



Ruling on Triple Talaq: Finding the Way-Out

Dr. Usman Quddus

Sajida Faraz

Naila Rafique

Nosheen Qayyum

Assistant Professor of Law, University of Swabi at usmanquddus1980@gmail.com

Lecturer Law, Women University Swabi, KPK, Ph.D. Scholar (IIUI) IRSIP (Fellow), Germany at sajidafaraz1@gmail.com

Assistant Professor Law, Capital University Science & Technology, (CUST) Islamabad, Pakistan at naila.rafique@cust.edu.pk

Assistant Professor Law, Capital University Science & Technology, (CUST) Islamabad, Pakistan at nosheen.qayyum@cust.edu.pk

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Abstract:

Triple talaq in Muslim countries presents an immense social challenge. Therefore, the practice of triple talaq requires review by Shariah principles for proposing reform to facilitate reconciliation before the divorce. The purpose of the research is to propose reforms for bringing about changes to fatwas on triple talaq thereby advancing the cause of family life in the interest of society, family unit, and children's health. The research employs a conceptual analysis for proposing reforms. Finding mandate revision of fatwa or religious ruling on divorce/talaq. The research primarily finds a solution for the triple talaq problem using Hanafi School of Law techniques due to the predominance of the sect around the world and the prevalence of practice mostly in the people belonging to the Hanafi School of Law. The research proposing a solution to the stated reasoning is the first of its kind. The methodology of this research is descriptive, conceptual, and analytical. Relevant sources have been conceptually analyzed to propose a meaningful solution to the issue of triple talaq in one session. Results propose the prohibition of Rulings on triple talaq to facilitate reconciliation before the divorce. This is necessary to preserve society, family life, and children's health.

KEYWORDS: Talaq, Triple Talaq, Social problems, family law, Fatwa.



Introduction

Triple *talaq* in one session is an immense social problem in Muslim countries considering the social problems it brings with it. The breakup of family life not only negatively affects the children of the broken marriage but society at large. Divorce in a single session or the concept of triple *talaq* as is popularly known facilitates the breakup of marriage as the same may be done within a few seconds jeopardizing the whole family unit. It is, therefore, imperative that some solution to this social problem may be put forth. The practice of triple *talaq* has the backing of religious ruling so the proposed reform may be brought about through a religious ruling attaining the status of *ijma* by being accepted by the majority of *ulema* as a preferred opinion relating to *talaq*. This article proposes reforms to the religious ruling of triple *talaq* by relying on the texts of original sources of *Shariah* and the Hanafi jurisprudence. The objective of the study is to advocate a complete ban on the practice of triple *talaq* through the utilization of religious scholars by proposing a solution employing established sources in *Shariah*.

Importance of Preserving Family

The definitive purposes of Islamic law as outlined by the Muslim jurists, are, i. Preservation and Protection of Religion ii. Preservation and Protection of Life iii. Preservation and Protection of Family Life iv. Preservation and Protection of Wealth v. Preservation and Protection of *Aql*.ⁱ These have been derived directly from the Quran and Sunnah. Many Jurists in Islam hold preservation and protection of life and mental health i.e., *Aql* over others because without these any other purpose is not possible.ⁱⁱ Preservation of family life is inextricably linked to the purposes of preservation of life and mental health. Without establishing family life, neither preservation and protection and preservation of life is possible nor preservation of mental health. Preservation of family is extremely important to preserve social life and for the health of society in general. The harms that are associated with the breakup of a family have by highlighted through different research on the topic:

- a. Divorce diminishes the frequency of worship of God and recourse to Him in prayer.
- b. Divorce diminishes children's learning capacity and educational attainment.
- c. Divorce reduces household income and deeply cuts individual earning capacity.



- d. Divorce significantly increases crime, abuse and neglect, drug use, and the costs of compensating government services.
- e. Divorce weakens children's health and longevity. It also increases behavioral, emotional, and psychiatric risks, including even suicide.
- f. Weakened Parent-Child Relationships
- g. Weakened Mother-Child Relationships
- h. Weakened Father-Child Relationships
- i. Children's relationships with their parents worsen after a divorce.
- j. Weakened Grandparent-Grandchild Relationships.
- k. Children's Weakened Ability to Handle Conflict.
- l. Children's Diminished Social Skills.
- m. Children of divorced or separated parents exhibit increased behavioral problems, and the marital conflict that accompanies parents' divorce places the child's social competence at risk.
- n. When parents divorce, their children's attitudes about sexual behavior change. Children's approval of premarital sex, cohabitation, and divorce rises dramatically, while their endorsement of marriage and childbearing falls.
- o. Children's increased trouble in romantic relationships.
- p. Parental divorce is also associated with lower marital quality for their children.
- q. Child suicide is often triggered by thoughts that his divorced parents reject him or have lost interest in him.ⁱⁱⁱ

The horrendous consequences of the breakup of marriage as mentioned above which are verified by scientists mandate some solutions for the breakup of marriages particularly in Islam. Islam places greater importance on preserving family life however, breakups in marriages have become a routine affair in the Islamic world which is attributed partly to the principle of the binding effect of triple *talaq* here, hence a solution has been proposed. Triple *talaq* as a Hanafi practice makes the practice of breakup of marriage a routine affair with the consequences of the breakup of a marriage in a few seconds. Despite the law not supporting the practice of triple *talaq* in many countries, the practice goes on unhindered due to the presence of religious ruling in favor of triple *talaq* making it a sacrosanct affair.



Traditionalist Arguments Supporting the Binding Nature of Triple *Talaq*

Before proceeding further, it would be appropriate to state the kinds of *talaq* or divorce under Islamic law.

- a. "*Talaq-e-Ahsan*" is the 'most proper' type of *talaq* within which the husband expresses divorce in a single sentence - "I have divorced thee" - within the period of (when the married wife isn't menstruating) and so must wait until the *iddat* period gets finished. The *iddat* period for a lady who has been divorced by her husband is generally 3 monthly periods and throughout this period, she cannot marry another man. If before the completion of *iddat*, the husband resumes co-habitation along with his married lady or says "I have retained thee", the divorce is revoked.
- b. "*Talaq-e-Hasan*" is a 'proper' form of *talaq*. In this type of *talaq*, 3 successive pronouncements of *talaq* are given by the husband in 3 ordered *tuhrs* (when the lady isn't menstruating). In the case of a non-menstruating lady after a month or thirty days between the successive pronouncements, its pronouncements may be made. Before the third pronouncement, this type of *talaq* can be revoked.
- c. *Talaq-ul-Biddat* Allows men to pronounce *talaq* thrice in one sitting generally in a written *talaqnama*, or maybe by phone or text message. Thereafter, notwithstanding the person himself perceives his call to possess been hasty in apprehension, the divorce remains sealed. This mode of divorce is disapproved The *Talaq-ul-Biddat* has its origin in the second century of the Islamic era. *Talaq-ul-Biddat* though valid is disapproved in Islam.^{iv}

The fatwa or legal ruling on triple *talaq* is supported by verse 2:23 of the Holy *Quran*. It states, "*And if he hath divorced her (the third time), then she is not lawful unto him thereafter until she hath wedded another husband. Then if he (the other husband) divorces her, it is no sin for both of them they come together again if they consider that they can observe the limits of Allah. These are the limits of Allah. He manifesteth them for people who know.*" The Hanafi School maintains that the word thereafter in Arabic preceding the third *talaq* talks about triple *talaq* in a single session.^v

The *hadith* that is quoted to support triple *talaq* goes thus:



“It is reported that Rukānah b. ‘Abd Yazīd divorced his wife (*battā*) in a single session and was greatly saddened by his longing for her. Messenger of Allah asked him in which manner had he divorced her. Rukānah said that he divorced her thrice in a single session whereas he had intended only one. The Prophet (PBUH) asked him to swear in the name of God that he had intended only one, which he did. According to some jurists and commentators, if three *talāq* spoken in one session are ineffective, then why would the Prophet (PBUH) ask Rukānah to swear that he intended only one and not three *talāq*? Safdar argues that if the word *battā* would not mean that three *talāq* are three, then why the Prophet (PBUH) would ask Rukānah to swear when metaphorical words are used for *talāq*, the man’s real intention assumes great significance, whether the husband intended three or one. He further says that the word *battā* could also mean three. However, if three would be considered as one, then the Prophet (PBUH) would never ask Rukānah to swear. It is reported that Rukānah pronounced the second *talāq* at the time of ‘Umar al-Ḥaṭṭāb and the third at the time of ‘Uthmān b. ‘Affān. Therefore, this *Ḥadīth* is proof that three *talāq* in one session are counted as three.”^{vi}

The last lines of this hadith narrate the context of the *hadith*. It is talking about some other form of *talaq* not related to triple *talaq*.

Law on Triple Talaq in India and Pakistan

Family Ordinance in Pakistan doesn’t allow for triple *talaq* as it prescribes notice to the arbitration council for reconciliation after any form of *talaq*.^{vii} However, courts in Pakistan have been holding that the failure to send notice of divorce leads to the conclusion that *talaq* is ineffective but not revoked.^{viii} This position arose to counter the culpability of persons in *Hudood* laws after failing to submit notice and marrying again. So, the practice of triple *talaq* is very much in vogue in Pakistan. The Federal *Shariat* Court of Pakistan declared section 7 of the family law ordinance on *talaq* as un-Islamic holding triple *talaq* to be valid, however, the matter has been put in abeyance and is pending a decision before the Supreme Court of Pakistan.^{ix}

The Muslim Women (Protection of Rights on Marriage) Bill, 2019 in India has made the effect of triple *talaq* void. This law in India was promulgated after a Supreme Court Judgement declared the practice of triple *talaq* in India to be against *Shariah* and fundamental rights.^x However,



Muslims are primarily being regulated around the world on decisions of legal schools i.e., Hanafi, Shafi, Hanbali, and Maliki, etc. Therefore, the decision in India like the case of Pakistan may not be practically enforceable unless a legal ruling making void the effect of triple *talaq* comes up. That then may be endorsed by a majority of the scholars in a school to attain the status of *ijma*.

The Way Out

Verse 2:229 of the Holy *Quran* by Muhammad Marmaduke Pickthall reads:

"A divorce is only permissible twice: after that, the parties should either hold together on equitable terms or separate with kindness. It is not lawful for you, (Men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom. These are the limits ordained by Allah. So do not transgress them if any do transgress the limits ordained by Allah, such persons wrong (Themselves as well as others)." It is clear after reading both verses of the Holy Book together i.e., 2:229, and 2:230 supra mentioned above that these verses are not in the context of triple *talaq*. This can be evinced from the statement in verse 2:229 that "A divorce is permitted only twice". Therefore, the holding by the legal schools that verse 2:230 talks about triple *talaq* seems out of context.

Prophet Mohammad condemned the act of triple *talaq* as playing with the book of God while he was alive.^{xi} A triple *talaq* is an abominable act that is considered permissible by Islamic jurists. The verse of the Holy *Quran* relating to disapproved acts goes as thus: "All of these are evil and abomination in the sight of your Lord." (Al-Isra, 17:38). Smoking according to the jurists of Islam is an abominable or disapproved act.^{xii} However, there are many countries in the world e.g. Islamic Republic of Pakistan that have banned smoking indoors. Similarly, failure to give due weight to commodities is in the category of disapproved acts under Shariah however, Islamic countries worldwide have prohibited it. The disapproved acts are also referred to in the Quranic verse as,

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"He (the Prophet) forbids to them (Muslims) all that which is unclean." (Al-Araf, 7:157).

The illustrious jurist of present times Professor Imran Khan Nyazee argues that a Muslim is supposed to bring his weapons and horse (if he can find one) to participate in *jihad*. He can only



do so if he is allowed to bear arms. However, the right is restricted justifiably through a licensing system in many Muslim countries. Similarly, a Muslim man can cohabit with a slave girl however, Muslim states have justifiably restricted the right of Muslims to buy a slave girl. The right to marriage is unfettered in Islam however, it is regulated through registration forms, etc. in Islamic states. This is so because several Quranic verses support the right of women over men e.g. Offence of Qazf i.e. defaming women without evidence of four witnesses pertains to women only. Likewise, the procedure of *Lian* is for women only wherein she is accused of adultery and her statement denying same is sufficient proof of absolving her. ^{xiv}

These examples make it manifestly clear that a disapproved act in Sharia can be completely prohibited through appropriate legislation. The fuss that is created over the presence of laws that prohibit the practice of triple *talaq* is wholly unjustified and it is about time that Ulema or religious scholars come ahead with appropriate fatwas in support of prohibiting the practice of triple *talaq* while laying down stress on the Quranic procedure of *talaq* that facilitates reconciliation. Divorce is a big social problem and if not appropriately addressed by facilitating reconciliation and banning any immediate breakup of marriage may eventually tear apart society as discussed above. Immediate divorce seen vis a vis the third purpose of Islamic law i.e. preservation of family life is an anomaly and requires a consequent amendment to yield in favor of Quranic principles of preservation of family life. The practice of *talaq* is rampant in Pakistan and courts are burdened with cases of *talaq* alongside other cases.

The courts in Pakistan take reconciliation efforts as a routine matter, resulting in increased divorces. In this regard, it is proposed that local clerics on the costs of parties may be mandated to bring about reconciliation between the parties while apprising them of all the consequences that a divorce may bring. The prohibition of triple *talaq* can also find support from the principles of *Istehsan*. *Istehsan* means looking at the implications of the application of two rules and applying the one that creates ease and facility.¹⁴ Therefore, concrete disapproval of triple *talaq* in one session may be preferred over probable approval of *talaq*. The probable permissibility of approval of triple *talaq* is evident from the *fatwa* of Ibn Taymiyyah. Ibn Taimiyah and Ibn al-Qayim use the same *Qur'ānic* verse mentioned above, i.e., “*Talāq* is twice; then either to retain in all fairness or to release nicely” and argue that the word ‘*marratān*’ means ‘*marratān ba ‘da marrah*’ (i.e., one after the other).



This means, they argue, that the *talāq* in which the husband has the right to exercise revocation, is to divorce her twice, one after the other and it does not make any difference whether the husband pronounces *talāq* one, three, or one thousand times.

Rāwandī argues that “three repudiations are not effective when pronounced in one phrase” and “if a person divorced in one phrase he has not divorced twice or three times”.^{xv} Moreover, the probable nature of the binding effect of triple *talaq* becomes all the more evident through reports that it is a practice allowed by Hazrat Umer the second caliph, and such practice was non-existent before this period.^{xvi} Muhammad Husain Haykal, the noted Egyptian Islamic scholar, says that it was done given the extraordinary conditions prevailing at the time. During wars of conquest, many women from Syria, Egypt, and other places were captured and brought to Medina. They were fair complexioned and beautiful, and the Arabs were tempted to marry them. But these women were not used to living with co-wives and often made a condition the men pronounce a triple divorce against their former wives, thinking that they would not be able to take them back.

They did not appreciate that according to the *Qur'an* and the Sunnah, three divorces pronounced on one occasion were treated only as one divorce, and the divorce was therefore revocable. The Arabs would pronounce three divorces to satisfy these women but later took their former wives back, giving rise to innumerable disputes. To overcome these difficulties, Hazrat 'Umar thought it fit to enforce three divorces in one sitting as an irrevocable divorce.^{xvii} Hazrat Umar is also reported to accept triple *talaq* as valid while punishing such a person for giving triple *talaq* in a single session.^{xviii} One such solution to discourage the practice of triple *talaq* in one session could be to give strict punishments to such persons who pronounce triple *talaq* instantly. Lead in this regard can be taken from the developments in India.^{xix}

Conclusion

Divorce is a big social problem that has negative consequences for society and the family unit. Islam places greater importance on family life and designates it as the third most important purpose of the law to be achieved. Therefore, ulema should support it with appropriate fatwas reaching the status of *ijma* so that the practice of triple *talaq* in one session may be eliminated. Reconciliation methods should be advanced to prevent the breakup of marriages. The disapproval



of triple *talaq* in one session as conveyed by Prophet Muhammad (P.B.U.H) may be elevated to the status of prohibited in law with religious backing.

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