

“A study on the opinion and Perception of Muslim women about ‘Triple talaq a study conducted at University of Mysore Manasagangothri Mysuru’”

BY

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Abstract

The present attempts to Study the perception of Muslim women who deals with the talaq (Divorce). Triple talaq was a practice of divorce by Muslims in India. It has been a subject of controversy and debates within the community, raising the issues of justice, gender equality and human rights. Researcher tries to understand the basics of triple talaq and studies the how Women Muslim girls give their opinions about the Triple talaq. It's quite clear in the study 64% respondents opined talaqed women should get better social status. The study result shows that 76% respondents opined that after talaq Muslim women have reduced participation in the socio cultural and religious aspects of life of Muslim community. The NGO (non-government organization) should also play a significant role in organizing community base camp and giving awareness to the local people about the ill effects of talaq and sensitizing and motivating them a change in the socio religious practice of Muslim community.

KEY WORDS: Divorce, Talaq, Sunnat, Biddat, Ahsan, Hasan, Ila, Zihar, Khula, Mubarat, Mehr and Iddat.

INTRODUCTION

Triple talaq is a practice of divorce by Muslim in India. It has been a subject of controversy and debates within the community, raising the issues of justice, gender equality and human rights. According to the prophet's sayings giving talaq to a wife in a fit of rage or anger is strictly prohibited. The Quran advise the husband to settle the differences through a mutual conversation as the first step. This step is known as the **faizu hunna**. If the differences continue between the husband and wife, the parties should refrain from any conjugal acts till settle their dispute. This step of physical separation known as the **wahjuru hunna** is prescribed so that the couple re units. However, even if this second step fails, it is recommended that the husband must attempt to talk to wife, make peace with her and talk about the gravity of the situation; this third step is known as the **wazibu hunna**. However, Quran advise that even if the third steps fails, the fourth step of, arbitration must be followed. in this step, a member from each of the spouse family is present and the parties try to make amends in the strained relationship.

Before understanding what Triple Talaq is, we must understand what is a **Nikha (marriage) stand** for Islam

“Nikha is essentially a contract laid down in a “**Nikhanama**” drawn between the husband and the wife. This contact can have condition and has a compulsory consideration (mehar) to be paid at the time of the marriage. This consideration paid by a man to the wife”. So the basic difference between a Hindu marriage and Muslim marriage is that for Hindus marriage is a divine sacrament whereas for Muslim, it is contract drawn between the husband and wife. When dissolution of marriage tie proceeds from the husband, it is called Talaq and when it takes place at the instance of the wife, it is call **Khula**, when it is by mutual consent, it is called **Mubarat**. Under certain circumstances wife may move the **Qadi** or court to get her realized from the marital tie which is called **faskh** (Judicial divorce).

NATURE AND BACKGROUND OF DISSOLUTION OF MARRIAGE IN ISLAM SOCIAL POLICY OF ISLAMIC LAW OF DIVORCE

Islam with its realistic and practical outlook on all human affairs recognizes divorce, but only as a necessary evil in inevitable in certain circumstance. It is said in hadith (Prophet's saying) of all the permitted things divorce is the most abominable with god. According to Islamic concept matrimonial alliance is a sort of social contract and it can be dissolved when it ceases to serve its purpose. This doesn't mean that marriage has no sanctity or solemnity in Islam. The analysis of marriage and divorce laws recognized by Islam clearly shows that the martial tie is to be respected and continued as far as possible. The mutual adjustment and tolerance are emphasized behind proportions just for the sake of keeping intact the marital tie. The parties also lose some social respect on separation. The parties, their well wishers and courts are required not to leave any stone unturned for the subsistence of martial tag in case of dispute and disagreement between the parties. The dissolution is provided as a last resort in such circumstances. The marriage under such extreme circumstances may be dissolved either by the parties or by the court.

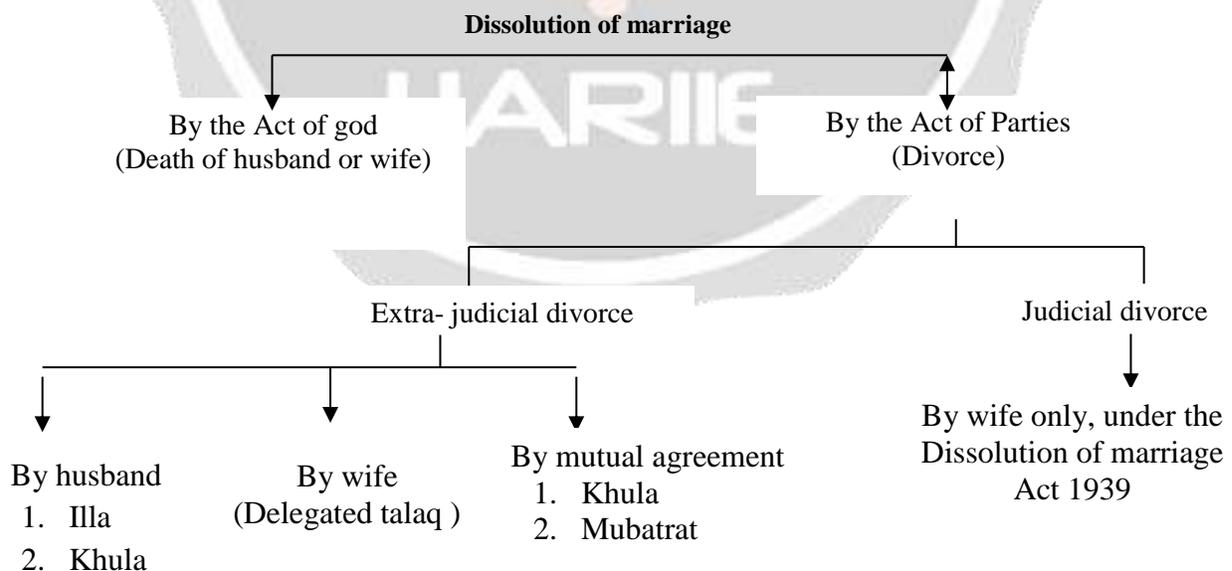
HISTIRICAL BACKGROUND OF DIVORCE:

To understand the nature and concept of divorce in Islamic law, a brief account of its historical background is necessary. Among all the nations of antiquity, the power of divorce was regarded as a natural corollary to marital obligation. They could divorce their wives at any time, for any reason or even without any reason. They could give divorce and also revoke the same as many times as they preferred. They could, moreover if they were so inclined, swear that they would have no intercourse with their wives, through still living with them. they could arbitrary accuse their wives of adultery, dismiss them and levee them with such notoriety as would deter other suitors ; while they themselves would go exempt from any formal responsibility of maintain in pre Islamic Arabia divorce was used as an instrument of torture . Under ancient Hebrew low a husband could divorce his wife for any course which made her disagreeable to him and there few or no checks to his arbitration and capricious use of this power. These social and moral ill and injustice engaged the attention of the prophet of Islam fully conscious of the evils flowing from divorce; he framed the laws of marriage and divorce in order to remove these evils.

TYPES OF TALAQ IN ISLAM

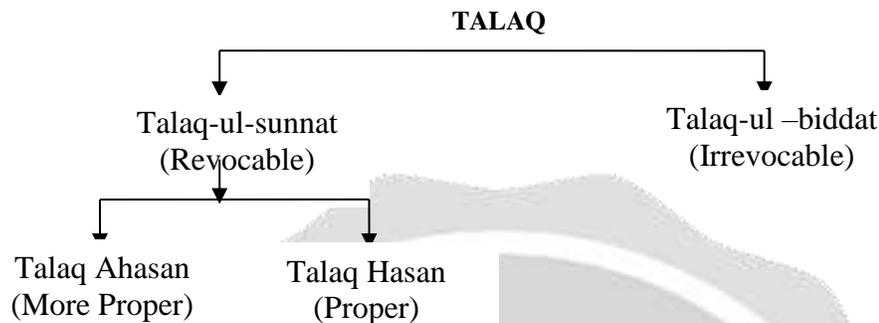
The basics of the Islamic law of divorce is the inability of the spouses to live together rather than many specific cause on account of which the parties cannot live together . It is to be noted that with this idea behind a divorce, Muslim law recognizes several modes of divorce. a divorce may be either by act of the husband or by the act of the wife .

The chart given bellow, present a clear picture of the various kinds of divorce in Muslim marriage.



Talaq- Talaq is an Arabic word & it literal meaning is to release; under Muslim law, talaq means repudiation of marriage by the husband, when divorce proceeds from husband at his will it is known as divorce by talaq .

Talaq as practiced in India is peculiar because a Muslim husband has an unrestricted right to divorce his wife even without giving any reason. The law gives to husband an absolute authority to terminate the marriage by pronouncing talaq, because in a society dominated by males, the conjugal happiness primarily depends up on the efforts of the husband. But this absolute authority of pronouncing talaq should not be misused by the husband. In Islam talaq is permitted only when the wife by her conduct or her words does injury to the husband or happens to be impious.



Talaq-ul-sunnat (Revocable):-Talaq-ul-sunnat is regarded to be the approved form of talaq. It is called as Talaq-ul-sunnat because it is based on the prophet's tradition (sunna). As a matter of fact, the prophet always considered talaq as an evil. The prophet recommended only revocable talaq, because in this form, the evil consequences of talaq do not become final at once. There is possibility of compromise & reconciliation between husband & wife. Talaq-ul-sunnat is also called as talaq-ul- raje. Talaq-ul-sunnat may be pronounced either in Ahsan or Hasan form.

Talaq Ahasan: or the most laudable form of divorce .this is done by a single pronouncement of divorce a tuhar (period between menstruation) followed by abstinence from sexual intercourse for the period of iddat. When the period of iddat expires & the husband does not revoke the talaq either expressly or through consummation, the talaq becomes irrevocable & final. it may be noted that the characteristics feature of the Ahasan form of talaq is a single pronouncement followed by no revocation during the period of three month's iddat.

Talaq Hasan or a laudable form of divorce. In talaq Hassan divorce, the husband has to make a single declaration of talaq in a period of tuhar (period between menstruation). In the next **tuhar**, there is another single pronouncement for the second time. But if no revocation is made after the first or second declaration then lastly the husband is to make the third pronouncement in the third period of purity. As soon as this third declaration is made, the talaq becomes irrevocable the marriage dissolves & the wife has to observe the third pronouncement & its irrevocability after the third. In order to make an effective talaq, the words must be uttered three times in three consecutive periods of purity.

Talaq-ul- Biddat (Triple talaq):- triple talaq was neither recognized nor sanctioned by Quran & the holy prophet. It was not in practice during the span of first caliph but the second caliph **Umar** brought this concept of instant divorce. It came in to existence to meet some emergency situation & was not made a law permanently. Unfortunately, the hanafis jurists on the strength of this administrative order of second caliph declared this form of divorce as valid.

Triple talaq is also known as **talaq-ul- biddat** which gives a right to a man that whenever which gives a right to a man that whenever he thinks fit, he may give divorce to his wife anytime & which becomes void & irrevocable. This not only violates, Muslim women rights but this is also makes them inferior in the eyes of society as well as in the eyes of men. It is true that every religion practice is scared, & no one has right to interfere in these religious practice. now a days this practice is being misused by many Muslim man's which severely affects their wives life & we don't agree that religion can take away the basic human rights & natural rights of any human being which this practice does the most barbaric things about this type of divorce is that it will be complete even in the absence of wife & even if the wife does not having knowledge of such divorce.

THE CONSTITUTIONALITY OF TRIPLE TALAQ

In the holy book Quran, **Nikah** means **misqaan ghaliza** that means a strong bond & it explain how & with whom one can enter in to this strong bond & this bond cannot be dissolved without proper reason & method triple talaq has not only result in atrocity but also infringed the fundamental rights guaranteed to the citizens of India.

Article 14:- is the **right to equality** in which no person is above the law, as it is supreme, every person is equal in the eyes of law irrespective of gender or religion. We have seen the, in triple talaq all right of divorce is bestowed upon the men only. As the marriage is under taken by the free consent of both parties, dissolution of such marriage also should be by the free consent of the Parties, only then equality exists. But in triple talaq the husband can pronounce the divorce without even the knowledge of the wife, which in itself is infringing the Muslim wife's right to equality. Triple talaq has conferred unlimited & absolute power to give instant divorce to his wife even when there is no just or reasonable cause. This shows that how the doctrine of tripe talaq has been misused so as to satisfy the male ego & to suppress woman without any just cause.

Article 15(1) state that the stat **should not discriminate against any citizen on grounds of any religion ,race ,caste, sex, & place of birth or any of them** .article 15(1) does not permit any kind if discrimination ;whereas triple talaq violates it. Triple talaq is and detestable practice in which all rights are conferred up on the men & women are consider mere as puppets, whom they can control as they desire. The Muslim women tend to suffer triple penalty because of their gender.

Article 21 is the most acrid fundamental right conferred by the law of laws. It speaks about the right of life & **personal liberty**, which has been violated by the doctrine of triple talaq. It encroaches upon the basic unity that a woman holds under article 21. The Quran encourages people to respect the woman & not to abandon her without any just reason or for satisfying the male ego. If spouse gives divorce to his spouse without any logical & rational cause it will not only isolate the Quran but also the supreme law of the land. The most important contention which makes a triple talaq violates of article 21 is those concept is totally arbitrary & woman has no say in this process which is totally unfair & unconstitutional.

Article 25 (1) provides **freedom of religion** where every citizen if given the right to choose & practice & freely any religion of his or her own choice, it also states that no one should interfere with it. Muslim marriage & divorce are governed by Muslim personnel law & them solely responsible for the infringement of fundamental rights of Muslim woman.

"In Quran, it is nowhere mentioned that talaq-ul- biddat that is triple talaq should be practiced to dissolve the marriage. Marriage & succession are not a part of religion & with the changing time the law also needs to change. This idea was supported by hon'ble court in **prakash v. phulvani** & it was stated that there can be no discrimination n the grounds of religion."

Therefore, it is clearly visible from the above instance that triple talaq is violate of constitution. It violates the basic structure of the constitution which provides justice to both men & woman equally but it is not justifiable as. It is discriminatory to woman & this practice is totally arbitrary in nature which makes it violate of fundamental rights guaranteed under constitution.

JUDICIAL DECISION ON TRIPLE TALAQ

Mohd. Ahmed khan vs. shaha bano begum & others:- this is one of the lands marking judgment in the legal history, in 1985. This case explained that what should be including under the decree of the Supreme Court.

In this case the issue was that MS bano claimed the maintenance under the Cr P.C rather than through the personal laws, after getting divorced from her husband mohd.ahmed khan. According to the personal laws, she could only claim maintenance only during the period of iddat , but as in the Indian law, she had to be given maintenance all through her life , with some exceptions too , under which she didn't came.

As the plaintiff & the defendant were Muslim, were to be governed by the Muslim personal law. Since the petition was filed under the Cr P.C, the district court, the high court & the Supreme Court passed their judgments, favoring MS shaha bano.

The Muslim Women (Protection of Rights on Marriage) Bill, 2017

Talaq, under Islamic law, refers to the husband's right to dissolve the marriage and divorce his wife. One such form of talaq is that of talaq-e-biddat or instantaneous triple talaq. This is a practice that has been highlighted for its discrimination against Muslim women, and has touted as a capricious custom that goes against the Constitutional mandated principles of gender justice and equality. On 22nd August, 2017, a recent judgment by the Supreme Court brought this practice into the limelight, with the five-judge bench ruling the triple-talaq as a form of divorce void in the Shayara Bano Vs. Union of India case. While this judgment was a landmark decision, and signified a momentous change in the lives of Muslim women across the country, it was not enough to stop the practice altogether. It has been protested against by several stakeholders, including The All India Muslim Personal Law Board (AIMPLB), on the grounds that the court has no jurisdiction to decide the validity of judicial practices, and that only legislature can make this change. It is in the context that The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was introduced. It was introduced in Lok Sabha by the Minister of Law and Justice, Mr. Ravi Shankar Prasad on December 28, 2017. The aim of the bill is to give effect to the judgment of the Supreme Court, and to protect Muslim women who are still prone to being victims of the practice of triple-talaq. The Bill proposes to declare pronouncement of talaq-e-biddat by Muslim husbands void and illegal, and it also makes the act of pronouncement a punishable offence. It is an important step in ensuring the rights of Muslim women, as citizens of India, and providing them with Constitutional protection of gender equality and justice. II. The Muslim Women (Protection of Rights on Marriage) Bill, 2017. The Muslim Women (Protection of Rights on Marriage), 2017 aims to declare the practice of 'talaq -e-biddat' and other such forms of instantaneous talaq as illegal, while also incorporating provisions for the protection of married Muslim women upon whom talaq is declared.¹ The Muslim Women (Protection of Rights on Marriage), 2017.

Salient Features of the Bill

- Declaration of Talaq as Void and Illegal: Here, "talaq" refers to talaq -e-biddat or any form of talaq that has the effect of instantaneous and irrevocable divorce on pronouncement by a Muslim husband. The Bill declares any such pronouncement of talaq by a person to his wife, in spoken or written or electronic form or any other manner, to be void and illegal.
- Punishment for Pronouncing Talaq: As a consequence of declaration of the practice as illegal, the person who pronounces talaq shall be punished with imprisonment up to three years and a fine.
- Subsistence Allowance to Protect Rights of Married Muslim Women: A married Muslim woman against whom talaq has been pronounced will be entitled to a subsistence allowance from her husband for herself and her dependent children. The amount in question will be determined by the Magistrate (Magistrate of First Class exercising jurisdiction under the Code of Criminal Procedure).
- Custody of Minor Children: In the event of pronouncement of talaq, the married
- Custody of Minor Children: In the event of pronouncement of talaq, the married Muslim woman will be entitled to custody of the married couple's minor children.
- Offences to be cognizable and Non-Bailable: Any offence under this Bill will be cognizable and nonbailable within the meaning of the Code of Criminal Procedure 1973. Shortcomings of the Bill The salient features highlight the strengths of the Bill in providing a protective framework to Muslim women and taking forward the cause of women's rights. There is broad consensus regarding the undesirability of the principle of talaq-e-biddat. However, criticism raised against the Bill attempts to bring in more effective ways of discontinuing this practice.
- Criminalization of the Practice: The criminalization of talaq under section 3 and 4, while intending to protect the married Muslim women, face some legal and operational challenges.
 - Since marriage under Islamic law is a civil contract, the Bill must follow civil procedure. The current criminal nature of the offence is, in this respect, inappropriate given the nature of the subject.
 - Moreover, scholars suggest that the legislation should have included the offence under the ambit of the Domestic Violence Act instead of complete criminalisation. In this manner, women would receive many more benefits such as protection against violence, right to residence in marital home which are not available under the current provisions.

Scholars have also questioned how talaq-e-biddat can be termed an offence under section 4 and 7 given that it has been made void and inoperative based on section.³
- Discriminatory Treatment of Muslim Men: Under the law, Muslim men can be prosecuted even without the agreement of the wife, due to declaration of illegality. But, in the case of similar crimes within other religions,

males cannot be prosecuted without assent of the wife. This would be differential treatment of men of different religions.

Removal of Judicial Oversight: The Bill, under section 7, makes the pronouncement of talaq a cognizable offence, implying that the police have the authority to make an arrest without a warrant and to initiate investigation without permission of the court. This opens up the possibility of the law being misused against Muslim men.⁴

RESEARCH METHODOLOGY

Statement of the research problem

To study on Perception and Opinion of Muslim Women about Triple Talaq, a study conducted at University of Mysore Manasagangotri Mysuru.

Aim of the study

The study aim that understanding the level of awareness about triple talaq there attitude and fallings and also analyze effects of such practice up on the Muslim women and society and to identify the scope for social work intervention as well as policy formulation.

Specific Objectives of the study

On the basis of the above review & research gaps the present study is based on following objectives. There are:

- To study about the socio demographic profile of Muslim women
- To study about the Attitude & perception of Muslim women toward triple talaq
- To study about the level of awareness about triple talaq among Muslim women
- To study about the effect of triple talaq up on the Muslim women
- To suggest and measure to improve the quality life of Muslim women

Research design

In the present study the researcher has used both exploratory and descriptive research design, it's a exploratory because the researcher has went to depth of the research area interacted with respondents and extracted their emotions and fallings about triple talaq and find out the original attitude as well finding about the same, it's also description in nature because the researcher has describe all the explored issues and findings in a simple and lucid manner.

Universe of the study

The present study has been carried out in the manasagangotri campus university of Mysore consist of 37 no of PG departments including the subjects of humanities pure science applied science languages study and also business study. A total no of 3500 students on studying in manasagangotri campus in the present academic year 2019 this constitute of this study.

Sampling technique and sample size

a) **Sampling technique:** In the present study the researcher has used convenience sampling, convenience sampling is type of non-probability sampling that involves the sample being drawn from that part of the population that is close to hand convenience sampling is also known as grab sampling accidental or opportunity sampling

b) **Sample size**

The present study the researcher has selected 50 respondents and collected the primary data

Research tool used in the study

The researcher has developed structure questioners covering all the objective of the study.

Collection of the data

- a) **Primary data:** the researcher had distributed the questioner to the willing Muslim respondents and requested to fill and return the same the entire filled in questioner where collected a couple of days later. The researcher has collected primary data.
- b) **Secondary data :** the researcher had visited the library studied the books scientific articles and generals and collected the relevant secondary sources of information with re regard to subject of the study the researcher also studied existing policy and the recommendation of the supreme court abolishing of the triple talaq thus the researcher has collected a huge amount of secondary data.
- c) **Analysis and interpretation of data:** the collected primary data edited classified and coded appropriately, presented them form s of table later the data was analyzed and interpreted by using the simple percentage method.

Major Findings

The following major findings have been identifies from the present study. They are follows

- It has been found that 86%(43)respondents opined that they aware of the practice of triple talaq
- It was found that 60% of respondents have agreed that the ban of triple talaq in India.
- The study shows that 80% (40) respondents opined that talaq causes more problems after obtaining talaq.
- It is quite clear that 58% (29) respondents opined that triple talaq is an ideal and justifiable practice in the present day situation
- The study shows that 66% (33) respondents opined that the practice of Triple Talaq as mode of separation from wedded life
- The study shows that 58% (29) respondents opined that Muslim community practice discrimination while separating the couple from wedded life.
- It has been found that 72% (36) respondents opined that practice of triple talaq put the Muslim women married women in to hardship.
- In the Present Study 78% (39) respondents opined that talaqed Muslim women should have the right to get marry again.
- It's quite clear in the study 64% (32) respondents opined talaqed women should get better social status.
- The study result shows that 76% (38) respondents opined that after talaq Muslim women have reduced participation in the socio cultural and religious aspects of life of Muslim community.
- Study clearly shows that 76% (38) respondents opined that quality of life of the separated women decrees after talaq .
- The study clearly shows that 96%(48)respondents opined that Talaq causes negative effect up on the growing children
- Study clearly shows that 98% (49) respondents opined that if they get a chance to fight against Talaq they will fight.
- The study clearly shows that 98% (49) respondents opined that Talaq victim Women should get a chance to empower herself.
- A study clearly shows that 82% (41) respondents opined that they agreed with the decision of the Government of India to abolish the practice of Triple talaq.
- A study clearly shows that 80% (40) respondents are opined that the New Muslim Women (Protection of rights on marriage) Bill 2017 protect Muslim Women from injustice.
- A study clearly shows that 84% (42) respondents opined that Talaqed Women should be provided with sufficient social security measures from the Government.
- A study clearly shows that 82% (41) respondents are opined that NGO can provide skill developmental programmers' and also enable them to become entrepreneur.
- The study find out that 100 % (50) respondents are opined that if strong community level campaign begins from the follow Muslim women they will join them.
- A study clearly shows that 96% (48) respondents are opined it is right time that the Muslim religious authority /institution should take collective scientific and rationalistic about the practice of talaq and safe guard the interest of the women folk.

Suggestions:

- The Both the central and state government should formulate and enact social policy and legislation and keep a vigil on the practice of triple talaq so that it can be control as well as stopped to a considerable esteemed.

- The government through its department of social welfare, department of welfare of the religious minority and waqf boards should involve group meetings workshops and develop a plan of action to bring a total control of the practice of triple talaq in the community.
- The NGO (non-government organization) should also play a significant role in organizing community base camp and giving awareness to the local people about the ill effects of talaq and sensitizing and motivating them a change in the socio religious practice of Muslim community.
- NGO 's can also take up extensive research programs about the socio religious practices including talaq and find out suitable suggestions , submit the findings to the government . So as to enable them to enact suitable legislations towards controlling the practice of triple talaq.
- Educational institutions like universities should also encourage the students of social work conduct special camps and enlighten the local people about the ill effects of triple talaq and there by leading to the positive social change in the Muslim community.
- The government authorities at every district level should register the Muslim marriages so that they can keep watch on the married couple
- The judiciary starting from taluk levels (lowest level) till the supreme court of India should take a note of incidents of triple talaq seriously and when they find such incidents they can initiate a judicial probe through a socio- Moto means.
- A suitable policy can also be enacted by the government in consultation with the religious institution of Muslim community with regard to the talaqed women, thereby permitting them to remarry a suitable person.
- Both government and NGO 's should take steps to improve the social status of Muslim women in general and talaqed women in particular so as to enable them to lead a decent quality of life.

Conclusion:-

Marriage is a very sacred institution which leads to a sustainable relationship. It should preserve and its sanctity should be protected. Irrespective of religion but this corrupt practice of triple talaq violates the basic human rights which are conferred upon the women citizens of India. This practice makes Muslim men superior to the Muslim women. The after effect of Talaq (divorce) is another vulnerability which a woman has to suffer; they become economically poor and socially backward. The society does not accept and they are taken for granted even by their own parents. They are taunted and treaded roughly as if it is they themselves who are responsible for the divorce.

It is been noted that in the Muslim community , marriage is a contract between a male and a female and it is completed only when both the parties pronounce **qubool hai** thrice , but then during divorce , it is only the husband who can pronounce talaq thrice and separate. This explicitly violates the article 14, of the constitution of India that every person should be treated equally. Muslim women have to suffer because they are Muslim and certain rights have been taken away from them. By this, it is evident that there is a violation of Article 15. The most which is speaks in the Article 21 is also violated as Muslim women are not given the right to choose about their life by themselves Article 25 is violated as the religious practices under the Muslim, community are not protected under this Article.

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