



MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019: A NEED OF INDIA

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Abstract:

Women's rights problems are currently quite divisive in Muslim personal law. More attention is being paid to Muslim women's rights in relation to instant triple talaq, nikah halala, maintenance, and polygamy in particular. Even though the Indian Constitution promises freedom, equality before the law, and protection from discrimination based on gender or religion, there are still several wrongdoings in Muslim community that are rooted in a callous, rigid mentality. As far as we are aware, a significant portion of Muslim law has not yet been codified, and the majority of court decisions involving Muslims are based on long-standing customs. However, by passing the Muslim Women (Protection Of Right On Marriage) Bill, 2019,¹ the courts attempted to codify Islamic law. This measure has generated a lot of controversy. The entire triple talaq controversy has been reduced to a conflict between tradition and modernity from the outside.

This paper will attempt to identify all of the issues and gaps in the legislation that was approved by the legislature. This paper would also concentrate on all the arguments raised by the opposition to this measure. This essay will also attempt to determine why only a small portion of the Muslim community opposes this legislation.

Keywords:

Muslim Women (Protection Of Right On Marriage) Bill, 2019, Instant Triple Talaq, Honourable Supreme Court, Islamic Females, Parliament, Constitution.

Introduction:

Two major opportunities came in the history of the Indian Parliament, while it got a chance to enact a strong law for the protection of the rights of the Muslim community declared a minority in India and the rights of Islamic females and Constitutional equality, first in 1985² and second in 2017³.

It is a well-known fact that in 1985, in the greed of Islamic appeasement and vote bank, the Congress government at the Center headed by the then Prime Minister Rajiv Gandhi (late) replaced the protection of Islamic females, decided by the Honourable Supreme Court of India, in the case of Muhammad Ahmed Khan Vs. Shahbano Begum. The Islamic females were cheated by the 'Muslim Women (Protection Of Rights On Divorce Of Marriage) Act, 1986'⁴, reversing the judgment.

But for the second time in the year 2017, the N. D. A. government at the Center under the leadership of Prime Minister Narendra Damodar Modi, stood completely with the Islamic females in the Apex Court of India on the issue of instant triple talaq.

In the Hon'ble Supreme Court, a five-judge bench consisting of Justice Kurian Joseph, Justice Nariman and Justice U. U. Lalit, giving a landmark judgment dated 22 August 2017, overruling the opinion of Justice Nazeer and the then CJI Kehar, by a majority of 3:2 declared instant triple talaq to be against Article 14 of the Constitution of India, as it was against the rights of Muslim women. It is against the fundamental right of equality. The court further said, this malpractice ends the marriage without giving any chance to the women. Referring to the ban on instant triple talaq in more than 20 Muslim countries of the world, the Hon'ble Supreme Court asked why India cannot be freed from this curse?

Chief Justice J. S. Kehar and Justice Nazeer refrained from interfering in the minority judgment, terming instant triple talaq as a religious practice. However, both the judges agreed that it is a sin, so the central government should intervene and make a law on instant triple talaq. Both the judges said that a six-month stay should be imposed on instant triple talaq and in the meanwhile the central government should enact a law in this context. If the law is not made in the above 6 months, then the stay issued will be permanent.

Chief Justice Kehar further said that all political parties should rise above politics and take a decisive decision on this important issue. It may be noted that the Hon'ble Supreme Court had reserved 50 hearings from May 11 to May 18⁵ and by its historic decision on August 22, 2017, the Central Government, in Article 142⁶ of the Indian Constitution, provided immediate relief to Muslim women from a very ancient evil practice, issued instructions to the Government to enact a law on this subject within 6 months.

In accordance with the directions received by the Hon'ble Supreme Court, the Union Cabinet of the NDA Government led by Prime Minister Narendra Damodar Modi gave its approval to The Muslim Women (Protection of Rights on Marriage) Bill 2017 on December 15, 2017. Subsequently, the then Law Minister Mr. Ravi Shankar Prasad presented this important bill related to instant triple talaq in the Lok Sabha on December 28, 2017. On the same day, December 28, 2017, this bill was passed in the Lok Sabha. Introducing the Bill, the Law Minister said that the House should stand up for the mother, daughter and sisters. He made four appeals to the House:

- (01) This bill should not be seen from the eyes of politics.
- (02) This Bill should not be divided between party walls.
- (03) This bill should not be weighed on the scales of religion.
- (04) This bill should not be seen from the point of view of vote bank.

Despite the above poignant appeal by the Law Minister, the entire opposition stopped the passage of this important bill in the Rajya Sabha due to the lack of majority of the NDA government in the Rajya Sabha.

The Central Government on September 19, 2018 gave its assent to an ordinance on instant triple talaq to stop the continued use of instant triple talaq despite the historic judgment of the Hon'ble Supreme Court on instant triple talaq. Under this ordinance, an important provision of 3 years imprisonment was made to the husband who used instant triple talaq.

Due to the hanging of the bill once again in the Rajya Sabha and completion of the date of the first ordinance in January 2019, the Central Government presented an ordinance for the second time on January 12, 2019 and for the third time on February 3, 2019, in the context of instant triple talaq and it declared a criminal act, this third ordinance got the assent of the President on 21 February 2019.

After the completion of the term of the 16th Lok Sabha, the old bill gave up its recognition. As a result, the NDA government was again formed in the 17th Lok Sabha, then the Law Minister again presented the Muslim Women Marriage Rights Protection Bill, 2019 in the Lok Sabha on 21 January 2019 despite the huge uproar by the opposition.⁷

After a long and tumultuous debate, the 17th Lok Sabha passed the above bill on July 25, 2019 with a majority of 303:84. In the same sequence, on Tuesday, July 30, 2019, the NDA government got the above bill passed in the Upper House, Rajya Sabha in the ratio of 99:84 on the basis of its political skill and majority. It may be noted that just before this, the proposal of the opposition in the Rajya Sabha to send this bill to a select committee, was also defeated by a majority of 100:84.⁸ Thereafter, on Wednesday late night, July 31, 2019, the President signed this bill. But the important thing here is that this bill was deemed to have come into effect from September 19, 2018, the date of the first ordinance presented on instant triple talaq.⁹

Shortcomings In The Act:

This law protects Muslim women everywhere from the practice of talaq-e-biddat. Naturally, there are some gaps in this law that require ratification. The flaw in the act is examined below in this chapter.

Dubiety In Marriage Status After Instant Triple Talaq:

The declaration of talaq-e-biddat just renders the conduct invalid and illegal. However, this act says nothing about a person's marital status following the triple talaq. It's unclear if the marriage will last or break apart.

The marriage might endure after the talaq-e-biddat, however, as the act's goal was to end quick divorce. On the other hand, it also discusses issues like child support and default custody that are frequently covered by divorce law.

The act stipulates that the penalty for talaq-e-biddat is an immediate arrest without the right to post bail and a maximum sentence of three years in prison. Such a severe penalty for the spouse would be detrimental to the relationship and the financial security of the family.

What legal action the women would pursue if the spouse were behind bars is equally unclear. The wife will be forced to live alone because she is unable to divorce her husband or get remarried while he is being held against her will. This will drive Muslim women into empty marriages with no reliable income source.

Instant Triple Talaq: Criminalisation And Over Criminalisation:

Muslim marriage and divorce are both agreements between a husband and a wife that are of a civil nature, just as in any other faith. Instantaneous talaq becomes unlawful as a result of this action. The act's stated goals and justifications demonstrated why it was crucial to make immediate talaq illegal in order to outlaw triple talaq. Declaring immediate talaq is punishable by a 3 year prison sentence and a fine, according to section 4¹⁰ of the law. Additionally, thanks to this law, the husband can be arrested right away after the offence is reported and no bail is allowed for it.

The statute not only makes instantaneous talaq illegal, but it also over criminalises it. For crimes like forging currency, sedition, riots, etc. that have the potential to endanger national security and the peace of the community, a three-year sentence is still mandatory. This act specifies the same punishment without providing a proper cause or explanation for why incarceration should be required.

The Enactments Implementation:

The fundamental precept of penal law states that the prosecution has the burden of proof. The suspect is always believed innocent until and unless they are conclusively shown to be guilty. The wife is the prosecution in cases of immediate talaq, and she has the burden of proof. Since triple talaq can be declared orally without a witness, it can be very difficult to prove immediate talaq. The conviction rate may consequently drop.

Variability Of Provision:

Section 5¹¹ of this Act contains the provision that discusses the sustenance allowance. Its nature is highly ambiguous and arbitrary. This act neither defines subsistence allowance nor does it specify payment procedures or the maximum amount that may be awarded. Even the provision of an allowance while the spouse is incarcerated is not made explicit by this act. The act is silent on the subject of whether the subsistence stipend should be granted as a temporary remedy or upon the accused's conviction. This law gives the magistrate a great deal of discretion in cases involving subsistence allowance.

Arbitrariness:

The default child custody arrangement to a Muslim woman is discussed in section 6¹² of the statute. This clause is unclear on its own because it doesn't specify whether custody is to be given temporarily or permanently. There is no need for this clause, though, if the husband is incarcerated, as the mother would already have custody as the husband's natural guardian.

There Is No Way Of Reconciliation:

Similar to all religions, the Quran The first essential step before divorce is reconciliation. Due to the husband's three years of non-bailable imprisonment, this act ends all hopes for reconciliation. The husband's forced imprisonment absolutely closes the door to a potential marriage reconciliation.

Suggestions:

Despite the fact that this act has a number of flaws, it is undeniable that the goal it seeks to accomplish is a worthy one. However, this law needs a few changes. Here are some suggestions for releasing the restrictions on Muslim women.

Questioning The Status Of The Marriage:

The status of marriage following the triple talaq should be clarified as a result of this statute. Additionally, it ought to state that any legal means must be used in order to obtain a divorce. 52

Clarity When Discussing Custody And The Subsistence Allowance:

The law may not intervene in situations involving the status of marriage, but it should be apparent whether it would be an interim remedy or not in the remaining situations, which include maintenance and custody of minor children. The act should further clarify the manner and rules for paying a subsistence allowance. Additionally, the minimal subsistence stipend should be discussed.

The act's provisions relating to custody should also be made clearer. The custody clause is extremely ambiguous and leaves a lot of room for the magistrate's judgement.

Middle-Class Muslim Wife Files For Divorce:

Today, Muslim women need to be given more power. Muslim women urgently need to be given more authority in society due to their low socioeconomic standing and reliance on their husbands for support. This law must enable Muslim wives the ability to declare triple talaq as grounds for divorce.

Declaring Instant Triple Talaq Is No Longer A Crime:

The primary criticism of the measure is that it fails to adequately justify its criminalization of triple talaq. The triple talaq has been over criminalised by this law, not just made illegal.

If the parliament is certain, it will make triple talaq a crime, it should at the very least abolish strict responsibility. The purpose of the spouse at least should be required during the pronouncement in this provision. Only when the husband has a clear and unmistakable intention to declare the triple talaq can it be made illegal. Additionally, a few instances where the statement might be ineffectual, such as when someone was angry or drunk, should be mentioned.

Period Of Compulsory Reconciliation:

The act gives time for reconciliation that is appropriate. Reconciliation is a basic prerequisite for divorce in the Quran as well. The husband and wife should decide whether to cohabit or not in the interim. When attempts at reconciliation fail, the court should only consider the possibility of divorce.

Conclusion:

Gender inequality has existed in India since antiquity, with women suffering the majority of its effects. India's society has always been dominated by men, and since ancient times, women have suffered from a variety of harmful customs, including polygamy, sati, and devadasi. With the passage of time and increased public enlightenment, many socially undesirable practices have been abolished, triple talaq being one of them. One of the most contentious topics in the Muslim faith is triple talaq, also known as talaq-e-biddat, which has been brought on by Muslim males abusing their 'right' to divorce their wives quickly by repeatedly uttering 'talaq' three times. The Muslim Women (Protection of Right on Marriage) Bill, that was enacted in 2019, ruled this practice to be unconstitutional and criminalised it with a three-year sentence.

The 22nd of August 2017¹³ was a significant day in India's history. On this day, humanity witnessed the demise of a pernicious, misogynistic male ritual that had destroyed the lives of countless Muslim women. The Quran, which is the fundamental Muslim holy text, was also violated by the practice of triple talaq. Nevertheless, Muslim men frequently used this option to dissolve their unions whenever they pleased and without providing any justifiable grounds. As the triple talaq was being pronounced on phone calls, in mobile texts, in letters, and at any time also in rage, a condition of intoxication, etc., this practice was gradually progressing toward an increasingly wretched state. This triple talaq was irrevocable, binding, and went into effect right away. "Sharia allows the right to divorce to husbands since men have greater decision-making power," the All-India-Muslim-Personal-Law-Board claims. Shah Bano, who was the first victim of this practice, started the fight against triple talaq, and he also helped it end in victory. A five-judge constitutional court, where each judge is a member of a different religion, heard the contentious case of Shayara Bano, through which triple talaq was abolished and the new legislation making triple talaq illegal. The decision has received widespread acclaim across the nation since many people see it as the start of an overhaul of the antiquated and discriminatory personal laws.

The Lok Sabha, approved The Muslim Women (Protection of Rights on Marriage) Bill, 2017, on December 28, 2017. Although this reform effort also had to go through a lot of criticism and storms like other reform efforts taken in ancient times, finally on July 30, 2019, India got its own law regarding instant triple talaq.¹⁴

This statute defines instant triple talaq as talaq-e-biddat and makes it illegal in all forms, including written, verbal, and electronic, as well as subjecting the husband to a three-year prison sentence and a fine upon proclamation. Additionally, this law includes provisions for a subsistence payment and a minor child's default custody. This act states that upon pronouncing triple talaq, the husband may be detained without a warrant and without the possibility of being released on bond.

All Muslim women who are opposed to the triple talaq procedure will benefit from our action. It goes without saying that this act has some gaps that still need to be filled, but no one can contest the legislation's laudable goal.

Reference:

1: Muslim Women (Protection of Rights on Marriage) Act, 2019.

<https://egazette.nic.in/WriteReadData/2019/209473.pdf>

2: Mohammad Ahamed Khan vs. Shah Bano Begum (A.I.R. (1985) S.C. 945).

3: Shayara Bano vs. Union Of India And Others - Writ Petition (C) No. 118 of 2016.

4: Act No. 25 of 1986, 19th May, 1986.

5: Navbharat Tims, 22 August, 2017, 12:59 P.M.

6: Article 142: Enforcement Of Decrees And Orders Of Supreme Court And Unless As To Discovery, Etc.

7: ABP News, 25 July, 2019, 10:47 A.M. (IST).

<https://abplive.com/news/india/triple-talaq-bill-timeline-what-happen-when1172659>

8: Outlook, July 30, 2019.

<https://www.outlookhindi.com/politics/general/rajya-sabha-passes-muslim-women-protection-of-rights-on-marriage-bill-2019-triple-talaq-bill-39501>

9: NBT Navbharat Times, 18 Dec 2019, 1:30 P.M.

<https://navbharattimes.indiatimes.com/india/triple-talaq-bill-become-law-president-ramnath-kovid-given-his-assent/articleshow/70473063.com>

10: Section 4: Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

11: Section 5: Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.

12: Section 6: Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of talaq by her husband, in such manner as may be determined by the Magistrate.

13: Date of final verdict of Shayra Bano case.

14: July 31, 2019, the President signed this bill. But the important thing here is that this bill was deemed to have come into effect from September 19, 2018, the date of the first ordinance presented on instant triple talaq. NBT Navbharat Times, 18 Dec 2019, 1:30 P.M.

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