

Triple Talaq in India: (A Study with Special Reference to Shayara Bano Case, 2017)

A Project Report Submitted to the Central University of Punjab

For the award of

LL.M

In

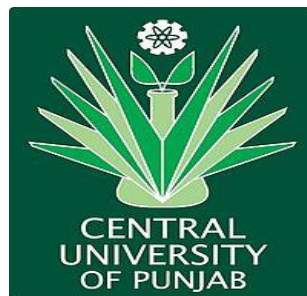
Department of Law

By

Shehnila

Supervisor

Dr. Sukhwinder Kaur



Department of Law

School of Legal Studies and Governance

Central University of Punjab, Bathinda

May, 2018

DECLARATION

I declare that the dissertation entitled “**Triple Talaq in India: (A Study With Special Reference of Shayara Bano Case, 2017)**” has been prepared by me under the guidance of Dr. Sukhwinder Kaur, Assistant Professor, Department of Law, School of Legal Studies and Governance , Central University of Punjab.

No part of this dissertation has formed the basis for the award of any degree or fellowship previously.

Shehnila
Department of Law
School of Legal Studies and Governance
Central University of Punjab,
Bathinda – 151001
Date:

CERTIFICATE

I certify that Shehnika has prepared her Dissertation entitled “**Triple Talaq in India: (A Study with a Special Reference of Shayara Bano Case, 2017)**” for the award of LL.M. degree of the Central University of Punjab, under my guidance. She has carried out this work at the Department of Law, School of Legal Studies and Governance, Central University of Punjab, Bathinda.

Dr. Sukhwinder Kaur
Assistant Professor
Department of Law
School of Legal Studies and Governance
Central University of Punjab,
Bathinda – 151001
Date:

ABSTRACT

“Triple Talaq in India: (A Study with Special Reference of Shayara Bano Case, 2017)”

Name of Student : Shehnila
Registration Number : 16llmlaw10
Degree for which submitted : Master of Law
Supervisor : Dr. Sukhwinder Kaur
School of Studies : School of legal Studies and Governance

The agenda of the ‘Triple Talaq’ is very sensitive among the Muslims across the world including India. The Holy Quran contains the different provisions of talaq. It is provided in Quran that Triple Talaq can be given in three instalment procedure period i.e. after first pronouncement next pronouncement has to be made in next month and the third in third month during the menstrual period of a wife (Tuhur). In spite of having stated provision of triple talak in Quran, instant triple talak has been permitted, which end-ups the marital life in a single step without providing any opportunity to rethink upon the decision. The practice of immediate triple talak is mainly common among Sunni Muslims and is consider to be valid. Yet, the Muslims scholars call it talaq-e-Bidat. The unwanted cases of some Muslims women’s instant talak have took the attention of the worldwide i.e. by mail, over the telephone, and even through mobile phone text messages. This work focuses upon the different theories of divorce prevailing in the contemporary Muslims world and upon the restraints imposed by the Islam over the exercise of husband's power to talaq. The dissertation work critically appraises the ‘innovative triple divorce’ by examining whether it is sanctioned by the Holy Quran or the Sunnah and if there is a consensus of opinion (*ijma*) on the effectiveness of triple divorce.

Shehnila

Dr. Sukhwinder Kaur

ACKNOWLEDGEMENT

I would like to express my gratitude to all those who gave me the opportunity to complete this dissertation and make my life's very precious and memorable experience. Firstly, I am great thankful to God and my parents (Mohd. Shamshad & Mrs Shehnaz).

I specially pay my thankful vote to my guide, Dr .Sukhwinder Kaur, Assistant Professor, Central University of Punjab, Bathinda, who supported me every time every minute and gave valuable thought at the time of research work and without his help I could not be able to complete my research work.

I am also thankful to Dr. Tarun Arora, Head of Department, Dr. Deepak Chauhan, Associate Professor, Dr. Puneet Pathak, Assistant Professor, and Dr. Amit Kashyap Assistant Professor Central University of Punjab. I am also thankful to Bhupinder Singh, Assistant (Library), Central University of Punjab, Bathinda and other staff members who helped me to find the relevant books, journals and other materials.

Shehnila

TABLE OF CONTENTS

Sr. No.	Contents	Page. No.
1	Declaration	ii
2	Certificate	iii
3	Abstract	iv
4	Acknowledgement	v
5	Table of Contents	vi
6	List of Case Laws	vii
7	List of Abbreviations	viii- ix
8	Chapter-I Introduction A. Introduction B. History	1 – 21
9	Chapter-II Review of Literature	22– 29
10	Chapter-III Research Methodology	30
11	Chapter-IV Detailed discussion	31 – 44
12	Chapter-V Conclusion and Suggestions	45-47
13	Bibliography	48-50

LIST OF CASE LAWS

Cases	Page No.
<i>Yusuf v. Sowramma</i>	33
<i>Rashid Ahmad v. Anisa Khatun</i>	34
<i>Mohamed Ahmed Khan v. Shah Bano</i>	34
<i>Shamim Ara v. State of U.P</i>	35
<i>A.S. Parveen Akthar v. Union of India</i>	35
<i>Masroor Ahmed v. State (NCT of Delhi) and Anr</i>	35
<i>Ahmedabad Women Action Group (AWAG) v. Union of India</i>	36
<i>Shayara Bano and Ors. v. Union of India (UOI) and Ors</i>	36

LIST OF ABBREVIATIONS

AIR	All India Reporter
A.C.	Appeal Cases
A.P.	Andhra Pradesh (A.I.R.)
All.	Allahabad
B.H.C.	Bombay High Courts Reports
SEC.	Section
Bom.	Bombay (A.I.R.)
Cal.	Calcutta
Cal. W.N	Calcutta Weekly Notes
Ch., Chap.	Chapter
Cr.Pc.	Criminal Procedure Code
GOVT.	Government
D.B.	Division Bench
D.M.C.	Divorce and Matrimonial Cases
e.g.	Exempli Gratia
ed.	Edition
F.B.	Full Bench
H.C.	High Court
I.A.	Indian Appeals
i.e.	That is
Ibid.	Ibidem
J.	Journal
J.I.L.I.	Journal of Indian Law Institute
J.T	Judgment Today
Kant.	Karnataka
Ltd.	Limited
M.P.	Madhya Pradesh
Pvt.	Private
Raj.	Rajasthan
S.C.	Supreme Court Cases
Sec.	Section

U.P	Uttar Pradesh
Viz.	Videlicet
Vol.	Volume
V.	Versus

CHAPTER I

INTRODUCTION

In the pre-Islam Arabia, the laws were mostly in the favour of Muslim male and against the women. At that time, there were different kinds of marriage was prevailed and method of dissolution of marriage was simple and easy for Muslim male. The basic rights of Muslim wife were denied because male was considered superior as compare to Muslim female. Women were treated as a property of their husband and they were absolutely depend upon their husband Under the Muslim law, marriage is taken into consideration as the civil settlement.

The Arabic word Nikah (marriage) manner “the union of sexes” and in law, this means “marriage”. The phrase ‘Nikah’ has been used for marriage under Muslim law. ‘Nikah’ literally method, “to tie up collectively”. It implies a particular agreement for the reason of legalizing technology. Marriage create a particular and high status in the society. Marriage ensure balance in a married life as it bound both parties to marriage to live together for an indefinite period and also required the wife to be honoured with the Maher. Islamic law is strongly in the favour of institution of marriage. There may be no area for celibacy in Islam just like the Roman Catholic Monks and nuns. The Prophet has said, “There may be no Celibacy in Islam.”¹

Muslim Marriage is a contract governed by Muslim law that permits physical relationship between husband and wife. It is an honourable way to regulate domestic life and to ensure the continuation of a responsible generation. When a contract is valid, both husband and wife have rights and responsibilities towards each other. They have the right to live together and to make plans for their life and future. Unfortunately, not all marriages last forever. As the final solution and the last resort, the dissolution of marriage or divorce is allowed. Divorce amongst historic Arabs changed into easy and of frequent incidence. In fact, this tendency had even endured to a point, in Islamic law in spite of the truth that Prophet showed dislike to it. The term 'Divorce' is understood at some stage in the sector and its concept is

¹ Marriage under Muslim law/, *available at:* <https://www.lawctopus.com/academike/marriage-under-muslim-law/> (visited on 04-1-2018).

located in each language and religion. According to Islamic idea matrimonial alliance is a kind of social contract and it can be dissolved while it ceases to serve its purpose. This doesn't imply that marriage has no sanctity and solemnity in Islam. Islam with its sensible and practical outlook on all human affairs acknowledges 'Divorce', however handiest as an essential evil, inevitable in sure occasions. Who can deny the truth that there do stand-up positive situations in which it isn't always humanly possible for the couple to steer a glad and useful existence via continuing as husband and wife? In place of dragging on with a sour and miserable lifestyle in pressured partnership, wouldn't it now not be more conducive to the welfare of the parties to the element with the grace and true will? Ameer Ali in his book 'Mohammedan law' is of view that the reforms of Prophet Mohammed marked a brand new departure within the records of ignore regulation. . Prophet Mohammad confined the power of divorce and gave to the women the right of acquiring separation on reasonable grounds. The Prophet is pronounced to have stated," If a female is prejudiced by using a wedding, let or not it's damaged off." terrific divergence exists a few of the various colleges concerning the workout of the energy of divorce through husband of his very own motion without the intervention of the decision. Big and influential our bodies of jurist regard talaq emanating from the husband as in reality prohibited except for the necessity including the adultery of the wife. Some other segment consisting chiefly of the 'Matanzas', consider talaq as now not permissible without the sanction of the 'Hakim-ush-sharia', viz. the decision to administer the Muslim law. They recall this type of motive as can also justify separation and eliminate talaq from the category of being forbidden, must be examined via an unbiased decide and in help of their doctrine, they talk to the phrases of the Prophet already stated and his guidelines that in case of dispute between the married parties, arbitrators have to be appointed to the agreement in their differences. The pre-Islamic group of divorce required no system to make its movement legitimate, and as there has been no test on the effect that the tie changed into dissolved became considered enough. In Muslim marriage, the husband can dissolve the wedding tie at his will as he has a good deal greater rights than that of the wife but the girl cannot divorce herself from her husband without his consent. She can, of course, buy her divorce from her husband.

The Arabic word for the divorce is 'talaq' which incorporates the literal importance of liberating or the undoing of a loop. In the terminology of the jurists, the talaq is called khula (that means actually the eliminating or starting off of a factor), while it's far claimed with the aid of the spouse. Under Muslim law, talaq is the merely arbitrary act of a Muslim husband who can also repudiate his spouse at his own pleasure without or with reason. . He can pronounce the talaq at any time. It is not necessary for him to obtain the prior approval of his wife for the dissolution of his marriage. The Muslims considered their marriage as a contract without any semblance of sacrament. They recognize divorce in three main versions - a) unilateral divorce by husband, b) divorce by mutual consent, c) judicial divorce which is available only to the wife. In former two no intervention of the Court is required. Under Muslim law, a marriage may be dissolve either through the loss of life of the husband or wife or by way of divorce. After the death of the spouse, the husband may also remarry right now. But the widow cannot remarry before a positive exact duration known as iddat expires. The iddat of loss of life is four months and ten days in case of the death of husband and if she is pregnant, till the delivery of the child.²

In India, Divorce in Muslims is regulated by their personal Muslim laws and according to that Nikah can be dissolved either by the death of husband or wife i.e. the act of god or by divorce i.e. the act of parties. The Large population of Muslims in India belongs to Sunni community and in Sunnis, a Muslim husband has an exclusive right to give divorce to his wife just by pronouncing talaq for three times either in one sentence or in three sentences by saying "I divorce you, I divorce you, and I divorce you". Triple Talaq becomes neither recognized nor sanctioned via The Holy book Quran and The Holy Prophet. Triple-Talaq is also called as Talaq-ul-Biddat which gives a right to a Muslim husband to give divorce to his wife at any time which become valid and irrevocable immediately. This not only violates Muslim wives rights but this also makes them inferior in the eyes of society in addition to inside the eyes of fellows. Similarly to this, the most thrilling reality about this is that its miles being used by the husband but outcomes are faced by wife.³ Under the

² Concept of Marriage and Divorce under Personal Laws in India, *available at:* http://shodhganga.inflib net.ac.in/bit stream/10603/54472/8/08_ chapter%201.pdf. (Visited on 05-01-2018)

³ Divorce in Muslims, *available at:* www.legalamicus.com /journal (visited on 04-12-2017).

Quran the marriage status is to be maintained as far as possible, and there should be conciliation before the divorce, and Quran discourage divorce.⁴ Islamic law permits talaq when the wife has not a good character which made an unhappy married life. When the husband gives divorce without reason, it is not considered as an appropriate talaq in the eyes of religion. This practice was not approved by Allah but this practice is followed still now. Men use triple talaq as a right to abandon their wife who needs to be respected and supported.⁵

The holy book of Islam i.e. Quran provides the procedure of giving divorce. A divorce is Talaq which means taking off any tie or restrain and signifies dissolution of marriage. In Hanafi law recognized express, implied, contingent, constructive and delegated. Ithna Ashari law recognized only the express and the delegated talak in the presence of two male witnesses. When the husband pronounces talaq in the absence of the wife, it has taken effect on such date the wife came to know of it. The express talaq falls into two categories: a) Talak-ul-Sunna and b) Talaq-ul-Biddat or Talaq-e-Badai. Ahsan is most approved form of divorce where the husband disown his wife by a single pronouncement in a time of tuhr (purity, i.e., when the wife is free from her menstrual courses), amid which he has not engaged in sexual relations with her. Main purpose of iddat period is that divorce can be repudiate at any time for the completion of iddat period. Hasan has approved a form of talaq where the husband successively pronounces divorce three times during the time of tuhr. If the wife beyond the age of menstruation period, the pronouncement of talak may be made after the interval of a month or thirty days between the successive pronouncements. When the last pronouncement is made, the talak becomes final and irrevocable. Talaq-ul-Biddat is not the approved form of talaq. This form of talaq is not recognized by the Shia. Triple divorce the husband repudiates marriage by orally saying talaq in one sentence thrice within the time of tuhr. Three pronouncements of talaq are made in a single tuhr, either in one sentence e.g. "I divorce you triply or thrice", or in three sentences, "I divorce you, I divorce you, I divorce you." But a triple repetition is not a necessary condition of talaq-ul-biddat,

⁴ S.K.A.Naqvi, *The Law Relating to Muslim Women*, 75 (Orient publishing company, 2014).

⁵ Ahmad Gal wash, *The Religion of Islam*, 104 (Cairo Publisher, 1961).

and the intention to render a talaq irrevocable may be expressed even by such sentence, as, "I have divorced you by a talaq-ul-bain (irrevocable talaq)".⁶

Triple divorce or immediate talaq become no longer length for the duration of Prophet's Mohammad lifetime, for the duration of the first Caliph Abu Bakar's reign and additionally for more than two years throughout the second one Caliph Hazrat Umar's time. Later on, Hazrat Umar accepted it due to a particular scenario of women. When the Arabs ruled Syria, Egypt, Persia etc. they found that women were more beautiful as compare to their own women and hence were attracted to marry them. However, the female who have been not understanding approximately Islam's disapproval of triple divorce in a single sitting, could insist that before marrying them they need to pronounce divorce thrice to their current wives which they could without difficulty take delivery of to do (as they knew Islam had abolished triple divorce and that it would now not be effective) and marry the Syrian or Egyptian women and might also retain their in advance other halves. Whilst the Egyptian and Syrian women determined that they were cheated, they complained to second Caliph Hazrat Umar. The Caliph then enforced triple divorce again so one can prevent its misuse with the aid of tile Arabs. He had done so to meet an emergency scenario and not to put in force it permanently and to contravene specific provisions of Holy Qur'an and pronouncing of Holy Prophet Mohammad. But later Jurists declared this form of divorce valid and gave no secular sanction to it.⁷

The motive for legitimizing this form of divorce via Caliph Hazrat Umar appears to be restrictive instead of permissive. He held it permissible to impose positive restrict on loose dispositions to divorce which had crept in the course of his regime. Hazrat Umar's item in making powerful three divorces suggested on one event turned into to warn the people that they would take evil outcomes of following a un-Islamic practice, however, the result was contrary to what he intended. Henceforth, it has become a widespread exercise to pronounce divorce three times on an unmarried occasion dissolving the wedding immediately and irrevocably. it is this component of divorce which has created false impression regarding the pronouncement of divorce, alongside the felony effect of it becoming irrevocable, both via three

⁶ Mohammed Nazmi, *Mohammadan Law*, 73(Central Law Publications, 2012).

⁷ Syed Khalid Rashid, *Muslim Law*, 22, (Eastern book Co. Lucknow, 3rd ed., 1996).

pronouncements at an unmarried sitting or three pronouncements at three tuhrs of single Iddat seems to have crept into Islamic Jurisprudence, and is a matter grave enough to require seriously take a look at duration.⁸

Meaning of Talaq

In Muslim law, talaq method freedom from the bondage of marriage and not from every other bondage. In the legal sense, it manner the repudiation of marriage by husband using three words of talaq. In other words, talaq is the refusal of marriage by way of the husband according to the technique laid down by means of the law. While the husband physical activities his right to pronounce divorce technically that is referred to as talaq. The best Muslim Law Advocates in India can be consulted to understand the concept of divorce in Islam. The most remarkable feature of Muslim law regarding talaq is that all the schools of the Sunnis and the Shias sanction but they have different view in some matters. The absolute power of a Muslim husband of divorcing his wife unilaterally, without assigning any purpose, actually at his whim, even in a joke or in a state of intoxication, and without recourse to the courtroom, and even within the absence of the wife, is diagnosed in modern India. All that is essential is that the husband ought to pronounce talaq; how he does it whilst he does it, or in what he does it isn't always very important. Consistent with Sunni regulation, a talaq may be oral or in writing. No precise formula or use of any particular phrase is required to represent a legitimate talaq. Any expression which simply shows the husband's choice to interrupt the marriage is enough. It wants not be made in the presence of the witnesses. According to Shias, talaq must be in the oral form, except where the husband is unable to speak. If the husband is able to speak but he offers it in writing, the talaq is void under Shia law. The other condition for talaq under the Shia law is that talaq must be pronounced in the presence of two witnesses. 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

⁸ Talaq a Biddat: Classical views and Judicial trends *available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/52355/7/07_chapter %203 .pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/52355/7/07_chapter%203.pdf)* (visited on 10-1-2018).

ambiguous then it is certainly important to show that the husband certainly intends to dissolve the marriage.⁹

Marriage under Muslim law

Marriage is referred to as Nikah under Muslim marriage laws. Nikah is an Arabic term which means carnal conjunction or union of the sexes. Justice Mahmood has expressed the view that Nikah is civil contract. The civil contract of marriage will complete with the proposal and acceptance of parties to marriage. All the rights and obligation of parties to marriage come into existence after the fulfilment of valid marriage. If we compare the Muslim marriage with Hindu law, we can say that the Muslim marriage is not a sacrament but it is a civil contract. Nikah or marriage following are the essential requirements:

Essential of valid marriage: Essential for valid marriage under Muslim law given as below:

1. Under Muslim law proposal given by one party (Ijab) and acceptance (Qubul) from the other to marriage.
2. For the validity of a marriage, the proposal made by one of parties to the marriage, and acceptance of the proposal by another party.
3. The proposal and acceptance must both be expressed at one meeting.¹⁰

Under Mohammadan law or religion there is no particular ceremony or rituals for conversion. Any person who profess Mahomedan religion and acknowledges that there is one god and Mohammad is his last prophet is a Mohammadan. It is not necessary that he should observe any particular ceremonies or be an outbox believer in the religion.¹¹

⁹ Meaning of Talaq, *available at*: https://www.legistify.com/blogs/view_detail/565-muslim-divorce-types-and-procedure (visited on 16-1-2018).

¹⁰ Dinshaw Fardunji Mulla, *principles of Mahomedan law*, 331, (Lexis Nexis, Gurgaon, 20th edn. 2012).

¹¹ *Syed Amanlluah Hussain v. Rajammae* (AIR 1977 AP 152).

Puberty: when the marriage under party contracted, during the by guardian on the behalf of minor they can repudiate their marriage after attained the age of 15 year, but before the completed 18 years of age.¹²

Capacity to marriage

1. A person who is sound mind may make a contract of marriage.
2. A Person who is minor (not attained the age of puberty) maybe enter into the contact of marriage through their respective guardians.
3. The consent of the party marriage must be free. If the consent of the party caused by fraud, force, the marriage will not valid in the eye of Law.¹³

When consent to a marriage has been obtained by force fraud, the marriage is invalid unless it is ratified.¹⁴ Where consent of the marriage has not been obtained, consummation against the will of the women will not validate the marriage.¹⁵

Muta Marriage

The word Muta marriage means enjoyment, and by implication 'the marriage for pleasure'. A Shia Muslim may enter into a contract of marriage for a limited period. Which may be for a year, a month, a day, or even a part of day. A Muta marriage is not recognized be Sunnis. Under Sunni law Muta marriage is void. When the period of marriage, and the dower have been fixed then the contract is fixed. If the period is fixed is fixed the dower is not specified, the contract is void. But where the dower is fixed and the period is or not specified, though contract is void as a Muta marriage yet it may operate as a permanent marriage.¹⁶

Prohibited relationship

There are certain prohibited degrees within which marriage is prohibit under Muslim laws. The prohibition among the parties may be of two kinds; 1) Absolute prohibition 2) Relative Prohibition. Absolute prohibition may be classified into three categories:-

¹² Dinshaw Fardunji Mulla, *Principles of Mahomedan law*, 330, (Lexis Nexis, Gurgaon, 20th edn. 2012)

¹³ *Ibid.*

¹⁴ *Kulswabi v. Abdul Kadir* (AIR 1921 Bom 45).

¹⁵ *Abdul Kasem v. Jamila Khatun Bibi* (AIR 1940 Cal 1).

¹⁶ Mohammad Nazmi, *Mohammadan law*, 49, (Central Law Publication, Allahabad, 3rd edn. 2012).

Consanguinity: Consanguinity means blood relationships. Muslim marriage laws dictate that a man cannot marry with the following persons;

1. his mother or grandmother however high so ever
2. his daughter or granddaughter how-low-so-ever
3. his sister whether full blood half blood or uterine blood
4. his niece or great niece how low soever
5. his aunt or great aunt how high soever

Affinity: Affinity means relationship by marriage. A man prohibited from marriage his;

1. Wife's mother's grandmother however highsoever.
2. Wife of one's own son or son's son or daughter's son his wife's daughter or granddaughter howlowsoever
3. father's wife or paternal grandfather's wife howlowsoever

Fosterage: Foster relationship arises between two persons so connected through suckling milk at the breast of one woman. The effect is that a man is not only prohibited from marrying his own sister but also his foster sister. Shias place consanguinity and fosterage in the same footing however Sunnis do not follow the same

Relative prohibition - It arises from a cause which renders a marriage invalid but the moment it is removed, the prohibition also ends and the marriage becomes lawful. Following are the kinds of relative prohibition:-

1. As per Muslim marriage laws, a Muslim woman cannot marry a non-Muslim man and marriage between them is considered void. But if the husband turns into a Muslim converts to Islam then the marriage will become valid. A Muslim man is allowed to marry another Muslim woman only if she not an idol-worshipper or fire- worshipper. A Muslim man cannot marry a Hindu or a Parsi but he can marry a Christian or Jew. Muslim marriage law recognize limited polygamy with a restriction of maximum four wives, but it is not a vested right nor an obligatory right for a Mohammedan to marry four wives. If a man takes a fifth wife then such marriage is irregular under Sunni law.

2. Wife is bound to allow her husband to have sexual intercourse with her, keeping in mind and giving due regard to her health, decency and place;
3. She is bound to observe strict conjugal fidelity.
4. She shall live in the house of her husband observe "purdah" if necessary;
5. She has to obey her husband's lawful commands.
6. Rights of a wife and corresponding duties of her husband;
7. Wife is entitled to get dower and she can refuse cohabitation, if it is not paid;
8. She is entitled to maintenance with due consideration to the husband's capacity;
9. She is entitled to equal treatment and separate sleeping apartment, if there are is more than one wife;
10. She can refuse to live with her husband if he starts idol worship.

Period of Iddat: As per Muslim Marriage laws Iddat is the period during which a woman whose marriage has been dissolved or husband has died has abstain from a marrying another man. A Muslim marriage continues even after the divorce or death of a woman's husband. The purpose behind that is to correctly ascertain whether wife is pregnant by the earlier husband or not and to prevent confusion as to the parentage of the child.¹⁷ Iddat commences from the time when the divorce is pronounced and not from the time it comes to the knowledge of the women. If women does not get knowledge of her divorce or death of her husband and the period of iddat passes away she considered to have completed the period of observance the iddat. The period of Iddat is depends upon the nature of dissolution of marriage which given are below;

1. In case of widow- 4 months and 10 days.
2. In case the woman is pregnant - till the delivery.¹⁸

Types of talaq

Talaq-e-Sunnat: talaq-e-sunnat is governed according to the dictator of Prophet Mohammad. It has been divided into two categories:

¹⁷ Period of Iddat, *available at:* <http://www.askfamilyproblem.com/marriage-under-muslim-marriage-law-india.html/> (visited on 24-1-2018).

¹⁸ Kahkashan Y. Danyal, *Muslim Law of Marriage, Dower, Divorce, and Maintenance*, 85, (Regal Publications, New Delhi, 2015).

Ahsan: It consists of a single pronouncement of divorce made within the period (purity, between menstruations), or at any time if the spouse is free from menstruation. The husband ought to abstain himself from intercourse for the period of iddat. The requirement that the pronouncement is made at some point of a duration of tuhr applies simplest to oral divorce and does not practice to talaq in writing. The advantage of this form is that divorce can be revoked at any time earlier than of the entirety of the length of iddat, consequently hasty, inconsiderate divorce can be averted. The revocation can be effected expressly or impliedly. Therefore, if earlier than the completion of iddat, the husband resumes cohabitation together with his wife or says "I have retained thee" the divorce is revoked. Resumption of sexual intercourse before of the entirety of the period of iddat also effects within the revocation of divorce.¹⁹

Hasan: in this, the husband is needed to pronounce the formulation of talaq three times all through three successive tours. If the wife has crossed the age of menstruation, the pronouncement of it could be made after the interval of a month or thirty days between the successive pronouncements. When the remaining pronouncement is made, the talaq becomes very last and irrevocable. Its miles vital that each of the three pronouncements need to be made at a time whilst no sex has taken place at some point of the duration of tuhr.

Talaq-i-biddat: Triple talaq that was struck down by the Supreme Court. Triple talaq means three times pronouncing talaq.²⁰

Talaq al Biddat- It is an irregular divorce. This is of two kinds:

- a) Three declarations: here a husband repudiates his wife by three divorces at a time in one sentence or where he repeats the sentence separately thrice within one period of purity.
- b) One irrevocable declaration: the husband may say that he divorces his wife a hundred times, the Talaq is complete. Here the husband neither pays any attention to the period of purity nor to the abstention from intercourse. The divorce is valid,

¹⁹ Paras Diwan, *Muslim Law in Modern India*, 83, (Allahabad Law Agency, Delhi, 9th edn. 2004).

²⁰ *Ibid*, 84.

but the pronouncer of such divorce shall be sinner. Under the Shia sect, no divorce is affected by the pronouncement of three divorces at a time.

c) Divorce under intoxication: according to the Hanafi jurists, the divorce pronounced in an intoxicated condition occasioned by wilful use of liquor or other unlawful intoxicating substances with the purpose of bringing on intoxicating and thereby enjoying its pleasure, shall take effect. But if he was intoxicated under compulsion, there is no divorce. Shias do not recognize divorce under intoxication.

d) Divorce under compulsion: Hanafi jurists consider a Talaq given by a man under compulsion as valid, while the Shia jurists consider it as invalid.

Divorce pronounced in jest: according to the Hanafi, if a person uses the words of divorce for his wife even in jest and without the intention of really effecting it, divorce shall duly take effect.²¹

Divorce by wife

The wife can get her marriage dissolved by the under mentioned three ways:

Talaq-e-Tafweez

Talaq-e-Tafweez additionally referred to as delegated divorce (recognized among each, the Shias and the Sunnis). The Muslim husband is free to delegate his power of saying divorce to his wife or another man or woman. He may delegate the power in reality or conditionally, temporarily or permanently. A permanent delegation of power is revocable but a temporary delegation of power is not revocable. This delegation must be made distinctly in favour of the person to whom the power is delegated, and the purpose of delegation must be clearly stated. It should be noted that even in the event of a contingency, whether or not the power is to be exercised, depend upon the wife she may choose to exercise it or she may not. The occurring of the event of contingency does not result in automatic divorce.²²

ILA: In ILA, the husband takes an oath not to have sexual intercourse together with his wife. Observed by this oath, there is no consummation for a period of four months. After the expiry of the fourth month, the marriage dissolves irrevocably. But if the husband resumes cohabitation within four months, ILA is cancelled and the

²¹ Kahkashan Y. Danyal, *Muslim Law of Marriage, Dower, Divorce, and Maintenance*, 71, (Regal Publications, New Delhi, 2015).

²² Paras Diwan, *Muslim Law in Modern India*, 86, (Allahabad Law Agency, Delhi, 9th edn. 2004).

marriage does not dissolve. The first-class Muslim regulation lawyers in India may be hired to recognize the idea of divorce in Islam.²³

Zihar: in this mode, in this mode, the husband compares his wife to a woman inside his prohibited relationship e.g., mother or sister and so forth. The husband would say that from these days the wife is like his mother or sister. After this kind of comparison, the husband does not cohabit along with his spouse for a duration of 4 months. Upon the expiry of the stated period, Zihar is complete. After the expiry of the fourth month the wife has following rights:

1. She may go to the court to get a decree of judicial divorce.
2. She may be file a petition for the decree of restitution of conjugal rights.
3. In which the husband wants to revoke Zihar via resuming cohabitation within the said length, the wife can't are seeking a judicial divorce. it could be revoked if:
 4. The husband observes speedy for a length of two months, or,
 5. He provides meals at least sixty human beings, or,
 6. Frees a slave.²⁴

Lian

When the husband made false charges of unchastely or adultery against his wife then this amounts to character assassination and the wife has obtain a right to file petition for a divorce on these grounds. Such a mode of divorce is called Lian. However, it is only a voluntary and aggressive charge of adultery made by the husband which, if false, would entitle the wife to get the wife to get the decree of divorce on the ground of Lian.²⁵

Muslim Divorce by Mutual Consent: The parties to the marriage may dissolve their marriage with the aid of mutual consent. Khula and Mubarak are types of divorce wherein the events may additionally repudiate their marriage.

²³ Paras Diwan, *Muslim Law in Modern India*, 87, (Allahabad Law Agency, Delhi, 9th edn. 2004).

²⁴ *Ibid*, 88.

²⁵ Raffia Arshad, *Islamic Family law*, 127, (south Asian edn. 2016).

Khula

The word Khula means to remove or put off, as a man is said to be Khula his garment when he puts it off. In law it is the laying down by a husband of his right and authority over his wife for an exchange. It is a contract entered into for the purposes of dissolving a marriage tie, in lieu of compensation paid by the wife to her husband out of her property. Whenever hate takes place between husband and wife and they both see reason to apprehend that the ends of marriage are not likely to be answered by a continuance of their union, the women need not scruple to release herself from the power of their husband, by offering compensation.²⁶

.Mubaraat

Mubaraat is also a form of dissolution of a marriage contract. It signifies a mutual discharge from the marriage claims. In mubaraat the aversion is mutual and both the sides desire separation. Thus it involves an element of mutual consent. In this mode of divorce, the offer may be either from the side of wife or from the side of the husband. When an offer mubaraat is accepted, it becomes an irrevocable divorce (talaq-ul-bain) and iddat is necessary. Muslim law favours more husband than wife when it comes to divorce. Husband has been given more powers to dissolve the marriage in their own instances. Triple talaq is one of the worst forms of talaq where uttering of words by husband three times would result in the dissolution of marriage and wife has no remedy against unreasonable use of such right but this form or Triple-Talaq had been declared unconstitutional by Supreme Court. Under an agreement, the wife may divorce her husband either by Khula or Mubaraat. Before 1939, a Muslim wife had no right to seek divorce except on the ground of false charges of adultery, insanity or impotency of the husband. Even with the advent of such legislation wives are not on the same pedestal with husband. They have not been provided same right so due to such procedure, it is always unfavourable to wife. On the instances of the delegated power of divorce, Faizee observes, "this form of delegated divorce is perhaps the most potent weapon in the hands of a

²⁶ Mohammad Nazmi, *Mohammadan law*, 80, (Central Law Publication, Allahabad, 3rd edn. 2012).

Muslim wife to obtain freedom without the intervention of any court and is now beginning to be fairly common in India.²⁷

Dissolution of Muslim Marriages Act 1939:

A bill introduced by Qazi Mohammad Ahmad Kazmi within the Legislature on seventeenth April 1936. It, but, became law on 17th March 1939 and hence stood the Dissolution of Muslim Marriages Act 1939. Chapter 2 of the Act says that,

A female married under Muslim law will be entitled to gain a decree for divorce for the dissolution of her marriage on anyone or more of the subsequent grounds, particularly:-

1. That the whereabouts of the husband have not been known for a period of four years.²⁸ When the husband is missing for a period of four years, the wife may file a petition for the dissolution of her marriage. The husband is deemed to be missing if the wife or any such person, who is expected to have knowledge of the husband, is unable to locate the husband. Section 3 provides that where a wife files petition for divorce under this ground, she is required to give the names and addresses of all such persons who would have been the legal heirs of the husband upon his death. The court issues notices to all such persons appear before it and to state if they have any knowledge about the missing husband. If nobody knows then the court passes a decree to this effect which becomes effective only after the expiry of six months. If before the expiry, the husband reappears, the court shall set aside the decree and the marriage is not dissolved.
2. That the husband has neglected or has failed to provide for her maintenance for a period of two years.²⁹ It is a legal obligation of every husband to maintain his wife, and if he fails to do so, the wife may seek divorce on this ground. A husband may not maintain his wife either because he neglects her or because he has no means to provide her maintenance. In both the cases the result would be the same. The husband's obligation to maintain his wife is subject to wife's own performance of matrimonial obligations. Therefore,

²⁷ Dissolution of Muslim Marriages, *available at* <https://www.google.co.in/search?q=.+Triple+talaq+is+one+of+the+worst+forms+of+talaq> (visited on 10-03-2018).

²⁸ Section 2 (i), Dissolution of Muslim Marriages Act 1939

²⁹ Section 2 (ii), *Ibid.*

if the wife lives separately without any reasonable excuse, she is not entitled to get a judicial divorce on the ground of husband's failure to maintain her because her own conduct disentitles her from maintenance under Muslim law.³⁰

3. That the husband has been sentenced to imprisonment for a period of seven years or upwards.³¹ The wife's right of judicial divorce on this ground starts from the date on which the sentence becomes final. Therefore, the decree can be passed in her favor only after the expiry of the date for appeal by the husband or after the appeal by the husband has been dismissed by the final court.³²
4. That the husband has failed to perform, without reasonable cause, his marital duties for a period of three years.³³ The Act does define 'marital obligations of the husband. There are several marital duties of the husband under Muslim law. But for the purpose of this clause husband's failure to perform only those married duties may be taken into accounts which are not included in any of the clauses of Section 2 of this Act.³⁴
5. That the husband was impotent at the time of the marriage and continues to be so.³⁵ If the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease.³⁶ The husband's insanity must be for two or more years proximately previous the presentation of the suit. But this act does not specify that the unsoundness of mind must be curable or incurable. Leprosy may be white or black or cause the skin to decline away. It may be curable or incurable. Venereal disease is a disease of the sex organs. The Act provides that this disease must be of incurable nature. It may be of any duration. Moreover even if this disease has been

³⁰ Divorce under Muslim law, *available at*: <http://www.legalserviceindia.com/article/I393-Divorce-under-Muslim-Law.html> (visited on 25-03-2018)

³¹ Section 2 (iii), Dissolution of Muslim Marriages Act 1939.

³² Divorce under Muslim law, *available at*: <http://www.legalserviceindia.com/article/I393-Divorce-under-Muslim-Law.html> (visited on 25-03-2018)

³³ Section 2 (IV), Dissolution of Muslim Marriages Act 1939.

³⁴ Divorce under Muslim law, , *available at* <http://www.legalserviceindia.com/article/I393-Divorce-under-Muslim-Law.html> (visited on 25-03-2018)

³⁵ Section 2 (v), Dissolution of Muslim Marriages Act 1939.

³⁶ Section 2 (VI), Dissolution of Muslim Marriages Act 1939.

infected to the husband by the wife herself, and she is entitled to get divorce on this ground.

6. That she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated;³⁷
7. That the husband treats her with cruelty, this is to mention:³⁸
 - a) Habitually attacks her or makes her life depressing via cruelty of conduct although such conduct does not amount to bodily unwell-treatment, or
 - b) Associates with girls of ill-reputation or leads an infamous lifestyle, or
 - c) Attempts to force her to lead an immoral lifestyle, or
 - d) Disposes of her belongings or prevents her exercise her personal rights over it, or
 - e) Obstructs her in the observance of her no secular career or exercise, or
 - f) If he has multiple better halves, does not treat her equitably according to the injunctions of the Holy Quran. ³⁹

Constitutional provisions: The rights and safeguards enshrined within the constitution for girls in India are listed under:-

1. The state shall not discriminate against any citizen of India on the ground of sex.⁴⁰
2. The state is empowered to make any special provision for women. In other words. This provision enables the state to make affirmative discrimination in favour of women.⁴¹
3. No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex.⁴²
4. Traffic in human beings and forced labour are prohibited.⁴³

³⁷ Section 2 (vii), Dissolution of Muslim Marriages Act 1939.

³⁸ Section 2 (viii), *Ibid*.

³⁹ Divorce under Muslim Law, *available at:* <http://www.legalserviceindia.com/article/I1393-Divorce-under-Muslim-Law.html/> (visited on 20-1-2018).

⁴⁰ Article 15(1), The Constitution of India.

⁴¹ Article 15(3), *Ibid*.

⁴² Article 16(2) *Ibid*.

⁴³ Article 23(1) *Ibid*.

5. The state to secure for men and women equally the right to an adequate means of livelihood.⁴⁴
6. The state to secure equal pay for equal work for both Indian men and women.⁴⁵
7. The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength.⁴⁶
8. The state shall make provision for securing just and humane conditions of work and maternity relief.⁴⁷
9. It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women.⁴⁸
10. One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women.⁴⁹
11. One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women.⁵⁰
12. One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women.⁵¹
13. The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide.⁵²

Legal rights to women:

The following various legislation's contain several rights and safeguards for women:

1. Protection of Women from Domestic Violence Act 2005 is a comprehensive legislation to protect women in India from all forms of domestic violence. It also covers women who have been/are in a relationship with the abuser and

⁴⁴ Article 39(a), The Constitution of India.

⁴⁵ Article 39(d), *Ibid.*

⁴⁶ Article 39(e) *Ibid.*

⁴⁷ Article 42, *Ibid.*

⁴⁸ Article 51-A (e), *Ibid.*

⁴⁹ Article 243-D (3), *Ibid.*

⁵⁰ Article 243-D (4), *Ibid.*

⁵¹ Article 243-T (3), *Ibid.*

⁵² Article 243-T (4), *Ibid.*

are subjected to violence of any kind—physical, sexual, mental, verbal or emotional.

2. Immoral Traffic (Prevention) Act (1956) is the premier legislation for prevention of trafficking for commercial sexual exploitation. In other words, it prevents trafficking in women and girls for the purpose of prostitution as an organized means of living.
3. Indecent Representation of Women (Prohibition) Act 1986 prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.
4. Commission of Sati (Prevention) Act 1987 provides for the more effective prevention of the commission of sati and its glorification on women.
5. Dowry Prohibition Act 1961 prohibits the giving or taking of dowry at or before or any time after the marriage from women.
6. Maternity Benefit Act 1961 regulates the employment of women in certain establishments for certain period before and after child-birth and provides for maternity benefit and certain other benefits.
7. Medical Termination of Pregnancy Act 1971 provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.
8. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994 prohibits sex selection before or after conception and prevents the misuse of pre-natal diagnostic techniques for sex determination leading to female feticide.
9. Equal Remuneration Act 1976 provides for payment of equal remuneration to both men and women workers for same work or work of a similar nature. It also prevents discrimination on the ground of sex, against women in recruitment and service conditions.
10. Dissolution of Muslim Marriages Act 1939 grants a Muslim wife the right to seek the dissolution of her marriage.
11. Muslim Women (Protection of Rights on Divorce) Act 1986 protects the rights of Muslim women who have been divorced by or have obtained divorce from their husbands.
12. Family Courts Act 1984 provides for the establishment of Family Courts for speedy settlement of family disputes.

13. Indian Penal Code 1860 contains provisions to protect Indian women from dowry death, rape, kidnapping, cruelty and other offences.
14. Code of Criminal Procedure 1973 has certain safeguards for women like obligation of a person to maintain his wife, arrest of woman by female police and so on.
15. Indian Christian Marriage Act 1872 contain provisions relating to marriage and divorce among the Christian community.
16. Legal Services Authorities Act 1987 provides for free legal services to Indian women.
17. Hindu Marriage Act 1955 introduced monogamy and allowed divorce on certain specified grounds. It provided equal rights to Indian man and woman in respect of marriage and divorce.
18. Hindu Succession Act 1956 recognizes the right of women to inherit parental property equally with men.
19. Minimum Wages Act 1948 does not allow discrimination between male and female workers or different minimum wages for them.
20. Mines Act 1952 and Factories Act 1948 prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.
21. The following other legislation's also contain certain rights and safeguards for women:
22. National Commission for Women Act 1990 provided for the establishment of a National Commission for Women to study and monitor all matters relating to the constitutional and legal rights and safeguards of women.
23. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal). Act 2013 provides protection to women from sexual harassment at all workplaces both in public and private sector, whether organized or unorganized.

Research Gaps

Prior to Shayara Bano case triple talaq case was valid, but after the judgement of Shayara Bano Case v. U.O.I Case triple talaq has been declared unconstitutional.

The Muslim Women (Protection of Rights of Marriage) Bill, 2017 which was introduced in Lok Sabha is still pending in Rajya Sabha as their opinion on one side.

On one side this Bill amount to an unwanted interference in personally and religious matter for a particular community. Which may affect the secular objective of enshrined in the constitution.

Research Questions

1. To analyse the effect of Triple Talaq on Muslim Women.
2. To observe the impact after declaring is to be unconstitutional.
3. To analyse the regulatory framework protecting the Muslim women's Rights.
4. To analyse provisions of Triple Talaq prevailing after Muslim Countries.
5. To observe the limits for adhered by the constitution for state intervention in personal and religious Matter.

Research Problem

The position and status of women in Islam is highly debated by the Indian scholars they are of view that Islam suppressed women; she did not possess any identity of her own and is not equal to men as we know that the current discussion is going on uniform civil code and tippie talaq in the India. So researcher wants to find out about the status of Muslim women in triple talaq and response of judiciary in this regard.

Objectives

1. To evaluate the historical background of triple talaq.
2. To analyse the judicial response toward the validity of triple talaq.
3. To evaluate the position of Muslim women in triple talaq era.
4. To critical analyses Muslim Women (Protection of Right Marriage) Bill, 2017.

CHAPTER II

REVIEW OF LITERATURE

The book authored discussed about the background of dissolution of marriage under Islamic law including the background of triple talaq and how this mode of divorce came into practice. The author further discusses the various modes of dissolution of marriage and critically evaluates each mode of divorce as mentioned under the Sharia law. The author emphasizes on the socio-legal aspects of the much debated mode of dissolution of marriage. The word talaq means repudiation or severance of marriage. The court observed that only Muslim men have the option to exercise the act of talaq, at any time without giving any plausible cause or explanation. He has the arbitrary power to use the tool of divorce as against the wife. Under Islamic law, a wife is divorced if the husband pronounce the word talaq three times.⁵³

In the book the author discussed about the rights of Muslim women and the position of Muslim women in Islam and India. The author further talks about the talaq according to the holy Quran. He said that Divorced cannot be given without a valid reason. Divorce will take effect not immediately on pronouncement but the expiry of the prescribed period of time. The wife after the divorce will not leave the house of her husband, but would remain there till expiry of the period of iddat. For the husband, it is mandatory to think over the grave. Consequences which are likely to follow as a consequences of divorce.⁵⁴

The author in his book highlights some aspects about Islam in women and gender justice. The author also talk about the problem of Muslim female in person law Like around legal rights of maintenance and guardianship of Muslim women, post divorced problems and social support, relative, economic and social deprivation in India. The Muslim women in India face a several of problems. The author said that women's face only of legally nature and that if Muslim personal law is reformed triple talaq, and polygamy abolished, everything will be satisfactory for them. It is far from true. These women's face many problems such as complex problems apart from legal ones. They also face economic, educational, communal problems as well as

⁵³ Furkan Ehmadi, *triple talaq: An Analytical study with emphasis on Socio-legal-Aspects* (Regency publication, New Delhi., 1994).

⁵⁴ Hajira Kumar, *status of Muslim women in India*, (New Delhi: Aakar Books., 2002).

related to health. It is very important to understand all these problems in order to appreciate Muslim women's problems.⁵⁵

The author of the present book, mentioned the position of Muslims in 21st century. The author discussed in his book some contains: Islam and the challenge of poverty, the political universe of Islam, polygamy in Islam and practice, Islam, globalization and fundamentalism, rights of women in Islam. The number of essays written from time to time on various important aspects of Islam. These essays will enhance proper understanding of Islam and Islamic issues. Islam is one of the world religious and every fifth person in the world religious and every person in the world is a muslim. Thus it is very important to understand Islam in proper light. The author in his book explaining the Islamic issues in the light of political, sociological, economic and anthropological perspectives. The author argues, is a religion of peace and it is bounded duty of every muslim to strive peace. Islam also stressed justice and no permanent peace is possible without justice. These essays will enable the readers to understand Islam and Islamic issues in fresh light and will remove misunderstanding from the minds of people created by wrong projections of Islamic teaching in the media.⁵⁶

The author of the book on rights of Muslim women in Islam covers various aspects relating to the status of women in pre-Islamic period, custom and traditions, forms of marriages in pre-Islamic period, divorce and forms of divorce, dower. All the chapters of the book deals with the status of women in post-Islamic period. The Quranic concept of women's rights in marriage, divorce, inheritance, custody of children, polygamy, maintenance, property, right to earn. Altogether, it attempts to earn Muslim women with Islamic arguments for their empowerment. The author mentioned the provisions of Quran gives equal rights to both and it does not destroy between them in respect to personal, democratic and human rights. The question whether in a secular society Muslim personal law needs any change.⁵⁷

The author in his book has not been defined only marriage, adoption maintenance, guardianship, secession, custody, divorce, but also more complex issues such as

⁵⁵ Asghar Ali Engineer, *women's and gender justice*, (Gyan Books Pvt.Ltd, Delhi. 2001).

⁵⁶ Asghar Ali Engineer, *Islam: challenges in 21st century*, (Gyan Books Pvt.Ltd, Delhi. 2004).

⁵⁷ Asghar Ali Engineer, *The Rights of Muslim Women in Islam*, (New Dawn Press, Inc., India, 2004).

forced and talaq contracts. Chapter 6 define causes of divorce: divorce on the husband initiative, dissolution of the wife initiative, effect of divorce. If the wife refused to move into the husband's house after the marriage because she had not received the whole of the proper dower. The husband agreed that if she did not move into his house within the five days she would be considered divorced. In renunciation divorces; the most usual arrangements was for the wife to renounce what would have been due to her by virtue of her matrimonial rights if she had been divorced by ordinary talaq. An unproved charge of adultery against the wife is liable to be aground for judicial dissolution on her initiative.⁵⁸

The author in his book has not been defined only marriage, adoption, maintenance, divorce, but also more complex issues such as forced and talaq (pre- nuptial) contracts. The author mentioned ten chapters in this book. The author explained that Chapter 2 define sharia law is based on the texts of the Quran. The author further says that Islam recognizes that most human are sociable and marriage is an institution that allows intimate socialization between opposite genders in a loving, secure and stable environment and dissolution of marriage means breaking or separating tale is right is given to the husband to terminate his marriage and release himself from his responsibilities as a husband.⁵⁹

The author of this book discussed about the relationship between women and law and examines the political socials, religious, factors that have historically worked to the disadvantage of women. According to author a woman has been continuously discriminated by patriarchal laws created men for men. The Vedic position of women suffered erosion on accounts on factors beyond her control. India being pluralistic country did not leg behind in protecting the right of women whether Muslims, Christians, or paresis. The rights of Muslim women who have historically been victim of a male melancholy.⁶⁰

The editors of this book mentioned various papers of different authors. The part 4 deals with the women's right in Islam: revising quranic rights. According to author women constitute a group whose rights are systematically related around the world.

⁵⁸ Aharon Layish, *women and Islamic law in a non-Muslim state*, (transaction publishers, New Brunswick, new jerse, 2006).

⁵⁹ Raffia Arshad, *Islamic Family law* (south Asian edn. 2016).

⁶⁰ Lalita Dhar Parihar, *Women and Law*, (Eastern Book Company, 2011).

Among all women, Muslim women have most challenging and are frequently addressed not only by human rights advocates and feminists, both within and outside Muslim-populated countries. The author also discussed absent-minded position and rights of Muslim women in Quran. At the social level, the Quran not only permits general inequality and offers guidelines that are likely to reinter that inequality, but it also allows inequalities among men.⁶¹

The author of the present book mentioned the rights of Muslim women's under Islam. In an era of unlimited polygamy, the prophet restricted the number of wives to four, with an injunction that each that each wife be treated with equal dignity and affection. The author explained that Islamic law of marriage, Maher, succession etc. The right of 'Meher' means as a safeguard to the women. Meher is an important aspect of marriage. After the death of the husband, the Muslim system was more beneficial to women, in larger interest of women's welfare, although Muslim law contains several positive provisions which would safeguard women's right. The author also said that many Muslims women's are unaware that the Muslim women have the same right to approach the court for the grounds of cruelty, desertion, or even adultery, as the Hindu women. There is a general belief that that a Muslim women can dissolve her marriage by approaching qazi for a khula and further, she would be forced to relinquish her claim to her Meher.⁶²

In the present book the author highlights the important developments of Muslim law that have taken place in India over the past two decades or more. Useful addition to the text are to be found in the sections on gifts, waqfs, pre-emption, guardianship of person and property, divorce, dower, marriage and maintenance, etc. Most of the material is based on judgments of high courts across the country, an indication that many of these properties are keenly contested at the bar and is indeed a reflection of inspirations of Muslim society as well as the relevance of Islamic law to a vibrant plural, secular polity. There is for instance much to learn from the contextual nature of nikah, the intricate and equitable system of maintenance and divorce, the immense usefulness of the concept of waqfs as an instrument of charity somewhat different from trust in common law. The author also added verses from the Holy

⁶¹ Admantia Pollis and Peter Schwab (eds.), *Human rights new perspectives New Realities* (Viva books, 1st edn. 2010).

⁶² Flavia Agnes, *Family law and constitutional claims*, (Vol. 1), (Oxford University press, 2011).

Quran as well as case law and recent legislative changes, without disturbing the basic structure of Mulla's script.⁶³

The author in his book discussed about marriage, divorce, and matrimonial litigation. The author divided the book into two volumes. In volume two the author scrutinizes the institution marriage and from olden times to its swiftly changing nature in today does society owe to various social, moral and economic factors. The 6 author further examines the protections of women from domestic violence act. The book provides broad perspectives the rights and duties of spouses, not only towards each other, but also in relation to other family members, especially children. Muslim women rights to maintenance. The right of divorced Muslim women taken out of the preview of the general law of maintenance under section 125 of Cr.Pc. and placed under special legislation. A Muslim woman has the right to a fair and reasonable settlement for her life time, in addition to maintenance during the iddat period. If the husband fails to make the settlement, a divorced Muslim woman has the right to approach the magistrate's court for enforcement of the right under section 3 of Muslim Women Act. A divorced Muslim wife is entitled to maintenance under section 125 of Cr.Pc. continuously and beyond the iddat period till she remarries, or is able to maintain herself.⁶⁴

The author in his book discussed about the triple talaq. The author also talk that. Though matters of religion have periodically come before our courts, and often been decided in the context of article 25 and 26 of the constitution, claims relating to article 14, 19, and 21, besides the directive principles of state policy, inevitably continue to the made. Human rights and gender justice increased the demand on courts to respond the new challenges. Triple talaq is a part of that trend, and comes a delicate moment in the life of our nation. If the immediate concern about triple talaq and the related issue of nikah halala can be addressed by endorsing a more acceptable alternate interpretation based on shariah.⁶⁵

The present book establish that Muslim wife can at the time of marriage reserve in the kabinnama (marriage-deed) a right for herself to dissolve the marriage under

⁶³ Sir Dinshaw Fardunji, *Principles of Mahomedan Law*, (Vol. 1) (Lexis Nexis, Gurgaon, 20th edn. 2012).

⁶⁴ *Ibid.* (Vol. 2).

⁶⁵ Salman Khurshid, *Triple Talaq: Examining Faith*, (oxford university, New Delhi, 2018).

certain specified conditions. This is styled as tafwid-e-talaq (delegation of divorce). The author also explained that under certain specified conditions, the wife can pronounce divorce upon herself has been held to be valid, provided first, that the option is not absolute and unconditional secondly, and that the conditions are reasonable and not opposed to public policy.⁶⁶

The author in his research work observed that talaq-i-tafwid is perhaps the most potent weapon in the hands of a Muslim wife to obtain her freedom without the intervention of any court and has become rife in India since thirties.⁶⁷

Shalini sharma (1994) in her article said that it is no surprise if Muslim women's suffer because the condition of Hindu women's is no better. Since both are governed by different social customs and laws of the land, the comparison is not logical. In case of Hindu women laws are not made effective but Muslim women's suffer because there was no protection from courts away from this issue. Most probably don't know that before talaq Speak thrice in one sitting the woman is kept under tension, and pressure. They suffered physical and mental harassment. She said that Women forced to accept what is impossible. Bangladeshi woman writer Taslima Nasreen who says that, the laws must be enacted to forbid Muslim men to right marry four times, about custody of children of divorced parents and deprive women of an equal share of family inheritance. They must accept family planning.⁶⁸

Syed shahabuddin (1994) in his article highlighted the judgement triple talaq. He said that there is a long standing debate on the validity of Triple Talaq. An opinion is emerging that the customary Triple Talaq as exercised in Muslim community in India is a derived from the Quranic norm which calls for two talaq's at an interval, to be followed by yet another interval before it becomes vakid and irrevocable. Lok Sabha empower on this question to Kazis under the Kazi Act to hear the parties and to pronounce on the validity of the talaq in accordance with the Quranic rules. However, even if Triple Talaq is abolished, husbands who made up their mind to desert their wives only to wait for a certain period. It is, therefore, important for the

⁶⁶ Asaf A.A. Fyze, *Outlines of Muhammadan Law*, (Vol .II), (Oxford University press, Delhi, 4th edn. 1977).

⁶⁷ Asaf A.A. Fyzee, „*The Muslim Wife's Right of Dissolving her Marriage*“ (1936) 38 *Bom. Law Rep. J.I.* 113.

⁶⁸ Shalini sharma, „*Triple 'Talaq'*“ *Economic and Political Weekly*, Vol. 29, No. 31, p. 1982(1994).

Muslims community to take up at the same time, a campaign against divorce unless it becomes impossible for the couple to live together.⁶⁹

J. S. Bandukwala (2006) in his work discuss about the holy book quran at all of instant triple talaq. This is a later modification, brought in to suit the demand of soldiers on long duty far from home. Our ulama must accept that the triple talaq violates the letter and spirit of the Quran and the Hadith. The Quran directs the husband to treat his divorced wife with dignity, honour and kindness. Quran allows men to marry up to four wives. But then it based that all must be treated just and fair. The very next sentence says that even if you try to be just, you will not be able to do so. This implies monogamy is the rule in Islam. Polygamy is permitted only under extreme conditions. In actual practice most second marriages only result of sexual passion. This right misused by many rich and famous non-Muslims, by declared themselves as Muslims, to marry a second time. Fortunately census figures show that the rate of polygamous marriages highest among tribal, Buddhists, and Jains. The Muslim rate is the lowest. Most Muslims peoples poor that they cannot afford a second wife.⁷⁰

Muhammad Munir (2013) in his research work explained the various laws of different countries relating to the triple talaq. Most Arab, as well as many Muslim states such as Egypt, Syria, Jordan, Iraq, Sudan, Morocco, Kuwait, Yemen, Afghanistan, Libya, Kuwait, Qatar, Bahrain, and the United Arab Emirates, have, while formulating their own laws, followed Ibn Taimiyah's and Ibn al-Qayyim's positions on this issue. In Pakistan, the Muslim Family Law Ordinance 1961, has abolished triple talaq, as the procedure laid down in section 7 is largely applicable to one or two pronouncements only and excludes three pronouncements. Furthermore, some portions of section 7 are in clear contravention of the dictates of Islamic law, which adds to this precarious section's peculiarities. The superior courts in Pakistan and Bangladesh have not been consistent in interpreting the law on this important subject, while on the other hand, some Indian High Courts have treated triple talaq as invalid.⁷¹

⁶⁹ Syed shahabuddin, "Triple 'Talaq'" *Economic and Political Weekly*, Vol. 30, No. 16, p. 846 (Apr. 22, 1995).

⁷⁰ J. S. Bandukwala *Indian Muslims: Past, Present and Future*, " *Economic and Political Weekly*, Vol. 41, No. 14, pp. 1341-1344 ((Apr. 8-14, 2006).

⁷¹ Muhammad Munir, *Reforms in Triple Talaq in the Personal Laws of Muslim States and the Pakistani Legal System: Continuity versus Change*, 2013 *Int'l Rev. L.* 1 (2013).

Nehaluddin Ahmad (2009) in his article said about the issue of the 'triple talaq' is regarded as highly sensitive among the Muslims, not only in India but elsewhere. In holy Quran is very cautious in matters of divorce. Triple talaq to be spaced over a period of 3 months to give husband and wife time for reconciliation through the interferences of relatives and friends. Talaq can be pronounced only when the wife is in a state of *tuhur*, (purity after menstruation). In quran injunction to the contrary, immediate triple divorce is permitted, destroying marital life in one breath. The practice of immediate triple divorce is widespread among Sunni Muslims and has legal validity. Even then the jurists call it a *talaq-e-Bidat*. The dispute highlighted by reports of some Muslims instantly divorcing their wives by mail, by telephone, and even through mobile phone text messages. This article explains the different theories of divorce prevailing in the contemporary Muslim world and what checks and restraints imposed by Islam over the exercise of husband's power of *talaq*. The article critically appraises the 'innovative triple divorce by examining whether it sanctioned by the Quran.⁷²

⁷² *Nehaluddin Ahmad, A Critical Appraisal of Triple Divorce in Islamic Law, 23 Int'l J.L. Pol'y & Fam. 53, (2009).*

CHAPTER III

RESEARCH METHODOLOGY

The methodology adopted in this research work is doctrinal in nature. Doctrinal research not only involves analysis of the case law arranging, ordering, systematizing legal propositions and study of legal institution but it does more. That is why to make the study more meaningful and authentic; the analytical research method has been opted that is the part of the doctrinal research methodology. In this type of methodology, the aspects can be taken out of book, prior conducted researches. So to analyze the historical, definitional and statutory facts, the researcher has opted the doctrinal research methodology. Most of the material collected and analysis from the researcher paper, articles and books, websites, journals etc.

CHAPTER IV

DISCUSSION DETAILED

The triple talaq earlier than Shayara Bano's⁷³ case has been a topic of controversy and debate in India. The exercise of triple talaq has raised issues of justice, gender equality, human rights and secularism. The talk has concerned within the government of India and the supreme court of India and its miles connected to the debate approximately a uniform civil code cited under Article 44 of Indian charter. On 22 August 2017 the Indian Supreme Court declared triple talaq to be unconstitutional. Three out of five judges within the panel concurred that the practice of triple talaq is unconstitutional. The ultimate was considered that talaq is the practice to be constitutionally enacting a regulation. Triple talaq is a shape of divorce that changed into practiced in India, wherein a Muslim male should legally divorce his spouse by means of pronouncing talaq three instances. The pronouncement will be oral or written or these days, brought by means of digital manner which include the smartphone, SMS, email or social media. The person suggested the talaq and the spouse need no longer were the gift on the time of pronouncement. After a period of iddat at some stage in which it became ascertained whether the wife is pregnant the divorce has become irrevocable. In the recommended exercise, a waiting period was required earlier than each pronouncement of talaq at some point of which reconciliation became attempted. But it had grown to be commonplace to make all three pronouncements in one sitting. While the exercise becomes decrease upon it became now not prohibited. A divorced women couldn't remarry her divorced husband until she contract with second marriage to some other man and consummate that marriage it called nikah halala. Until she remarried, she retained the custody of the male child and young female children. Beyond the one's restrictions, the children got here under the guardianship of the father. Triple talaq is a 1400 year old (vintage) exercise amongst Sunni Muslims. Instant talaq as an exercise is not prescribed inside the Quran. Several Islamic countries which include Pakistan and Bangladesh have banned it. Triple talaq, in Islamic law, is primarily based upon the belief that the husband has the right to reject his wife with desirable grounds. If the wife desires to repudiate her marriage and her husband does not

⁷³ MANU/SC/1031/2017.

agree to provide a talaq, she can file a petition under the Dissolution of the Muslim Marriages Act.

Quran (holy book): Triple Talaq

Divorce is once at a time, even if I say in anger 'I divorce you' 15 times not three, it still counts as one there's a misunderstanding approximately the instant Triple talaq and is taken into consideration a Bidat it is defined better in Surah Al-Baqara 227 to 230. Those Quranic passage explains that the act of divorce has to show up on 3 separate events and maximum students say that a divorce within the warmth of anger and the husband says 'I divorce you' it isn't binding. Quran gives an explanation for about talaq in para No- 2, Ayat No 227 to 230 given underneath (below):

1. And if they determine upon divorce then Allah is All-Hearer All-Knower.⁷⁴
2. And divorced women shall wait for three menstrual periods and it is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and the last day. And their husbands have the better right to take them back in that period if they wish for reconciliation. And they have rights over their husbands as regards living similar over them to what is reasonable but men have a degree over them.⁷⁵
3. The divorce is twice after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you to take back any of your Maher which you have given them except when both parties fear that they would be unable to keep the limits create by Allah. Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back for her khula These are the limits ordained by Allah So do not misbehave them. And whoever misbehaves the limits ordained by Allah.⁷⁶
4. And if he has divorced her then she is not lawful unto him thereafter until she has married another husband. Then if the other husband divorces her it is no sin on both of them that they reunite. Provided they feel that they

⁷⁴ Surah-al-bakrah para no 2 Ayat no 227.

⁷⁵ *Ibid*, Ayat no 228.

⁷⁶ *Ibid*, Ayat no 229.

can keep the limits ordained by Allah. These are the limits of Allah which He makes plain for the people who have knowledge.⁷⁷

Constitutional Validity of Triple Talaq

The Honourable Court has intervened on the difficulty of triple talaq and has tried to interpret the verses within the Quran. In *Yusuf v. Sowramma*⁷⁸, Justice Krishna Iyer viewed that the Muslim male has more powerful as compared to women for dissolution of the marriage. The holy Quran prohibit Muslim man to divorce his wife as long as she is faithful and obedient. He further observed that, the teaching of Prophet and the verses of Holy Quran has taken a contrary and a misconception prevails with dealing with the wife's right of divorce. The court took the notice of gender discrimination and thus the court observed that there is a need for codification of law relating to Muslim marriages and divorce which will be in pace with the Constitution of India. Justice Krishna Iyer observed that:

“Since infallibility is not an attribute of the judiciary, the view has been ventured by Muslim jurists that the Indo-Anglian judicial exposition of the Islamic law of divorce has not exactly been just to the Holy Prophet or the Holy Book. The view that the Muslim husband enjoys an arbitrary, unilateral power to inflict instant divorce does not accord with Islamic injunctions. "The judiciary has interpreted the verse of Quran and also taken note of the views of different schools of Islam while deciding the cases with respect to triple talaq”.

The above observation of courts indicate on how the Muslim community needs to be educated about the correct procedure of divorce and pronouncing talaq in one sitting is oppressive against women. Chapter IV verse 35 of Quran which says, "Any if you fear a breach between the two, appoint an arbiter from his people and an arbiter from her people. If they desire agreement, God will effect harmony between them."

⁷⁷ Surah-al-bakrah para no 2 Ayat no 230.

⁷⁸ AIR (1971) Ker 261.

In *Rashid Ahmad v. Anisa Khatun*⁷⁹, Anisa Khatun challenged the validity of the divorce on two grounds, Firstly, she was absent at the time of pronouncement of divorce, Secondly, cohabitation had continued and subsisted for the further period of fifteen years i.e. till the death of Gyyas-ud-din and five children were born to Gyyas-ud-din and Anisa Khatun. The payment of one thousand paid to Anisa Khatun as prompt dower. The court held that pronouncement of the triple talaq by Gyyas-ud-din (husband) constituted an instant effective divorce and validity and effectiveness of divorce would not be effected by resumption of cohabitation between the parties.

In *Mohamed Ahmed Khan v. Shah Bano*,⁸⁰ Ms. Bano claimed the maintenance under the Cr.P.C after getting divorced from her husband Mohd. Ahmed Khan. Under the personal laws (Muslim Law), she was entitled to get maintenance only during the period of iddat, but she can obtained maintenance through her life according to the provision of Cr.P.C. The court held that High Court and the Supreme Court passed their judgments in the favour of Ms. Shah Bano. This judgment was opposed by the AIMPLB, as they claimed that decree of Personal laws was not within the jurisdiction of the courts. In order to reverse the judgment of the Supreme Court, The Government of India passed 'The Muslim Women (Protection of Rights on Divorce), 1986'. According to this legislation, Muslim women were entitled to a 'fair and just' amount of money within the 'iddat' period, beyond which, the husband was to have no liability. The Chief Justice Chandrachud further observed that talaq confers upon the husband, "the privilege of being able to discard his wife whenever he chooses to do so for reasons that are good, bad or indifferent; indeed for no reason at all". However, some of the Sunni clerics have mentioned that the practice of triple talaq gained recognition and was sanctioned during the reign of second Caliph Omar. The reason for this practice to be sanctioned by Caliph Omar in certain cases was to help women come out of a bad marriage where their husband was delaying to give divorce by misusing the procedure provided in the law. It was for the protection of women that this practice gained sanctity in the 7th century, which was later, misinterpreted by the Mulla's who used this to suit their anti-women and patriarchal goals. Hence the practice of triple talaq in one sitting is

⁷⁹ MANU/PR/0074/1931.

⁸⁰ AIR (1985) SC 945.

a sinful form of divorce that suppresses women's rights and violates equity or equal justice in the society.⁸¹

In the *landmark judgment of Shamim Ara v. country of U.P.*⁸², the Supreme Court held that two conditions of a valid talaq must be satisfied. Firstly there should be a reasonable cause for talaq. Secondly, there should be some efforts made by the arbiters for reconciliation between husband and wife. If the above two conditions are not fulfilled, the talaq is not valid and recognized.

In the case of *A.S. Parveen Akthar v. Union of India*⁸³, the Supreme Court upheld the validity of triple talaq. This judgment violates the fundamental rights i.e. Article 14, 15 and 21 that is an integral part of Constitution. Triple talaq is against the right of equality which is mentioned under article 14 of the Indian Constitution. Supreme Court has rightly pointed out that personal law conferring inferior status on women is considered as an anathema to equality. Article 14 embodies the principle of non-discrimination. The divorce given by husband unilaterally is against the principles of non-discrimination which is a significant provision of the Constitution of India. The practice of triple talaq is cruel, discriminatory and against Part III of the Constitution.

Article 15(1) of the Constitution prohibits the state from discriminating against any citizen on the ground of religion, race, sex, or any of them. Muslim women are subjected to discrimination and are facing cultural emotional abuse. Such form of talaq is against article 15 on the basis of religion and sex as well as it discriminates the women itself. Article 21 of the Constitution provides the right to life and liberty except by the procedure established by law. The right to life guaranteed under Article 21 includes right to livelihood. Derogating from the normal format of divorce, triple talaq damages the essence of Article 21.

In *Masroor Ahmed v. State (NCT of Delhi) and Anr*⁸⁴, the Delhi High Court held that there should be clear intention to divorce her wife in triple talaq. Talaq Ahsan and Hasan both have legal recognition under Sunni and Shia law. But the difficulty lies with talaq-e-biddat which is not recognized by Shia. The court further observed that a triple talaq (talaq-e-biddat) be regarded as one revocable talaq because this would

⁸¹ Aquil Ahmad, *Mohammedan Law*, 17 (Central Law Agency, 23rd Edition, 2008).

⁸² AIR (2002) 7 SCC 518.

⁸³ AIR (2003) 1 LW 370.

⁸⁴ AIR (2008) 103 DRJ 137.

provide ample opportunity to the husband to revoke the same during the iddat period. It is the duty of family members of the spouses could make sincere efforts to bring reconciliation between the parties.

In *Ahmedabad girls motion group (AWAG) v. Union of India*⁸⁵, PIL was filed for address two issues i.e. Muslim male has a right of four marriages, along with the right to divorce, under the concept of Talaq, and the husband has a right to divorce by declaring the term 'Talaq', without judicial approach, and this may happen without the consent of wife. The court held that Indians citizens have been governed by personal laws, regardless of the time period and interference by the court would lead to several undesirable consequence because the verdict of personal laws was beyond the jurisdiction of the courts. The petition was dismissed.

In *Shayara Bano and Ors. v. Union of India (UOI) and Ors* case⁸⁶, case, the validity of Section 2 of Muslim Personal Law (Shariat) Application Act, 1937 and Articles 13, 14, 15, 21, 25 and 142 of Constitution of India was challenged. The petitioner approach to court to declare the triple talaq to be unconstitutional and void. The honourable Supreme Court declared the practice of Triple Talaq as unconstitutional by 3:2 majority. The Supreme Court has consulted and cited the laws of 19 countries including Egypt, Pakistan, Turkey and other nation-states from the Arab peninsula, South-East Asia, and South Asia that have abolished triple talaq. Arab countries such as United Arab Emirates, Egypt, Kuwait, Algeria, Iraq, Jordan, Lebanon, Libya, Morocco, Sudan, Syria, Tunisia, and Yemen have enacted laws against the practice of triple talaq. Bench headed by Chief Justice J.S. Khehar and other justices U.U. Lalit, S. Abdul Nazeer, Kurian Joseph, and R.F. Nariman, and heard seven petitions including the five individual petitions filed by Muslim women challenging the practice of triple talaq. Primarily, the women contended that the practice of triple talaq is unconstitutional.

J.S. Khehar, C.J.I. and S. Abdul Nazeer (minority view) observed that "exercise of 'talaq-e-biddat', has the sanction and accredited with the aid of the religious denomination which practiced it, and as such, there could be no doubt that the practice, changed into a part of their private law. After tested Section 2 of the Muslim

⁸⁵ AIR (1997) 3 SCC 573.

⁸⁶ MANU/SC/1031/2017.

Personal Law (Shariat) Application Act, 1937, the confined purpose of the aforesaid provision turned into to negate the overriding effect of usages and customs over the Muslim 'personal regulation'-'Shariat'. The Shariat Act, neither lays down nor proclaims the Muslim 'personal regulation' as 'Shariat'. There has been a similar divergence of norms, of their respective schools. The Shariat Act did not form the norms as were to be relevant to Shias and Sunnis, or their respective schools. The Shariat Act acknowledges the Muslim personal Law as the rule of decision in the same way as cited below Article 25. Article 25 curved up the supremacy and enforceability of 'private law' of all religions. Muslim personal law 'Shariat' as the body of law, turned into spread by the Shariat Act, and what had grown to be ambiguous changed into clarified and formed. Muslim personal law 'Shariat' could not be taken into consideration as a state enactment.

The essential rights cited in Articles 14, 15 and 21 areas against country moves. A task under these provisions Articles 14, 15 and 21 could be invoked only in opposition to the state. It was animated to keep in mind, that Article 14 forbids the state from acting arbitrarily. Likewise, Article 15 prohibits the state from taking discriminatory movement on the grounds of religion, race, caste, sex or location of beginning, or any of them. The mandate of Article 15 requires the country to deal with all of us equally. Even Article 21 is a safety from state movement, inasmuch as, it prohibits the kingdom from depriving all of us of the rights ensuring to them, as rely on life and Muslim personal law 'Shariat' could not be examined on the touchstone of being a country action. Muslim personal law 'Shariat' is an issue of non-personal law of Muslims to be traced from four resources, particularly, the (Quran) and the (hadith) the 'ijma' and the 'qiyas'. Talaq-e-biddat is an exercise amongst Sunni Muslims of the Hanafi School. Non-public regulation being a count of spiritual religion, and not existence nation sign, there has been no doubt of its being violate of the provisions of the constitution.

Rohinton Fali Nariman, J. found that "Muslim Marriage is a contract, May additionally below positive instances, be terminated. Apparently, earlier than the time of the prophet Mohammad, the Arab was simply open to repudiate his wife on a small craze, however, after the arrival of Islam, divorce became authorized to a person if his wife by means of her indocility or bad individual renders marital existence not possible. In the absence of suitable reason, no man may want to justify the divorce.

Triple Talaq is instant and irrevocable, it is apparent that any strive at reconciliation among the husband and wife by using two arbiters from their families, that's important to workshop the marital bond, cannot ever take area. Additionally, as understood with Privy Council in Rashid Ahmad, such Triple Talaq is valid despite the fact that it is not for any reasonable reason which view of the law not holds nicely after Shamim Ara. This being the case, it is clear that this form of Talaq is painfully arbitrary within the sense that the marital bond may be broken changeably and originally by way of a Muslim man without any attempt at reconciliation with the intention to store it. This form of talaq is held to be the violation of the 393 essential right contained below Article 14 of the constitution of India. In our opinion, consequently, the 1937 Act, insofar as it seeks to recognize and implement Triple Talaq, is inside the meaning of the expression "legal guidelines in pressure" in Article 13(1) and need to be struck down as being void to the extent that it recognizes and enforces Triple Talaq. Because we have declared section 2 of the 1937 Act to be void to the extent indicated above at the tighter ground of it being obviously arbitrary. We do not find the want to go into the ground of discrimination in these cases, as changed into argued with the aid of the discovered attorney standard and people helping him

Kurian Joseph, J. and U.U. Lalit J. found that "the constitution offers the assurance to freely profess, exercise and propagate the faith of its personal choice as a fundamental proper. Article 25(2) empowers the territory to make regulation in two contingencies notwithstanding the freedom granted below article 25(1). Article 25(2) set up that not anything in this circular shall affect the operation of any present regulation or prevent the state from making any regulation or limiting any financial, economic, political or another secular pastime which may be related to spiritual practice reform or the throwing open of Hindu no secular establishments of a public character to all training and Sections of Hindus. The freedom of religion under article 25 is absolute right beside the above-mentioned exception. Kurian Joseph, J. and U.U. Lalit J. further observe that they may be no longer agreed that triple talaq changed into a necessary part of a spiritual exercise. The whole reason of the 1937 Act turned into to declare Shariat as the rule of the selection and to stop anti-Shariat practices with recognizing to subjects enumerated in part two which include talaq. Therefore, in any case after the creation of the 1937 Act, no practice towards the

views of Quran changed into permissible. Therefore, there could not be any Constitutional safety to this sort of practice and hence, opposition with the Chief Justice for the constitutional safety given to triple talaq.

Introduction of the Muslim Women (Protection of Rights on Marriage) Bill 2017 in Lok Sabha and Raja Sabha

Union law Minister Ravi Shankar Prasad introduced the Muslim Women (Protection of Rights on Marriage) Bill, 2017 seeking the practice of triple talaq to be criminalized in the Parliament. Talaq is an Islamic practice that permits men to divorce their wives straight away through pointing out 'Talaq' (divorce) thrice.⁸⁷

Union Law Minister Ravi Shankar Prasad said the bill that the Muslim Women (Protection of Rights on Marriage) Bill, 2017 will act as a deterrent due to the fact that there had been a hundred instances of triple talaq even after the landmark judgment of the honourable Supreme court delivered in August this year. He stated that while 22 Islamic nations, inclusive of Pakistan and Bangladesh, had regulated triple talaq, there was no powerful regulation in India. Prime Minister Narendra Modi and Congress president Rahul Gandhi were absent in Lok Sabha when the bill was passed in Lok Sabha. The Minister turned down demands from the leader of the Congress within the Lok Sabha Mallikarjun Kharge to refer the bill to the Parliamentary standing Committee on law and Justice members from the Rashtriya Janata Dal, the CPI (M), the Samajwadi party, the All India Majlis-e-Ittehad-ul Muslimeen and the All India Muslim League, as also parties considered near the BJP, which includes the Biju Janata Dal and the AIADMK, hostile the bill, announcing it becomes arbitrary and a faulty notion being surpassed in haste. No longer having BJD and AIADMK on board will impact the bill's clean passage inside the Rajya Sabha because the opposition has more numbers than the NDA. E.T. Mohammed Basheer of the Indian Union Muslim League and Asaduddin Owaisi of the AIMIM alleged that through the bill the government becomes trying to bring in a Uniform Civil Code. Sushmita Dev, also raised key questions to the government that who might pay the subsistence allowance prescribed in the bill to the Muslim wife if the husband went to jail. Ms. Dev asked on behalf of party that "In law, you have to

⁸⁷ What Is Triple Talaq Bill, *available at*: <http://www.thehansindia.com/posts/index/National/2017-12-28/What-is-in-Triple-Talaq-Bill/348562> (visited on 15/04/2018).

prove mens rea or guilty intention. If the husband says I had no intention but I was upset, I was angry, what happens then,” BJP MP Meenakshi Lekhi made an impassioned appeal in favour of the bill and attacked the Congress by reminding the party that it had opposed the Shah Bano judgement of the Supreme Court in 1986. “They were opposed to an allowance of Rs. 125 in the Shah Bano case and our Muslim sisters and the country suffered. After a gap of 30 years, there is an opportunity to correct it,” stated Ms. Lekhi. Members against the bill voiced three major worries, arguing that the competition to the bill can be classified as expressing three principal worries. Maximum of the opposing parties argued that the bill had felony flaws and became being passed in hurry. Apart from Congress, other parties that took this position covered CPM, Samajwadi party, Rashtriya Janata Dal or even parties pleasant to the BJP like the Biju Janata Dal and AIADMK had been coming under this group. Despite being 2nd largest opposition party in Lok Sabha, Trinamool Congress members didn't participate in the debate even though they were present. Many party who in principle supported the bill expressed issues approximately making the civil trouble of instant divorce a crook offense and with little scope of reconciliation. “Every family dispute should not result in a criminal action,” said Supriya Sule of the Nationalist Congress Party” stated Supriya Sule of the Nationalist Congress party. Some other political parties like Badruddin Ajmal's AIUDF, Asaduddin Owaisi of AIMIM and the Kerala-based Indian Union Muslim League that the bill turned into politically prompted and encroached on Muslim personal law.⁸⁸

Should to the triple talaq bill be dispatched to a pick out Committee or now not? This question created the trouble inside the Rajya Sabha, forcing an adjournment of the house for the day. The Muslim Women (Protection of Rights on Marriage) Bill, 2017 popularly called the triple talaq invoice, became moved inside the house on Wednesday soon after it reconvened at 3 p.m. moving the bill, Law Minister Ravi Shankar Prasad said triple talaq become getting used regardless of the supreme court banning it. Trinamool Congress member Sukendu Sekhar Roy moved a

⁸⁸ Lok Sabha passes the Triple Talaq Bill, *available at:* <http://www.thehindu.com/news/national/lok-sabha-passes-the-triple-talaq-bill /article22319663.ece> (visited on 21/04/2018).

motion for an amendment in Rule a hundred twenty-five and sought that the bill is dispatched to a standing Committee. . "We think the Bill is faulty. It requires suggestions from different stakeholders," he said. Congress member Anand Sharma too moved a movement to send the bill to a select Committee. His motion became supported by many opposition parties, which includes the Trinamool Congress, the AIADMK, the DMK, the CPI, the CPI (M) the RJD and the BSP. Even before the bill turned into considered, a heated verbal exchange became witnessed within the house with participants elevating a series of a factor of Orders. While Mr. Prasad again rose to speak, the opposition participants objected to the Minister and chief of the house Arun Jaitley speaks after a Bill is moved, claiming it changed into unparalleled. However, Deputy Chairman P.J. Kurien clarified the Minister concerned and the leader of the house has the right to explicit their views. Appealing to the Congress to support the Bill, Mr. Prasad stated "Triple talaq is continuing notwithstanding the supreme court banning it... This Bill is necessary."

Mr. Jaitley argued that the motions moved by Mr. Sharma and Mr. Roy cannot be taken up because it was in conflict with the rulebook. Mr. Jaitley's speech turned into interrupted numerous times. "The whole country is watching that in the other House you supported the Bill and in this House, you are opposing it," he said pointing at the Congress members. The Treasury Bench placed forth the argument that the ultimate court's ban on triple talaq became valid till 6 months, which ends up on February 22, and this Bill was necessary to protect married Muslim women. The opposition members were a firm in their stand that they are prepared to support the bill but the bill is faulty and needs a second look. At one stage, leader of Opposition Ghulam Nabi Azad recommended the house could vote on the issue. "If the majority's view is not heard in this House, where will it be heard?" Mr. Azad quipped. Amid din, the Chair determined each motion is legitimate however the members on both the edges endured their protests. The residence became adjourned for the day.⁸⁹

⁸⁹ Rajya Sabha Remains Undecided on Fate of Triple Talaq, *available at*: <http://www.thehindu.com/news/national/rajya-sabha-remains-undecided-on-fate-of-triple-talaq-bill/article22359350.ece> (visited on 28-04-2018).

Muslim Women (Protection of Rights of Marriage) Bill, 2017

The Muslim Women (Protection of Rights on Marriage) Bill, 2017 introduced by Union Law Minister Ravi Shankar Prasad in Lok Sabha to declare the practice of triple talaq as criminal act. Talaq is an Islamic practice that allows men to divorce their wives immediately by declaring 'Talaq' (divorce) thrice.⁹⁰

Object of Bill: The Supreme Court on 22nd August, 2017, in the *Shayara Bano v. Union of India and others*⁹¹, in a majority judgment of 3:2, set apart the exercise of talaq-e-biddat (3 pronouncements of talaq, at one and the equal time) practiced by Muslim husbands to divorce their wives. This landmark judgment gave a boost to free up Indian Muslim female from the age-vintage practice of the capricious and eccentric method of divorce, by using a few Muslim male, leaving no room for reconciliation.⁹²

The petitioner within the above-mentioned case challenged, the validity of talaq-e-biddat that the said exercise is discriminatory and against the dignity of Muslim female. The judgment vindicated the situation taken through the authorities that talaq-e-biddat is towards constitutional morality, the dignity of women and the standards of gender equality, as also towards gender fairness guaranteed under the constitution. The All India Muslim non-public regulation Board (AIMPLB), which changed into the seventh respondent in the above case, in their affidavit, inter alia, contended that the judiciary has not any power to decide subjects of religious practices which include talaq-e-biddat, however for the legislature to make any law at the same. They had also submitted inside the Supreme Court that they might difficulty advisories to the members of the community against this practice.

In spite of the Supreme Court setting aside talaq-e-biddat, and the warranty of AIMPLB, there had been reports of divorce by way of talaq-e-biddat from many parts of the country. it's miles seen that setting aside talaq-e-biddat with the aid of the ideally suited court has now not laboured as any deterrent in bringing down the wide

⁹⁰ What is in Triple talaq Bill, *available at:* <http://www.thehansindia.com/posts/index/National/2017-12-28/What-is-in-Triple-Talaq-Bill/348562> (visited on 22/04/2018).

⁹¹ MANU/SC/1031/2017.

⁹² Supreme Court Sets Aside Instant Talaq, *available at:* <http://www.prsindia.org/uploads/media/Muslim%20Women> (visited on 21 -04-2018).

variety of divorces by way of this exercise among Muslims. Its miles, consequently, felt that there is a need for state action to give impact to the judgment of the Supreme Court and to redress the grievances of sufferers of illegal divorce. It is proposed to provide for some issues like subsistence allowance from the husband for the livelihood and daily supporting needs of the wife, in case the husband declared triple talaq. The Muslim wife would also be have right of minor children's custody. ⁹³

In order to prevent the continued harassment towards married Muslim women due to talaq-e-biddat, pressing appropriate legislation is necessary to offer some comfort to them. The bill proposes in June to declare triple talaq to be void and illegal in view of the honourable Supreme Court verdict.⁹⁴The rules could help in making the bigger Constitutional goals of gender justice and gender equality of married Muslim women and assist sub serve their essential rights of non-discrimination and empowerment.

The validity of triple talaq: The bill offers that any pronouncement of talaq via someone upon his wife, with the aid of phrases, either spoken or written or in electronic shape or in any other way in any respect, will be void and unlawful. Whilst a Muslim husband announces talaq upon his spouse in contravene of section 3 will be punished with imprisonment for a term which may make bigger to a few years and fine.⁹⁵

Subsistence allowance: The bill says that without prejudice to the generality of the provisions contained in another law for the time being in force, a married Muslim female upon whom talaq is reported, will be entitled to obtain from her husband such amount of subsistence allowance for her and established children as can be determined by the magistrate.⁹⁶

Custody of minor children: Notwithstanding anything contained in every other law in the meanwhile in force, a married Muslim girl will be entitled to custody of her minor children in the occasion of pronouncement of talaq by her husband, in such manner as may be determined by the magistrate.⁹⁷

⁹³ Triple Talaq Bill: Will Criminalizing Men Help Muslim Women? *available at:* <http://www.prsindia.org/uploads/media/Muslim%20Women> (visited on 21 -04-2018).

⁹⁴ *Ibid.*

⁹⁵Section 2, The Muslim Women (Protection of Rights of Marriage) Bill, 2017.

⁹⁶Section 3, *Ibid.*

⁹⁷Section 4, The Muslim Women (Protection of Rights of Marriage) Bill, 2017.

Cognizable and non-bailable Offences: Notwithstanding something contained in the Code of the criminal procedure, 1973, an offense punishable under this Act shall be cognizable and non-bailable within the meaning of the said Code.

CHAPTER V

CONCLUSION AND SUGGESTION

In the pre-Islamic period, talaq was resorted to as an instrument which means to cruelty with undesirable wives. The husband can talaq his wife on a sudden when his wife in menstruation period or even when she is pregnant and breastfeeding her new-born baby without any debt to her. The social and moral sicknesses and gender discrimination exercised in pre-Islamic Arabs directly before the rise of Islam attract the attention of the Holy Prophet. The full awareness of the evils that arise from talaq. The direction and inspiration under the laws of marriage and talaq to remove these sins. The correct way to pronounce talaq is specified in the Holy Quran and the authentic tradition is that when it is unavoidable it should be pronounced only when she not in menstruate period, and even if a clash arises during the monthly period, it is not valid that a husband give talaq his wife during her menstruate period, the husband should wait until she is not pure and then pronounce a talaq If husband likes. Then wait for the second menstrual period of her wife for pronouncement of talaq. A husband should wait for third menstrual period of her wife to pronounce the third talaq and closure after the cleaning. However it is well to wait and re-examine the problems after the first and second pronouncement because in the case of the first and second pronouncement, the husband remembers the right to take him as his wife after the ending. But if the talaq is pronounced for the third time, the husband fails the right to improve his back, and the husband and wife cannot marry each other. Therefore, the procedure of talaq that arise in the Holy Quran and the Prophet Mohammad purposes to recover the chances of reconciliation and thus reduce cases of dissolution of marriage, provide satisfactory time to ruminate and re-examine to finish the marriage. The pronouncement of talaq three times in a one sitting terrible sin in Muslim law. Presently, triple talaq under emotional pressure has become a common practice, especially in non-Muslim countries. The triple divorce is against the rule of the Quran, which is a sin. Therefore, if a person has pronounced a triple talaq, it means that the husband have adopted non-Islamic divorce procedures.

Since the husband had been granted the right to be released from fateful and unmarried marriages, Islam had given women equal rights to get rid of annoying

and different relationship. There are two ways that women are allowed to seek separation from their husbands first through mutual agreement between the husband and wife, which includes khula and secondly, through a court order to charge the husband. In the court of law. It has been observed that the wife is not free, like a husband, to free herself through clear pronouncement of talaq under khula or Mubarat. In many a case if the husband refuses to relief wife from the marriage record, she must report the court and obtain a decree to dissolve her marriage. The husband was also granted the right to obtain the freedom from hopeless and unpredictable marriage. The Islam given the equal rights of male and female get rid of unwanted and unsafe relationship.

Triple talaq is irreconcilable with the right of Muslim women to equality between men and women. Muslim women have denied their Quranic rights due to misunderstanding and interference in male Traditional societies. In many cases pronouncement of talaq in the absence of his wife declared void and illogical. In order to change the current method for instant talaq, the husband and wife firstly discuss about the problems between them. If husband and wife stay away during the long time period then the physical relation and mental relation may help them to get back together. If this also succeed if the couple tries to discuss problems between them and tried to settle that issues; if the clash remains unclear, the matter forward to the mediator for the settlement. More than twenty Muslim countries banned the triple talaq, including Pakistan, Sri Lanka and Bangladesh. Egypt was the first country to declare triple talaq invalid or irregular. If more than 20 Islamic countries banned the practice of triple talaq. So why not India banned the practice of triple talaq. In the case of Shayara Bano, the Supreme Court held that the triple talaq is unconstitutional by 3:2 majority and passed the Muslim Women (Protection of Rights) Bill, 2017 in the Lok Sabha order, but it is still under consideration in the Raja Sabha. The objective of the bill is "the protection of the rights of married Muslim women and the prohibition of divorce through the pronouncement of divorce by their husbands The Bill is declared the instant talaq to be illegal and void. Triple talaq is punishable for three year imprisonment under the Bill.

Suggestions

- Triple Talaq is pronounced by various ways like text message, WhatsApp etc. and sometime the triple talaq pronounced in the absence of wife so it is suggested that there should be proper procedure of talaq and it must be in the presence of witnesses.
- Polygamy and Nikah halala should be prohibited because it is against the right to equity.
- There should be some efforts for reconciliation by the member of two parties i.e. husband and wife before the pronouncement of talaq.
- To protect the interest of Muslim women and to save them from being suppressed, there is need to codify Muslim law and codification of Muslim law according to direction of Holy book (Quran).
- The Supreme Court declared the Triple talaq to be unconstitutional by Supreme Court, it must be implemented properly.
- The best solution in order to prevent the triple talaq, it there must be punishment for husband for declaring triple talaq.

BIBLIOGRAPHY

Act/ Bill

- The Muslim Women (Protection of Rights of Marriage) Bill, 2017
- Dissolution of Muslim Marriages Act 1939

Books

- S.K.A.Naqvi, *The Law Relating to Muslim Women*, 75 (Orient publishing company, 2014).
- Ahmad Gal wash, *The Religion of Islam*, 104 (Cairo Publisher, 1961).
- Mohammed Nazmi, *Mohammadan Law*, 73(Central Law Publications, 2012).
- Syed Khalid Rashid, *Muslim Law*, 22, (Eastern book Co. Lucknow, 3rd ed., 1996).
- Dinshaw Fardunji Mulla, *principles of Mahomedan law*, 331, (Lexis Nexis, Gurgaon, 20th edn. 2012).
- Kahkashan Y. Danyal, *Muslim Law of Marriage, Dower, Divorce, and Maintenance*, 85, (Regal Publications, New Delhi, 2015).
- Paras Diwan, *Muslim Law in Modern India*, 83, (Allahabad Law Agency, Delhi, 9th edn. 2004).
- Furkan Ehmadi, *triple talaq: An Analytical study with emphasis on Socio-legal-Aspects* (Regency publication, New Delhi., 1994).
- Hajira Kumar, *status of Muslim women in India*, (New Delhi: Aakar Books., 2002).
- Asghar Ali Engineer, *women's and gender justice*, (Gyan Books Pvt.Ltd, Delhi. 2001).
- Asghar Ali Engineer, *Islam: challenges in 21st century*, (Gyan Books Pvt.Ltd, Delhi. 2004).
- Asghar Ali Engineer, *the Rights of Muslim Women in Islam*, (New Dawn Press, Inc., India, 2004).
- Aharon Layish, *women and Islamic law in a non-Muslim state*, (transaction publishers, New Brunswick, new jersey, 2006).
- Raffia Arshad, *Islamic Family law* (south Asian edn. 2016).

- Lalita Dhar Parihar, *Women and Law*, (Eastern Book Company, 2011).
- Admantia Pollis and Peter Schwab (eds.), *Human rights new perspectives New Realities* (Viva books, 1st edn. 2010).
- Flavia Agnes, *Family law and constitutional claims*, (Vol. 1), (Oxford University press, 2011).
- Salman Khurshid, *Triple Talaq: Examining Faith*, (oxford university, New Delhi, 2018).
- Asaf A.A. Fyze, *Outlines of Muhammadan Law*, (Vol .II), (Oxford University press, Delhi, 4th edn. 1977).
- Aquil Ahmad, *Mohammedan Law*, 17 (Central Law Agency, 23rd Edition, 2008).
- **Journals**
- Asaf A.A. Fyze, „*The Muslim Wife’s Right of Dissolving her Marriage*“ (1936) 38 Bom. Law Rep. J.I. 113.
- Shalini sharma, “*Triple 'Talaq’ Economic and Political Weekly*, Vol. 29, No. 31, p. 1982(1994).
- Syed shahabuddin, “*Triple 'Talaq’ Economic and Political Weekly*, Vol. 30, No. 16, p. 846 (Apr. 22, 1995)
- J. S. Bandukwala *Indian Muslims: Past, Present and Future*,” *Economic and Political Weekly*, Vol. 41, No. 14, pp. 1341-1344 ((Apr. 8-14, 2006).
- Muhammad Munir, *Reforms in Triple Talaq in the Personal Laws of Muslim States and the Pakistani Legal System: Continuity versus Change*, 2013 *Int'l Rev. L.* 1 (2013).
- Nehaluddin Ahmad, *a Critical Appraisal of Triple Divorce in Islamic Law*
- Nehaluddin Ahmad, *A Critical Appraisal of Triple Divorce in Islamic Law*, 23 *Int'l J.L. Pol'y & Fam.* 53, (2009).
- **Case**
- *Yusuf v. Sowramma* (AIR (1971) Ker 261)
- *Rashid Ahmad v. Anisa Khatun* (MANU/PR/0074/1931)
- *Ahmedabad Women Action Group (AWAG) v. Union of India* (AIR (1997) 3 SCC 573.
- *Mohamed Ahmed Khan v. Shah Bano* (AIR (1985) SC 945)

- *Shamim Ara v. State of U.P* (AIR (2002) 7 SCC 518)
- *A.S. Parveen Akthar v. Union of India* (AIR (2003) 1 LW 370)
- *Masroor Ahmed v. State (NCT of Delhi) and Anr* (AIR (2008) 103 DRJ 137.
- *Shayara Bano and Ors. v. Union of India (UOI) and Ors* (MANU/SC/1031/2017)

Websites

- <https://www.lawctopus.com/academike/marriage-under-muslim-law/>
- https://www.legistify.com/blogs/view_detail/565-muslim-divorce-types-and-procedure
- <http://www.askfamilyproblem.com/marriage-under-muslim-marriage-law-india.html/>
- <https://www.oneindia.com/india/list-of-countries-where-triple-talaq-is-banned-2527065.html>
- <http://www.thehansindia.com/posts/index/National/2017-12-28/What-is-in-Triple-Talaq-Bill/348562>
- <http://www.thehindu.com/news/national/lok-sabha-passes-the-triple-talaq-bill/article22319663.ece>
- <http://www.thehindu.com/news/national/rajya-sabha-remains-undecided-on-fate-of-triple-talaq-bill/article22359350.ece>
- <http://www.thehansindia.com/posts/index/National/2017-12-28/What-is-in-Triple-Talaq-Bill/348562>
- <http://www.prsindia.org/uploads/media/Muslim%20Women>
- <http://www.prsindia.org/uploads/media/Muslim%20Women>
- <http://www.thehindu.com/news/national/lok-sabha-passes-the-triple-talaq-bill/article22319663.ece>

Online Resource

- Manupatra
- Heinonline
- J- Store