

India: Parliament Criminalizes Triple-Talaq Divorce

by Hugh Fitzgerald



“Triple Talaq” allows a Muslim husband to divorce his wife by repeating the word “Talaq” (divorce) three times in any form, including email or text message. In India, that will no longer be allowed. Although the Indian Supreme Court declared triple-talaq divorces unconstitutional in 2017, that ruling apparently required legislation in the Indian Parliament to ensure that it would be obeyed. The lower house of parliament passed such a law that same year, but India’s upper house of parliament has only now approved, by a vote of 99 to 84, a bill that makes the Muslim practice of “instant divorce” a criminal offense. Men found in breach of the new law can be

jailed for up to three years.

Supporters say the new measure protects Muslim women. Opponents say the punishment is harsh and will harm women.

India's governing Bharatiya Janata Party (BJP) supported the bill, while the main opposition Congress party opposed it as did, of course, the much smaller Muslim parties.

"Triple talaq: India criminalises Muslim 'instant divorce,'" [BBC](#), July 30, 2019:

Prime Minister Narendra Modi was quick to celebrate the vote as "a victory of gender justice".

He tweeted:

An archaic and medieval practice has finally been confined to the dustbin of history!

Parliament abolishes Triple Talaq and corrects a historical wrong done to Muslim women. This is a victory of gender justice and will further equality in society.

India rejoices today!

The BBC continues:

But others accused his Hindu nationalist BJP of targeting Muslims.

Asaduddin Owaisi, an MP from the opposition All India Majlis-e-Ittehadul Muslimeen party, said the new law was another attack on Muslim identity under the BJP, which has been in power since 2014.

It is curious that Owaisi – and other Muslims who are furious at the ban on triple-talaq divorces – should describe the law as an "attack on Muslim identity," because the ban on triple-

talaq divorces is already in force in twenty lands, almost all of them Muslim, including Pakistan, Bangladesh, the United Arab Emirates, and Egypt. Clearly in those countries the ban was not seen as “an attack on Muslim identity.”

Furthermore, there are no passages in the Qur’an that clearly and explicitly discuss triple-talaq divorces, though there are passages (Qur’an 2:229-230) about a man’s right to divorce unilaterally. The husband should express that desire for divorce twice, but then there should be a waiting period before the third, and final, demand, for divorce. This is intended to be a period of reflection, that many Muslim clerics think should last three months. It’s not only the Qur’an that is largely silent on the triple-talaq. There is no discussion, either, of triple-talaq divorce in Sharia law.

Asaduddin Owaisi not only described the ban as an “attack on Muslim identity” but also saw it as “a law [that] is against Muslim women & marginalizes them even more. The law forces a woman to stay in a marriage with an imprisoned man who’d verbally & emotionally abused her. It puts the burden of proof on Muslim women & forces her into impoverishment.”

Let’s try to understand the tortured logic here. From now on, a Muslim husband in India cannot simply divorce his wife by uttering or emailing or texting three words: Talaq, Talaq, Talaq. He must sue for divorce, in court. The Muslim wife now has rights, to contest the divorce if she wishes, or to sue for support for herself and her children, while before she was merely akin to a human kleenex, to be discarded whenever the Muslim husband felt like it. The new law does not, as Owaisi says, “force a woman to stay in a marriage with an imprisoned man who’d verbally & emotionally abused her.” Why does making it harder for the husband to get a divorce “force a woman” to remain in a marriage? She has no need to stay with an abusive husband. She has given up none of her rights to sue for divorce. And when it is the husband who wants the divorce, the wife’s bargaining position has improved as a result of this

new law banning triple-talaq divorce. She cannot be so easily gotten rid of; she now has claims, to children and to property, that must be heard.

Owaisi describes the new law as making a husband into an “imprisoned man” – as if being deprived of the triple-talaq option means he has no other way of getting a divorce, and must remain forever stuck with a wife he no longer wants. Owaisi’s claim is ludicrous. The husband can still sue for divorce, just the way Christian and Hindu husbands now do in India, or as Muslim husbands do in Egypt, the U.A.E., Pakistan, and Bangladesh, and more than a dozen other Muslim lands.

Muslims thus cannot claim that the banning of triple-talaq divorces is anti-Muslim. Nearly twenty Muslim states enforce that ban. No clear Qur’anic verse has been violated, nor any part of Sharia, by that ban. The beneficiaries of this law are Muslims. Without having to fear the unilateral finality of the triple-talaq, Muslim women will now be able to contest a divorce in court or if they agree to a divorce, can negotiate or sue for support. Muslim men will benefit, too, for they will now be forced by the flaw to behave less precipitously in such an important matter; triple-talaq divorces, that can be the result of a husband’s temporary burst of anger against a wife, will no longer be permitted. More Muslim marriages may be preserved as a result. Muslims should be, but won’t be, pleased. If Narendra Modi is for the ban, it must be bad. One more terrible thing done to Muslims by Hindus. What did Muslims ever do to the Hindus to deserve this? Will the persecution ever stop?

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