



Research Paper

Practices of divorce among Muslims in India: An Overview

Dr. Md. Yusuf Khan

Assistant Professor
Department of Sociology,
North-Eastern Hill University,
Shillong, Meghalaya

ABSTRACT: The practice of divorce, especially triple talaq, by Muslims, and Islam for equipping Muslim men with the arbitrary power to pronounce divorce at their will, have been criticised for victimizing and rendering the position of Muslim women extremely weak and vulnerable, and consequently project them as more prone to divorce than women of other communities because of the tendency to believe/claim that Muslims practice divorce by conforming to the Islamic law. However, this article tries to show otherwise as theoretically Islam doesn't encourage divorce and look down upon women; rather it gives women the right to divorce in the form of Khula. Secondary sources used in the present study show that rate of divorce is less among Muslims than among other religious communities in India. Moreover, triple talaq which is against the prescriptions of Quran and Hadiths is not practised by many Muslim communities. Among those who practice it there are cases where women seeking divorce prefer triple talaq to other forms as it allows hassle-free termination of the relationship.

KEYWORDS: Divorce, Islam, Muslims, Women, Triple Talaq, India

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I. INTRODUCTION

Divorce which is also denoted by the Arabic word 'talaq' among Muslims is supposed to be pronounced by conforming to the *Sharia'h* (Islamic law) the sources of which are Quran, the holy book of Muslims, and the *Hadiths* (the sayings of Prophet Muhammad). Marriage being a civil contract in Islam is opened to any reasonable and lawful stipulations. It recognizes the necessity of divorce in cases when marital relationship becomes toxic to an extent that peaceful home life comes out to be nearly impossible. However, Islam does not believe in unlimited opportunities for divorce on frivolous and flimsy grounds, because any undue increase in the facilities for divorce would destroy the stability of family life, and it has been made necessary that this right should be exercised only in exceptional cases, when no other way is left and all efforts to make peace between husband and wife have proved abortive. Ashraf (2006), quoting a verse from the holy Quran and a *hadith*, states that divorce is disliked by God and His Prophet Muhammad PBUH¹, therefore, it is a great sin to exercise the right of divorce without genuine reasons. That is why the idea that a Muslim husband can divorce his wife at will and when he likes, in fact, opposes to Islamic teachings. Therefore, while allowing divorce even on genuine grounds, Islam takes great care to introduce checks designed to limit the use of this right. Thus, divorce is the last thing to which a Muslim may resort as a necessary step and that too only when it becomes absolutely inevitable and all efforts of peaceful living between the husband and the wife miserably fail. Quran and *hadiths*, indeed, discourage divorce and is strongly in support of the family unit. Navaid (2009) shows this by citing the *hadiths* which say, "Of all things licit, the most hateful to God is divorce," and "Let not the faithful man hate the faithful woman; if he dislikes some of her habits, he may like others." Despite of the fact that Islam discourages divorce, most of the scholars and common people blame Islam saying that the arbitrary power of Muslim men under the *Sharia'h* to pronounce divorce upon their wives renders the position of Muslim women extremely weak and vulnerable, and consequently project them as more prone to divorce than women of other communities. But can the provisions of Islamic law be made the bases to suggest that the divorce rate, family instability and the vulnerability of women is higher among Muslims? Moreover, *triple talaq*² which is considered by most of the Muslim jurists and scholars as valid *talaq*, albeit it is against the prescriptions of Quran and *Hadiths*, has been a ambiguous issue for decades engaging the attention of not only scholars but also general public. The demands to ban this unsavoury practice of *triple*

talaq in one sitting have been getting momentum in recent years that the All India Muslim Personal Law Board (AIMPLB)³ has started discussing for its modification. But the question is how often this form of *talaq* has been practised by Muslims in India? By considering only the fact that AIMPLB permits *triple talaq* we cannot conclude that all *talaqs* that are being pronounced by Indian Muslims are *triple talaq*.

Therefore, this article examines the doubts and misunderstandings regarding divorce among Muslims, and also analyses the degree of congruity between Islamic injunctions and actual practices of divorce prevalent among Muslim communities as this has the potential to show how often there is a gap between religious theory and social practice.

II. DIVORCE IN ISLAM

The word 'divorce' is originated from a Latin derivative and conjures up the splitting up of a unit, the permanent physical separation of the spouses, while the Arabic word '*talaq*' is derived from the Latin word '*itlaq*' which means to set free or to leave. *Talaq*, therefore within the context of the marital link means to terminate the bond created by a marriage contract. In Islam there are three broad forms of divorce through which a marriage can be dissolved. When dissolution proceeds from the husband it is called *talaq*; and when it takes place at the instance of the wife by returning to her husband a part or full amount of the *mahr*⁴, it is called *khula*; and when it is by mutual consent, it is called *mubaraat*. Thus, rights similar to that of husband have also been given by Islam to the wife regarding the divorce. Ashraf (2006) is of the opinion that whenever enmity exists between the husband and wife, and they apprehend that the matrimonial alliance is not likely to serve the ends of marriage, and then it is perfectly lawful for the woman to seek *khula*. Islam provides certain guidelines to be followed at the time of divorce failing which will lead to the invalidity of the divorce. Quoting a verse from holy Quran, he further explains the principles of divorce or a disagreement to live together as husband and wife, and the process to be adopted when a rupture of marital relations is feared. He claimed that in the process to be adopted, both husband and wife are to be represented on a status of equality: an arbiter has to be appointed from his people and another from her people. Then, the two are told to remove the differences and reconcile the parties to each other. If agreement cannot be brought about, a divorce will follow. However, there is difference of opinion among the different schools of Islamic thought⁵, regarding the powers of the arbiters. According to the *Hanafi* and *Shafii* schools, the arbiters are not authorized to pass any final decree but may recommend measures for reconciliation, which may be accepted or rejected by the spouses. Divorce may be given orally, or in writing, with actual utterance of divorce. But, whatever the actual words used, they must expressly convey the intention that the marriage ties is being dissolved (*Ibid.*).

Islam prescribes the pronouncement of *talaq* when the wife is in the state of purity when menses are over because of two reasons. Firstly, it is said that during menstruation women become irritable and tense due to physiological changes. It is forbidden to divorce a wife in consequence of a marital fault arising during her menstruation. Secondly, during the period of menstruation, the marriage partners are cut off from physical intimacy which is the main source of their mutual attraction and affection. When the menstruation period is over, it is possible that affectionate emotions prevail with the resumption of sexual relation and the discontentment which inclined the husband to divorce may melt away. Ashraf (2006) argues that the pronouncement of divorce should be spread over three period (three menstruation cycles) and the final decision should be made of whether he is prepared to take her back or to bid her good bye for ever before the third menstruation cycle. After these three courses of menstruation, a divorce becomes irrevocable. The three month period of waiting is prescribed because the state of pregnancy will become clear within this three month and no doubt is left in regard to the fatherhood of the new born child. Also both the parties are given a time limit to reconsider the consequences of permanent separation within this three month times before taking the final step. In case of pregnancy this period extends to delivery no matter it is one day or nine months. Thus the period of waiting during which conjugal relationship may be established is only a chance given to the couple for reunion and to make divorce revocable before the prescribed period is reached. Ashraf (2006) corroborated this by citing verses from holy Quran which says that the husband must take his final decision after the completion of the second pronouncement of divorce and before the completion of the third pronouncement, within which he can take back his wife. Within the period of waiting the husband is bound to maintain the wife and her children begotten by him. If the husband changes his mind after the third sitting and wants to have his wife back, he cannot do so except if and when the wife is married to someone else and her new husband too divorce her (Navaid, 2009; Ashraf, 2006). This condition seems to have been placed to guide husbands not to be reckless but calmly consider while taking a decision to divorce their wives. Thus, Islam provides a strict rule to which Muslims have to adhere at the time of pronouncing *talaq*.

There is a great controversy regarding the effect of the triple pronouncement of divorce at one and the same time. The difference in the opinion of jurists is due to the difference in the interpretation and application of law. Under most of the classical schools of *Sunni*⁶ Islamic jurisprudence, there is no material difference regarding the effect of '*triple talaq*', in substance. According to *Hanafi* and *Maliki* jurists, the pronouncement of divorce three times at a go is considered to be valid divorce. More or less same view is held by the *Hanbali* School.

Whereas the *Shafii* school holds that if a husband pronounces three divorce at a time, intending or without intending, it will result in single pronouncement of *talaq* i.e., the first pronouncement of three divorces spanning three months with one pronouncement in each month (Ahmad, 1978).

According to the *Sunni* theology, *talaq* may be affected by just uttering the word '*talaq*' which leaves no doubt as to the intention of the husband. For example, if a man were to use the word '*talaq*' it would not be necessary to see whether he intended to divorce his wife or not. There is no need of witness to be present at the time of *talaq*. Under *Sunni* law a *talaq* uttered even under compulsion, fraud, under influence or paroxysm of anger is valid. However, according to *Shia* doctrine, *talaq* pronounced by just uttering the word '*talaq*' is not valid. *Talaq* pronounced under compulsion is invalid and ineffective under *Shia* law because the intention to divorce is a necessary element, as stated by Husain (1976), to the validity of the *talaq*. Moreover, according to *Shia* law, a husband cannot affect a valid *talaq* in writing unless the husband is dumb. It is further necessary that there should be two reliable witnesses present at the time of *talaq* to hear the words of *talaq* pronounced, or in the case of a dumb individual, to see the writing or the signs in which *talaq* is expressed. In contrast to the *Sunni* law, *Shia* law strictly prohibits the pronouncement of *triple talaq*. They consider it as forbidden (*haram*).

III. PRACTICES OF DIVORCE AMONG MUSLIMS IN INDIA

Many scholars like Davis (1976) have the view that traditions and customs of Muslim marriage in India are based on the Islamic ideals and teachings. As a rule, the predominant tendency in both theological and religious discourse as well as academic research about Muslims has been to treat them as a monolith and insist that they are one, no matter where they are located. This may be so to the extent that they are supposed everywhere to follow the basic tenets of Islam, but this proposition would be opened to some degree of questioning from the point of culture and social life. One significant aspect of the social demography of Muslims in India is that they are not concentrated in one or just a few parts of the country. They are dispersed in different parts of the country in varying proportions of the population of the region. Further, Muslim community in different parts of the country has been formed by entirely different processes at historically different times and carry the distinct imprint of history, culture, language and socio-cultural structures of the areas where they are located.

These facts have a far-reaching implication for the way we understand Muslim communities in India. Socio-cultural life, including the practice of divorce, of a community are a result of interaction of the community with the geography, ecology and the history of a region which have a decisive influence. The socio-cultural diversity among Muslims in India has a deep imprint on the practices of divorce. These practices are neither uniform nor absolutely in accordance with the *sharia*'h. Some Muslim communities, particularly the Muslims of higher social strata, may look upon divorce as social stigma while other Muslims of lower social strata may widely practice divorce. Further, although *Shia* law permits divorce, the *Shia* community of Uttar Pradesh didn't favour divorce till recent times even as a last resort and preferred death to divorce (Husain, 1976).

Among many Muslim communities like the *Gujar Bakarwals* of Jammu and Kashmir, divorce may be affected through un-Islamic means like elopement of the wife by another man (Khantana, 1976). Thus, it is possible to contemplate a situation where the wife takes the initiative of divorce to achieve an advantage over her husband. Therefore, one must recognize that divorce is something that results from a complex web of factors for which either the man or the woman might be responsible. Furthermore, the dissolution of Muslim marriage act of 1939 enables a Muslim wife in India to seek divorce through courts on the grounds: (i) the whereabouts of the husband are unknown for a period of four years; (ii) failure of the husband to provide for the maintenance of the wife for a period of two years; (iii) sentence of imprisonment on husband for a period of seven years; (iv) failure without reasonable cause to perform marital obligations; and (v) impotency of husband (Husain & Hasnain, 1988). Thus, in actuality, there may be many cases of divorce where the wife seeks divorce and the husband has no way but to give his consent to the divorce. Islam also provides the conditions on the basis of which divorce can be sought by either party like husband's impotency, suffering from a serious disease that renders the continuation of the marital relation either impossible or unsafe or if the husband is put in prison for long a long time or fails to support his wife. However, in practice, Muslims in India seek divorce besides these grounds and for un-Islamic reasons like inadequate dowry, desire for another marriage etc.

As far as the rate of practice of divorce among various religious communities in India is concerned, available sources seem to contradict the claims of many that it is highest among Muslims. The census of India, 1931, the last census to provide community-wise data, shows that the percentage of 'divorced persons' was less among Indian Muslims as compared to the percentage of other major communities and all-India percentage. Hindus recorded the highest with 5.7 and 16.9 percentage of male and female respectively as divorced while Muslims recorded only 4.4 male and 12.9 females as divorced (Hutton, 1933). Further, Khan (1979), in his study of fertility behaviour among Muslims of Kanpur city, found only three cases of divorce among 300 Muslim couple respondents. Similar findings were also reported by Roy (1979) in her study of Ashraf middle class families in Delhi and Lucknow. She found only three cases of divorce in the entire sample of 300 families. Roy says, "In two of the three cases women seek divorce. In the first case the woman after having two children realised that her

husband was incapable of looking after the family. Moreover, the man used to keep away from the family for months together. The girl's parents were sympathetic towards her and they brought their daughter back to their home. Later the woman signed the divorce paper and succeeded in getting her husband's consent. In the second case the woman had to divorce her husband due to his infidelity". Jain (1979), in her study in the city of Jaipur, surprisingly also found only three cases of divorce in a sample of 375 respondents out of which one case is divorce seeking by the wife i.e. *Khula*. From a close scrutiny of these findings we can conclude that divorce is not as frequent among Muslims as is generally assumed. Indeed, only 9 cases of divorce are reported out of about 980 marriages in Kanpur, Lucknow and Jaipur. Thus, a divorce rate of less than 1 percent is reported among Muslims of these regions. Secondly, contrary to the popular impression that Muslim men divorce their wives as and when it suits them, these findings show that divorce is also sought by women. In fact, out of 6 cases in two studies, 3 women sought divorce.

IV. PRACTICES OF TRIPLE TALAQ

Triple talaq which is considered as undesirable or even forbidden in Islam is being practiced by Muslims in India as evidenced by reports in various academic writings and print media. Because of these reports of the incidences of *triple talaq*, it is repeatedly claimed, not only by Muslims but also by many non-Muslims scholars that if justice and equality are the key social message of Islam, then how can the practice of *triple talaq* be squared with any notion of justice or equity. As a matter of fact, triple divorce was practiced by the Pagans and Jewish-Christian Arabs in pre-Islamic Arabia, indeed, as an instrument for torturing wives. The power of divorce possessed by husbands was unlimited and was frequently exercised without any regard to the marital obligations. They could divorce their wives at any time, for any reason or even without any reasons (Ahmad, 1994). Muhammad PBUH after the attainment of his Prophethood of Islam framed the law of divorce so that evils and atrocities flowing from *triple talaq* could be removed. He allowed divorce at three distinct and separate time periods but not *triple talaq* (Mahmood, 1992). Henceforth, *triple talaq* had not been allowed till more than first two years during the period of second *Caliph*⁷ of Islam, *Hazrat Umar*. However, on account of a peculiar situation Umar permitted *triple talaq*. When the Arabs conquered Syria, Egypt and Persia they found out that the women there were much more beautiful than their own women and hence were enticed to marry them. But those women did not know about the Islam's abolition of *triple talaq* in one sitting, and insisted that before marrying them the men should pronounce *triple talaq* to their existing wives which they readily accepted to do (as they knew Islam had abolished *triple talaq* and that would not be effective) and after marrying the Syrian or Egyptian women they would also retain their earlier wife. When the Egyptian and Syrian women discovered that they had been cheated, they complained to Umar, the then *Caliph*, to enforce *triple talaq* again in order to prevent its misuse by the Arabs. He had agreed with their demands to meet an emergency situation and not with an intention to enforce it permanently, but later on jurists also declared this form of divorce as valid and gave sanction to it (Ahmad, 2003).

Thus, *triple talaq* was endorsed during the reign of second *Caliph* of Islam and it was not the Quran but the *Umayyad*⁸ practice which gave lawfulness to this form of divorce. If Islamic law (*sharia'h*) is derived from the Quran and *hadiths*, then the sanctity of *triple talaq* as declared by jurists is critically questionable. However not all jurists have the same view, some have views which are against the practice of this form of *talaq* and claim it as invalid divorce.

We cannot deny the austerity of '*triple talaq*' provision in Muslim law which legally enables a Muslim man to divorce his wife. But to assume that this provision is extensively misused for exploiting and discarding Muslim women would be wrong since in some cases where, for whatever reason, both the husband and wife has come to realize that they can no longer live together as husband and wife, *triple talaq* allows a relatively hassle-free termination of the relationship. Further, there are some Muslims like *Asamiyaa* Muslims of Assam who prefer pronouncement of divorce at three different consecutive interval of time to *triple talaq* (Ali, 1976) while other Muslim communities like *Meos* of Mewat (Shamsh, 1983) who prefer *triple talaq* to other forms of divorce when both of these communities are bound to follow the same Islamic law.

V. CONCLUSION

Despite of the legality of divorce and husband's authority to divorce his wife at his will in Islam, divorce rate among Muslims when comparing with other religious communities is low and at times wives rather than husbands also seek divorce predominantly not for the reasons prescribed by Islam. Besides, notwithstanding the fact that *triple talaq* has been sanctioned as a valid form of divorce in Islam, its practice varies across Muslim communities. From this we can conclude that divorce among the Muslims in India is a social phenomenon and its practices and pattern are controlled and regulated more by the societal conditions than by *Sharia'h* or Islamic law.

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Notes:

¹ Peace be upon him.

² *Triple talaq* simply means the pronouncement of *talaq* (literally means 'I divorce you') by the husband to the wife three times at an instance.

³ Matters of jurisdiction involving Muslims in India related to marriage are governed by AIMPLB.

⁴ In Islam, '*mehr*' which is also transliterated as '*mahr*' is the amount of money or kind to be paid by the groom to the bride, at the time of marriage or *nikah* which remain her own property as security in the marriage and she can spend it as she wishes.

⁵ There are four schools of thought in *Sunni* Islamic law i.e., *Hanafi*, *Maliki*, *Shafii* and *Hanbali* School.

⁶ There are two sects of Islam i.e., *Sunni* and *Shia*.

⁷ *Caliph* was the chief Muslim leader in the then Arabia.

⁸ *Umayyad* is Arabic word which means member of Muslim dynasty that ruled the Islamic world from 660 to 750 A.D.