

**Law and social transformation: Journey of Muslim women
(Protection on Marriage) Bill,2019.**

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INTRODUCTION

Nathan Roscoe Pound said that “lawyers are social engineer” it means that law is a tool for social transformation in society which changes from time to time for the better of mankind. The historical backdrop of humankind uncovers that human insight has concocted various techniques and intends to meet the basic changes in the social framework which happen with the headway of information, culture and human progress. Law has consistently been considered as one of the significant instruments of influencing social change. In the cutting-edge time, there has been across the board worry of law as an apparatus for realizing homogeneity in the heterogeneous populace having socio-social decent varieties. In spite of the fact that there are a few gadgets to achieve a change and transformation in the public arena, yet reorganization through law is maybe one of the best and most secure strategies to accomplish this end. It is important to note that what means social change and how with the passage of time the meaning has changed. In the simplest form we can define it as the changes that came with the passage of time due to change in conditions, nature and behaviour for society in milieu..In our journey to find the impact of law on social change, we for the most part will in general overlook the switch, i.e., the impact of social change on law. That lawful change reflects more extensive social change frequently appears to be too evident to even consider requiring dialog. For instance, mechanical change is one significant direct reason for lawful change: the advancement of the inward ignition motor, the engine vehicle and later of air transport delivered immense regions of new or reshaped legitimate principle to control these new highlights of existence with their specialist potential outcomes, dangers what's more, perils. Likewise, law can adjust to change in manners that may not be promptly obvious on the essence of lawful precept. Lawful ideas can stay in a similar structure while essentially changing their social capacities. Law can adjust to changed social conditions without fundamentally mounding its structure or nature.

The present research is based on *Practice of triple talaq in India: Journey of The Muslim Women (Protection of rights on Marriage) Bill, 2019*. The practice of triple talaq was earlier in 1985 declared unconstitutional in a supreme court judgement and the Apex court in a major verdict of 22nd August 2017 held that Triple Talaq is unconstitutional on the grounds of violation of Article 14 and Article 21 of the constitution. The remarking feature of verdict that constitutional bench who pronounced the verdict comprises of 5 different judges from intermingled faiths and ruled by

a 3:2 majority that there was no constitutional protection for Triple Talaq. Prior to Shayara Bano v. U.O.I triple talaq was valid. The question arises is now how this bill and the Triple Talaq Act, 2019 change the situation in social arena. In the name of talaq in Islam there is many rights of women which is violated so first we need to understand the marriage in Muslims and what is the procedure for divorce which is valid in holy Quran. We as a country which gladly pronounce that we are secular nation with the values of unity in diversity with the world's largest democracy provides the protection of equal rights to all our citizens to uphold the principle enshrined in constitution of India. In any case, underneath all the bronzed cases, lies the merciless underside of out of line and harsh individual laws which tear isolated the foundation of reasonableness whereupon our unimaginable nation was manufactured. The most stunning sort of persecution to which Muslim women have been presented to since long stretches of yesteryear is the over the top daily schedule concerning altogether increment talaq or even more consistently known as "moment separate". The research questions here in this paper is

1. Is triple talaq in congruity with Islamic law?
2. To analyse the effect of triple talaq on Muslim women.
3. What is status of Personal laws as per Constitution of India
4. Analysing Bill.

[To observe the impact after declaring it unconstitutional.]

Prophet Mohammed says, about marriage, "The one who does not marry is not amongst me" and the concept of divorce should not be resorted to. It should be used only when there is no other alternative. For divorce he says, "Of all the lawful things, divorce is the most hated by Allah." This raises the question as to whether Quran supports this practice?

Meaning of talaq

"Divorce" is present in every nation with a form of one or other and the idea of dissolution of marriage is found in each religion and language. In Islamic notion marriage is a collusion that has the idea of an implicit agreement and can be put to an end when it neglects to satisfy its motive. Muslim marriage is a social contract according to concept of Islam¹. Talaq, Khula, Mubarat are a few methods of dissolving a Muslim marriage. Hasan and Talaq-e-Biddat (triple talaq). While the

¹ www.legalserviceindia.com

past two are revocable, the last one is unalterable. It is generally transcendent among India's Muslim society that take after the Hanafi School of Islamic Law. The phrases of talaq need to without a doubt indicate the husband's intention to dissolve the marriage. If the pronouncement is not express and is ambiguous then it is certainly important to show that the husband certainly intends to dissolve the marriage. There are different types of talaq under Islamic law. Triple talaq or talaq-e- biddat is the most disapproved form of talaq. As per this rule, Wife cannot separate from her husband via the method of triple talaq but vice versa it is possible. As per the Muslim Individual Law (Shariat) Application Act 1937 ladies can seek divorce after moving to the court for the purpose of dissolution of marriage. (This Demonstration was passed to make arrangements for the use of Shariat or Islamic individual law to Muslims in India.

Dissolution of Muslim marriage is in the following ways:

- Judicial Divorce
- Extra Judicial Divorce: It is further sub divided into three on the basis of who ends the marriage

1. By the husband:

2. Talaq: If it is an expressed talaq then further divided into two categories

I. Talaq-i-sunnat (Revocable)

- Talaq-i-Hasan
- Talaq-i-ahsan

II. Talaq-i-biddat (Irrevocable)

- Ila
- Zihar

3. By wife:

- Talaq-i-tafweez
- Lian

- By dissolution of Muslims Marriages Act, 1939

4. By mutual agreement:

- Khula
- Mubarat

IS TRIPLE TALAQ IN CONGRUITY WITH ISLAM

Muslim law lays on the four-crease mainstays of the fiqh, namely²: the Quran (kitab), the Sunnah (Hadiths), the Ijma³ and Qiyas⁴. A 'guideline' to progress toward becoming 'law' must discover a spot in the previously mentioned sources. On the off chance that the arrangement of an issue is given in the Quran, at that point it is the last controlling of Shariah. On the off chance that there is no unmistakable work in the Quran, we take a gander at the customs of the Prophet reported as hadiths by his partners. In the event that the issue has no arrangement in both of the two, at that point just is resort taken to Ijma.⁵

Triple talaq is 1400-year-old practice among Sunni Muslims and unfortunately it gained prevalence in the entire Muslim society of India. The Quran permits kinds of divorces i.e. Talaq-Ahsan and Talaq-Hasan the same being dictates of prophet. The above two types of divorce are considered to be most pronouncing form of divorce, but the Talaq-ul-Biddat is sinful, it is not given in Quran it is innovated form of divorce and was disallowed by the prophet himself. Also, the practice of 'nikah halala' is one of the most misconceived Islamic practices. The Muslim Personal Law (Shariat) Application Act, 1937 expressing that it is unessential in the cutting edge time frame and not in understanding to Islam. This unapproved type of separation is trailed by the Sunni people group and not by the Shia people group. Shia schools of Islamic statute pursue the law that originates from the place of prophet. Since this training isn't from the place of prophet, it

² MULLA, Principles of Mahomedan Law, Lexis Nexis-Butterworths (19th edn, 15th reprint, New Delhi), Section 33 at p. 22

³ Meaning the concurrence of opinion of the companions of Mahomed and his disciples.

⁴ Being analogical deductions derived from comparisons of the first three sources

⁵ Furqan Ahmed, Triple Talaq: An Analytical Study with Emphasis on Socio-Legal Aspect (Regency Publication, New Delhi, 1994) at p. 41

isn't trailed by Shias. Shias and Sunni have different thoughts regarding the practice of triple talaq certain significant things like the standards of virtue of the lady (from monthly cycle), status of her virginity, holding up periods as determined in Quran and so forth should be carefully clung to, to approve any separation. The smallest deviation invalidates the separation. It is given in the Holy Quran, there must be endeavors towards compromise between the gatherings to separate. The Supreme Court in Shamim Ara v. Province of U.P. also, Anr has maintained this perspective on Quran expressing that there must be substantial explanations behind separating from somebody and there must be an endeavor to accommodate. This view has additionally been maintained by numerous High Courts incorporating the Kerala HC in Kunimohammed v. Ayishakutty. In the light of above all triple talaq should be banned as it does not found place in any of four pillars in Islam, also it is against the spirit of the constitution and most important unfair and unjust. It is mentioned in the Quran there is no spot been selected the three partitions enunciated in a lone breath would amount to three separate divisions. The hold back of Quran relied on is segment 2:229 "Divorce must be pronounced twice and then (a woman) may be retained in honor or released in kindness. And it is not lawful for you that ye take from women aught of that which ye have given them, except (in the case) when both fear that they may not be able to keep within the limits (imposed by) Allah. And if ye fear that they may not be able to keep the limits of Allah, in that case it is not sin for either of them if the woman ransom herself. These are the limits (imposed by) Allah. Transgress them not. For whoso transgresses the Allah's limit, such are wrong doers."

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EFFECT OF TRIPLE TALAQ ON MUSLIM WOMEN

In the Indian context women and children are two most vulnerable stakeholders of society, the effect of this evil practice if terminated provides a strength to women in new dimensions with a consonance social ethos. It is worthwhile to mention that India consist of big Muslim Populace in World level also. The issue of triple talaq was always time and again with the different rulings of supreme court has been in news and now finally to provide equity and justice to women, government came with the Muslim Women (Protection of Rights on Marriage) Bill 2019, which has now been passed by both the house of parliament and will become law on the accent of the President of India. In recent years, rights of women have been ameliorating by advanced interpretation of Muslim law by the judiciary. These verdicts are makers that serve to support the rights of Muslim women. It violates the very spirit of constitution that mentioned in preamble i.e. equity, also it violates other rights of women which is provided by constitution for the wellbeing of women. the exercise of triple talaq earlier than Shayara Bano's case has been a topic of controversy. Men and women should have same rights, as we are made equal, law needs to change according to the time. Muslim ladies, some of them have filled PIL in Supreme Court against this. The solicitor has requested rejecting of area 2 of the Muslim Personal Law (Shariat) Application Act, 1937, naming it against the Article 14 of the constitution. 8 December 2016, the Allahabad High court in its decision, has seen that the act of Triple Talaq is unlawful and disregards the privileges of Muslim ladies. If Muslim women get divorce by husband then they have to face problems like mentioned below and that's why government came with legislation:

1. Muslim ladies are bound to live in destitution and have lower work support in formal areas; subsequently, whenever separated and without upkeep, many would be driven into intense neediness.
2. The prerequisites for remarriage with a similar spouse if Triple Talaq is a mix-up are unreasonably embarrassing for ladies to practice this alternative.
3. The abundance of separated from Muslim ladies show that in spite of less marks of shame around remarriage (in contrast to Hindus, Muslims were not disinclined to widow remarriage), they exceed the quantities of Muslim separated from men.

There is great injustice with women many times in name of personal laws which is arbitrary, for reference we can see case of Afreen Rehman in which Talaq was given via speed post. "This

routine with regards to Talaq-E-Biddat (one-sided Triple-Talaq) which for all intents and purposes treats ladies like asset is neither agreeable with the advanced standards of human rights and sexual orientation equity, nor a vital piece of Islamic confidence, as indicated by different noted researchers. Muslim ladies have been given Talaq over Skype, Facebook and even instant messages. There is no assurance against such discretionary separation. Muslim ladies have their options limited while the guillotine of separation dangles, interminably prepared to drop at the impulses of their spouses who appreciate undisputed power”. She similarly referred to that the committee has fail to ensure the balance and value of women overall and Muslim women explicitly especially when it concerns matters of marriage, partition and movement..

The undisputable effect of talaq is that it adjusts the common status of a wedded lady in a one-sided way, as the spouse articulates a lady monetarily unsteady in the event that she is exclusively subject to her significant other's pay and is principally in charge of the family unit errands. Such a lady might be headed to guarantee upkeep if the mehr (measure of money related security typically decided at the season of marriage which is given to a Muslim lady at the season of separation) she gets is ostensible which regularly it is. She may need to participate in fights in court for the care of her kids. Ironically the people who said in favour of triple talaq guarantee that triple talaq can't be a factor for settling under the watchful eye of official courtrooms and will keep on staying extra-legal, however neglect to see that the results following triple talaq are arbitrated under the steady gaze of courtrooms.

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Personal Laws & The Supreme Law of Land

The objectives of our constitution requests to crash each and such a germs that are accountable for hurting the incredibly basic idea of consistency. To outline it we can view this announcement If a Hindu submits female foeticide he should go to imprisonment. Also, what is the wrongdoing of the Muslim ladies that someone (their spouses) expresses talaq thrice via telephone and their lives get crushed. Article 13 is a key arrangement in the insurance of central rights, as it makes all laws, before the presence of the constitution just as new laws planned by the Legislature, void to the extent that they abuse any of the Fundamental rights ensured under Part III of the Constitution⁶. This arrangement makes the Courts the gatekeeper and defenders of the Fundamental rights.⁷ Article 13 has just one ground of unlawfulness, to be specific the infringement of any arrangement in Part III of the Constitution. It anyway requires the specific law to fall inside the definition given in article 13(3) (a). Article 13 states that law “includes any ordinance, order by-law, rule, regulation, notification, custom or usage having in the territory of India the force of law” It further states that ‘law in force’ “includes laws passed made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such laws or any part therefore may not be then in operation either at all or in particular area”

In the Narasu appa Malli case laid accentuation on oversight of the term individual law in Art. 13 and limited the elucidation of the expression 'custom or use' in Art. 13. They additionally held that the incorporation of Art. 17, Art. 25(2) and Art. 44 by the constitution creators was finished with the view that that diverse individual laws were to win subject to adjustment by the State with the end goal of social changes. Kerala High Court has held that regardless of whether personal laws don't come extremely close to Article 13, if an encroached arrangement is essential for that Act, it must trial of lawfulness regardless of whether the arrangement depends on strict standards.⁸ Further, Muslim Personal Law is in power in India not as a component of Muslim religion but rather as a result of it is perceived by a State enactment, primarily the Muslim Personal Law

⁶ State of West Bengal v. Committee for protection of Democratic Rights, West Bengal, AIR 2010 SC 1476 (1490)

⁷ Brij Mohan Lal v. Union of India, (2012) 6 SCC 502 (569).

⁸ Amini EJ V. Union of India, AIR 1995 Ker 252.

(Shariat) Application Act 1937. It infers its position as it is perceived under a legal enactment which would be exposed to the test under article 13(1) of the Constitution.

BILL OF 2019

The spark for abolishment of triple talaq came from the followers of practice itself. Came in public prominence in 1985 in Shah Bano case. The issue found some conclusion with the death of Muslim Women (Protection of Rights on Divorce Act), which made it fundamental for the spouse to pay support to his significant other 90 days after separation. The principal prominent legal verdict came in 2002 in the Shamim Ara versus State of UP Though Talaq was not held invalid for this situation, yet, the Justice RC Lahoti said that talaq must be articulated on relevant conceivable and sensible grounds. In 2002 only, the Aurangabad bench of Bombay High Court invalidated the triple talaq by giving reference from Quran in Dagdu Pathan vs Rahimbi⁹. In December, 2016, the Allahabad High Court observed in a rule that this practice is unconstitutional. In May, 2017, the Supreme Court also described is unconstitutional in Shayara Bano v. Union of India.¹⁰

Law Minister presented the Muslim Women (Protection of Rights on Marriage) Bill, 2019 on June 21, 2019. It replaces an Ordinance declared on February 21, 2019. looking for the act of triple talaq to be condemned in the Parliament. It is partitioned in 3 sections. What is in bill an analysis is as follows:

Key provisions of the Bill:

The Bill makes **all declaration of talaq**, including in written or electronic form, to be void (i.e. not enforceable in law) and **illegal**.

The offense will be cognizable just if data identifying with the offense is given by: (I) the wedded lady (against whom talaq has been announced), or (ii) any individual identified with her by blood or marriage.

⁹ 2002 SCC OnLine Bom 440 : (2002) 3 Mah LJ 602 (FB) : (2003) 1 Bom CR 740 (FB) : (2002) 104 (3) Bom LR 50 : (2003) 1 HLR 689 (FB) : (2002) 2 DMC 315

¹⁰ (2017) 9 Supreme Court Cases1:2017 SCC OnLine Sc963

The Bill gives that the Magistrate may allow bail to the denounced. The bail might be conceded simply subsequent to hearing the lady (against whom talaq has been articulated), and if the Magistrate is fulfilled that there are sensible reason for giving bail.

The offense might be compounded by the Magistrate upon the solicitation of the woman (against whom talaq has been pronounced). Intensifying alludes to the methodology where the different sides consent to stop legitimate procedures, and settle the question. The terms and states of the compounding of the offense will be controlled by the Magistrate.

It provides the rights of subsistence allowance, custody of minor children to victims of triple talaq i.e. *talaq-e-biddat*.

BENEFITS

- Muslim women now be treated inequality on par with men.
- It will strengthen the constitutional principles and international laws.
- The provision of maintenance or subsistence allowance will help in strengthening the family.

CONCERNS OF THE BILL:

- The supreme court invalidated this practice and declared it arbitrary and unconstitutional.
- Logically the talaq-e-bidder does not dissolve the marriage. Bill presumes that marriage is dissolve irrevocably.
- If the Muslim men kept in custody then who will give the allowance.

Law is always a tool for change with change of time here also we get to see that how it changes and abolished the practice of triple talaq in our country, which was already most Muslim countries have abolished including Pakistan.

CONCLUSION

Social problems are interconnected rather than isolated and law is a mirror to know how there is bond between people. Compelling execution of law as an instrument or gadget of social change should work pair with social and social existence of individuals of India. Change of social framework as indicated by the need of the occasions and as per the modes and mores of the

individuals involves need. It can be seen that from the order of supreme court there is a chance of it to become main reference for the LCI which is in process for compiling public opinion for Uniform civil code (UCC). After a long battle finally Muslim women gets their right from this bill it also safe the part 3 of constitution which was earlier violated in the name of personal laws which includes Article 21, Article 14 and 15. Also it in par with the Article 25 that provides religious practices as fundamental rights. It is worthwhile mentioning here that as per the recent study 92% are in the favour that the practice shall needs to get abolished. The privileges of in excess of 170 million Muslim ladies of India are in question at a time. Egypt was the first country to declare triple talaq invalid or irregular. This practice has nothing positive in itself and the step taken by legislature and judiciary is apt for it. It is rightly put in Shayara Bano's case by Justice Kurian Joseph, "Can something found to be sinful by God be validated by men through law?". The above bill is an apt thing to stop this practice.

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