

#tripleTalaq : Ball Is In Govt.'s Court To Give Justice To Muslim Women!

Analysis of Triple Talaq Judgement By Adv. Dr. Surat Singh

New Delhi, Dr. Surat Singh, a senior Supreme court Advocate, said that if ban on triple Talaq would have been a unanimous decision it would have carried much more moral force and social acceptance. Now ball is in government's court to provide equality to the Muslim women in marriage. In case government fails to form a law within 6 months the ban on instant triple Talaq will cease.

Dr. Singh observed that since the two judges supported and two judges opposed the instant Triple Talaq, the Supreme Court's decision to ban Triple Talaq is still open for debate and going to cause a lot of confusion. Thanks to honorable justice Kurian Joseph that the ban on triple Talaq could be achieved. This also gives opportunity to the pro-Triple Talaq group to take their argument to the Parliament.

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While talking to Pritpal Kaur, consulting editor of 6D, Mr Singh said, "first of all, triple Talaq is an important issue which has a long practice of about 1400 years. If ban on triple Talaq was a unanimous decision, it would have carried much more moral force and social acceptance. In this case the chief justice himself was in minority. Chief justice Lauren of America had shown the leadership qualities by drafting a judgement before hand with the consent of the other judges while dealing this kind of dissent. Similar leadership could have been shown here too in this case. So it could have been better if it were a unanimous decision.

Secondly since this is a long judgement, so as a result there is more scope for different interpretations of the judgement. If judgements are shorter there is less possibility of interpretation. As a result of that everybody can interpret it in their own way. On the whole there are more pluses in the judgement than negatives. These Judges have come out with remarkable judgement and they should be applauded for that. On the whole the judgement will go as one of the finest judgement of the Judicial thinking. Nobody can say that judges were in two minds. They were given complete freedom to express what they really felt. There was no interference by any body. They have expressed their ideas fully. Their intellectual integrity and the objectivity the way they looked at the matter and the issues cannot be doubted. This is A remarkable judgement. Love the legislation to legislate and Supreme Court has hoped that given the importance of the issue of all political parties will come together in reaching to a consensus and pass the law in the parliament."

When Dr. Singh was asked what will happen if the government fails to form a law within stipulated time? Can the government overrule the supreme court?

Mr. Surat Singh opened up about the contradictory conclusion of judges.

He said, " There had been two judges versus two judges in this matter which leads to a tie. 2 judges including chief justice Kehar and Justice Nazir concluded that instant triple Talaq is integral part of Muslim personal law and under article of 25 Indian Constitution which gives freedom of religion says if something is integral part of personal law then they will have the right to practice that and it is a constitutional right. And if that is the case government cannot interfere. By contrast to other judges Rohinton Nariman and Justice U.U.Lalit has come to the conclusion that the instant triple Talaq is not par law not a protected fundamental right in fact it is totally arbitrary whimsical capricious and it violates the right of equality of Muslim women. And personal law is equal to fundamental right against other fundamental rights so we will not interfere. On the other hand rejected triple Talaq as being the fundamental right saying that this kind of atrocious practice cannot be justified in any community. They observed equality and respect of women are the fundamental of Islam written in Quran. Prophet Mohammed was a progressive person as far as rights of women are concerned. People sometime say that four marriages are allowed for one man in Islam but they forget about the reason why it was allowed and also earlier men would marry many times. So Prophet Mohammed set a limit of four for every individual with the condition that every woman should be treated equal. So the judges observed that triple Talaq was never integral part of personal law and we can test it and after testing its validity in the constitution law they declared it as totally illegal. So for that no law is required."

Mr. Singh further said that the deciding judge justice Kurian Joseph who is of the opinion that tilted the balance towards banning the triple talaq. Korean said that if it is part of personal law then Supreme cannot interfere to that extend to the opposing judges justice and Justice Nazir but at the same time he said that Quran does not justify on indeed triple talaq so it is not integral part of personal law.. And if it is not integral part of the Islam then it should be tested on the constitutional law and right to equality and there he comes to the conclusion that it violates right of equality of women. So the instant triple Talaq is an illegal thing.

Dr Surat Singh observed that because 3 out of 5 judges have already said that it is unconstitutional and declared instant triple Talaq as illegal, so no other law is required. But as a good practice, as the policy decisions have to be made by the representative of the people and not the judiciary so justice kurian Joseph said that let the legislation come out with the law.

Dr Surat Singh is opinion about the possibility of triple Talaq been banned forever totally depends on passing a law in this regard. The judgement also states that in case government fails to pass a law in 6 months, then the suspension of triple Talaq will cease. The legislature is not willing to make a law it will not go into the public policy. Mr Singh said that this situation is little bit confusing because 2 judges and 2 judges opposing triple talaq is the grey area.