

The Muslim Women (Protection of Rights on Marriage) Act, 2019 : A Step towards Improving the Status of Muslim Women

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The Practice of Triple talaq is a curse for a Muslim woman. The Muslim majority countries have banned the practice of unilateral instant talaq. Even the holy book of Muslims, Quran, bans this practice. This practice clearly breached the right to equality, right to justice and human rights of Muslim women. The direction to make law to regulate this practice in India has been made by the Supreme Court of India in Shayara Bano V. Union of India WP (c) 118/2016. Hence, the Muslim Marriage (Protection of Rights on Marriage) Act, 2019 is very important instrument which has been enacted by the government of India to improve the condition of Muslim women in India. This enactment will be able to secure right to equality, gender justice and protection of human rights of Muslim woman. In fact, this Act is a step towards improving the status and condition of Muslim women in India.

[Keywords : Talaq-e-biddat, Gender equality, Instant Triple Talaq, Nikah halala, Shariat Act, 1937]

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1. An Instrument to Restrict Triple Talaq

The woman (Protection of Rights on Marriage) Act, 2019 has made triple talaq illegal in India.¹ It stipulates that instant triple talaq in any form is illegal and void on the violation of this provision, there is provision for three years imprisonment for the errant husband. An aggrieved woman will have legal right for maintenance for herself and dependent children.²

2. Origin and Background of the Muslim Woman (Protection of Rights on Marriage) Act, 2019

This Act is the Act of Parliament of India Criminalizing triple talaq. The Supreme Court of India made triple talaq unconstitutional.³ The opinion of minority suggested that there should be suitable legislation to deal with the triple talaq in the Muslim Community.⁴ In December 2017, having referred a number of Supreme Court Judgments and cases, the government of India introduced The Muslim Woman (Protection of Rights on Marriage) Bill 2017.⁵ The Bill proposed to make triple talaq in any form illegal and void. For the breach of the law there is provision for punishment upto three years.⁶ The Bill was passed by Lok Sabha on the same day. But it was stopped by the opposition in the Rajya Sabha.⁷ The Bill was reintroduced and passed by Lok Sabha and by Rajya Sabha in July 2019.⁸ The Bill was given assent by the President of India. The Act stands to be effective retrospectively from September 19, 2018.⁹

3. Definition and History of the Practice of Triple Talaq

Triple Talaq is also known as talaq-e-biddat, instant divorce¹⁰ and talaq-e-mughaliezah (irrevocable divorce).¹¹ It was a form of Islamic divorce which was used by Muslim in India specially adherents of Islamic Schools of jurisprudence.¹² Talaq is the Arabic term for divorce. It allows any Muslim man to divorce legally his wife by uttering the word talaq three times in oral, written or electronic form. The use and status of triple talaq has been controversial and debating subject. The people questioning the practice have raised different issues like justice, human rights, secularism and gender equality. This debate is between the government of India and the Supreme Court of India.¹³ It has been connected to Uniform Civil Code in India. On 22 August, 2017, the Supreme Court of India declared instant triple talaq unconstitutional.¹⁴ Three out of the five

judges in the panel concurred that the practice of triple talaq is unconstitutional.¹⁵ Rest two judges declared the practice to be constitutional. They directed the government of India to ban the practice by making laws in this regard.¹⁶ Most of the Muslim Countries have already banned this practice of triple talaq.¹⁷ The Quran has also established the provisions to avoid triple talaq practice.¹⁸ It provides two waiting periods of three months before making the divorce final. During this period husband has time to reconsider his decision of talaq.¹⁹ On 30 July, 2019, Government of India made the practice of triple talaq unconstitutional and illegal. From 1st August, 2019 it was made punishable. The Muslim Women (Protection of Rights on Marriage), Act, 2019 deemed came into force on 19 September, 2018.

4. Triple Talaq : A Practice of Divorce in Muslim

Triple talaq has been a kind of divorce that used to be practiced in Islam. By this mode of talaq a Muslim man could divorce his wife legally by speaking talaq thrice. The man did not require mentioning any reason for the divorce and it was not necessary that wife remain present at the time of pronouncement. On finishing of the iddat the divorce became irrevocable.²⁰ In this practice, a waiting period was required before each pronouncement of talaq. During this period reconciliation was attempted. It was common to make all pronouncements in one sitting. This practice was objected badly but it was not prohibited.²¹ A divorced women was not able to remarry her divorced husband but for she first married another man. This practice was known as Nikah halala. She could have custody of male children and prepubescent female children until she remarried. After the restrictions, the children used to come under the guardianship of the father.²² This practice of talaq-e-biddat is as old as of 1400 years old.²³ The Supreme Court of India declared it as “manifestly arbitrary” and described that “it permits a man to break down a marriage whimsi- cally and capriciously”.²⁴ Instant talaq is known as talaq-e-biddat. Triple talaq has not been mentioned in the Quran. Muslim legal scholars have also not consented to it. Islamic countries have disapproved this practice. It is considered technically legal in Sunni Islamic Jurisprudence. Triple Talaq is based on the belief that the Muslim men have right to dismiss or reject his wife if he has good grounds.²⁵ The All India Muslim Personal Law Board (AIMPLB) had mentioned before the Supreme Court of India that Muslim women

had also had right to pronounce triple talaq.²⁶ They could execute nikahnamas on the conditions that the husband would not pronounce triple talaq. According to AIMPLB, it is clear that Sharia has given right to Muslim husband that he could divorce his wife as Islam has granted Muslim men greater power of decision making.²⁷

5. Jurisprudence of Triple Talaq

Muslim family affairs in India are governed by Muslim Personal Law (Shariat) Application Act, 1937. The provisions of this Act are generally called Muslim Personal Law. It was one of the Acts became operational introducing provincial autonomy. It forms a diarchy at the federal level. Government of India Act, 1935 was also the Act introducing provincial autonomy.²⁸

The Shariat is open to be interpreted by the Ulamas. The Ulama of Hanafi Sunni considered the triple talaq binding provided the pronouncement is made in the presence of Muslim witnesses and confirmed by a Sharia Court. The Ulama of Ahl-i-Hadith, Twelver and Must'ali persuasions had not considered it as proper.²⁹ In classic Islamic Jurisprudence, triple talaq has been disapproved specifically, but it is legally valid form of talaq.³⁰ Because of transition in social conditions all around the world, this practice of Triple Talaq has been rejected since the twentieth century. Various reforms have been made in different countries in this regard. In India Muslim couples are not required to register marriages with civil authorities. Which is contrary to practice adopted in most of the Muslim majority countries³¹ Muslim marriages in India are taken as private affair unless the couple decides to register the marriage under the Special Marriage Act, 1954.³² The government of other countries have imposed checks on the husband's unilateral right of divorce but this prohibition of triple talaq has been implemented in India after a long period in the form of Muslim Women (Protection of Rights on Marriage), Act, 2019.³³

6. Muslim Women and Triple Talaq

The practice has been opposed by the Muslim women. Public interest litigations have been filed by many of them against this practice in the Supreme Court. They have termed it regressive. They have asked for scrapping of section 2 of the Muslim Personal Law (Shariat) Application Act, 1937. They have described it the violation of Article 14 of the constitution. The Supreme Court described

instant triple talaq worst form of marriage dissolution. This practice has been banned in the Muslim majority countries like Morocco, Pakistan, Afghanistan and Saudi Arabia.³⁴

7. Triple Talaq and All India Muslim Personal Law Board (AIMPLB)

Triple talaq has been supported by All India Muslim Personal Law Board. It envisages that State has no right to intervene in religious matters of others. In April, 2017 Muslim Mahila Research Kendra has prepared a report in coordination with Shariat Committee for woman. In the report AIMPLB claimed that Muslims have lesser divorce rate as compared to other religious communities. It has claimed that it has received forms of 35 million Muslim women across the country who have supported Triple Talaq and Shariat Act, 1937.³⁵ In April, 2017 AIMPLB issued a code of conduct regarding talaq in response to issue over the practice of triple talaq. It warns that those who divorce on the grounds which are not available in the Shariat Act will be boycotted. Those who apply triple talaq recklessly and without justification will be boycotted. It has also mentioned that it should be delivered in three sitting with a gap of at least one month gap.³⁶

8. Triple Talaq and Shayra Bano V. Union of India & others³⁷

The bench that heard the issue of triple talaq in 2017 was consisted of five judges from five different communities. The Chief Justice J. S. Kehar, is a Sikh, Justice Kurian Joseph is a Christian, RF Nariman is a Parsi, UU Lalit is a Hindu and Abdul Nazeer is a Muslim.³⁸

The Supreme Court in this case examined whether the constitution of India protects the practice of Triple Talaq or not. If this practice is safeguarded by Article 25(1) of the constitution of India it guarantees to all the fundamental right to profess, practice and propagate religion. That court wants to clear whether or not triple talaq is an essential feature of Islamic belief and practice.³⁹ Out of five judges two have upheld validity of talaq-e-biddat and rest three judges held it unconstitutional. They have barred the practice by 3-2 majority.⁴⁰ One judge stated that the instant triple talaq violates Islamic law.⁴¹ The bench directed the central government to make law within six months to govern marriage and divorce among

Muslims.⁴² The Court further stated that until the government prepares a law regarding instant triple talaq, there could be an injunction on using the practice of instant triple talaq.⁴³ The constitutional experts mentioned that the judges were unable to uphold personal rights over religious laws. They further state that the judgment does not ban other forms of Muslim divorce that favours men. It bans only instant triple talaq.⁴⁴

9. Conclusion

The Muslim women (Protection of Rights o Marriage) Act, 2019 is very import instrument which has been enacted by the government of India to improve the condition of Muslim women in India. This enactment will be able to secure right to equality, gender justice and protection of human right of Muslim women. In fact, this Act is a step towards improving the status and condition of Muslim women in India.

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