

Triple *Ṭalāq* in Islamic Law and Triple *Ṭalāq* Bill: An Analysis

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Abstract

This paper aims to discuss Triple Ṭalāq (talāq-i-bid'ah) in the Quran, Sahih Ahadith, and four Islamic schools of jurisprudence, i.e. Hanafi, Maliki, Shafi'i, and Hanbali. The paper is divided into four parts including analysis. First part discusses methodology of ṭalāq in the Quran. Second part of the paper discusses methodology of ṭalāq described by Prophet Muhammad. Third part discusses methods of ṭalāq in four schools of Sunni Islamic Law. Fourth and final part of the paper is an analysis of all discussions. Nowadays in India, Triple Ṭalāq has become a matter of concern and is seen on the political ground. It is need of hour to narrate the real methodology of triple ṭalāq in Islam, by which Islam and Muslims are being degraded.

Ṭalāq in the Quran

Allah says in the Quran, “Whosoever shall follow my guidance he will not go astray nor come to grief”.¹ In a majority 3:2 judgment on 22 August, 2017 in the case of Shayara Bano vs. Union of India, the Indian Supreme Court set aside instant *ṭalāq* as a *manifestly arbitrary* practice. As per the clause-3 of the *triple ṭalāq Bill*, Any pronouncement of *ṭalāq* by a person upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever shall be *void* and *illegal*.²

Very first, it should be kept in mind that, *triple ṭalāq* in one sitting is not recognised by the Quran and *Sunnah* directly. As Allah says in the Quran;

Women who are divorced shall wait, keeping themselves apart, three (monthly) courses. And it is not lawful for them that they should conceal that which Allah hath created in their wombs if they are believers in Allah and the Last Day. And their husbands would do better to take them back in that case if they desire reconciliation. And they (women) have rights similar to those (of men) over them in kindness, and men are a degree above them. Allah is Mighty, Wise.³

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According to the Holy Quran, the best procedure to divorce is, man pronounced the word *ṭalāq* once while woman is not in periods, i.e. at the time of divorce women should be pure from periods, and wait for next period to pronounce second *ṭalāq* but should not have physical relations, if in this period they (couple) want to reconcile may reconcile freely, otherwise they should wait for third and final period, if the man pronounce third *ṭalāq*, it will be true divorce. After that, divorced woman will not be lawful for her former husband unless she has married to another husband. As Allah says in the Quran;

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 that they come together again if they consider that they are able to observe the limits of Allah. These are the limits of Allah. He manifested them for people who have knowledge.⁴



When ye have divorced women (two times), and they have reached their term, then retain them in kindness or release them in kindness. Retain them not to their hurt so that ye transgress (the limits). He who does that hath wronged his soul. Make not the revelations of Allah a laughing-stock (by your behaviour), but remember Allah's grace upon you and that which He hath revealed unto you of the Scripture and of wisdom, whereby He doth exhort you. Observe your duty to Allah and know that Allah is Aware of all things.⁵

It means for men it is not permissible at any cost that they oppress women. Currently, in India *triple ṭalāq* has become a hot issue, and Indian government depicts the wrong picture of Islam, that, women are oppressed in Islam in the name of *triple ṭalāq*. Islam is the first religion that provided right to take *ṭalāq* independently. And Islam is the single religion in the world that provides similar rights to women as provided to men. As Allah says in the Quran;

And they (women) have rights similar to those (of men) over them in kindness.⁶

Divorced woman has the right to remarriage whom she wishes, as Allah says in the Holy Quran;

And when ye have divorced women and they reach their term, place not difficulties in the way of their marrying their husbands if it is agreed between them in kindness. This is an admonition for him among you who

believeth in Allah and the Last Day. That is more virtuous for you, and cleaner. Allah knows; ye know not.⁷

As per the clause-5 of *triple ṭalāq Bill*, without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom *ṭalāq* is pronounced, shall be entitled to receive from her husband such amount of subsistence allowance for her and dependent children as may be determined by the Magistrate.⁸

This above mentioned provision in *Triple Talāq Bill*, the Quran had announced this provision 1400 years ago. As Allah says in the Quran;

For divorced women a provision in kindness: a duty for those who ward off (evil).⁹

Triple ṭalāq in one sitting is against the Quran, as Allah says in the holy Quran;

O Prophet! When ye (men) put away women, put them away for their (legal) period and reckon the period, and keep your duty to Allah. Expel them not from their houses nor let them go forth unless they commit open immorality. Such are the limits (imposed by) Allah; and whoso transgresses Allah's limits, he verily wronged his soul. Thou know not: it may be that Allah will afterward bring some new thing to pass.¹⁰

Then, when they have reached their term, take them back in kindness or apart from them in kindness, and call to witness two just men among you, and keep your testimony upright for Allah. Whosoever believeth in Allah and the Last Day is exhorted to act thus. And whosoever kept his duty to Allah, Allah will appoint a way out for him.¹¹

The all above mentioned Quranic verses declared that triple ṭalāq in one sitting is against the Quran. And this practice is *bid'at* (innovation) in Islam. According to Hadith, in all the lawful things in sight of Allah, ṭalāq is worst thing.

Sir Syed says, that, generally speaking, divorce is one of the greatest enemies of society by which value of marriage falls, and destroying man's confidence in woman's loyalty. But it can't be denied that divorce has some advantages. He says, divorce solves the problem of incompatibility of disposition, violence of temper which embittered the life of the both, husband and wife. Sir Syed says, with advantages to an individual divorce is not less injurious to society; divorce has injurious effect upon children during the separation of

parents. Sir Syed says, in Islam divorce is not a sin when it was taken as a remedy. According to him, if conditions are proved more dangerous in future for a couple then divorce on such occasions is a remedy, which is maintained in Islam.¹²

Regarding divorce, Sir Syed quotes references from the traditions of the Prophet. Sir Syed says, “Our Prophet neither underrated nor overvalued divorce. He permitted divorced parties three several distinct and separate periods within which they might endeavour to reconcile and renew their conjugal intercourse; but should all their attempts to become reconciled prove unsuccessful then the third period, in which the final separation was declared to have arrived, supervened.¹³

Mahmud, son of Waleed, narrates a tradition that once, Prophet was apprised about a man, who had divorced his wife in one sitting, then the Prophet becoming exceedingly angry, addressed the party thus: “have you considered the Allah’s command as a game and that even in my presence?”¹⁴

Sir Syed quotes a tradition from *Abu Dawood, Ibn Maja and Darmi*, that Prophet had said that, “a woman who demands divorce without strong and unavoidable necessity, will ever remain a stranger to the fragrance of paradise.¹⁵

Ṭalāq in Islam is a remedy of last stage disease. Ṭalāq is recognised in Islam to protect life of the two individuals, and to make a balanced society. It is the last step, if there is no path to have relation. As Allah says in the Holy Quran;

Men are in charge of women, because Allah hath made the one of them to excel the other, and because they spend of their property (for the support of women), so good women are the obedient, guarding in secret that which Allah hath guarded. As for those from whom ye fear rebellion, admonish them and banish them to beds apart, and scourge them. Then if they obey you, seek not a way against them. Lo! Allah is ever High, Exalted, and Great.¹⁶

And if ye fear a breach between them twain (the man and wife), appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah will make them of one mind. Lo! Allah is ever Knower, Aware.¹⁷

***Ṭalāq* in Ḥadīth**

All the sayings, doings and practices of Prophet Muhammad are called Hadith. Prophet of Islam, Muhammad has an authority in Islamic Law. This authority of Prophet Muhammad is recognised by Allah, as Allah says in the Quran;

O ye who believe! Obey Allah, and obey the messenger.¹⁸

Triple ṭalāq in one sitting is also not recognised in Prophet's tradition. In *Sahih Muslim* is mentioned that;

Ibn 'Abbas (Allah be pleased with them) reported that the (pronouncement) of three divorces during the lifetime of Allah's Messenger (may peace be upon him) and that of Abu Bakr and two years of the caliphate of Umar (Allah be pleased with him) was treated as one. But Umar bin Khattab said, Verily the people have begun to hasten in the matter in which they are required to observe respite, so if we had imposed this upon them, and he imposed it upon them.¹⁹

Abu Sahba' said to Ibn 'Abbas, Do you know that three (divorces) were treated as one during the lifetime of Allah's Apostle and that of Abu Bakr, and during three (years) of the caliphate of Umar? Ibn Abbas said, Yes.²⁰

Abu Sahba' said to Ibn 'Abbas, Enlighten us with your information whether the three divorces (pronounced at one and the same time) were not treated as one during the lifetime of Allah's Messenger (may peace be upon him) and Abu Bakr. He said, It was in fact so, but when during the caliphate of Umar (Allah be pleased with him) people began to pronounce divorce frequently; he allowed them to do so (to treat pronouncements of three divorces in a single breath as one).²¹

Maulana Umar Ahmad Usmani quotes a tradition from *Musnad Ahmad Ibn Hanbal* that, "once Rukanah pronounced three divorces in one sitting against his wife but later he was very sorry for it. When the Prophet asked him, how did you divorce your wife? Rukanah replied that he had pronounced three divorces in one sitting. Again Prophet asked him, did you pronounce it in one sitting? Rukanah replied yes. Prophet said, consider it one divorce only, if you want, can take your wife back. And Rukanah took his wife back".²²

Maulana Usmani points out that Hazrat Umar had enforced triple divorce as valid divorce, and it had become a law. It is within the power of caliph of the time to enforce certain ordinances in view of the prevailing situation, or to meet some crisis situation and no

one can question it. It is, therefore, possible that Ibn Abbas might have given the *Fatwa* accepting triple divorce after Hazrat Umar enforced the ordinance. Thus it is proved by this Hadith that during the Prophet Muhammad, time three divorces in one sitting were considered as one divorce.²³

***Ṭalāq* in Four Schools of Islamic Law**

According to Hanafis, though this form of *ṭalāq* (*triple ṭalāq* in one sitting) is sinful and innovative but it is valid and *ṭalāq* will take place. The Hanafis believe that, when triple divorce is pronounced, the wife will become totally alienated for the husband and he cannot remarry her. She becomes totally *ḥaram* (prohibit) for him. Neither he can take her back nor fresh *nikāh* until she marries another person and that person divorces her on account of marital conflict or she becomes a widow. According to Maulana Umar Ahmad Usmani, this position is not only of Imam Abu Hanifa but also of Imam Malik and Shafi'i. Imam Shafi'i says that, this form of divorce is perfectly valid. It is not innovation. It is quite proper on the part of husband to pronounce such a divorce. No husband can be prevented from adopting a valid course. Even Imam Ahmad Hanbal's position is the same as that of Imam Abu Hanifa and Imam Malik. Thus it seems that all major founders of four schools of jurisprudence accept the validity of triple divorce. But Imam Taymiyyah has proved that Imam Ahmad bin Hanbal had retracted from his earlier position of accepting the validity of triple divorce and in a later period, he used to say that when I reflected on the *Quranic* position I came to the conclusion that it permits only *raj'i ṭalāq* i.e., divorce in which the wife can be taken back. He then took the position that even if someone pronounces triple divorce it should be treated as one only. The husband thus will have the right to take his wife back within the *'iddah* period or go for *nikāh* if the *'iddah* period has expired. Imam Ahmad's companions and disciples also adopted this position. Many companions of the Prophet like Ibn Abbas, Hazrat Ali, etc. also were of this opinion. Some have quoted; companions like Abdullah bin Mas'ud, Abdur Rahman bin'Auf and Zuber bin al-Awwam also adopting this position. Ahl-e-Hadith also is of this opinion, i.e., that triple divorce is not valid. The Ithna 'Asharis (i.e., twelve, Shi'as) and Imamiyas believe that if three divorces are pronounced together, even one divorce does not take place, let alone three. Even some Hanafi jurists like Hajjaj bin Artat and Muhammad Ibn Muqatil believe that if one pronounces three divorces, no divorce will take place. Maulana 'Usmani tells us that, according to Muhammad Muqatil one of the two opinions of Imam Hanifa was that only one divorce will take place if three

divorces are pronounced. Similarly according to Imam Tilmisani Imam Malik also held the opinion that only one divorce takes place if three divorces are pronounced. Usmani also quotes from Hafiz Ibn Hajar's *Fath al-Bari* to the effect that many eminent jurists held that, if one pronounces three divorces, only one take place. From among the '*ulama* (clerics) of later period, Sheikh Shaltut, who was Sheikh al-Azhar, writes in his *Fatwa* that if one gives three divorces, only one divorce *ṭalāq -i-raj'i* will take place and the husband will have the right to take his wife back by saying so or by having sexual contact with her. Another prominent 'Ālim 'Allama Rashid Rida', in his *Tafsir al-Manar* (Vol. IX, p. 683), has expressed a similar opinion. Another contemporary eminent Arab 'Alim Shaikh Jamal al-Din al-Qasim has discussed this problem at great length in his book *al-Istinās* and has concluded that triple divorce has no validity and it should be treated as one divorce only. Quoting all these authorities Maulana 'Usmani says that triple divorce is not according to the methodology of Qur'an.²⁴

Conclusion

To conclude the topic, it can be said that, *triple ṭalāq* in one sitting is totally against the Quran and Hadith. Although all four major schools of Islamic Jurisprudence declared it valid but all considered it *bid'ah* (innovation in religion). What is the difference between the Supreme Court judgement on August 22, 2017, in which *Triple Talāq* declared manifestly arbitrary practice and in the Islamic law? What is the difference between the *triple ṭalāq Bill* (Bill No. 247 of 2017) and rulings of the Quran and Hadith? Instant *ṭalāq* will take place due to the intention of the man not according to any rulings. The true rulings of the divorce are according to the Quran and Hadith.

Nowadays, many Muslim states considered triple divorce as one divorce on the legal ground. Hafiz Ibn Hajar Asqalani says, *ṭalāq* is *haram* (prohibited), if it is against the Sunnah i.e. *triple ṭalāq* or *ṭalāq* in menstrual. Maulana 'Umar Ahmad further quotes from Haykal's book to show why Hazrat 'Umar was constrained to enforce triple divorce despite the Quranic injunction contrary to it. Muhammad Haykal says that when the Arabs conquered Iraq, Syria, Egypt, etc., the women prisoners from these regions were brought to Mecca and Medina. These women were very attractive and charming and the Arabs were captivated by their charm and wanted to marry them. But these women insisted on the men giving irreconcilable divorce to their wives. To satisfy them they would pronounce triple divorce and pretend to

having divorced their wives for good. It was the need of hour that was perceived by the Hazrat Umar to solve problem.

This Bill of government is totally politically motivated. Who will suffer from this Bill? Only Muslims shall become victim of this Bill, especially Muslim women. If a man pronounced the instant *ṭalāq*, goes to jail for three years, who shall provide the allowance to the woman and her minor children? This Bill will create more and extreme tensions and conflicts between the two Muslim families as well as Muslim society. The Quranic rulings already have declared the allowance to the divorced women 1400 years ago. Islamic Law is quite clear over this matter. And there is no need to dispute over this matter.

References

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- ¹ The Quran (20: 123)
 - ² Bill No. 247 of 2017
 - ³ The Quran (2: 228)
 - ⁴ The Quran (2: 230)
 - ⁵ The Quran (2 : 231)
 - ⁶ The Quran (2: 228)
 - ⁷ The Quran (2: 232)
 - ⁸ Bill No. 247 of 2017
 - ⁹ The Quran (2: 241)
 - ¹⁰ The Quran (65: 1)
 - ¹¹ The Quran (65: 2)
 - ¹² Khan, Syed Ahmad, *Essays on the Life of Muhammad*, Essay 4, Idarah-I Adabiyat-I, Delhi, 2009, pp.8-9
 - ¹³ *Ibid.*, pp. 14-15
 - ¹⁴ *Ibid.*, p. 15
 - ¹⁵ *Ibid.*, p. 15
 - ¹⁶ The Quran (4: 34)
 - ¹⁷ The Quran (4: 35)
 - ¹⁸ The Quran (4: 59)
 - ¹⁹ Sahih Muslim, Vol. 7, H. No- 2675
 - ²⁰ Sahih Muslim, Vol. 7, H. No- 2676
 - ²¹ Sahih Muslim, Vol. 7, H. No- 2677
 - ²² Asghar Ali Engineer, *The Quran, Women and Modern Society*, Select Book, India, 1999, pp. 143 -153
 - ²³ *Ibid*
 - ²⁴ *Ibid*