



**ANALYSIS OF MUSLIM WOMEN
(PROTECTION OF RIGHT ON
MARRIAGE) ACT, 2019**

*By Pallavi
From School of Law, UPES*

ABSTRACT

Today, the issues of women rights in Muslim personal law are highly controversial. Specially, Muslim women rights relating to triple talaq divorce, inheritance, maintenance has got much attention now a days. Indian constitution has however guaranteed equality and freedom from discrimination based on gender or religion, but still there are various practices which are based on heartless conservative culture.

As we know a large part of Muslim law is still not codified and most legal decision of court in case of Muslim are based on the norms are being followed from a long time. The courts have however tried to codify the Muslim law by passing the Muslim women (Protection of right on marriage) bill, 2019. There has been a lot of controversy about this bill. From the outside, the entire triple talaq issue has been translated into debate of culture versus modernity.

This paper would try to find out all the problem and lacunas in the bill which was passed by the legislature. This paper would also focus on all the reasons behind opposing this bill by the opposition. This paper would also try to find out why few section of the Muslim community is against this bill.

Keywords - triple talaq; Muslim; Muslim women (Protection of right on marriage) bill, 2019.

INTRODUCTION:-

India is one of the most religiously diverse nations in the world. Although “India is a secular” Hindu majority nation but this nation also has a large population of Muslim. Triple talaq which is a Muslim practice have been in news and in every discussion from a long time. One of the most debated issues in the Muslim faith has been “Triple talaq, or talaq-e-biddat”. “It plagued by the portrayal of Muslim men regularly misusing this perceived ‘right’ to divorce their wives instantly by simply uttering “talaq” thrice”. “Shayara Bano v. Union of India¹” one of the landmark judgement of the supreme court of India, “has taken the step to declare this form of talaq unconstitutional and to strike down its practice. In” 2019, Muslim Women (Protection of Right on Marriage) Bill was pass which declared this practice unconstitutional and criminalized this with punishment of 3years as result of Shayara Bano case.

Talaq is an Islamic word for divorce and it literally means separating and breaking of marriage. In essence, ‘the talaq is a unilateral repudiation or cutting off the marital tie’². There are 3 forms of divorce beneath sharia law, namely, Ahsan, Hasan and Talaq-e-Biddat (triple talaq). The previous 2 are revocable while the last one is irrevocable. Talaq-e-biddat (triple talaq) mainly prevails among Muslim communities that follow the Hanafi School of sharia law. Triple Talaq is that method of divorce beneath sharia (Islamic law) wherever a husband will

¹ (2017) 9 SCC 1

² David Pearl & Werner Meenski, Muslim Family Law p. 281 (3d ed. 1998)



divorce his woman by saying ‘Talaq’ thrice. This can be additionally known as oral talaq. Under this law; wives cannot divorce husbands by means of triple talaq. Among Muslims, a method of divorce is available to the husband that is Triple Talaq or Talaq-ul-Biddat.³ It’s a customary practice “that dissolves a marriage when the husband says the word ‘talaq’ thrice”. Bharatiya Muslim Mahila Andolan (BMMA) conducted a study in which it was found that 59 Muslim women out of 100 “Muslim women had been divorced through Triple Talaq.⁴ In” which nearly all were done orally. According to the study of Bharatiya Muslim Mahila Andolan (BMMA) it was found that more than 90 percent of 4,710 women interviewed wanted a ban on Triple Talaq.⁵

This custom of triple talaq has been criticized for long time due to being unilateral and biased against women, and due to this reason 22 countries of the world have banned it in their nation. In Supreme Court of India, it has been challenged as well for abolition. Women have been fighting from a long time in India for the abolition of this evil practice which in a minute destroys their lives. However there campaign got up streamed in 2016 only after the shayara bano v. Union of India and others⁶ case came in Supreme court against triple talaq.

On 22 August 2017, the practice of triple talaq was declared unconstitutional by the Supreme Court and saying that it was against Article 14 and 21 of the Constitution of India. In 2019 Supreme Court declared the practice of instant triple talaq unconstitutional and a divorce pronounced by uttering talaq three times in one sitting void and illegal after which The Muslim Women (Protection of Rights on Marriage) Bill, 2019 which declared triple talaq illegal and void came into force on September 19, 2019.⁷

This declaration by supreme court of making triple talaq unconstitutional and criminalization of this practice was not supported by everyone in the Muslim community as a result batch of petitions were filed by ‘Jamath Kerala Jamiathul Ulema’, a religious organization of Sunni Muslim scholars; Amir Rashid Madni, a politician and Islamic scholar, and a Muslim organization called Jamiat Ulama- I- Hind, challenging the Muslim Women (Protection of Rights on Marriage) Act 2019.⁸

POSITION IN OTHER COUNTRIES:-

The present day muslim world comprises twenty two Arabs and moreover eighteen non Arab countries. Three different groups can be categorised for the family law presently followed by the Muslim world. These three groups are as follow:

³ Mulla, Principle of Mohammedan Law 338 (22nd ed. 2017).

⁴ How Indian Muslim women fought, and won, the divorce battle - Triple talaq ; BBC NEWS ; <http://www.bbc.com/news/world-asia-india> (October 5, 2019)

⁵ Triple Talaq, Times of India (2019), <https://timesofindia.indiatimes.com/topic/Triple-Talaq>(October 5, 2019)

⁶ (2007) 9 SCC 1

⁷ Triple Talaq bill gets President's assent, Jagran Josh (Aug 1,2019), <https://www.jagranjosh.com/current-affairs/triple-talaq-bill-becomes-a-law-president-ram-nath-kovind-gives-assent-1564634176-1> (October 5, 2019 ;11:11 pm)

⁸ SC to examine validity of new triple talaq law, issues notice to Centre, Livemint (2019), <https://www.livemint.com/news/india/sc-agrees-to-hear-criminalization-of-triple-talaq-and-issues-notice-1566542437661.html> (October 5, 2019)



- i. Firstly, where unaltered and unwritten classical family law according to its various schools are being followed by the countries.
- ii. Secondly, the countries where statutory law have replaced the Islamic law pertaining to family disputes by the applicable to all citizens irrespective of their religion.
- iii. The nation where the locally predominant type of family various techniques.

Extra judicial divorce by the action of the husband remains possible in several Muslim countries. However a system of various checks on this form has been devised. Besides, triple talaq has now been forbidden in most of the Muslim countries. The triple talaq has been abolished by the provisions of many Muslim countries or has been made impracticable.

There are more than 22 Islamic countries that don't support triple talaq. These countries have declared the practice of triple talaq to be null and void. UAE, Iraq, Egypt, Morocco, Philippines, Sudan, Jordan, Kuwait, Syria, Yemen and many more have made law in which the concept of triple talaq is not even recognized. In all the above-mentioned countries every talaq affects only a single revocable divorce, which can be revoking during wife's iddat, failing that for renewal of remarriage anytime with her consent. Even the device of halala for validating remarriage of the parties also stands abolished in these countries.⁹ As this practice are inhumane and are against the dignity of women which must not be practice anywhere.¹⁰

⁹ Tahir Mahmood, Muslim Law in India and abroad P. 145 (2nd ed. 2016)

¹⁰ Prateek Kushwaha, The journey of triple Talaq in India, 98-102, International Journal of Law Vol 4; Issue 2; (2018)

¹¹ Roller coaster ride of the triple talaq bill, Times of India (2019),

It's however an admitted fact that Triple talaq is still applicable in some Muslim countries where the traditional interpretation of the law is done. For example, nothing is done in the laws which are present in Saudi Arabia to change this undesirable practice. The permanent commission of Academic Research and Adjudication, few years back dealt with the issue of triple talaq. Its attention was drawn to fact that in few nation triple talaq has been either abolished or made impracticable by the legislation.

THE JUDICIAL JOURNEY OF TRIPLE TALAQ:-

The journey of The Muslim Women (protection of right on Marriage) Act 2019 has been a roller coaster ride as on the issue of gender discrimination mixed with political as well as religious issue.¹¹

For the very first time this issue of triple talaq came into light by Shah Bano case¹² in 1985. The wife in this case not only asked for alimony from her husband but also raised question against the long standing evil custom of triple-e-biddat, polygamy and nikah halala. It was case of Shamim Ara v. State of U.P.¹³ in 2002 where some noteworthy judgement came into picture. This case didn't invalidated triple talaq but put restriction of reasonable grounds and cogent plausible was applied. In this case it was also said that both husband and wife will appoint two arbitrators who would made all the efforts for resolution and reconciliation. Talaq would only come into effect once all the efforts have been failed. The Aurangabad

<https://timesofindia.indiatimes.com/india/roller-coaster-ride-of-the-triple-talaq-bill/articleshow/70456691.cms> (October 11, 2019; 03:28 pm)

¹² 1985 AIR 945, 1985 SCR (3) 844.

¹³ AIR 2002 S.C. 3551.



bench of Bombay High Court in 2002 only invalidated the practice of triple talaq by referring to Quran in case of *Dagdua Pathan v. Rahimbi*.¹⁴ In this case court said that husband can't repudiate the marriage at his own will. He will have to prove all stages that are – conveying the reasons for divorce, appointment of arbitrators and conciliation proceedings between the parties were followed. These judgements served as the main basis for all the later cases and thus the practice of triple talaq was invalidated.

The campaign of women for abolition of triple talaq is going on for a long time. It has got support by too many of women rights activist and journalists however it got up stream only in 2016. This issue got triggered when in apex court petition was filed by Shayara Bano in 2016.

Shayara Bano a 36-year-old native of Kashipur, Uttarakhand, emerged as a spark, as defining persona in the legal battle against the patricentric tradition which ruined the lives of thousands of muslim women. She was married for 15 year to Rizwan Ahmed. In 2016 his husband divorced her through triple talaq (talaq-e-biddat). After this she filed a petition in Supreme Court against constitutionality of three practices – talaq -e-biddat, polygamy, nikah – halaha as they are violate of Article 14¹⁵, 15¹⁶, 21¹⁷ and 25¹⁸.

On 16th February, 2017 court asked Shayara Bano, the Union of India, various women rights bodies and All India Muslim Personal Law Board (AIMPLB) to give a written submission on issues related to talaq -e-

biddat, polygamy and nikah – halaha. The Union of India and various women rights organisation supported Shayara Bano whereas AIMPLB said that uncodified Muslim Personal Law cannot be subjected to constitutional judicial review and these are ancient Islamic practices which are protected under article 25¹⁹.

In this case mainly issues were raised as follow,

- Whether triple talaq is Islamic in nature or not?
- Can Article 25²⁰ protect the practice of talaq –e- biddat or not?
- Regardless of whether Muslim Personal Law (Shariat) Application Act, 1937 presents statutory status to the subjects represented by it or is despite everything it shielded under "Individual Law" which isn't inside the significance of word "law" under Article 13 of Constitution of India?

On 22nd August 2017 the decision on triple talaq was pronounced by 5 judge Supreme Court's bench. In the judgement of the practice of triple-e-biddat or triple talaq was declared unconstitutional by 3:2 majorities. In this judgement Rohinton Nariman, U.U.Lalit and Kurian Joseph were those who said the practice of triple talaq to be unconstitutional while CJI J.S. Khehar and Abdul Nazeer gave a dissenting verdict.²¹ The 397 pages of judgement on one side witnessed 2 judges upholding the custom of talaq-e-biddat or triple talaq validity while

¹⁴ II (2002), DMC 315 Bom FB.

¹⁵ The constitution of India, 1950

¹⁶ The constitution of India, 1950

¹⁷ The constitution of India, 1950

¹⁸ The constitution of India, 1950

¹⁹ The constitution of India, 1950

²⁰ The constitution of India, 1950

²¹ Adarsh Pandey and Arunaditya Singh Parihar, Case Comment on Shayara Bano V. Union of India <http://vips.edu/wp-content/uploads/2019/04/CaseCommentonShayaraBanoV.UnionofIndia.pdf>.



deceleration of being illegal, unconstitutional and against the basic nature of Islam by other. Hence with the ratio of 3 : 2 the evil custom of triple talaq or talaq-e-biddat was abolished. The 5 judge bench issue direction under Article 142²² to the union government regarding this a legislation is to be draft within 6 month.²³

On 28th December, 2017 The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was passed in lok shabha. This bill make triple talaq in any from illegal and void, with up to three year of imprisonment for husband and other remedial provision. In 2019 triple talaq bill faced the test of rajya shabha. Although it faced a lot of criticism on various ground like every reformative act get from ancient time but finally it saw light and become a formal law.²⁴

The separate judgement of five judges are as follow;

➤ Justice Kurien Joseph –

Justice Kurien Joseph became the part of the majority judgement by giving judgement against triple talaq. On the ground that the practice of triple talaq is not an essential practice he struck down this practice. He also said that this practice as not an complusory practice therefore can't be protected within the boundary of Article 25²⁵ and 26²⁶. Whether what is wrong in Quran can that be

legally right was the main question that was raised by Justice Kurien Joseph.²⁷

Justice Kurien Joseph firstly tried to confirm that is there any legal provision or legislation that governs the triple talaq or not to search for solution to this question. According to him, there is an enactment known to be The Muslim Personal Shariat Application Act, 1937 which is applicable to Muslims. This act is only applicable to that subject matter only which is covered under section 2²⁸ and talaq is not covered under section 2²⁹. The principle that governed talaq is actually Quran and hence there is no proper codified legislation to deal with triple talaq.

Justice Kurien Joseph also examined all the relevant verse of the Quran. After examining the verse he said that the Quran clearly considers the marriage to be sacramental and permanent.³⁰ Talaq should be the last option only when there is extremely unavoidable situation.³¹ There always should be an attempt to reconciliation before talaq and if achieve success in reconciliation the talaq should be revoked according to the sayings of the Quran. where there is no scope for reconciliation that kind of talaq is against the basic nature of Quran and Triple talaq is an instantaneous talaq where there is no scope of reconciliation and therefore it is in violation of the Muslim personal law³².

²² The constitution of India, 1950

²³ Adarsh Pandey and Arunaditya Singh Parihar, Case Comment on Shayara Bano V. Union of India <http://vips.edu/wp-content/uploads/2019/04/Case-Comment-on-Shayara-Bano-V.-Union-of-India.pdf>

²⁴ Triple talaq bill in Rajya Sabha: Do you know why it is controversial?, India Today news (2019) <https://www.indiatoday.in/news-analysis/story/triple-talaq-bill-in-rajya-sabha-do-you-know-why-it-is-controversial-1575100-2019-07-30> (October 11,2019 ; 03:32 pm)

²⁵ The Constitution of India, 1950

²⁶ The Constitution of India, 1950

²⁷ Shamim Ara v. State of Uttar Pradesh and another, AIR 2002 SC 3551

²⁸ The Muslim Personal Law Shariat (Application) Act (1937)

²⁹ Id.

³⁰ Shamim Ara v. State of Uttar Pradesh and another, AIR 2002 SC 3551

³¹ Id.

³² Id.



triple talaq was held to not an essential religious practice and in violation of the basic principle of the Quran on the above mentioned reasons by His lordship. In spite of the fact that holding of Justice Joseph's was part of the majority, he backed the dissent that Talaq is not regulated by the Shariat Act according to his reasoning. It is said that the vote of Justice Joseph's was being swung in this case.

➤ Justices R.F. Nariman and U.U. Lalit

Making it the majority opinion, triple talaq was even struck down by Justices Nariman and Lalit stating it to be unconstitutional. Justices Nariman and Lalit raised the question that whether triple talaq can be tested under Article 13³³ or not. The precedent of *Narasu Appa Mali case*³⁴ was taken by Justices Nariman and Lalit as reference, which laid down that personal law falls outside the boundary of Article 13(1)³⁵. Under part 3 i.e. fundamental right of constitution, only those personal laws which are codified that can be examined for violation. The Shariat Act enforces and recognises triple talaq therefore it would fall under Article 13 of constitution said by Justices Nariman and Lalit. It would be struck out by Article 13(1) if it is not consistent with the provisions of Part 3 i.e. fundamental right of the constitution

Under The Muslim Personal Shariat Application Act, 1937 section 2 tested under Article 14 to find its constitutional validity of triple talaq. Justices Nariman and Lalit held that;

“It is clear that this form of Talaq [Triple Talaq] is manifestly arbitrary in the sense

that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution of India. In our opinion, therefore, the 1937 Act, insofar as it seeks to recognise and enforce Triple Talaq, is within the meaning of the expression “laws in force” in Article 13(1) and must be struck down as being void to the extent that it recognises and enforces Triple Talaq”³⁶

Justice Nariman and Lalit found triple talaq to be violative of Art. 14 so they didn't go into the aspect of discrimination against women.

➤ Justices J.S. Khehar and Abdul Nazeer –

Justice Khehar and Nazeer gave a dissenting judgement in this case. They upheld the practice of triple talaq to be valid. According to them neither Article 25 nor is any other Article being violated by the practice of triple talaq. Therefore the practice of triple talaq can't be struck down.

The history of triple talaq was examined by Justice Khehar for giving this judgement. It was noted by Justice Khehar that the Muslim of India widely practice the custom of triple talaq. His lordship said that triple talaq has approval of muslim and it can be seen through the popularity it has among Muslim. Therefore it has been seen as an integral part of Islamic religion.

the principle of *Narasu Appa case* was upheld by Justice Khehar and with reference to that

³³ The Constitution of India, 1950

³⁴ *The State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom. 84 (India)

³⁵ The Constitution of India, 1950

³⁶ *Shamim Ara v. State of Uttar Pradesh and another*, AIR 2002 SC 3551



his lordship said that the Art. 13(1) cannot be used to review the Shariat law. The structure of Art. 25 and any other provision of Part III of the Constitution can only be used for reviewing the personal laws. Triple Talaq was then examined by Justice Khehar against each of the exceptions. According to his lordship no nexus was found of triple talaq to public, health or morality and it was also found that it doesn't even breach any fundamental rights. Further he also stated the triple talaq as a personal law and therefore should be protected under article 25 of the constitution.

Chief justice Nazeer also gave a dissenting order in this case. His lordship believed that judiciary isn't an appropriate forum and it was under legislature authority. This was the only reason for not striking down triple talaq. Abolition of other social evils like devdasi, polygamy and sati was mentioned by him and was said that these practices were not challenged in any of the courts and these were discontinued by legislative enactments. Therefore, exercising the power under Article 142 of the constitution in the direction of the Supreme Court was given to the Union of India by Chief Justice to form an appropriate legislation in relation with Talaq-e-Biddat (Triple Talaq). Although an injunction of six months was granted by Chief Justice as an interim against triple talaq.

TRIPLE TALAQ ACT:-

The parliament has power to pass law related to marriage and divorces. This power is drawn through entry 5 of concurrent list (seventh schedule) read along with Article

25(2) and Article 44³⁷. After long battle of cases like Shah Bano(1985), Danial Latifi(2001), Shamim Ara(2002), and finally Sharaya Bano (2016), the Indian government formulated a bill known as The Muslim Women (Protection of Rights on Marriage) Bill on December 28, 2017. On 30th July, 2019, Rajya Sabha passed the bill of Triple Talaq through ballot voting in which 99 votes were in favour while 84 were against.

This act faced a lot of controversy as well as a lot of protest from opposition. Modi government marked a landmark victory through passing of this bill. The bill of triple talaq was in controversy ever since previous Modi government on Lok Sabha table in 2017.

The main objective and reason of this bill was to end the practice of the triple talaq. The case of Sharaya Bano resulted in this The Muslim Women (protection of Right on Marriage) bill, 2019. Immediate need was felt by the state to end this practice and neither the judgement passed in case of Sharaya Bano nor adequate deterrents were being served by All India Muslim Personal Law Board against triple talaq. Therefore the need to give legal enforcement of the verdict was felt by the state.³⁸

The declaration of immediate and non-revocable talaq is declared void & illegal under this act³⁹. This act gives definition of talaq as talaq-e- biddat or any other talaq which have immediate and non-revocable effect⁴⁰. This talaq-e-biddat could be in any form – spoken, written, and electronic or in any other manner. According to this act any

³⁷ The Constitution of India, 1950

³⁸ Manasi Chaudhari, Triple Talaq Bill: Lacunae and Recommendations, 5(2) NLUJ Law Review 49 (2018)

³⁹ Section 3, The Muslim Women (Protection of Right on Marriage) Bill, 2019

⁴⁰ Section 2, The Muslim Women (Protection of Right on Marriage) Bill, 2019



husband pronouncing tala-e-biddat would be punishable with imprisonment of 3years as well as fine.

This act also legislates on matter related to allowance and custody. Every Muslim women divorce through talaq-e-biddat is entitled for allowances for herself and her dependent children⁴¹. Under this act Muslim women will also be entitle to have the default custody of her minor child in case of instantaneous talaq pronounced by husband⁴². The Magistrate would be determining the term and nature of the custody.

The provision of default custody seems like a consequence of section 7 of the act – under which it talked about arrest of husband which can be done even without warrant and he would not be granted bail. Therefore the mother must have the custody of the minor child.

This enactment is minuscule legislation. It has been organised into 3 chapters which further lay out into 8 sections. The act is smaller than the statement of objects and reasons prescribe for this act. In this the first chapter talk about jurisdiction, commencement and definition clause. The 2nd chapter talk about the declaration of triple talaq illegal & void as well as punishment for the pronouncement of triple talaq. The rights of Muslim women related to subsistence allowance and custody of minor child is being dealt in the last chapter of this act talk about related to. This chapter also talk about arrest of husband without warrant and non bailable nature of the offence.

⁴¹ Section 5, The Muslim Women (Protection of Right on Marriage) Bill, 2019

⁴² Section 6, The Muslim Women (Protection of Right on Marriage) Bill, 2019

LACUNA IN THE ACT:-

This act is a boon for all the Muslim women against the practice of talaq-e-biddat. Naturally, this act also has some lacuna that need to be ratified. In this chapter the shortcoming of the act is discussed below.

- DUBIETY IN STATUS OF MARRIAGE AFTER TRIPLE TALAQ

The pronouncement of talaq-e-biddat is merely makes the illegal and void by the act. This act but doesn't throw light on the marital status after the pronouncement of triple talaq. It doesn't clear whether the marriage will survive or end.

It may be thought that as the intention of the act was to end instantaneous divorce the marriage may survive after talaq-e-biddat. On other hand it also talks about things which are typically present in divorce law like maintenance and default custody of child.⁴³

The punishment of talaq-e-biddat prescribe under the act is immediate arrest that is non bailable and imprisonment up to 3years. Such harsh punishment to husband would impact the relation as well as family's financial stability negatively.

While the husband is in prison, what recourse the women would take is also not clear. The wife will have to live as a single as she can neither divorce husband nor can she remarry anyone else during the forceful imprisonment of the husband. This will force the Muslim women in a vacant marriage, without any source of stable income.

⁴³ Manasi Chaudhari, Triple Talaq Bill: Lacunae and Recommendations, 5(2) NLUJ Law Review 49 (2018)



• **CRIMINALISATION AND OVER-CRIMINALISATION OF TRIPLE TALAQ**

Both Muslim marriage as well as divorce are contracts between husband and wife which is civil in nature same like in any other religion. This act makes instantaneous talaq criminal in nature. The statement of object and reasons of the act justified that the criminalisation of instantaneous talaq was important for prohibition of triple talaq.⁴⁴ Under section 4 of the act it is prescribed that pronouncement of instantaneous talaq would result into imprisonment of 3 years along with fine. This act also make this crime non bailable and give power for the immediate arrest of husband on pronouncement.

The act not only criminalises instantaneous talaq but it over-criminalise instantaneous talaq. The imprisonment of three years are preserved for the crime that have the potential to threaten security of country and public peace like counterfeiting coins⁴⁵, sedition⁴⁶, rioting⁴⁷ etc. Same punishment is prescribed under this act without any proper justification or rationale given for prescribing imprisonment.⁴⁸

• **IMPLEMENTATION OF THE ENACTMENT**

The main principle of the criminal law says; “burden of proof lies on the prosecution”. In all the cases it is considered that the accused is innocent until proven guilty beyond reasonable doubt⁴⁹. Similarly in case of

instantaneous talaq the burden of proof lies on the prosecution that is the wife. Proving instantaneous talaq can be extremely difficult since triple talaq can also be pronounced orally without any witness. As a result the conviction rate can go low.

• **VAGUENESS OF PROVISION**

The provision under this act which talk about subsistence allowance is under section 5. It is very vague and arbitrary in nature. This act doesn't provide the definition of subsistence allowance and neither it prescribe the guidelines for payment nor it talk about the amount to be given. This act doesn't even clear about the payment of allowance when the husband is imprisoned. Whether the subsistence allowance should be paid as an interim relief or after the conviction of the accused, the act is silent in this matter⁵⁰. This act in case of subsistence allowance leaves a very wide scope for magistrate's discretion.

• **ARBITRARINESS**

Under section 6 of the act, default child custody to Muslim wife is talked about. This provision is not clear in itself as it doesn't say when the custody is to be provided whether in the interim or permanently. However, if the husband is in imprisonment there is no need of this provision as the custody would anyway lie with the mother, as the natural guardian⁵¹.

• **NO OPTION FOR RECONCILIATION**

⁴⁴ The Muslim Women (Protection of Rights on Marriage) Bill, 2017, No. 247-C, Bills of Parliament, 2017, <http://164.100.47.194/Loksabha/Legislation/billintroduce.aspx> (21 May, 2018) (India).

⁴⁵Section 233, The Indian Penal Code, 1860

⁴⁶ Section 124 A, The Indian Penal Code, 1860

⁴⁷ Sec 146, The Indian Penal Code, 1860

⁴⁸ Manasi Chaudhari, Triple Talaq Bill: Lacunae and Recommendations, 5(2) NLUJ Law Review 49 (2018)

⁴⁹ Vijayee Singh v. State of Uttar Pradesh, (1990) 3 SCC 190 (India).

⁵⁰ Mulla, Principal of Mohammedan Law; 338 (22nd ed. 2017)

⁵¹ Ms. Gita Hariharan and another v. Reserve Bank of India and another, AIR 1999 SC 1149 (India).



In Quran similar as any other religion Reconciliation is the fundamental step before divorce. This act kills all the chances for reconciliation due to three year of imprisonment of husband that is not bailable. The door for a possible restoration of marriage is completely shut with the husband being forcefully imprisoned.

SUGGESTIONS:-

Although this act has various lacunae present in it but one can't deny that the objective that the act wants to achieve is noble. However this act requires certain amendments. Following are some recommendations for making the muslim women unfetter.

- Doubt in Status of Marriage

This act should provide some clarification on the status of marriage after the pronouncement of triple talaq. It should also further say that if someone seeks a divorce it should be done through any of legally approved methods.⁵²

- Clarity in provision talking about custody and Subsistence allowance –

The law may not interfere in the situation relating to the status of marriage but in the remaining circumstances that is maintenance and custody of minor child act should be clear whether it would be interim measure or not. The act should also shed some light on the mode and guideline on payment of subsistence allowance. It should also talk about the minimum amount for subsistence allowance.

The act should also get clarity in provision related to custody. The provision given for custody is very vague and very wide scope of magistrate discretion is present in it.

- Medium to Muslim Wife to seek divorce –

The empowerment of Muslim women is a need in present day. In the society, the socio-economic status of the women belonging to Muslim community and her dependence on the husband for sustenance make a dire need to empower Muslim women. This act must give Muslim women some power to divorce the husband on the ground of pronouncement of triple talaq.

- De-criminalising the pronouncement of triple talaq –

The foremost criticism of the act is criminalisation of triple talaq as it fails to give enough justification for this. This act has not just criminalised the triple talaq but it has over criminalised it.

The parliament at the minimum should eliminate the strict liability if it is sure about criminalising triple talaq. The intention of the husband at least should be required during the pronouncement in this provision. It should only criminalise the pronouncement when husband have clearly and unambiguously intent to pronounce the triple talaq. There should also be mention of some exception when the pronouncement would be ineffective like in case of anger, intoxication etc.

- Compulsory reconciliation period –

The act provides a reasonable amount of time for reconciliation. Under Quran also the fundamental requirement for the divorce is reconciliation. Whether to live together or not in the interim it should be the decision of husband and wife. The court should only look

⁵² Manasi Chaudhari, Triple Talaq Bill: Lacunae and Recommendations, 5(2) NLUJ Law Review 49 (2018)



into the question of divorce only once the reconciliation fails.⁵³

CONCLUSION:-

In India from the ancient time there have been gender discrimination and the major victim of this discrimination have been women. The society of India has always been a male dominant society and from the ancient time women have suffer from different type of evil practices such as sati, devdasi, polygamy etc. Many of the social evil practices have been done away with the furtherance of time and amplification of education among people, triple talaq being the one of them. Triple talaq, or talaq-e-biddat, is one of the most talked about issues in the Muslim religion has been afflict due to Muslim men who have regularly misusing this 'right' to divorce their wives immediately by simply uttering of the word 'talaq' thrice. In 2019, Muslim Women (Protection of Right on Marriage) Bill was pass which declared this practice unconstitutional and criminalized this with punishment of 3years as result of Shayara Bano case.

On 22nd of August, 2017 was a landmark day in history of India. On this day society saw the ending of an evil male biased custom which has tear down the life of many Muslim women. Triple Talaq which was also against basic tenet religious script of the muslim that is Quran. Still it was widely used by Muslim male to end their marriage at anytime with their will and without giving any reasonable ground. This practice was slowly moving toward more and more miserable state as the triple talaq was being pronounced on phone call, in mobile text, in letter and at any

moment also in anger, in state of intoxication etc. This triple talaq became binding and effective immediately and was irrevocable. According to AIMPLB (All India Muslim Personal Law Board), "Sharia grants right to divorce to husbands because men have greater power of decision making." The battle of this triple talaq was initiated by the viticim of this practice that is Shah Bano as well as it was finally led to success even by the victim of this practice. This controversial case of Shyara bano through which triple talaq was end and the new legislation which illegalize triple talaq was heard by 5-Judge constitutional bench in which each of the judge belong to different religion. "The judgement has been widely celebrated throughout the country, as many consider it the beginning of a long overdue overhaul of archaic and discriminatory personal laws."

On 28th December, 2017 The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was passed in Lok Sabha. Although it faced a lot of criticism on various ground similarly as all the reformatory steps have seen since ancient time but finally it saw its light. On 30th July, 2019 the Rajya Sabha passed the triple talaq bill through ballot voting within which 99 votes were in favour while 84 votes were against and later become an act.

This act define triple talaq as talaq-e-biddat and make it in all form whether written, spoken or by electronic means illegal with 3 year of imprisonment of the husband along with fine on pronouncement. This act also provides provision related to subsistence allowance and default custody of minor child.

⁵³ Manasi Chaudhari, Triple Talaq Bill: Lacunae and Recommendations, 5(2) NLUJ Law Review 49 (2018)



According to this act the husband can be arrested without a warrant on pronouncement of triple talaq and it is a non bailable offence.

This act is a boon for all of women belonging to Islamic faith against this practice of triple talaq. Naturally, this act also has some lacuna that needed to be ratified but one can't deny that the objective that the act wants to achieve is noble.

