

**THE JURAT INTERNATIONAL LAW JOURNAL****LAW AND SOCIAL TRANSFORMATION: JOURNEY OF MUSLIM  
WOMEN (PROTECTION ON MARRIAGE) BILL, 2019*****SHELAL LODHI RAJPUT****SYMBIOSIS LAW SCHOOL, PUNE**“By virtue of exchange, one man’s prosperity is beneficial to all other”**- Frederic Bastiat***INTRODUCTION**

Nathan Roscoe Pound said, “Lawyers are social engineers”. It means that law is a tool for social transformation in society which changes from time to time for the betterment of mankind. Law has consistently been considered as one of the significant instruments of influencing social changes. In the cutting-edge time, there has been 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.<sup>1</sup> It is important to note what social change means, 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 changes in conditions, nature and behaviors 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, which frequently appears to be too evident to even consider requiring dialog. For instance, mechanical change is one of the significant reasons 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 changes 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

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<sup>1</sup> [economic and social challenges and opportunities - the ... www.un.org](http://www.un.org) > 2020/07 > RECOVER BETTER 0722-1 (google.com)

declared unconstitutional in a Supreme Court judgement<sup>2</sup>, 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 Indian 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. Union of India*<sup>3</sup>, triple talaq was valid. The question arises is now how this bill and the 'Triple Talaq Act, 2019' changes the situation in social arena. In the name of talaq in Islam, there are various rights of women which are violated. So, we first need to understand the marriage in Muslims, the procedure for divorce, which is valid in holy Quran. As a secular nation with the world's largest democracy, the constitution of India enshrined some of the key aspects as notion of Equality to everyone as to eliminate discrimination on any basis. In any case, underneath all the bronzed cases, lies the merciless underside of unfair and harsh individual laws. 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. Analysis of the effect of Triple Talaq on Muslim women.
3. What is the status of Personal laws as per Constitution of India?
4. Analysis of the Bill after it has been declared 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?

"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 the concept of Islam<sup>4</sup>. Talaq, Khula, Mubarat are a few methods of dissolving a Muslim marriage along with Hasan and Talaq-e-Biddat (triple talaq). While the first two are revocable, the last one is not revocable. 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, indicates the husband's intention to dissolve the marriage. If the pronouncement is not expressed, rather ambiguous then it is certainly important to show that the husband intends to dissolve the marriage. There are different types of talaq under

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<sup>2</sup> Mohd. Ahmad Khanv/Sshah Bano Begum - (Air 1985 Scr (3) 844)

<sup>3</sup> Air 1985 Scr (3) 844

<sup>4</sup> www.legalserviceindia.com

Islamic law. Triple Talaq or Talaq-e-Biddat is the most disapproved form of talaq<sup>5</sup>. As per this form, the 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<sup>6</sup>, ladies can seek divorce after moving to the court for the purpose of dissolution of marriage.

Dissolution of Muslim marriage can take place 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, namely<sup>7</sup>: the Quran (kitab), the Sunnah (Hadiths), the Ijma<sup>8</sup> and Qiyas<sup>9</sup>. 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

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<sup>5</sup> Desk, N. (2017) 10 pointers to Supreme Court's verdict on Triple Talaq, National Herald. Available at: <https://www.nationalheraldindia.com/minorities/10-pointers-to-supreme-courts-verdict-on-triple-talaq>

<sup>6</sup> Accessed on: [the muslim personal law \(shariat\) application act, 1937 ... indiacode.nic.in › bitstream › A1937-26 \(google.com\)](http://the.muslim.personal.law.(shariat).application.act,1937...indiacode.nic.in/bitstream/A1937-26/google.com)

<sup>7</sup> MULLA, Principles of Mahomedan Law, Lexis Nexis-Butterworths (19th edn, 15th reprint, New Delhi), Section 33 at p. 22

<sup>8</sup> Meaning the concurrence of opinion of the companions of Mahomed and his disciples.

<sup>9</sup> Being analogical deductions derived from comparisons of the first three sources  
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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.<sup>10</sup>

Triple Talaq is a 1400-year-old practice among Sunni Muslims, and unfortunately it gained prevalence in the entire Muslim society of India. The Quran permitted 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 and is an 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<sup>11</sup> 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 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 that 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 including the Kerala HC in Kunimohammed v. Ayishakutty<sup>12</sup>. In the light of above, all Triple Talaqs should be banned, as it does not find place in any of four pillars in Islam, also it is against the spirit of the constitution and most important it is unfair and unjust. It is mentioned in the Quran that there is no spot been selected the three partitions enunciated in a lone breath would amount to three separate divisions.<sup>13</sup> The aspect of divorce in Quran is relied on its 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

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<sup>10</sup> Furqan Ahmed, Triple Talaq: An Analytical Study with Emphasis on Socio-Legal Aspect (Regency Publication, New Delhi, 1994) at p. 41

<sup>11</sup> [the muslim personal law \(shariat\) application act, 1937 ... indiacode.nic.in > bitstream > A1937-26 \(google.com\)](http://www.indiacode.nic.in/bitstream/A1937-26/google.com)

<sup>12</sup> 2010 (2) KHC 63 13

<sup>13</sup> (2020) Archipress.org. Available at: <http://www.archipress.org/docs/pdf/iqbalreconstruction.pdf>  
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them not. For whoso transgresses the Allah's limit, such are wrong doers."<sup>14</sup>

## 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 consists of big Muslim Populace in World level also. The issue of Triple Talaq was always time and again with the different rulings of the Supreme Court in news and now finally to provide equity and justice to women, the government has come 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 assent 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 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, and the law needs to change according to the time. Muslim ladies, some of them have filed 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 is 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

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<sup>14</sup> (2020) Archipress.org. Available at: <http://www.archipress.org/docs/pdf/iqbalreconstruction.pdf>

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 through 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 failed to ensure the balance and value of women overall; and Muslim women explicitly, especially when it concerns matters of marriage, partition and movement.<sup>15</sup>

The undisputable effect of talaq is 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 eyes of official courtrooms and will keep on staying extra-legal; however, it neglects to see that the results following Triple Talaq are arbitrated under the steady gaze of courtrooms.

## **PERSONAL LAWS & THE SUPREME LAW OF LAND**

The fundamental goal and objective of our constitution is to uphold the basic structure of constitution by guaranteeing fundamental rights to all and no discrimination on any basis. To outline it, we can view this announcement, if a Hindu submits female foeticide he should go to imprison. Also, what is the wrongdoing of the Muslim ladies that someone (their spouses) expresses talaq thrice via telephone and their lives get crush. 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 Constitution<sup>16</sup>. This arrangement makes the Courts the gatekeeper and defenders of the Fundamental rights.<sup>17</sup> 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). This article 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

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<sup>15</sup> [Journey of Muslim women - ijcr ijcr.org > papers > IJCRT\\_193080 \(google.com\)](http://ijcrjournal.org/papers/IJCRT_193080)

<sup>16</sup> State of West Bengal v. Committee for protection of Democratic Rights, West Bengal, AIR 2010 SC 1476 (1490)

<sup>17</sup> Brij Mohan Lal v. Union of India, (2012) 6 SCC 502 (569).  
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before the commencement of this Constitution and not previously repealed, notwithstanding that any such laws or any part thereof may not be then in operation either at all or in particular area.” In the *Narasu appa Malli case*<sup>18</sup> laid accentuation on oversight of the term individual law in Article 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.<sup>19</sup> 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 (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. The issue found some conclusion with the death of Muslim Women (Protection of Rights on Divorce Act)<sup>20</sup>, 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 v. State of UP*<sup>21</sup>. 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 Rahimbi*<sup>22</sup>. In December 2016, the Allahabad High Court observed in a rule that this practice is unconstitutional<sup>23</sup>. In May 2017, the Supreme Court also described is unconstitutional in *Shayara Bano v. Union of India*.<sup>24</sup>

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<sup>25</sup>. The analysis of

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<sup>18</sup>AIR 1952 Bom 84

<sup>19</sup> Amini EJ V. Union of India, AIR 1995 Ker 252.

<sup>20</sup> [THE MUSLIM WOMEN \(PROTECTION OF RIGHTS ... - eGazette egazette.nic.in > WriteReadData > 2019 \(google.com\)](#)

<sup>21</sup> MANU/SC/0850/2002

<sup>22</sup> 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

<sup>23</sup> [Triple Talaq unconstitutional rules Allahabad High Court- The ... www.newindianexpress.com > nation > 2016 > dec > tri... \(google.com\)](#)

<sup>24</sup> (2017) 9 Supreme Court Cases 1:2017 SCC OnLine Sc963

<sup>25</sup> Muslim Women (Protection Of Rights On Marriage) Bill, 2019 Scraps Triple Talaq: India - Family and Matrimonial - India (2020). Available at: <https://www.mondaq.com/india/divorce/875836/muslim-women-protection-of-rights-on-marriage-bill-2019-scraps-triple-talaq-india> (Accessed: 29 November 2020).

the bill is as follows-

Key provisions of the Bill<sup>26</sup>:

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.

The Bill also has a provision that states 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 reasons for granting 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 will now be treated equally and at 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 dissolves irrevocably.
- If the Muslim men are kept in custody then who will give the allowance.

Law is always a tool for social change with change of time, here also we get to see that how it gets changed 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 a bond between people. Compelling execution of law as an instrument or gadget of social change should work with social existence of individuals of India. Change of social framework as

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<sup>26</sup> Muslim Women (Protection of Rights on Marriage) Bill, 2019  
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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 get their right from this bill it also saves 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 is 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 need 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.