Chapter-XI

REFORMATIONS
SUGGESTED
Chapter- XI.

Reformations Suggested

As discussed above, there is conflict of opinion among the judges of Apex court, jurist and thinkers on the issue of triple divorce under prevailing non-codified Muslim law in India, as discussed in Chapter no. 7 and 8. No doubt, this is a sensational issue still an honest attempt to find out certain solutions will be highly appreciable by all concerns.

Before noting certain suggestions, the researcher prefers to quote the relevant verse of Holy Quran which will certainly a guide line for us. Holy Quran reads as;

"if ye fear a breach between them twain, appoint two arbiters one from his family and the other from hers. If they seek to set things a right, Allah will cause their reconciliation. For Allah hath full knowledge; and is acquainted with all things".

(Holy Quran verse 4:35)

The learned commentator of the Holy Quran English Translation of the Meaning and Commentary published under the auspicious of the Ministry of Hajj and Endowments, kingdom of Saudi Arabia observed:

"An excellent plan for setting the family dispute, without too much publicity or mud throwing or resort to chicaneries of the law. The Latin countries recognized this plan in their legal system. It is a pity that Muslims do not resort to it universally, as they should. The arbiters from each family would know the idiosyncrasies of both parties and would be able, with Allah’s help to effect reconciliation”.

(Muslim Law of Marriage and Succession in India, page 37, by Hon. S. A. Kader, former Judge, High court of Madras)
In view of above discussion, following reformations are suggested,

1. There is need of codification of divorce law of Muslims according to the spirit of Islam without leaving any scope of individual interpretations.

2. A Draft Committee may be constituted at national level to formulate the draft of a proposed law of divorce of Muslims, in the light of basic sources of Islam and *Ijma (majority view of Islamic scholars)* consisting eminent Muslim Scholars, retired Judges of Apex court and High courts, senior lawyers, professors of Islamic studies, representatives of All India Muslim Personal law Boards and other Muslim Organizations etc.

3. The procedure of divorce given in Quran and Sunnat must be adopted and the practice of 'triple divorce' being against the sprite of Islam and a hateful act hence may be discouraged by forming public opinion and by introducing some compensatory provisions on the line of Personal Statutes of Malaysia, Tunisia (given in Appendix enclosed) and other countries. Husband may be held liable to compensate his wife, for wrongful divorce (i.e. triple divorce or *talaq-e-biddat*), in the form of either lump sum amount, or, property transfer, or, monthly installments as fixed by the court.

4. Registration of marriages and divorces in the office of Quazi or person appointed and controlled by the Wakf Boards may be made compulsory.

5. The Quazi or the person appointed by the Wakf board shall first try for reconciliation of the dispute through two arbiters nominated by either parties, before registering irrevocable divorce.

6. However, the triple divorce, though prohibited, shall have to be given the same legal effect as a valid irrevocable divorce for all
6. However, the triple divorce, though prohibited, shall have to be given the same legal effect as a valid irrevocable divorce for all purposes, on the line of Saudi Arabia and many Sunni Muslim countries, for the reasons discussed in Chapter no.7 (supra).

7. It is also suggested that an amendment in Sec. 125 of Cr. P.C. may be made with application to all communities, irrespective of religion and caste, giving an option to the wife either to claim maintenance allowance of per month or to claim lump sum payment of maintenance and fair provision in case of happening of divorce, (judicial or extra-judicial), on the line of provision of permanent alimony as laid down under Sec. 25 of Hindu Marriage Act, 1955. However, the court shall be empowered to decide the appropriate mode of payment of maintenance after considering the economical status of the husband, age of the petitioner-wife, number of children, burden of maintenance of other dependants upon the husband and all other matters connected thereto. By this way there may be equality in the rights of a Hindu divorced lady and a Muslim divorced lady in getting lump sum permanent alimony on happening of divorce.

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