Ashwini Upadhyay, a bench comprising of Justice T.S.Thakur, A.K.Sikri and Bhanu Mati stated "while an individual's right to judicial remedy is clear enough, yet no Muslim women have challenged triple talaq on the grounds of discrimination".

Supreme in another instance clarified that "we will not debate on Uniform Civil Code and we will only concentrate and determine the issue whether it is linked to Constitutional rights".

CONCLUSION: Holy Quran itself explains that there's no concept of instant talaq mentioned anywhere in it and its alien to Islam. Talaq-ul-Bain or Triple Talaq is considered as harsh as well as highly sensitive where the third talaq will constitute Talaq-ul-Bain which

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is irrevocable. Despite clear Quranic provisions, triple talaq is misused and the wrong perception of people, who are pronouncing it through phones, emails etc., and hence destroying marital homes instantly. Muslim Personal Law Boards and relevant authorities shall investigate the complexity of the issue of instant talaq and bring in the strict following of the provisions under Holy Quran, which can only be achieved by collective efforts from all the Muslim groups and not to mould the provisions of *talaq* for their own benefits. It violates provisions of Holy Quran and Indian Constitution too and hence, to be governed accordingly.