

Female-instigated divorce (Khula) and Debate over Triple Talaq (Divorce) in Muslim Society

¹AbdusSagir Ahmed

ABSTRACT:

Women are half of the society. Women's contributions to the society is no less than that of the men. But women have been being deprived of their legitimate rights in every aspect of the society since time immemorial. Women cannot enjoy the rights as the men can enjoy. Besides, women have been victim of many injustice. One among them is that Muslim women keep being subject to divorce at any point of time due to practice of triple Talaq. It is pertinent to mention here that the relationship between men and women is deemed to be divine. They build their marital relationship according to religious rules and also break up accordingly. Breaking up of the relationship in standard language can be called 'Divorce' and the rules for divorce vary from religion to religion. For instance, women have no right to divorce in many of the religions. On one hand, Islam has granted men and women right to divorce alike. Muslims practice many forms of Talaqs. One of the Talaqs Muslims practice is Talaq-e-biddat or instant triple Talaq. It has created a lot of controversy in the Muslim society, particularly in Indian Muslim society i.e. mostly it's practiced by Indian Muslims. It is noticed that triple Talaq results in the severe suffering of women. Practice of triple Talaq is also a violation of Quranic rules. The objectives of this paper is to discuss the Muslim women's right to divorce and ongoing Debate over Triple Talaq (Divorce) in Indian Muslim Society in the light of Islamic texts. The discussion will be based on the Quran and authentic prophetic traditions.

Keywords: Right to divorce, Muslim woman, Quran, Triple Talaq, Islam, Divorce

I. Introduction:-

Women are the integral part of the society. The role played by them in the society is in no way less than that of men. Although women have the tremendous contribution to the society, they have been suffering from some demeaning and crippling problems like female infanticide, dowry system, unequal treatment in the society, sexual harassment, domestic violence, no right to divorce and so on. Right to divorce at the time of being incapable of living together with spouse is one of the fundamental rights of women but some societies and religions don't allow women to enjoy this right. In the absence of right to divorce, sometimes women have to undergo oppressive situations in their conjugal lives. Islam, the religion believing in equality and peace doesn't tolerate any form of oppressions nor it allows anyone to involve in it. With a view to avoid such situation Islam has granted women right to divorce. Divorce instigated by women is called 'Khula. It can be translated into English as female-instigated divorce. But in reality Indian Muslim women have been deprived of right to Khula divorce and on the contrary they are constantly being victim of triple Talaq.

¹ Research Scholar, Department of Arabic, Gauhati University

Definition of Khula(Female-instigated Divorce):

The Arabic word “Khula” lexically means to take off. In the phraseology of Islamic jurisprudence, Khula’ means ‘the separation of wife from her husband in return for a payment.’ⁱ The husband takes the payment and lets his wife go. So, Khula is the divorce taken by wife by giving a certain amount of ransom to husband. But in the Indian Muslim society a belief is doing the round that a woman can’t seek divorce nor she can divorce her husband directly. This belief is totally anti-Islamic and is condemnable.

Khula in the light of Quran and Hadith:

Legitimacy of Khula is proved by the texts of Quran and Hadith. In the holy Quran Allah said, “*And it is not lawful for you to take anything of what you have given them (wives) 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.*”ⁱⁱ This verse is quoted as an evidence (Daleel) for the legitimacy of Khula.

There are many Hadiths (Prophetic Traditions) as well which imply the legitimacy of Khula. Narrated Ibn `Abbas (RA): The wife of Thabit bin Qais came to the Prophet (PBUH) and said, “*O Allah's Messenger (PBUH)! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in un-Islamic manner (if I remain with him).*” On that Allah's Messenger (PBUH) said (to her), “*Will you give back the garden which your husband has given you (as Mahr)?*” She said, “*Yes.*” Then the Prophet (PBUH) said to Thabit, “*O Thabit! Accept your garden, and divorce her once.*”ⁱⁱⁱ This are the evidences based on which Muslim women are enjoying their right to divorce. But the retrogressive hard-line Indian Muslim clerics spread the notion that women can’t seek divorce. The common Muslims blindly believe the clerics. As a result women suffer pathetic married life.

Legitimate Reasons for seekingkhula:

A Muslim woman can ask for Khula if she dislikes her husband’s treatment of her – for example, he is over-strict, hot-tempered or easily-provoked, or gets angry a lot, or criticizes her and rebukes her for the slightest mistake or shortcoming, then she has the right of khula’. If he deprives her of her rights of spending on her maintenance, clothing and other essential needs, when he is unable to provide these things, then she has the right to ask for khula’. If he does not give her her conjugal rights and thus keep her chaste because he is impotent (i.e. unable to have intercourse), or because he does not like her.^{iv}

One Hadith from SunanAbiDawud should be mentioned here. Narrated Thawban: The Prophet (PBUH) said: *If any woman asks her husband for divorce without some strong reason, the odour of Paradise will be forbidden to her.*^v Similarly, this applies to man as well. A man either can’t divorce his wife without any strong legitimate reasons.

Ransom for Khula:

In Khula, the wife has to pay a certain amount of ransom to the husband. Now a question arises how much ransom can be sought by the husband. The answer is husband can seek only the obligatory bridal-money (Mohr) given by him to his wife at the time of marriage. In this case the following hadiths should be noted.

It was narrated from Ibn 'Abbas that: JamilahbintSalul came to the Prophet (PBUH) and said: “*By Allah, I do not find any fault with Thabit regarding his religion nor his behavior, but I hate disbelief after*

becoming Muslim and I cannot stand him. "The Prophet (PBUH) said to her: 'Will you give him back his garden?' She said: "Yes." So the Messenger of Allah (PBUH) told him to take back his garden from her and no more than that.^{vi}

So it's clear that the husband can't take more than bridal money that he has given to his wife at the time of marriage. But Islamic jurists are not unanimous in this case. They are of different views, the Hanafi School of Fiqh believes that if the reason of separation is due to the husband then the husband can't seek anything.^{vii} Because wife is compelled to seek Khula. Secondly, in general women are not allowed to earn money outside home and they have less opportunities in compare to men in earning money and have less share in inheritances. Based on these conditions, it can be said that if men are allowed to take more than bridal money, women will not be able to take Khula at all and will keep being suffered and also it can be thought that men will seek unreasonable amount of ransom. Besides, there is not a single evidence in both Quran and Sunnah to justify more ransom than bridal money. The prophet (PBUH) said, "You will get a reward for whatever you spend for Allah's sake, even for what you put in your wife's mouth."^{viii} It is said in one of the Hadiths recorded by Abu Dawud that the prophet said, "One who gives a gift and then takes it back is like a dog which eats and vomits when it is full, then returns to its vomit."^{ix} Although the Hadith is irrelevant to Khula, it seems to be relevant. However, if the wife seeks Khula without any legitimate reasons then the husband may have permission to seek more ransom.

Controversy on triple Talaq:

The status of woman as a wife in Islam can be understood best from the following two prophetic traditions. It was narrated from Abdullah bin Amr that: the Messenger of Allah said: "This world is but provisions, and there is no provision in this world better than a righteous wife."^x It was narrated from Ibn 'Abbas that: The Prophet said: "The best of you is the one who is best to his wife, and I am the best of you to my wives."^{xi} It is said that the most hated of permissible things to Allah is divorce and if a Muslim man truly believes in the Quran and hadith, he will never try to divorce his wife instantly. But in marital relationship for misunderstanding both man and woman face some critical situations which ultimately make them take recourse to divorce. Triple Talaq practiced by Muslims is very controversial topic in Islamic scholarship, especially in Indian subcontinent because it is widely practiced by Muslims in India and it has made many women children orphan. Triple Talaq has been a subject of debate since a long time. This illogical divorce has jeopardized married life of Indian Muslim women to a great extent.

Definition of Triple Talaq:

Triple Talaq is the Talaq by which a man can divorce his wife just by instantly uttering the word "Talaq" (divorce) three times in oral or written form to his wife. It's also known as 'Instant triple Talaq', and 'TalaqBidah'. It can be exemplified as the husband said to his wife, "I have divorced you! I have divorced you! I have divorced you!" After this it's believed that three irrevocable divorces has occurred and the wife has become prohibited for the husband. Thus, by triple Talaq men are able to divorce wives in a single second irrespective of situations. This is the concept of triple Talaq in a nutshell.

Characteristics and Consequences of triple Talaq:

On the basis of the above definition of Triple Talaq the following characteristics can be pointed out.

1. It's Instantaneous and impulsive. The husband doesn't think of its consequences. He divorces without thinking carefully about it.
2. It occurs at anger. Generally, triple Talaq is done by men at the time of anger. That's why it's the result of anger.
3. There is no chance for consultation. The husband and wife should talk about the problems but triple Talaq doesn't allow them to do so.
4. Triple Talaq is a tool to oppress women. It's used by men as a tool to oppress women. Sometimes men threaten women with triple Talaq.
5. It Ruins a family in a moment and paves the way for 'NikaheHalalah'^{xii} by which women are compelled to involve in fornication.
6. Triple Talaq is misused as it is the unilateral right of men. Sometimes men unnecessarily use it to marry another woman as a Muslim man can marry upto four women.
7. Triple Talaq jeopardizes and risks the lives of women. Women don't know when misfortune will come down to them. At any point of time women can be divorcee. That's why triple Talaq is a misfortune.
8. Triple Talaq is one of the reasons divorce rate is increasing in Indian Muslim society.
9. It occurs unilaterally. Triple Talaq allows Men to divorces women unilaterally. Woman don't get the opportunity to know what her fault is.
10. Triple Talaq is against the principles of civilized society. It's an injustice against women. Women are innocent victims of triple Talaq.

Triple Talaq in the light of Quran and Hadith:

After being familiar with the definition, characteristics and consequences of Triple Talaq, it can be undoubtedly said that triple Talaq is barbaric draconian illogical form of divorces. Questions arise, is triple Talaq allowed in Islam? Is it permissible according to Quran and hadiths? Now let's see what Quran says about Talaq.

All the men and women are not perfect and all can't behave in a good manner all the time. Sometime for a mild mistake strife can be taken place. What should husband and wife do at that time? Allah answered to this question in the Quran, *"If you fear a breach between the two (Husband and wife), appoint an arbitrator from his family and an arbitrator from her family. If they wish to reconcile, Allah will bring them together. Allah is Knowledgeable, Expert."*^{xiii} Thus, Allah is commanding to appoint arbitrators to discuss and extinguish the burning fire of the strife. This is the way to settle the dispute between husband and wife. But in triple Talaq discussion to settle the dispute is impossible as it happens suddenly and unilaterally at anger. So, it's the absolute violation of the Quranic verse and we know that violation of Quranic rules is prohibited.

And if husband and wife fail to continue their marital life after discussing the apple of discord between them then they can separate from each other but not through triple Talaq. The husband should divorce his wife as he is ordered to do. Allah Said in the Quran. *"O Prophet! If any of you divorce women, divorce them during their period of purity, and calculate their term. And be pious before Allah."*^{xiv} By this verse it is clear that men have to divorce women in their period of purity (non-menstrual days). If a man wants to divorce his wife three times then he have to divorce one by one in three consecutive period of purity.^{xv} This means the wife should be in her purity and the husband have to pronounce one divorce in one period of purity, and this way if he wishes

he can complete remaining two divorces. Divorcing this way is called divorcing in Iddah. According to most of the scholars men can divorce their wives by one Talaq. For example, if a man wants to divorce his wife he should give one divorce and his wife will be prohibited for him after three months from the day he divorced her and within that three months if he wishes he can take her back without new marriage. This is the process of divorce prescribed in the Quran. It should be noted here that divorce during menstrual period is not valid. Imam Bukhari has recorded a hadith where it is said that Ibn Umar divorced his wife while his wife was menstruating then the prophet (PBUH) was asked about it then he got angry and ordered to divorce her in her purity.^{xvi} Based on this, jurists are of view that divorce during menstrual period is not valid. Now questions arise, is it possible to divorce women in their period of purity in the process of triple Talaq? Triple Talaq happens in one second and period of purity comes once a month. To deliver three divorces a man needs three months but, how is it possible to do that in one second? Isn't it contradictory to the Quran, the constitution of Muslims? So, according to the above verse triple Talaq is invalid.

Men are also asked to appoint two pious witness at the time of divorce. Allah said in the Quran, "*Then, when they are about to reach their prescribed term, keep them with kindness or put them away with kindness, and call to witness two just persons from among you; and bear true witness for Allah.*"^{xvii} Regarding witness at the time of divorce jurists are of different views. Some say witness is compulsory on the other hand some say witness is not compulsory. But most accepted and accurate view is that witness is compulsory. But how is it possible to appoint witness in triple Talaq when it occurs in a moment instantly? If triple Talaq is valid, doesn't it contradict the holy Quran? How can a Muslim believe in something which goes against the Quran which is above all legislative texts for a Muslim? And this verse is clearly denoting illegitimacy of triple Talaq.

Beside this, divorce by three pronouncements was made a single one as the prophetic tradition shows: *Tawus said: Abu al-Sahba' said to Ibn Abbas: Do you know that a divorce by three pronouncements was made a single one during the time of the Prophet (PBUH), and of Abu Bakr and in the early days of the caliphate of Umar? He replied: Yes.*^{xviii} This Hadith (prophetic tradition) has been narrated by a lot number of Hadith narrators. There is no doubt in the authenticity of this Hadith. Based on this Hadith it is said that triple Talaq is invalid not only according to Quran but also according to Hadith.

One thing should be clarified here that there are few hadiths which ambiguously denotes legitimacy of triple Talaq. Now questions come to mind, what should be done with those Hadiths? The answer to this question is triple Talaq is invalid in the light of Quran and authentic Hadiths. All the scholars are unanimously believe that according to Quran triple Talaq is not valid. Secondly, it also goes against authentic hadiths as mention earlier. If we ignore Quran and authentic Hadiths and believe in the validity of triple Talaq depending on some ambiguous texts of Hadiths and Fatwa (Legal opinion) of hardline clerics, then Quran and authentic Hadiths remain meaningless. Allah Said in the Quran, "*O you who believe! Obey Allah and obey the Messenger and those in authority among you. And if you **dispute over anything**, refer it to **Allah** and the **Messenger**, if you believe in Allah and, "the Last Day. That is best, and a most excellent determination.*"^{xix} And the dispute and controversy of triple Talaq lie on Hadith not on the Quran and when the dispute is on the hadith so, ultimately Muslims have to go to Quran and according to Quran triple Talaq is invalid. So, the problem is solved.

Triple Talaq is against the Maqasid of sharia (Purpose of Shariah). One of the purposes of sharia is to protect human being from suffering as the prophet (PBUH) said in a hadith: *Narrated Anas bin Malik: The Prophet (PBUH) said, "Make things easy for the people, and do not make it difficult for them, and make them*

calm (with glad tidings) and do not repulse (them).^{xx} Triple Talaq makes women suffer a lot and it's not easy for women to accept. Legalizing triple Talaq based on only some ambiguous texts of Hadiths and rejecting Quran and authentic sayings of the Prophet is no less than a task of ignorant. Muslims are strictly ordered to follow Quran and Hadiths. Secondly, Allah said in the Quran, *"Allah commands justice, and goodness, and generosity towards relatives. And He forbids immorality, and injustice, and oppression. He advises you, so that you may take heed."*^{xxi} Triple Talaq is against every words of this verse. First, Allah commands justice and goodness and we know that triple Talaq is a total injustice. Secondly, Allah forbids immorality, injustice, and oppression. These three forbidden qualities are available in triple Talaq. So how it is legal!

Therefore, depending upon the evidences discussed in this paper from the Quran and Hadiths it can be concluded that triple Talaq or Instant triple Talaq is absolutely against Quran and Hadith and so, it is invalid. Muslims should study Quran and Hadith. Blind dependence and obedience to the conservative clerics will always lead to the destruction of the society. In India, the clerics stop women from entering mosque, praying in eid prayer and impose many of such illogical restrictions upon women. The only way to get rid of these anti-social clerics is to study and question their Fatwa.

References

-
- ⁱ . Encyclopedia of Islamic Jurisprudence, Ministry of Awqaf and Islamic Affairs, Kuwait: volume-19, Page No-234
 - ⁱⁱ . The holy Quran, chapter-2, verse: 229
 - ⁱⁱⁱ . Sahih al-Bukhari, Hadith No:5273
 - ^{iv} . <https://islamqa.info/en/1859>
 - ^v . SunanAbiDawud, Hadith No: 2226
 - ^{vi} . SunanIbnMajah, hadith No: 2056
 - ^{vii} .Encyclopedia of Islamic Jurisprudence, Ministry of Awqaf and Islamic Affairs, Kuwait: volume-19, Page No-243
 - ^{viii} .Sahih al-Bukhari, Hadith No: 1295 (the hadith is a long one and a meaningful part of it has been quoted here)
 - ^{ix} . SunanAbiDawud, hadith no: 3539
 - ^x .SunanIbnMajah, Hadith No: 1855
 - ^{xi} . SunanIbnMajah, Hadith No: 1977
 - ^{xii} It a practice in which a woman, after being divorced by triple talaq, marries another man, consummates the marriage, and gets divorced again in order to be able to remarry her former husband. Nikah means marriage and halala means to make something halal, or permissible. (Wikipedia)
 - ^{xiii} . Quran, Chapter: 4 verse: 35
 - ^{xiv} . Quran, Chapter:65 verse:1
 - ^{xv} . Period of purity means days in which women remain free from their monthly discharge and it's called 'Tuhur' in Arabic. Here it's meant Purity without intercourse' as stated in the exegesis of IbnKathir (died in 774 Hijri)
 - ^{xvi} .Sahih al-Bukhari, Hadith No: 5252
 - ^{xvii} .Quran, Chapter:65 verse:3

- ^{xviii} .SunanAbiDawud, Hadith No:2200, Sahih Muslim, Hadith No; 1472, Sunan al-nisai,
Hadith No: 3406, Masnad Ahmad, Hadith No: 2875
- ^{xix} . Sura An-nisa, verse: 59
- ^{xx} .Sahih al-Bukhari, hadith No: 6125
- ^{xxi} . Sura an-Nahl, Verse: 90