



THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019 – AN OVERVIEW

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ABSTRACT

The triple talaq law that is The Muslim Women (Protection Of Rights On Marriage) Act, 2019 came into effect retrospectively from September 19, 2018, after President Ram Nath Kovind gave his assent to the legislation that makes giving instant oral triple talaq or talalq-e-biddat a criminal offence with provisions of jail term up to three years. The new law makes void and illegal talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband. It also makes it illegal to pronounce talaq three times in spoken, written or through SMS or WhatsApp or any other electronic chat in one sitting. The issue has attracted media attention in the past two years since a Muslim organisation, Bharatiya Muslim Mahila Andolan (BMMA), launched a campaign to ban triple talaq and "nikah halala" - a practice where divorced women, in case they want to go back to their first husbands, have to consummate a second marriage. The present research paper aims to highlight how society acted as a medium in changing the legal system of triple talaq prevailing in the country.

KEY WORDS: Supreme Court, Triple talaq, Protection, Nikah halala, Social transformation, Divorce.

INTRODUCTION

The **Muslim Women (Protection of Rights on Marriage) Act, 2019** is an Act of the Parliament of India criminalising triple talaq. In August 2017, **the Supreme Court of India** in the case of *Shayara Bano vs. Union Of India (9 SCC 1-298, 2017)* declared triple talaq, which enables Muslim men to instantly divorce their wives, to be unconstitutional. The



minority opinion taken in the case suggested the Parliament to consider the need of framing appropriate legislation governing triple talaq in the Muslim community. In December 2017, citing the Supreme Court judgement and cases of triple talaq in India, the government introduced The Muslim Women (Protection of Rights on Marriage) Bill, 2017. The bill proposed to make triple talaq in any form - spoken, in writing, or by electronic means - illegal and void. Punishment for breach of the law was also proposed and it included up to three years imprisonment for the husband pronouncing triple talaq. The bill was passed by the Lok Sabha, the lower house of the Parliament of India, on the same day, but was hindered by the opposition in the Rajya Sabha, the upper house. But the hindrance created by the Rajya Sabha was not an end destined for this Bill. The bill was again reintroduced and was passed by the Lok Sabha and by the Rajya Sabha also in July 2019. Consequently, the bill received assent of the President of India. It was subsequently notified as law in the same month and was given retrospectively effectiveness from 19 September 2018.¹

WHAT IS TRIPLE TALAQ OR TALAQ-E-BIDDAT AND WHEN IT BECOMES EFFECTIVE?

"Triple *Talaq*" or "*Talaq-e-Biddat*" or in other words Instant Talaq is an Islamic practice that allows men to divorce their wives immediately by uttering the word "*talaq*" (divorce) three times. The pronouncement can be oral or written, or as in recent times, delivered by electronic means - telephone, SMS, email or social media. "*Talaq-e-Biddat*" or "*Talaq-ul-Bain*" (Irrevocable divorce) is instant Triple *Talaq* and is effective as soon as the word "*Talaq*" has been pronounced thrice. In this form of *talaq*, three pronouncements can be made during a single *tuhr* (when the woman is not menstruating) by saying "I divorce thee" thrice at the same instant i.e. there need not be any waiting period between two successive pronouncements.²

¹ The Muslim Women (Protection of Rights on Marriage) Act, 2019, Available at: [https://en.wikipedia.org/wiki/The_Muslim_Women_\(Protection_of_Rights_on_Marriage\)_Act,_2019](https://en.wikipedia.org/wiki/The_Muslim_Women_(Protection_of_Rights_on_Marriage)_Act,_2019).

² Pukhraj Deshpande, "India: Triple Talaq, Judgment Of Hon'ble Supreme Court And The Most Anticipated Triple Talaq Bill", Available at: <http://www.mondaq.com/india/x/668468/divorce/Triple+Talaq+Judgment+Of+Honble+Supreme+Court+And+The+Most+Anticipated+Triple+Talaq+Bill>.



MAIN PROVISIONS OF THE MUSLIM WOMEN (PROTECTION OF RIGHT ON MARRIAGE) ACT, 2019³

The main highlights of the act includes:

- All declarations of instant triple talaq, whether spoken, in written or electronic form, to be void and illegal.
- Instant triple talaq as a cognisable offence with a maximum of three years imprisonment and a fine.
- The offence will be cognizable only if information relating to the offence is given by the wife or one of her blood relatives.
- The offence is non-bailable. However, there is a provision that the magistrate hearing the case may grant bail to the accused, only after hearing the wife and if the magistrate is satisfied that there exist reasonable grounds for granting the bail.
- The wife is entitled to a subsistence allowance with the amount to be decided by the magistrate.
- The wife is entitled to seek custody of her minor children from the marriage. The manner of custody to be determined by the magistrate.
- The offence may be compounded by the magistrate upon request of the aggrieved woman.

CONCLUSION

The legislation, The Muslim Women (Protection of Rights on Marriage) Act, 2019, brings India at par with other Muslim majority states including Pakistan and Bangladesh. This was long overdue for a country that has taken pride in its adherence to the principles of secularism, democracy, and equality. Personal laws of other religious communities, Hindus and Christians, have gone through renditions to address some concerns relating to gender

³ The Muslim Women (Protection of Rights on Marriage) Act, 2019.



equality in matters of inheritance and polygamy. Despite the gains, gender equality does not permeate all aspects of civil law. This legislation presents an opportunity to put in place a civil code that steeped in equality not only in matter of faith but also in the matter of gender equality.⁴

Reform in Muslim personal law has been mired in politics and patriarchy for decades. Gender justice for Muslim women in marriage and family has been of no interest to anyone. But this unfortunate reality began to change in the last 10 to 12 years, with Muslim women raising their voice, and demanding fair play in family matters. Unlike in 1985, when the lone voice of Shah Bano was crushed by all - government, politicians, clergymen - several Muslim women have publicly demanded an end to instant triple talaq to bring fairness in divorce practices. They have approached the Supreme Court, made appeals to Parliament, and put pressure on the government and the Opposition. All of this, eventually, culminated into public discourse and support for the abolition of instant triple talaq with the passing of the Muslim Women (Protection of Rights on Marriage) Act, 2019.⁵

⁴ Available at: <https://economictimes.indiatimes.com/opinion/et-view/et-view-passage-of-triple-talaq-bill-a-moment-of-great-import-for-indias-legislative-history/articleshow/70459771.cms?from=mdr>,.

⁵ Zakia Soman, " Triple talaq law: A historic moment for social justice", Available at: <https://www.hindustantimes.com/analysis/triple-talaq-law-a-historic-moment-for-social-justice/story-RuqHguOXNjAcyu8vrRgcO.html>.