



**MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019: SAFEGUARDED THE INTERESTS OF MUSLIM WOMEN OR DEPRIVED THEM OFF THEIR SECURITY**

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**Abstract**

The purpose of this article is to study the effects of the Muslim Women (Protection of rights on Marriage) Act, 2019. This article explains how the practice of triple talaq caused problems for many Indian Muslim women. Some major problems which they go through are, they get in a state of imbecility, they become financially unviable, they are deprived off their security, etc. These are the horrors which women have to face as a result of triple talaq practice. It discusses how this bill helped to alleviate the horrors of this practise and also how it engraved the misery of some Muslim Women at the same time. This bill caused a lot of stir in the country because of its provisions which seemed strong and harsh on the face of it and also was such that it did not get a unanimous reception among the Indian Muslim community. It also enumerates other reasons apart from the clauses of this bill because of which the effect has been mixed. The other reasons are the socio-cultural environment in which Indian Muslim women live in, their beliefs, violation of other rights as a result of this bill, etc. Therefore, this article attempts to resolve the contention that has been caused by this act among the Muslim Community by weighing the advantages and disadvantages of this act.

**Introduction**

Triple Talaq since many centuries has been a mode of divorce in Islam. This practice is considered by many scholars and thinkers to be arbitrary, partial and unjust against Muslim women because it renders them helpless by not providing them any security when the divorce is promulgated. This is only one of the many horrors which they face because of the practice of triple talaq. Through this act, the centre aimed to put Muslim women on the same pedestal as Muslim men and they did that by making this practice unconstitutional. But by abolishing this practice, the centre has also created problems for a certain section of Muslim women who consider the cultural and religious Islamic laws Sacrosanct and who for many other reasons do not support the abolishment of this practise of triple talaq.

Therefore, the Effect of this act on Indian Muslim women has been varied and multifarious because of the different social-cultural environment in which they live in. This bill criminalised talaq-e-biddat making it a historic step in the constitutional history of India. The response of this bill among the Muslim women community has been mixed, some women felt empowered because of this bill but at the same time, some felt disparaged. The practice of triple talaq had caused resentment to many Indian Muslim Women, for these women this bill acted as ray of hope and in a way empowered them. But there is also a reasonable amount of Muslim Women who value their culture or practises to a large extent for this reason they have no grievances against this practise, so as a result they do not support this bill. The effect of any act or bill depends on various factors like provisions of the bill, the socio-cultural environment which the bill is



pertaining to, Circumstances that led to the implementation of the bill, the practise that the bill alters, etc. So on similar lines the effect of this bill is also dependent on the above mentioned factors.

### **What is Talaq-e-biddat?**

Under Islamic law, divorce can be promulgated in two ways, i.e,

1. Talaq- ul- sunnat- talaq-e-hasan & talaq-e-ahsan consists of talaq-e-sunnat. This type of divorce is revocable in nature.

2. Talaq-e-biddat- It is also known as triple talaq. It is an instant mode of divorce. This mode of divorce is neither mentioned in Quran nor is it mentioned in Sharia law. It has come into prevalence as a result of customary Islamic law. In this form of divorce, husband issues divorce by promulgating “talaq” three times in a row or in one sitting and for this, the presence of wife is also not mandatory, i.e, a man can give a woman divorce through electronic communication, through texts, through fax, etc.

Talaq-e-biddat was recognized by Hanafis (sunni), the Omeyyad monarchs introduced it in the 2<sup>nd</sup> century of Mohammedan law<sup>1</sup>. This form of divorce was considered legally valid, but its practice was considered immoral. This type of divorce is the most common and prevalent form of divorce among the Indian Muslim community. It is irrevocable in nature and its application has always been a controversy because of its unjust nature. This form of divorce has

always been controversial because the practice of it forms a dichotomy between constitutional law and religious law and also according to this form of divorce if the husband says talaq thrice on one occasion, even when he is in a state of anger or intoxication or simply if he is joking, still the marriage is broken and the nature of divorce remains irrevocable.<sup>2</sup>

### **How the practise of triple talaq in India created problems for Indian Muslim Women community?**

The practice of triple talaq has created many problems for Muslim women, because it raises the Muslim Men on a higher pedestal by allowing them to promulgate divorce at any given point of time. Many western scholars have described talaq-e-biddat, a form of divorce which gives unfettered power to repudiate one’s wife at will.<sup>3</sup> They have tainted talaq-e-biddat to be irresponsible, arbitrary and injurious towards Muslim women. It is also irrevocable in nature because of which it gives no option to women, but to remain in abysmal condition. Professor Tahir Mahmood also bolstered this point by stating “Triple talaq creates havoc with the lives of numerous Muslim Women due to its Purported Irrevocability”<sup>4</sup>. Triple Talaq is considered to one of the most degraded forms of divorces because it in a way gives an out to Muslim men and they escape from their duty of maintaining their wife.<sup>5</sup> After triple talaq’s promulgation, husband and wife do not share any

<sup>1</sup> Poonam Pradhan Saxena, MATRIMONIAL LAWS AND GENDER JUSTICE, 45 Journal of the Indian Law Institute, 335, 383-384 (2003)

<sup>2</sup> Nehaluddin Ahmad, A Critical Appraisal of ‘Triple Divorce’ in Islamic Law, 23. *International Journal of Law, Policy and the Family*, 47, 53-54. (2009)

<sup>3</sup> Lynn Welchman, Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual

Development and Advocacy 19-32 (Amsterdam University Press. 2007).

<sup>4</sup> POONAM, *supra* note 1, at 38

<sup>5</sup> Sylvia Vatuk, A rallying Cry for Muslim Personal Law: The Shah Bano Case and its aftermath 352-368 (Princeton University Press 2009)



relationship and hence as a result, husband is not duty bound to maintain his wife. Ergo, these are the problems that the practice of triple talaq creates among the Muslim community in India.

**Why triple talaq was valid in India unlike many other Islamic countries in spite of being arbitrary?**

This form of divorce has always been a subject of contention because of the arbitrariness that it entails. It has been banned in 22 Islamic countries because of its very nature, but in India this practice was not banned till now because the constitution of India according to article 25 and article 26 gives its citizens the freedom to practise and propagate their own religion and triple talaq being mentioned in customary Islamic law and substantiated by the hanafi school of thought become a valid form of divorce in the Muslim culture. It was not banned mainly because the constitution of India declares India a country which follows norms like sovereignty, socialism and democracy which in turn makes it a country where the freedom of people to follow their own culture is a very integral part to maintain these norms. Therefore, the reason because of which triple talaq was continued in India longer than many Islamic countries has been the basic democratic set-up of India.

**Causes that led to the promulgation of “The Muslim Women (Protection of rights on Marriage) Act, 2019”**

There were various causes or circumstances that led to the promulgation of this bill. One of the main causes was the very nature of

talaq-e-biddat. But there were also many causes apart from that and which were-

1. **Previous bills and acts regarding talaq-e-biddat in India-** There have been various legislations enacted in recent times in lieu of talaq-e-biddat. These legislations amended the original provisions of The Muslim Women (Protection of rights on divorce) Act 1986. The first act which brought a relief to millions of women was The Muslim Women (Protection of Rights on Marriage) Bill, 2017 instant triple talaq (*talaq-e-biddah*) in any form — spoken, in writing or by electronic means such as email, SMS and WhatsApp illegal and void, with up to three years in jail for the husband<sup>6</sup>. This bill was not passed in council of states because the majority of members were in favour of the practice of triple talaq. These members were majorly from all India Muslim Personal board, all India Majlis-e-ITTe hadul Muslimeen and congress. The Muslim boards were not in support of the bill because they had an agenda of keeping Muslim personal law intact and triple talaq followed mentioned hanafi school of thought was an integral part of the Muslim personal law. After this there were many bills and ordinances which were passed in the house of the people but none of them passed from council of states because of the above mentioned reasons and also because the provisions were very stringent of the Muslim women act, 2017. Therefore, Amendments were necessary for making the provisions reasonable as well as necessary to maintain the religious sentiments of Muslim personal boards. As these bills were not converted into acts because of the above mentioned reasons, so attributable to that the cases of triple talaq

<sup>6</sup> The Muslim Women (Protection of Rights on Marriage) Bill, 2017, No 2, Acts of parliament, 2017 (India)



were not allaying even after the Supreme Court judgement. This was the reason an act was imperative in which there are stringent provisions against the perpetrators at the same time which protects the religious sentiments of Muslims and also which could reduce the number of triple talaq cases in India. Finally, in 2019, The Muslim women (protection of rights on marriage) Bill came which was very precise because it incorporated all the requisite amendments. It also included the clause of bail in its provisions which made it reasonable for Muslim men by altogether not eliminating their rights. Ergo, this bill was worthy of becoming an act as for the first time a bill considered all the points of every major group. The provisions of this bill were reasonable. It directly influenced the lives of millions of Muslim women. So, the drawbacks of previous bills, acts and ordinances were one of the major causes of promulgation of the “The Muslim women (protection of rights on marriage) Bill 2019”.

2. **Lack of substantial change even after the Landmark Judgement and ordinances aftermath-** Triple talaq cases in India in recent times were on a surge. Even after the Supreme Court judgement of “Shahyara Bano V. Union of India”, triple talaq cases were not eliminated. There were more than 200 registered cases of triple talaq across the country even after the judgement<sup>7</sup>. The plight of Muslim women was subsided but was not eliminated because there was a lack of an act with coherent provisions. So, an order was imperative from the government to prohibit this practice. The proposed bill of 2019 could in real sense change the social lives of

Muslim women as it would criminalize triple Talaq through provisions which would be applicable in all parts of India. The ordinances before that could not make a difference because they were not converted into acts. Therefore, the pain and agony that the Muslim women faced because of the practice of triple talaq was so dreadful that an order that bans this practise was of utmost importance and it was done by the above-mentioned bill.

3. **Constitutional and personal law validity of triple talaq-** Triple talaq was considered to be legally valid despite being arbitrary, irrevocable and partial because it was enshrined in Hanafi school of thought. But its legality was challenged under article 372 of the constitution of India and section 2 of shariat application act.<sup>8</sup> In the above mentioned case, it was held that according to article 372, courts ought to guard the constitution and in pursuance of that they are the ultimate interpreters of the contentious laws. Therefore, court deems triple talaq to be against article 14. It does not label it under the purview of article 25 because it goes against the public order, morality and security. The petitioner counsel in this case argued that Islamic personal laws should not be interpreted by Indian courts as the language of the texts is Arabic and none of the judges are really versed with the language. He also argued that religious laws should not be tampered by the courts as it would be an infringement of article 25. The counter arguments of the counsel of respondent were that when a constitutional law contradicts any personal law of any religion on the same issue, then constitutional

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<sup>8</sup> Rahmat Ullah And Khatoun Nisa vs State Of U.P. And Ors II (1994) DMC 64



law should be resorted against the personal law as the security of the nation is of utmost priority. The court's judgement also held that the talaq was not legally valid and hence for the first time sparking the debate between constitutional law and religious law on this issue. The judgement of this case challenged the legality and validity of the triple talaq, hence giving this kind of perspective to the law makers on this issue. According to section 2 of shariat application act, if there is any ambiguity on an aspect, then the law should be applied instead of customs and usages. Since triple talaq is not mentioned in Quran and is followed in the context of customary Islamic law, the prevalence of triple talaq is questionable. Article 372 says that all the laws which were in force before 15<sup>th</sup> august, 1947 will be in force in the present times. But since triple talaq was practised as a result of customary personal law, it cannot be included in "law in force" because personal law is not made by legislature. So, the above-mentioned bill was also promulgated to absolve all the ambiguities that was surfaced because of the provisions of article 372 and section 2 of shariat act that was brought into the scheme of things because of the above mentioned case. This is not an immediate cause but this issue can also be considered in the making of this bill.

### **Main provisions of "The Muslim Women (Protection of rights on Marriage) Bill, 2019"**

1. This bill makes the offence of talaq-e-biddat cognizable and it will be considered cognizable only if it is informed by the married woman who has been victimised or

any person who is related to that woman through blood or through marriage.

2. The punishment for the offence of triple talaq will be up to three years imprisonment coupled with a fine.

3. A magistrate can grant a bail to the accused and that can be done only after hearing the side of the woman against whom talaq-e-biddat has been promulgated.

4. The magistrate has been given power to compound the offence of talaq-e-biddat upon the request of the woman against whom talaq has been issued. Compounding is amiably solving the issue without any legal hassles. The terms and conditions would be decided by the magistrate for compounding.

5. Victims of triple talaq are entitled to get maintenance for them and their children who are dependent on them. The sum of money which will be given as compensation would be fixed by the magistrate.

6. Women who get separated as a result of talaq-e-biddat are entitled to the custody of their minor children. The role of magistrate is very vital when it comes to the manner in which custody is to be given.

### **What benefits did this bill accrue to Muslim women in India?**

There are various benefits that were accrued to Muslim women as a result of this bill. This bill empowered the Muslim women and gave them the capability to stand on the same pedestal with the Muslim men. It firmly establishes gender equality and to an extent reduces the capricious power given to Muslim men as a result of customary Islamic law in terms of the forms of divorce. So, the

<sup>9</sup>PRS LEGISLATIVE RESEARCH,  
<https://www.prsindia.org/billtrack/muslim-women-protection-rights-marriage-bill-2019> ( last visited June 14, 2019)



various assistances that this bill has provided Muslim women are-

It established parity of Muslim women with Hindu and Christian women on legal lines.<sup>10</sup> Hindu and Christian women enjoy equal rights because of the codified laws like the Indian divorce act, Hindu marriage act 1955, special marriage act, etc. But in the case of Muslims, there is a separate set of laws which is akin to their own culture and talaq-e-biddat was also one such law which was based on customary Islamic law, so when through this bill triple talaq was criminalised, Muslim women were given legal rights, i.e, now they can have a say in their divorce. So the legal parity is a huge benefit that was accrued to them because of this bill.

This act not only punishes the perpetrators severely but it also gives the affected Muslim women an opportunity to resolve the turmoil and amiably settle the dispute or get back to the mean position with their spouses<sup>11</sup> by including a provision according to which triple talaq was declared a compoundable offence. This provision in a way wants to leave a window open in the slightest way possible because if in future the couple wants to reconcile things, then they should have an option to do so. So, this provision of reconciliation serves as a sigh of relief for those women who were completely dependent on men for both financial and emotional aspect.

This law helped Muslim women to become independent by making divorce a two-way process and now, it cannot be executed

without the consent of the wife. Though, talaq-e-hasan still exists and it also does not give much importance to the wife's consent in a divorce, but it still is not blatantly arbitrary and also is revocable till the third sitting. Therefore it can be concluded that now, marriage cannot be broken simply by uttering talaq three times at one sitting, i.e, it would no longer be arbitrary and so as a result the issue of custody of children is not brought up because the practice has been declared illegal and hence, Muslim women can now happily stay with their children and also stability of house could be maintained.<sup>12</sup>

This law protects women from destitution or parsimony which they used to face when they were left by their husbands by promulgation of triple talaq. Many women who were given divorce were not financially independent and when they were left by their husbands, they had nowhere to go to fulfil their basic human needs and when no option was left they generally became wards of state.<sup>13</sup> So, all these hardships which the women used to face were diminished by this law. After this bill, these women have gotten an out from the horrors of destitution which was resulted as an aftermath of promulgation of triple talaq.

#### **What disadvantages did it accrue to Muslim women in India?**

“The Muslim Women (Protection of rights on Marriage) Bill, 2019” criminalized the practise of triple talaq that has proved to be very beneficial for a major chunk of Muslim women in India, but it has not completely

<sup>10</sup> Zakia Saman, Passage Of Triple Talaq Bill Victory Of Muslim Women's Fight For Gender Justice, Outlook the fully loaded magazine (July 31, 2019 7:30 P.M), <https://www.outlookindia.com/website/story/india->

[news-opinion-passage-of-triple-talaq-bill-victory-of-muslim-womens-fight-for-gender-justice/335216](https://www.outlookindia.com/website/story/india-news-opinion-passage-of-triple-talaq-bill-victory-of-muslim-womens-fight-for-gender-justice/335216).

<sup>11</sup> *Id*

<sup>12</sup> BBC News, <https://www.bbc.com/news/world-asia-india-41008802> ( last visited August 22, 2017)

<sup>13</sup> Shayara Bano case



solved the problem of gender inequality existing in the forms of divorce in Islam. The gender inequality is still intact because there are some repercussions of this bill which have not gone in the favour of Muslim women and have proved to be detrimental for Muslim women. Some Muslim women have not found this bill to be advantageous for them because everyone does not live in the same socio-cultural society and the circumstances for every woman are not the same. So, the disadvantages are-

The most pressing disadvantage that has resulted because of this bill is the issue of maintenance of Muslim women against whom triple talaq has been promulgated.<sup>14</sup>

There is a clause of punishment of three years imprisonment and fine in this bill which makes the wife financially unviable. When the husband is imprisoned, there is no one to take care of the wife financially and that is the biggest disadvantage of this bill. So, the issue of maintenance remains an issue because of the criminality clause in the bill.

There is violation of conjugal rights for the women whose husbands are imprisoned for three years as a result of the criminality clause in this bill.<sup>15</sup> The right of conjugal rights has been violated by this bill which is a major concern for the women because this right is mentioned in Quran and any law cannot abridge the right of Muslims which is mentioned in Quran. So, this is also a big disadvantage for women because of this bill.

There are some Muslim women who firmly believe in the customary Islamic law and also their cultural sentiments are very deeply intact. This law has criminalised the practice of triple talaq and as a result the cultural sentiments of various women have been shattered because they are of an opinion that if any legislation alters any provision of cultural law then the right to enjoy cultural practise is hindered. So, these women because of their socio-cultural conditioning have a tendency to idolize their spouses and if any law which puts their husband on peril, then they are naturally against that law. So, for these women this law is disadvantageous.

There are some women who might have to face some persecution from the husband's family because according to this bill, husband would have to face three years of imprisonment and because of that the wife will be left alone with the husband's family and many times they vent out their anger on the woman by making the life of the woman miserable, so in a way the clause of punishment in some cases has lost its purpose. So, this is also a prominent disadvantage of triple talaq bill.

### Conclusion and way

#### forward

The Muslim Women (Protection of rights on Marriage) Act, 2019 has been a remarkable step towards gender equality and it can be considered as so because this act has put Muslim women at same pedestal as Muslim men in terms of having a divorce in their own

<sup>14</sup> The conversation, <https://theconversation.com/india-why-a-new-law-criminalising-muslim-instant-divorce-has-divided-feminists-122687> (last visited September 3, 2019).

<sup>15</sup> 10 concerns raised against triple talaq bill, <https://www.rediff.com/news/report/ten-concerns-raised-against-triple-talaq-bill/20181227.htm> (last visited December 27, 2018).



marriage. It criminalised the practice of triple talaq which can be considered a very brave step because it challenged the customary law of Islamic law and also there are not many instances in past where any central law has abridged a personal law of any religion in spite of it being regressive and this act doing that makes India a truly secular country. It is also considered a brave step as Article 25 of the Indian constitution gives its citizens freedom to practise, profess and propagate religion and triple talaq being one of the forms of divorces which is mentioned in 8anafi school of thought becomes a way by which one can practise religion, but contemporaneously Article 14 states right to equality and clearly the practice of triple talaq does not treat Muslim women equal to Muslim women as in the practice men can get separated from their wives even without their consent. So, there was a state of dichotomy between article 14 and article 25 & Muslim personal law. Therefore because of these reasons the government making this practise unconstitutional makes it a very brave step. The results of this act have been very significant. It in real sense has eliminated the practice as now the landmark judgement of 2017 had been formalised, so because of that there is a change in true sense, hence making the result of this act significant. The effect of this Act has not been unanimously advantageous for all the Muslim women against whom triple talaq has been promulgated. They faced consequences which were not advantageous like some of them were deprived off their security, some of them became emotionally feeble, some of them faced persecution from the husband's family, etc. These consequences in turn further engraved their misery. The effect of this act has been mixed because the effect is dependent on the socio-cultural environment

in which Muslim women live in. The socio-cultural environment affects many aspects like the treatment of wife by the family of husband when the husband has been imprisoned for triple talaq, the mindset of wife, i.e, whether she believes in the customary law or believes in the reason and logic over customs, etc. These aspects are developed according to the socio-cultural environment in which these women live in. But majority of Muslim women have benefitted from this law and hence, this law can be considered as a stepping stone for a bigger change. This act can be considered as an example of gender justice, through this act government has covered the legal aspect of equality now they should sought emotional and social equality and to achieve that this act can be considered as a great stepping stone.

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