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RGICS ISSUE BRIEF

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Triple Talaq

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Key Messages

- a. The Centre filed an affidavit on 7th October 2016 to abolish the practice of triple talaq (divorce practice among Muslims)
- b. Two sides of the debate emerge: protection of Muslim women and fundamental rights of the Muslim community are threatened because Muslims are governed by the Muslim Personal Law
- c. Political parties are divided and different parties have different opinions
- d. Several other women issues such as dowry, domestic violence are ignored and triple talaq is being used to target the Muslim community

Part I. Introduction

A diverse group of religious communities such as the Hindus, Muslims, Christians, Jains and Parsis reside in India. While each of these communities is bound by a unified penal law, nonetheless each community is allowed legal plurality in the case of civil law. In the backdrop of every community in India being governed by their respective laws, the recent interference of the government to ban the custom of triple talaq (divorce) among Muslims is contradictory. The government of India on 7th October 2016 filed an affidavit with the Supreme Court to ban the practice of triple talaq to protect the rights of Muslim women.¹ Though as per Census 2011 the number of divorced Christian women is more than divorced Muslim women yet it is important to note that triple talaq is being criticized because of the process adopted by several men to divorce their wives. For instance Muslim women are being divorced through Skype and Facebook and the procedure of divorce is being trivialized. A representation of percentage of divorced women from different religious groups is indicated in Table 1.

Table 1: Percentage of divorced women from different religious groups in India

Religious Community	% of Divorced Women	% of total population in India
Hindu	0.13%	80%
Muslim	0.25%	14.23%
Christians	0.27%	2.3%
Sikhs	0.14%	1.72%
Buddhists	0.33%	0.7%
Jains	0.18%	0.37%

Source: Census 2011

Since the filing of the affidavit the contentious issue of triple talaq has gained national significance and generated considerable amount of debate. Some people are of the opinion that triple talaq is unfair to women and needs to be delegitimized by the community and law. Triple talaq is seen as a regressive custom which violates rights of women. Another set of people believe that the government should not interfere in customary laws and allow religious communities to decide on such matters. The ban is being highlighted as an infringement on the rights of Muslims in India. In this context it is important to focus on the historical background of triple talaq and the various reforms associated with it. Adopting a historical perspective, this paper will understand how triple talaq has evolved among Muslims in India. Building on the existing narratives this paper will also highlight the major concerns of both sides of the debate. Finally this paper will also demonstrate the norm of triple talaq in other countries with dominant Muslim population.

¹ http://www.business-standard.com/article/news-ani/centre-files-affidavit-on-triple-talaq-polygamy-validity-116100700949_1.html

Part II. Muslim Personal Law: Historical Context

The issue of triple talaq has grabbed the attention of the nation in recent times. However it is important to understand that the concept of triple talaq is not new. In medieval India with the advent of the Mughals, triple talaq was practiced in India. In ancient India though divorce practices such as ilaa and zihaar among Muslims existed, however triple talaq was introduced by the Mughals (Ahmed, 1994). Within this backdrop a discussion on the historical context of triple talaq from medieval to post colonial India is important. The historical perspective will also shed light on how the practice of divorce is being trivialized through triple talaq in globalized India.

a. Mughal Era

The Mughal emperors who had invaded India were Hanafis. The Hanafis were followers of Imam Abu Hanifa who belonged to the school of Iraqi Sunni Arabs (Ramadan, 2006). During the Mughal era polygamy was practiced only among the Mughal royalty. Elite Muslim women in polygamous marriages would live in harems with their co-wives (Kazi, 1999; Lal, 2005). Nonetheless Muslim men had the right to exercise unilateral divorce. Divorce would be granted either orally or in writing and would not involve any witness. Following the divorce husbands were liable to pay maintenance to the divorced wife. In addition to men possessing the right to divorce the practice of khula, a woman's right to seek divorce was also prevalent. However the women would be granted divorce only if the husband would be willing to give her a divorce (Kazi, 1999).

The Mughal sultans followed Sharia which acted as a source of ethical guidelines and jurisprudential law was implemented in the form of Fiqh. The major goal of Sharia which draws from the Quran as compiled by Prophet Muhammed was to strengthen the role of women in society. For instance in the realm of marriage only the bride and not her family members such as her father and brother can receive the mahr (dower). Additionally the Sharia also states that men can marry up to four wives to curb unlimited polygamy (Esposito and DeLong-Bas, 2001). With regard to divorce the Sharia indicates that the husband can initiate divorce only after both husband and wife have mutually decided that they can no longer stay together. In fact the process of divorce involves the pronouncement of the word talaq thrice in oral or written format. However the word talaq cannot be pronounced together. A gap of one month has to be maintained after each time the word talaq is mentioned by the husband. An alterable divorce can become irrevocable after the period of iddat (a period which ascertains whether the wife is pregnant with a child from the marriage or not) (Hasan, 1994). It was under the colonial rule that the Sharia underwent transformation from a set of ethical guidelines which was considered to be divine to a set of laws under the British.

b. Colonial Era

Even though divorce practices existed among the Mughal elite and royalty and men retained the right to divorce, yet a Muslim family law was enforced by the British. Under the colonial regime in 1772 through the Hastings Plan established that indigenous legal norms would be applied to in cases of inheritance, caste, marriage and religious practices. The Hastings Plan proposed that the laws of Koran would be applied to Muslims and the laws of the Brahmanic Shastras would be applied to Hindus. Hence the Muslim Personal Law Application Act was passed in 1937 to create an Islamic law code for Indian Muslims (Agnes, 2004). In this context it is important to reflect upon the various dimensions of the Muslim Personal Law to

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understand the various debates surrounding it. In colonial India all individuals were governed by secular public law and religious personal law thus establishing a connection between religious identity and law. Hence since 1937 the Shariat Application Act governs issues of marriage, inheritance and divorce for Muslims and the State cannot interfere in these matters (Roychowdhury, 2016). Though the Sharia had transitioned into a set of codified laws, nonetheless the rules surrounding divorce remained the same. However the Muslim personal law also allows the wife to initiate khula, a practice that allows the wife to initiate divorce. In particular the Dissolution of Muslim Marriages Act, VIII of 1939 permits the women to initiate divorce if her husband is in prison, gone missing, not paid maintenance for a considerable period of time, failed to perform marital obligations, declared insane, impotency, not being treated equitably, the woman was married under age without consent and any other grounds (Choudhury, 2008).

Given the fact that the British formulated the current Muslim Personal Law in India, it is important to focus on the formation of the All India Muslim Personal Law Board which was formed to protect the implementation of Sharia in India.

c. Post Independence: All India Muslim Personal Law Board

In 1972, the then Union Minister, H.R.Gokhale, demanded that personal laws induced from religious injunctions should be removed. To protest against this demand the All India Muslim Personal Law Board was formed to protect the rights of Muslims. The first meeting to save Sharia was convened in Deobandh organized by Hazrat Maulana Syed Shah Minnatullah Rahmani. Following the meeting the All India Muslim Personal Law Board was formally established in 1973. In the context of triple talaq the All India Muslim Personal Law Board gained prominence when it opposed the case of Shah Bano.

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Part III. Shahbano Case

In a landmark judgment the Supreme Court in 1985 ruled in favor of Shahbano and mandated her husband Mohammad Ahmed Khan to pay her Rs179.20 as maintenance (Pathak and Rajan, 1989). Shahbano was a 62 year old Muslim woman, mother of five children from Indore, Madhya Pradesh. She was divorced by her husband in 1978. She filed a criminal suit against her husband and won the right to alimony from her husband (Pathak and Rajan, 1989). However since the judgment resulted in huge protests by the All India Muslim Personal Law Board, the then Congress government passed the Protection of Rights on Divorce Act 1986 that nullified the Supreme Court's judgment and adhered to the provisions of the Islamic law (Pathak and Rajan, 1989). Hence the husband was required to pay monthly allowance only till the period of iddat. The Act was severely criticized from several quarters and protests were carried out by the Bharatiya Janta Party (BJP) and All India Democratic Women's Association (AIDWA). However in 2001 Daniel Latifi the lawyer of Shahbano challenged the validity of the Act. In order to maintain a balance and to protect the rights of Muslim women, the Supreme Court revisited the Shahbano judgment and concluded that the husband should pay allowance till the wife remarries (Mullally, 2004). The Shahbano case was significant because the rights of women were upheld irrespective of religious claims. However the case was also important because it raised the question whether the Supreme Court had the right to interfere in the personal laws of a religious community. The Shahbano case also went against constitutional provisions of the Muslim community wherein private disputes such as divorce are governed by the Muslim personal law and asked for the intervention of the Court. Following the Shahbano judgment triple talaq has been criticized by scholars and women activists for violating women's rights. However on the other hand interference of the court in personal laws of the Muslim community has also been questioned.

Part IV: The Political Context

In the light of current events it is important to highlight debates surrounding triple talaq. The issue of triple talaq gained national prominence when on 7th October the Narendra Modi government filed an affidavit in the Supreme Court against triple talaq and polygamy, stating that "gender equality is non-negotiable".² The BJP justified their move by indicating that several Muslim women were being divorced over text messages, skype and facebook. To prevent such practices, the central government had filed an affidavit with the Supreme Court. The move was criticized and it is important to highlight the different perspectives put forth by different political parties:

- Congress: the practice of triple talaq is against democracy and gender justice. Nonetheless a sensitive issue such as triple talaq should be decided after consultation with religious leaders of the Muslim community.
- Bahujan Samaj Party (BSP): BR Ambedkar had emphasized on the right of religious freedom in the Constitution. The BSP also mentioned that Muslim women are aware of their own rights and can fight their own battles. People of one religion should not interfere with the rights of other religious communities.

² <http://www.firstpost.com/india/centre-opposes-triple-talaq-polygamy-in-sc-calls-gender-equality-non-negotiable-3039782.html>

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- Trinamool Congress (TMC): The Centre has no right to infringe on the rights of the Muslim community. Mamta Banerjee (Chief Minister of West Bengal) sent in her statement soon after the affidavit was filed that she supports triple talaq.
- Communist Party of India Marxist (CPI(M)): “The CPI(M) supports the demand of Muslim women against the practice of arbitrary and instant triple talaq. This specific practice is not permitted in most Islamic countries. Acceptance of this demand will bring relief to affected women. All personal laws including those for the majority community require reform. In this context the claims being made by Government spokespersons that personal laws for Hindu women have already been reformed shows that their interest is not in securing women's equality but in targeting the minority communities, particularly the Muslim minority. Even now laws concerning, adoption, property rights and even the right to choose your own partner discriminate against Hindu women.”³

The AIMPLB has disapproved the Centre's move and has started a signature campaign to indicate that the reason behind the affidavit on triple talaq is to attack the Sharia and impose a uniform civil code. They have also highlighted that only 1% of women are divorced in the Muslim community in India and the issue of triple talaq is being exaggerated.⁴ On the other hand the All India Muslim Women Personal Law Board formed in 2005 to uphold the rights of Muslim women have supported the Centre's move to abolish triple talaq. In fact they filed a petition with the Supreme Court to punish those men who arbitrarily divorce their wives.⁵

The statements from the different political parties highlight that the opinions are divided. While on one hand there is support for abolition of triple talaq, on the other hand the rights of the Muslim community are being infringed upon. To summarize the various sides of the debate it could be suggested that the rightists want a ban on the practice of triple talaq. Their main argument is that personal laws should be removed and a standardized code should be formulated for all citizens of India, irrespective of their religion. The leftists have indicated their support for a ban on triple talaq, however they have also pointed out that the government should also show their concern for women issues and not target a particular religious community. The left liberals have however criticized the attempt to ban triple talaq and have highlighted that the move to discipline Muslims and impose Hindutava ideologies. Given the differing opinions, it is important to focus on how other countries with high Muslim population have formulated policies on triple talaq.

³ <http://cpim.org/pressbriefs/triple-talaq>

⁴ <http://timesofindia.indiatimes.com/india/Triple-talaq-row-AIMPLB-to-start-signature-campaign-tomorrow/articleshow/54836646.cms>

⁵ <http://indianexpress.com/article/india/india-news-india/ban-triple-talaq-punish-men-who-give-arbitrary-divorce-says-aimwplb-3067154/>

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Part V: Triple Talaq Across Countries

In this section neighboring countries of India with significant Muslim population have been highlighted to indicate their laws surrounding triple talaq.

Table 2: Laws surrounding triple talaq in neighboring countries of India

Country	Policy on Triple Talaq
Pakistan	The husband after the announcement of divorce in any form will have to give a notice to the Union Council along with his wife
Bangladesh	Triple talaq is abolished and the husband has to return the dower received at the time of marriage
Sri Lanka	The Marriage and Divorce (Muslim) Act, 1951, as amended in the year 2006, doesn't recognize instant divorce. The law requires a husband wishing to divorce his wife to give notice of his intention to a qazi (Islamic judge), who should attempt reconciliation between the couples over the next 30 days. It is only then the husband can give talaq to his wife – that too, in the presence of the qazi and two witnesses.
Indonesia	Triple Talaq abolished. The marrying parties have to establish an agreement in the form of ta'liq al-talaq (conditional divorce). This agreement allows the husband to announce divorce only when a specific condition (which is mentioned by the wife in the agreement) is fulfilled

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Part VI: Conclusion

As indicated by the different perspectives, the issue of triple talaq highlights two concerns. On one hand Muslim women need to be protected and on the other hand abolition of triple talaq will result in interference with the rights of the Muslim community. Undoubtedly some Muslim men are misusing the process of triple talaq to abandon their wives by not following the mandatory three month gap required for the process of divorce. However as the government of India has filed an affidavit and is portraying themselves to be protectors of Muslim women are also in the course highlighting their own hypocrisy. For instance when Muslim women were being raped in Muzzafarnagar and Mewat, the Narendra Modi government maintained their silence (Menon, 2016). In the context of protection of the rights of Muslim women, it should be noted that women from other religious communities also face similar situations. While the Muslim personal law is being criticized for being regressive, the Hindu Code Bills are considered to be progressive. Post independence Pandit Jawaharlal Nehru, the then Prime Minister of India and the Dr Babasaheb Ambedkar, the then law minister of India drafted the Hindu Code Bills to reform the existing Hindu laws. The purpose to introduce the Hindu Code Bills was to create a unified Hindu identity and empower Hindu women (Kishwar, 1994). Under the gamut of Hindu Code Bills, the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956 was formulated to prevent polygamy among men and to provide property rights to women in a joint family system (Kishwar, 1994). Though the Hindu Code Bills were passed with the intention to empower women, nonetheless women from all religious communities continue to face several concerns. For instance if triple talaq is considered to be a women's issue it is important to understand that issues such as dowry deaths, child marriage, domestic violence and rape are all women issues as well. Though laws against all these concerns exist in India, nonetheless women continue to face these problems in India. In a country such as India where women as a group are still uneducated as compared to men, a focus on the rights of the Muslim women is a clear case of targeting a particular community. While it is important to reflect on cases where Muslim women face issues because of triple talaq, it is also important to tackle rising incidences of rape, dowry deaths and domestic violence. Though triple talaq is banned in neighboring countries of India, it is important to understand in India women as a group irrespective of their religious community face discrimination. It is important for the government to bring reforms for women in collective, instead of focusing on individual communities.

Part VII. Background Information/Reference Documents

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