

Research Article

Unilateral Divorce in Muslim with Special Reference to Countries

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ABSTRACT

The present paper explains the validity of unilateral talaq in the SAARC (South Asian Association of Regional Cooperation) countries. The first portion of it deals with the provisions of talaq laid down in the Holy Quran. Talaq-us-Sunnat is the most approved form whereas; Talaq-ul-Biddat leaves no room for revocation of divorce during the pleasurable life of matrimony. A comparative case study which has been decided by different courts in (India, Pakistan, Afghanistan, Bangladesh, Maldives, Sri Lanka, Nepal and Bhutan) has been undertaken to evaluate this issue. I have discussed here that the countries of Pakistan, Bangladesh, Maldives and Sri Lanka have banned the use of unilateral talaq; however, this harsh and violent practice is still prevalent in India, Afghanistan as well as in Nepal and Bhutan. Unilateral talaq which is also called triple talaq has been critically analysed in the background of Islamic law, Indian Constitution and provisions of various SAARC countries. Many scholars have suggested reforms to bring this law into conformity with the true spirit of Holy Quran and sayings of Prophet (P.B.U.H.) by treating both spouses on equal footing in the society. Reconciliation or reunification, which is an essence of Islamic form of divorce, is only possible in Talaq-us-Sunnat not in case of declaring Talaq-ul-Biddat. In this context, I have clearly mentioned the valid reasons why this barbaric, harsh and totally absurd practice should be abolished. The most important stands among them are that it is against the verses of Holy Quran and Hadith because unilateral divorce originated in the period of Umayyad dynasty, and so it is unjust and inhumane as it encourages exploitation of women as well as it is against the provisions of the Indian Constitution.

Keywords: Barbaric, Iddat Revocation, Talaq-ul-Biddat, Talaq-us-Sunnat, Triple Talaq, Unilateral.

INTRODUCTION

What is Divorce?

Divorce is the physical separation of spouses. This separation or dissolution of a marital tie in Islam is known as 'talaq'. Under Islam, Talaq is known to be the worst permitted act in the eye of God.

Situation of Divorce before Advent Of Islam

Among pre-Islamic Arabs, the power of divorce possessed by the husbands was unlimited. They could divorce their wives at any point of time without giving any reason or without reason. According to Rahim (1911), at least four types of dissolution of marriage were known in pre-Islamic Arabia. Those were Talaq, Zihar and Khula.

SITUATION OF DIVORCE AFTER ADVENT OF ISLAM

The position of divorce before Islam was investigated and looked upon by our Prophet Mohd. Sb.(P.B.U.H.). Though he could not abolish the entire custom of divorce yet accordingly he restrained this power of husband to a certain extent. Therefore, FYZEE (1936) classified divorce into two: TALAQ-US-SUNNAT and TALAQ-UL-BIDDAT.

TALAQ-US-SUNNAT is again subdivided into two:

- Talaq-e-Ahsan
- Talaq-e-Hasan

Talaq-e-Ahsan is the most approved way of talaq because the companions of Prophet Mohd. Approved it, and second it remains within the power of husband to revoke the divorce during iddat which is of 3 months or till delivery. This type of talaq can be pronounced in a period of tuhr (purity) pronouncement of divorce in period of tuhr (purity). Hedaya brands it as a most laudable divorce where the husband repudiates his wife by a single pronouncement.

In *Talaq-e-Hasan*, the husband successively pronounces divorce three times during consecutive periods of purity (tuhr). It is, therefore, a divorce upon a divorce, where the first and second pronouncements are revoked and followed by a third, only then talaq becomes irrevocable.

TALAQ-UL-BIDDAT

If a man repeats the word talaq three times, this is supposed to be Talaq-ul-Biddat and hence instantly dissolving the marriage leaving no room for either for revocation of divorce during iddat or for renewal of marriage even after that.

Here, the husband doesn't follow the approved form of talaq that is Talaq-us-Sunnat, and neither pays any attention to the period of purity nor to the abstention from intercourse.

Hedaya defines it as a divorce where the husband repudiates his wife by three divorces in one sentence, or where he repeats the sentence, separately, thrice within tuhr. FYZEE says such a divorce is lawful, although sinful, in Hanafi Law: but in Shia Law it is not permissible.

Thus, through this paper, I am trying to bring out the full force and effect of unilateral divorce (TALAQ-UL-BIDDAT) by examining the prevailing system of divorce in Muslim Law with special reference to SAARC countries

This practice of triple talaq evolved in the second century during the period of Umayyad kings. Therefore, it is against the spirit of Holy Quran and Hadith of Prophet Mohammed (P.B.U.H.).

Unilateral divorce has always been considered as harsh and unjust to Muslim women. The idea on which Talaq-ul-Biddat is based is that, men are superior to women. According to Chapter IV of Holy Quran, men are maintainers of women, because Allah has made some of them to excel others and because they spend out of their property (i.e. dower and maintenance).

Very unfortunately, Muslim men in the world are blissfully unaware of the true Islamic law on divorce and believe that the so-called Talaq-ul-Biddat or unilateral talaq to be the only way of divorcing their wives which is barbaric, harsh and absurd in itself. This act is considered as the worst permitted act in the eye of Allah because after divorce the family and children get destroyed. If anyhow in any case, a man wants to reunite with his divorced wife, he would have to follow the concept of Halala, in which the divorcee wife would have to marry another man and get divorced and then only she can reconcile and remarry with her former husband. The consequences of Halala procedure are very harsh and rubbish and this practice is not easily successful. This concept of Halala as practiced in India is also repugnant to the fundamental duty of citizens embedded in ARTICLE 51-A of the Indian Constitution. Issues like triple talaq/unilateral talaq/verbal talaq and Talaq-ul-Biddat are very controversial and debated within the society. People are confused about this provision. As we know, the term biddat is against the spirit of Holy Quran and Hadith because the verses of Holy Quran and sayings of Prophet Mohammed don't approve the biddat acts.

93% Islamic countries have banned the use of verbal and triple talaq: including Muslim countries of SAARC like Pakistan, Afghanistan, Maldives and Bangladesh in particular.

Tahir Mahmud (1972) said in a statement, recently, on Sayra Bano's (1985) case: 'According to the verses of Quran on divorce, a man can pronounce talaq only twice, according to their juristic interpretation only thrice on different occasions in his married life'. The so-called triple talaq is an absurdity that militates against the words and spirit of the Quran and sayings of the Prophet (P.B.U.H.).

POSITION OF UNILATERAL DIVORCE IN INDIA

India, being a part of SAARC also engrosses within it the concept of triple talaq in Muslim Law. However, triple talaq or Talaq-ul-Biddat is ultra vires to the Indian Constitution as it violates ARTICLE 14 because it is infested with the malady of inequality between men and women. It also stands against ARTICLE 15 which distorts the fundamental rights against any form of discrimination. Talaq-ul-Biddat mars the very essence of ARTICLE 21 (the right to life and personal liberty) which guarantees the right to live with dignity.

Other than violating the provisions of the constitution, triple talaq also violates ARTICLE 39 – A law which guarantees equal justice to all, are grossly laid down as Indian Muslim women fell prey to such unjust practices.

The Shah Bano Begum case was a landmark judgment of the apex court of India in the field of triple talaq (unilateral divorce); in which, she won the right to receive alimony from her husband. The judgment delivered by Chief Justice Y.V. Chandrachud given in favour of the woman in this case was greatly criticised by the Muslim orthodox ulemas, some of who believed in Quran to show that the judgment was in conflict with Islamic law but they were not in the right path because they were wrongly interpreting the verses of Holy Quran in the favour of male-dominating society.

Bano, Tahira (1978), Bano (2007), Bano and Nissan (1993) are not the names of Muslim women copied from some website, but these are the victims of triple divorce. The latest among them is Sayra Bano's case, in which the interpretation of the Supreme Court is expected very soon. Sayra Bano is the second woman after Shah Bano who fought for the ban on the instantaneous triple talaq. According to Sayra, she was being threatened by her husband each time whenever he found some fault with her. However, his threat became the greatest dread for Sayra when he uttered the word 'talaq' thrice in front of her. She has now made a petition before the Supreme Court on the advice of her family (Kashipur, Uttarakhand) to ban the instantaneous unilateral divorce, she faced from her husband Rizwan Ahmed. She has sought EQUALITY BEFORE LAW and PROTECTION AGAINST DISCRIMINATION on the basis of her gender and religion.

The Mohd. Ahmed Khan vs. Shah Bano Begum and others, AIR 1985 is a leading triple talaq suit in India; in which the appellant who was an advocate by profession was married to the respondent in 1932. Three sons and two daughters were born of that marriage. In 1975, the appellant drove the respondent out of the home. On 6 Nov. 1978, the appellant divorced the respondent by an irrevocable talaq and took up the defence that she had ceased to be his wife by reason of divorce granted by him and that he was under no obligation to provide maintenance for her and that he had already paid maintenance for her at the rate of Rs. 200/month for about 2 years and deposited a sum of Rs. 3,000 in the court by way of dower during iddat.

The magistrate directed the appellant to pay a sum of Rs. 25/month to the respondent by way of maintenance. In a revision application led by the respondent, the High Court of Madhya Pradesh enhanced the amount of maintenance to Rs. 179.2/month. Hence, appeal by special leave by husband before the Supreme Court. Dismissing the appeal, the court held (as per Chief Justice Y.V. Chandrachud) that the judgments of the Supreme Court in Bai Tahira and Fazlun Bi are correct. Justice Krishna Iyer relied greatly on the theological and systematic method of interpretation. A divorced Muslim wife is therefore, entitled to apply for maintenance under SECTION 125 of Code of Criminal Procedure.

Crude divorce rate, divorce–marriage ratio & general divorce rate in India, 2014

Background Characteristics	Crude Divorce Rate	Crude Marriage Rate	Divorce–Marriage Ratio	General Divorce Rate	
				Male	Female
Residence					
Rural	2.5	16.7	1.1	3.3	3.2
Urban	1.0	15.4	2.9	1.0	0.9
Division					
Andhra Pradesh	3.2	13.6	0.05	3.5	3.1
Bihar	5.1	16.7	0.08	5.5	3.0
Haryana	3.2	13.3	0.07	3.5	1.9
Madhya Pradesh	2.9	11.4	0.04	2.2	2.1
Maharashtra	2.8	10.9	0.03	2.0	1.9
Rajasthan	4.3	13.5	0.07	3.1	0.9
Uttar Pradesh	4.1	15.1	0.06	3.0	2.6
Religion					
Islam	4.0	6.5	0.08	4.1	3.9

Source: National Crime Records Bureau Report.

POSITION OF UNILATERAL DIVORCE IN PAKISTAN

Likewise India, Pakistan also contains numerous ways of dissolving marriage. According to the Muslim Family Laws Ordinance, 1961, there are various ways that a divorce can be affected between parties (husband and wife). The first and the most prevalent method to divorce is when the husband at his will, without the intervention of court, pronounces 'I DIVORCE YOU'. The second method is by the mutual consent of both the spouses. The third method, which is quite popular nowadays in Pakistan, is by obtaining a judicial decree at the instance of court by either party to the marriage contract. This is obviously called judicial separation. However, the Muslim Family Law Ordinance, 1961 has abolished triple talaq, as the procedure laid down in Section 7 of M.F.L.O., 1961 is largely applicable to one or two pronouncements only and excludes three pronouncements. Thus, the procedure of divorce according to the Muslim Family Ordinance, 1961 is as follows:-

According to Section 7(1) of M.F.L.O., 1961, any man who is ready to give divorce to his wife shall have to give a notice to the chairman of union parishad in writing and he shall also have to submit copy of the same to the wife. However, Section 7(2) puts a penalty on the same person if he violates the rule contained in clause 1 of Section 7 and thus shall be punished with an imprisonment extending to 1 year or with fine extending to Rs. 500 or with both. When the chairman receives the notice from the husband, he will constitute an arbitration council within 30 days of the receipt of notice, so as to bring out reconciliation between the parties; as according to Section 7(4). If no notice is given by the husband to the chairman, he would be deemed to have revoked the talaq which was pronounced by the husband; as held by the Supreme Court of Pakistan in *ALI NAWAZ GARDEZI VS. LT. COL. MUHAMMAD YUSUF*, PLD 1963. Thus, it is mandatory that the husband serves a copy of the notice of talaq which he serves on the chairman. In *INAMUL ISLAM VS. HUSSAIN BANO*, PLD 1976 Lahore, the husband contended that it is not mandatory to send a copy of the notice to the wife under Section 7(1). However, his contention was rejected and the court held that serving a copy of the notice to the wife was mandatory and essential to make the talaq effective.

If the whereabouts of the wife who is to be given notice is not known, the husband may give notice to the wife through her father or mother or adult brother or sister, if permitted by the chairman, but if their whereabouts are also not known then he may, on the permission of chairman, serve notice by publication of divorce in the locality where he last resided with his wife.

As we know that Muslim Family Law Ordinance, 1961 has completely abolished triple talaq in Pakistan, there are minimum chances of exploitation of Muslim women on the basis of suppression.

POSITION OF UNILATERAL DIVORCE IN BANGLADESH

Islam allows divorce only when circumstances necessitate it. Our Prophet Mohammad Shb. (P.B.U.H.) has said, among all lawful things, divorce is mostly disliked by Allah. The law and provisions of divorce as stated in the Muslim Family Law Ordinance, 1961 is the only codified law in Bangladesh dealing with the Muslims only.

The lengthy procedure of divorce in Bangladesh according to the M.F.L.O., 1961 is as follows:

According to Section 7(1) of M.F.L.O., 1961, any man who is ready to give divorce to his wife shall have to give a notice to the chairman of the union parishad in writing, and he shall also have to submit its copy to the wife. However, Section 7(2) puts a penalty on the same person if he violates the rule contained in clause 1 of Section 7 and thus shall be punished with an imprisonment extending to 1 year or with fine extending to Rs. 500 or with both. When the chairman receives the notice from the husband, he will constitute an arbitration council within 30 days of the receipt of notice, so as to bring out reconciliation between the parties; as according to Section 7(4). If no notice is given by the husband to the chairman, he would deem to have revoked the talaq which was pronounced by the husband.

Crude divorce rate, divorce–marriage ratio & general divorce rate in Bangladesh, 2014

Background Characteristics	Crude Divorce Rate	Crude Marriage Rate	Divorce–Marriage Ratio	General Divorce Rate	
				Male	Female
Residence					
Rural	1.1	14.3	0.07	3.2	3.1
Urban	0.6	8.3	0.07	1.6	1.5
Division					
Barisal	0.9	16.1	0.05	2.5	2.5
Chittagong	0.5	12.5	0.04	1.5	1.4
Dhaka	0.9	11.1	0.08	2.6	2.6
Khulna	1.4	14.3	0.10	3.9	3.9
Rajshahi	2.0	16	0.12	5.5	5.6
Rangpur	0.7	14.3	0.05	1.9	1.9
Sylhet	0.5	10.5	0.05	1.7	1.6
Religion					
Islam	1.0	1.3	0.08	3.1	3.0

Source: Bangladesh Bureau of Statistics.

Thus, it is mandatory that the husband serves a copy of the notice of talaq which he serves on the chairman. If the whereabouts of the wife who is to be given notice is not known, the husband may give notice to the wife through her father or mother or adult brother or sister, if permitted by the chairman, but if their whereabouts are also not known then he may, on the permission of chairman, serve notice by publication of the notice in the locality where he last resided with his wife.

As we know that M.F.L.O., 1961 has banned the use of triple divorce in Bangladesh, there are very few chances of suppression of women in Bangladesh.

POSITION OF UNILATERAL DIVORCE IN AFGHANISTAN

Mehbooba Hoquqmal, a strong advocate of women's rights in Afghanistan, referred that according to ARTICLE 131 of the Civil Code of Afghanistan, there are three ways by which a marriage can be revoked:

- Divorce (talaq)
- Khula
- Tafriq

TALAQ is contained under ARTICLE 135 of the Civil Code of Afghanistan as a right of the husband. Generally, divorce is undesirable in Islam, but according to her, divorce has been allowed as a last resort to get out of a broken marriage.

KHULA is the second way of dissolving marriage where the husband can delegate the authority of divorce to the wife. Here, a wife can ask for separation when she no longer wants to continue her marital tie. She could also ask for separation in circumstances as abandonment by the husband of his duties towards his wife and children and violence against women.

The third way of dissolving marriage is Tafriq. **TAFRIQ** occurs under such circumstances:

- When the husband is undergoing some chronic disease.
- According to ARTICLE 191 of Civil Code of Afghanistan, if the husband is away from his wife and if she is not able to get her alimony out of his property, she can ask for separation.
- If the husband is absent for three or more years, the wife can ask for separation.
- If the husband is imprisoned for 10 years, the wife can ask for separation.

Thus, we can say that family law must include such divorce proceedings as is based on sound and justifiable reasons.

POSITION OF UNILATERAL DIVORCE IN MALDIVES

The concept of unilateral divorce has been abolished by Maldives. It is a 100% Muslim populated country, where people possess three types of divorce:

- Raju'ee divorce
- Khula
- Faskh or judicial annulment

In Maldives, the principles of Quran and sayings of Prophet (P.B.U.H.) are in Toto implemented in all spheres of life.

Percentage of divorce in Maldives from 2000 to 2014

Year	Divorce Through Raju'ee (%)	Khula Divorce (%)	Divorce due to Judicial Annulment (%)
2000	18	12	20
2002	16	10	17
2004	16	11	20
2006	13	11	13
2008	15	12	15
2010	17	11.5	19
2012	17	9.5	19.8
2014	20	5	20

Source: Maldives Bureau of Statistics.

POSITION OF UNILATERAL DIVORCE IN SRI LANKA

The number of Muslim population in Sri Lanka is very less that is only 9%. However, there exists Muslim Law for localities believing in Islam.

The law allows that for a marriage to come to an end, three types of divorce are there:

- Divorce by mutual consent
- Inherent rights to husband (talaq)
- Khula

However, Sri Lanka like Maldives has banned the use of verbal/triple/oral and ba'in talaq.

POSITION OF UNILATERAL DIVORCE IN NEPAL

Muslims constitute the most distinct and well-defined minority group in the Hindu kingdom of Nepal. Muslims in Nepal comprise 3.5% of the total population.

As for the legal status of the Muslims as a religious minority group, the Legal Code which abolished caste-based social stratification, guarantees equal rights and opportunities for all people of Nepal. Accordingly, Muslims of Nepal are free to practice their customs and have been treated as an integral part of Nepalese society. They are also free to engage in religious activities and build mosques.

WHILE MUSLIM TRADITIONAL MARRIAGE (NIKAH) IS RECOGNISED BY LAW, THE TRADITIONAL DIVORCE KNOWN AS 'TALAQ' IS NOT SO RECOGNISED.

A Nepali Muslim scholar points out that though Muslims have readily accepted the laws of the land that prohibit proselytism.

If the liberal political atmosphere with guaranteed democratic freedom has brought the long suppressed Muslim ethnicity to the foreground, the prevalence of Deobandi school of thought for a more Quranic way of life has also made the identity assertion among Muslims synonymous with assertion of 'Islamic identity'. This involves strict adherence to the puritanical rituals and practices of Islam.

POSITION OF UNILATERAL DIVORCE IN BHUTAN

As Bhutan composed of only 5% Muslims of total population, no personal law exists for people believing in Islam. Thus, there is no prevalence of triple talaq or Talaq-ul-Biddat in Bhutan.

Percentage wise divorce rate among SAARC Nations

Sl. No.	Year	Countries	Divorce Rate (%)
1.	2012	India	8.5
2.	2012	Pakistan	7.63
3.	2012	Afghanistan	8
4.	2012	Bangladesh	6.33
5.	2012	Maldives	10.97
6.	2012	Sri Lanka	4.2

SUGGESTIONS

Some of the valid reasons why this practice of Oral talaq should be banned are:

- As unilateral divorce evolved in the second century in the period of Umayyad

dynasty, thus it is against the origin of the sayings of Prophet Mohammed Sb. (P.B.U.H.) as well as the verses of Holy Quran.

- It is unjust and inhumane.
- It diminishes the ability of Muslim women to live with dignity.
- It should be abolished so as to stop exploitation of women.
- It should be abolished as it is un-Quranic.
- It should be banned as it is against the provisions embedded in **ARTICLES 14, 15, 21, 39-A** as well as **ARTICLE 51** of the Indian Constitution.
- It is also my strong submission that the Parliament of India should take stern steps against the provisions of unilateral divorce with the consent of Muslim ulemas because this provision was originated by the Umayyad kings and not by the original text of Shariat.

CONCLUSIONS

Thus, we come at a point where we realise that triple talaq is a weapon of victimisation of women in the hands of Muslim men. Triple talaq destroys woman emotionally, socially and economically too. This unilateral talaq symbolises the subordination, suppression and subjugation of human rights of women and so it should be banned not only in the countries of SAARC, but in all parts of the world.

Due to ignorance, Muslims generally believe that divorce can be given only through triple divorce formula. If people knew that triple divorce is unnecessary and even a single talaq would dissolve the marriage leaving room for reconsideration, innumerable families could have been saved from destruction.

If at all, grave circumstances exist where reconciliation is not possible between husband and wife, Talaq-us-Sunnat is a remedy for spouse, which became prevalent during the lifetime of Prophet Mohammed Sb. (P.B.U.H.), should be used for breaking down the marital tie.

During the last 50 years, the archaic concept of triple talaq has been abolished in country after country in the Muslim world. If in India, the Supreme Court of the country delivers the same judgment in the Sayra Bano case which is before the court; in no sense will it be against the spirit of Holy Quran and Hadith.

Recently, 22 countries including Pakistan and Bangladesh have abolished this barbaric act of men, explicitly or implicitly. The so-called triple talaq is an absurdity that militates against the words and spirit of the Holy Quran and Hadith so it should be abolished in India and Afghanistan also because the provisions of

unilateral divorce (triple divorce) are not available in the original text of Holy Quran and Hadith of Prophet Mohammed Sb. (P.B.U.H.), however, this practice was prevalent only in the period of Umayyad dynasty, which is not the law of land for people believing in Islam.

As mentioned earlier also, the word 'biddat' itself suggests that it is the prohibited act of Holy Quran that is *ba'in* which is mostly disliked by Allah.

So, it is my humble submission to the people of society who are strongly supporting triple talaq, that they should first gain the true knowledge about the provisions of unilateral divorce in Islam then only they should take actions accordingly. There are a number of verses in the Holy Quran that call for attempts to reconcile in the case of marital discord. There is a verse calling for mediators from families of both sides, if reconciliation between husband and wife is not working out. So, the question of unilateral or instant divorce does not arise. This makes the practice of triple talaq totally un-Quranic. If this mere thought comes into practice, the SAARC countries can go to a zenith of prosperity and which would eventually lead to regional development in a newer sense.

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