

The pronouncement of talaq (divorce) thrice in one sitting is a wholly outrageous and obnoxious practice that is largely confined to India. No Muslim country puts any weight on it, and with good reason.

Part of the reason for the continuance of this practice in our country is that the Indian Ulema (clergy) and Muslim legal experts have done precious little to codify Islam's sublime teachings and ethics into law for the benefit of common people. Nor have they taken to Ijtihad (adapting Islam to changing times) and fiqh (jurisprudence), the dynamic principles of Islam. It should be noted that triple talaq is supported only by a very small minority of the Muslim belonging to the Hanifi school of thought.

M.B. Karimian, head of Iran's Culture House and a reputed Islamic scholar, says: "While nikah (marriage) requires no witness, divorce is not possible without the presence of an arbiter and representatives from the two families."

In Iranian marriage offices, Nikahnama (marriage certificate) consists of about 30 pages wherein the woman has to clearly delineate her conditions regarding her right to divorce, family earnings, city of residence, et cetera. Before the

marriage, the two are required to go in for a blood test.

As for divorce, Karimian says that the utterance of talaq in one sitting has no bearing in Iran, where "there have to be three separate sittings, each after a fixed period of time. There has to be a witness and no divorce is legal unless it is done in a court of law". Three separate sittings for divorce are a prerequisite to ensure that the move is not impetuous.

Iran's constitution says that if a person divorces his wife and the court does not find the woman to be a guilty party, then she is entitled to "half the wealth the man has earned during the period of marriage or its equivalent, including the belongings in the house".

Ibrahim Amini, an Islamic scholar, says: "although divorce is a lawful act, it is the most detested of all deeds." About 14 centuries ago Imam Sadiq said: "Get married but do not divorce because a divorce would tremble the Arsh (empyrean) of God."

Triple Talaq

A Product of Indian Islam

Huma Hassan

He also said: "There is nothing more detestable to Allah than a divorce. ...therefore, it is advisable to think thrice before resorting to an act, which finds no favour with God and the people."

The continuance of such practices can also be traced to the fact that we do not have proper mediation offices for the benefit of the divorcing couple. Islam places a lot of importance on mediation, where the two parties along with an arbiter, family representatives and a mediator work together to find mutual solutions to problems and issues. This is crucial as it helps in saving a lot of marriages because the reasons of divorce is many cases are trivial.

Mediation offers a sensible approach to settling divorce-related issues, because it helps couples manage their conflicts, whether real or imaginary. That is the reason Islam presupposes three separate sittings spanning over a minimum period of three months for divorce to take place.

The stay-at-home mothers, taking care of their children, have no marketable skills and might land in serious problems after divorce. For their security, Islam has fixed mehr (dower) for the woman and she is also entitled to half the belongings of the home and family wealth earned during the period of marriage.

There is need to increase awareness among Muslim and other women about their legal rights. For example, Islam has laid down specific conditions in which the wife has the right to divorce, known as Wakalah.

If at the time of marriage the woman makes it a condition in the Nikahnama (marriage certificate) that she will have the right to divorce, she gets it. According to Iran's constitution: "The wife's rights to divorce can neither be revoked nor ceded back to the husband in any of the ten specific instances.

1. Disinclination of the husband to spend on his wife; or his failure to perform his marital duties, for a period of six months.

2. Improper behaviour of the husband towards his wife to the point when she cannot endure living with him.

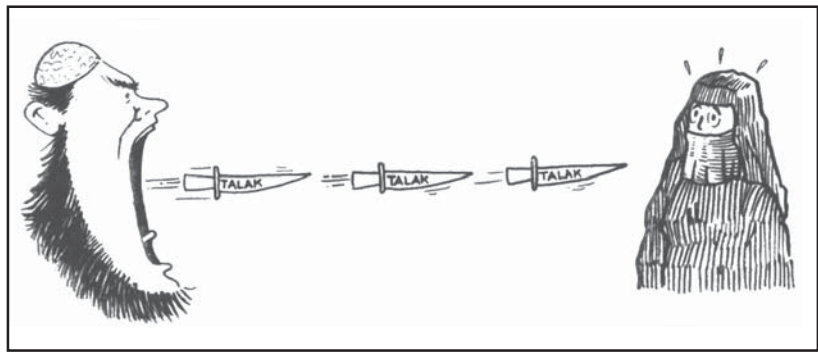
3. The husband suffers from an incurable disease, serious enough to prevent a normal marital life.

4. Refusal of the husband to comply with a court order to abstain from work which is detrimental to the position of his family, not befitting his wife.

5. When the husband is sentenced to at least five years of imprisonment and/or fined such a sum which will prevent him from spending on his wife for five or more years. This will apply when the court order is to be executed without delay, but not in the event of a stay of execution.

6. The husband's addiction to any prohibited drugs, that in the view of the court upsets the life of the family.

7. Abandonment of his family for



a period of six consecutive months without an excuse acceptable to a court of law.

8. When a final order of imprisonment fine is passed by a court against him for committing a crime which, in the court's view, is detrimental to the position of his family or does not befit his wife.

9. Sterility of the husband for a period exceeding five years.

10. When a husband is missing for a period exceeding six months, despite efforts by courts and authorities concerned to trace him.


These conditions ensure protection and justice to women who might otherwise have remained trapped in circumstances not of their own making.

The Islamic Declaration of Human Rights framed by top lawyers of 52 Islamic countries is also against the triple talaq, as according to them it is not in consonance with the ethics of the Quran.

The International Islamic Court of Justice, formed in 1987, is a representative of similar laws of equality and justice. Indians need to take a cue from the reforms going on in the international Islamic scene. Nowhere has triple talaq any locus standi.

It is time Muslim men and women initiated their own reform movement, both to retain the inner meaning of their religion and to prevent outside interference in their religious affairs. □

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