
ANALYSIS OF THE BAN ON TRIPLE TALAQ

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Chapterization:

For a better roadway of understanding of the research work, the researcher has divided the whole research paper into various chapters. They are listed as follows:

First chapter consists of:

- a)* Abstract
- b)* Introduction
- c)* Research objective
- d)* Research questions
- e)* Research methodology
- f)* Literature review

Second chapter consists of:

- a) Main body of the research

Third chapter consists of :

- a)* Significance of the scope of study
- b)* Conclusion

CHAPTER 1:

a) Abstract

In this study of the given topic of “**Ban on triple Talaq**”, the paper will be discussing upon how the Islamic divorce practice, **triple talaq**¹ or instant divorce prevailed in the society, causing a great degree of injustice towards muslim women even in this age age of modern times society. The use of this Islamic practice of triple talaq had been subjected to many debates and controversies. The questioning of this practice eventually raised the question of gender injustice, discrimination, against women, the sense of religion in terms of violation of human rights of the Islamic women. This misogynistic practice of triple talaq has received robust hatred and was discouraged in the world wide, throughout its existence.

“The **Muslim Personal Law (Shariat) Application Act, 1937** governs Muslim family matters in India (often called the "Muslim Personal Law"). it had been one of the primary acts approved after the **Government of India Act, 1935** went into effect, establishing provincial autonomy and a sort of federal dyarchy. It superseded the old

"**Anglo-Mohammedan Law**"² for Muslims and have become obligatory on all Muslims in India”.

“The **ulama**³ have the authority to interpret **Sharia**⁴ (a class of Muslim legal scholars). The “**ulama**” of **Hanafi Sunnis**⁵ viewed this sort of divorce to be binding if made ahead of Muslim witnesses then approved by a “**sharia**” court”. “However, the “**ulama**” of the **Ahl-i Hadith, Twelver, and Musta'li**⁶ schools of thought disagreed.

According to **Aparna Rao**⁷, a scholar, there was an intense discussion among the “**ulama**” in 2003. consistent with traditional **Islamic jurisprudence**, **triple talaq** may be a severely condemned yet legally legitimate quiet divorce. Since the first twentieth century, changing socioeconomic situations across the planet have led to growing unhappiness with customary

Islamic divorce law, and various modifications have been made in multiple nations”. “

¹ Form of divorce, followed in Islam

² Anglo-Mohammedan law, DOI:10.1007/978-94-024-1267-3_1902

³ Ulama- the learned of Islam.

⁴ Sharia- a class of Muslim legal scholars

⁵ Hanafi Sunnis- one of a kind of Muslim.

⁶ Ahl-i Hadith, Twelver, and Musta'li- Islamic schools

⁷ Aparna Rao- Islamic scholar

Unlike in other Muslim-majority countries, Muslim couples aren't required to register their marriage with civil authorities in India. In India, Muslim weddings are considered private unless the team chooses to register their marriage under the “**Special Marriage Act of 1954**”⁸. due to these historical considerations, the checks that are imposed”. “Thanks to these historical causes, other nations' governments' constraints on the husband's unilateral power to divorce, also because the prohibition of **triple talaq** wasn't enacted in India. After some very rigours debate in the Supreme Court, On 1 August 2019, India made **triple talaq** illegal, amending the **triple talaq** rule enacted in February 2019”. “It states that immediate **triple talaq (talaq-e-biddat)**⁹ in any form – spoken, written, or by technological means like email or SMS – is unlawful and invalid, with the husband facing up to 3 years in prison. consistent with the new rule, an aggrieved mother has the proper to hunt support for her dependent children”.

Keywords: divorce, India, punishment, verdict, triple talaq, Supreme Court, Muslim, women, discrimination, wrong.

b) Introduction:

“Marriage may be a legally recognised social compact between two individuals, typically supporting a relationship and indicating the union's permanency. We should always also examine variances when practising cultural relativism, like whether a legal barrier is essential (think of "common law" marriage and its counterparts) or whether quite two individuals are often engaged (consider polygamy). Other variations on the definition of Marriage may include whether couples are of opposing sexes or equal sexes, also as how one among the normal expectations of Marriage (childbearing) is regarded today”.

“However, in a married relationship, **Islam**, like **Hinduism**, is a significant supporter of Marriage. However, the Muslim understanding of Marriage varies from the Hindu conception, which considers Marriage a sacrament rather than a legal transaction. Marriage in Islam, according to many philosophers, is a religious obligation. To legally fulfil one's urge for childbearing, everyone must marry”.

⁸ Special Marriage Act of 1954 act id 195443, act 43

⁹ talaq-e-biddat, another name for triple talaq

“For a long time, Hindu marriage procedures have been modified to meet the demands and convenience of the people regularly. It refers to the Marriage between a husband and a wife. This sacrament is one of the necessary sacraments in Hinduism, one of 16 sacraments in Hinduism. It is a holy bond that cannot be severed. It is a sacred bond that can't be severed.

It's a relationship that exists from birth to birth which endures after rebirth and death. A man, consistent with Veda, is incomplete until he marries and meets his mate. As a result, Hindu Marriage is neither a contract nor a sacrament. However, it's a resemblance to both”.

“According to **Section 8 of Hindu law**,¹⁰ the government facilitates the supply as proof to Hindus so that the individual enters into a legitimate marriage within the specified manner.

- The Hindu marriage registrar has all the powers, and an appropriate time open for examination gathers proof and verifies it after paying a predetermined fee. And, as a Muslim marriage is considered a civil transaction, registration of Marriage is probably going to be obligatory. **Section 3 of the Muslim Marriages Registration Act**¹¹ of 1981- "Every union entered upon between Marriage is an establishment in Islam that legalises sexual relations between a male and feminine for the sake of the propagation of youngsters, development of affection, mutual support, and therefore the formation of families, which are considered the fundamental unit during a community. Muslims must register within thirty days after completing the **Nikah**¹²¹³ Ceremony following the start of this Act”.

“We can tell from our research that there are two sorts of divorce in Muslim law:

- **Judicial • Non-Judicial**

The extra-judicial divorce option is further subdivided into three categories:

1. **Talaaq, ila, and zihar by spouse**
2. **Talaaq-i-tafweez by wife, lian**
3. **prescribed by Khula and Mubarak.”**

¹⁰ Hindu marriage act, 1955 act no. 25 of 1955

¹¹ Muslim marriages registration act, 1981, act no XXII of 1981

¹² *Nikah*- Islamic word for marriage

¹³ Different options of divorces provided and guaranteed by Islam

“Some Indian Muslims, mainly **Sunni Muslims**, practise **Triple Talaq**, during which the husband can divorce his wife by saying the three words 'Talaq, Talaq, Talaq.' it's a 14000year-old custom. The husband isn't needed to offer any cause for divorcing his wife during this tradition. The Muslim wife cannot divorce her husband using the **Triple Talaq** process. Over the years, Muslim women in India have lived in constant terror of being evicted from their marital houses since a Muslim man, if he so desires, can end years of Marriage just by repeating the word "**Talaq**" (Divorce) 3 times. On July 30, 2019, the Indian Parliament enacted the **Triple Talaq bill**, also referred to as the Protection of Rights on Marriage Bill, making immediate **Triple Talaq** a criminal offence.

The law also renders **Triple talaq** recognisable as a non-bailable offence. On the summer solstice, 2019, “**Shankar Prasad**”, the minister of law and justice, tabled the Bill within the Lok Sabha to exchange an Ordinance enacted on February 21, 2019”.

“The Bill had been upheld within the Rajya Sabha for an extended time thanks to the continued disruption of the Upper House's functioning by various political parties. The Triple Talaq divorce system was still in use. Thus, an urgent got to take rapid action to ban such a practice by enacting rigorous legal measures”.

The Supreme Court ruled by the judicial order and stated that **Triple Talaq** is against the law because it violates gender legislation and, therefore, the notion of equality as a fundamental right guaranteed by the Constitution. It's not required for the practice of Islam in India. In

1985, “**Shah Bano**” filed a complaint within the Supreme Court against her husband after he abandoned her without paying her alimony. The Supreme Court found the case in her favour.

According to Clause 3 of the Bill, "any pronouncement of Talaq by a private against his wife, whether spoken or written or in electronic form or the other method whatsoever, shall be unlawful and illegitimate."

Clause 3 further stipulates that "anyone pronounces **Triple Talaq** on his wife shall be punished with three years in jail and a fine."

India may be a diverse country in culture, religion, and customs. In India, each religious group has its own set of rules governing family affairs that are supported their sacred books.

Moreover, a delicate, fine and precise balance must be struck and is adhered to between the freedom to follow any faith and social justice. The approval of the Triple Talaq Bill by Parliament is a crucial step toward providing social justice to Muslim women.

The practise of **Triple Talaq** was something that was very surreal and unbelievably wrong. The current law might not be ideal or truly rightful for the Muslim woman, but the initial small step also counts. Scrapping down the practice of triple talaq and criminalising it may not change the lives of Muslim women in a sudden instant, but an initiative of legal reform for the notion of the well being of Muslim women and guarantee their fundamental rights is what truly leaves an embarked change and a positive change. Even a small legal reform supporting the notion creates a significant impact on the notion and agenda of restructuring the process of social reform from a more prominent aspect and point of view. The women who fought for gender justice and equality were supported and were held up by this law. The main motive of the law was not to create a mindset of punishment but to provide a strong, robust dissuading sense. If the law only focused on suiting a suitable punishment, the importance of justice would have been sabotaged, as the course of punishment would have been put forward a bargaining and huddle provision to the victim wife. She may likely be able to get the husband to negotiate the degree and course of punishment and eventually liberalise the effect of wrong done. It may have provoked to be some negotiable agreement.

In any case, earlier conviction rates were meager, and there had been a reckless misuse of this—religious propaganda. The law makes a remarkable difference by a pronouncement of **Triple talaq** as a bailable aggravated offence. In under as judicial decree, meaning that if the wife and husband can come under an understanding and decision and can reconcile with free will and consent for a divorce, there would be no legal action or judicial case.

But besides all the facts, the old broken tune of the patriarchy still pulls back many strings on the law, as per the patriarchal head of thinking, they thimble upon the notion that any legal power to women lead To more injustice and violence towards the women in a greater degree and lead them to stumble upon the fact of women being unequal and making them subjected to certain or numerous cases of violence and crimes.

Breaking the sick and miserable clauses and conscious of the patriarchal society, the Muslim women had explored and exercised the various possibilities and resources of judicial rights

provided by the Constitution and religious regimes of equality and rights in their respective life. They exercised their most basic rights by outrageously raising their voice against the narrow driven sick practise of triple talaq in order to obtain gender justice and set the subject matter a righteous verdict. The issue of gender justice had always been a taboo and always an issue that has been juggled and mired upon the complex loop of the web of conservatism, religion and politics. From the past decade, India has seen many women coming forward and being vocal about many such misogynistic practices and also have put a string stop and complete stop to them. The women have become more aware of their rights, the idea of justice, the rightful demand for equality. Slowly and steadily, they gave grown more intellectual towards the aspects of legal reforms and had an excellent jist understanding of the notion of wrong done to them and sought redressal and compensation accordingly. From being upheld till the domestication of their life to achieving new horizons of law and justice, women from earlier to modern times have come a long way. They have grown in various aspects of theirs lives in a certain positive way. Gaining knowledge to fight for their fundamental rights, women have done it all. Even though they were pulled back by some underrated narrow sick driven mindset of the society and people, nothing stopped them from coming out as brave, outstanding and outrageous women in this patriarchal society. Fighting against all odds, women do make a tremendous difference in the world.”

c) Research objective:

The sole and utmost objective of the research work is to analyse and describe how the agenda of **“ban on triple talaq”** basically means and how because of the wrongful nature of the practice lead to hamper of gender justice, human rights, fundamental rights and even justice to the Muslim women. The basic and prior objective of the research work are enlisted below:-

1. To Explain briefly to the readers of the research work about the meaning of the topic **“ban on triple talaq”**
2. To analyse the topic of **“ban on triple talaq”** in precision and clarify its objective, pertaining with its wrongful and unjust uses in times, in various judicial aspects.
3. To critically study regarding the practice of **triple talaq** in regards to the judgments, how the practice created a havoc and horrific situation for the Muslim women with it’s utility empowered by virtue of religion and the consideration of the Islamic law in various alterations of laws and judgments given by the honourable Supreme Court.

d) Research questions:

1. What is the meaning of “triple talaq” what was its significance on the Muslim women in general?
2. What can we confer from the sudden overpowering protest and discouragement fir the practice of “triple talaq”? 3. What and how the practice of “triple talaq” evolved from the ancient times to in modern times?
4. Did and how the practice of “triple talaq” really created an adversity in the society in insane degree of inhumanity or anything has changed since the ever growing revolution of the society and world?

e) Research methodology:

The study and research of the topic of “**ban on triple talaq**” has used the theoretical design of research. Theoretical research are done to help the researcher to gather knowledge and information on a particular subject. It is conducted by all kind of experts and professionals. Theoretical research are done and they acts as basic root and fundamental point that guides subsequent inventions and innovations. The researchers digs and initiates the research with the start of writing hypothesis and runs tests by designing particular experiments relating to the subject matter. This leads to the scientific authenticity of the research well nest and defined. In accordance with the options and guidelines of methodology chosen, it very crucially, validate the conclusion and results obtained in the research work.

f) Literature review

With the primary research concludes and images and imagery that there have been none of the current research works, analysing the study of the topic “**ban on triple talaq**” at the contemporary study of the subject and research. The researcher initiated the research and research afresh right from the basic understanding of the topic and the abuse agenda from different sources of legal information, social journals, surveys, articles and many other numerous secondary and primary references and sources which dealt with the application and utility of the practice of divorce in various social proceedings and attainments. From critically analysing the study of the topic and reacting it with the facts of the current scenario that pertains with the enraging state and situation, it stands with the plan today in the present times, in the society with direct relevance and reference to the proceedings of many different social obligations and even judicial proceedings of Lower courts, High courts and eventually the Supreme Court. To obtain a more discrete and crystal clear picture of the research study of the

topic "**Ban on triple talaq**", the researcher refers to a research done by a law professional, published by "**Aditi Singh**", "**TRIPLE TALAQ**¹⁴", which is a comprehensive and extensive research on the given topic of the study. The report provides a piece of insightful and descriptive information about the topic "**ban on triple talaq**" with references to numerous practical examples and landmark judgments as well and a reality review of the topic in a profound manner of knowledge and understanding. The research briefly explains and put forward all possible references and opinions and consequences that have been laid after the ongoing practice of the customary irrational divorce law, opening the provisions of "**triple talaq**". The report enhances the quality of research by providing a detailed study about the aftermath of the illegal practice on children, families, and society. It offers a significant amount of information regarding the topic relating to the subject matter by providing some specific primary numeric and quantitative data.

To add to the efficiency and essence of intelligence in the presentation of the subject to the theoretical study of the topic "**ban on triple talaq**", the researcher refers to numerous and various other journals articles on the topic as a wider field of study. "**Triple talaq verdict:**

Parliament must frame new law respecting the heterogeneity in Muslim society¹⁵" is an extraordinary article, authored by "**Hilal Ahmed**" and published by "**first post-India journal**", is a great article that provides a degree of deep research and explanatory research on the topic, respectively which initiates the researcher with help and access to a better understanding of the research subject. The article primarily focuses on how the Making of triple talaq unlawful was one of the most significant steps done by the Indian parliament.

Human rights are commonly associated with more freedom and progress. However, it is essential to emphasise that granting rights does not necessarily result in liberation. The universal concept on which human rights are based is the primary basis for their excluding aspect. "The darker side of human rights appears to present itself most visibly in the case of women, who are stuck at the crossroads of communal identity and the narrative of modernity. The idea of a genuinely oppressed Muslim woman in need of protection through the rhetoric of the liberal right is one such universalistic issue".

¹⁴ Triple talaq, Aditi Singh, https://www.researchgate.net/publication/338477315_TRIPLE_TALAQ

¹⁵ Triple talaq verdict: Parliament must frame new law respecting the heterogeneity in Muslim society, Hilal Ahmed, <http://www.firstpost.com/india/tripletalaq-verdict-parliament-must-frame-new-law-respecting-the-heterogeneity-in-muslim-society-3960873.html>

In light of the "**ban on triple talaq**" issue and agenda, the researcher refers to one of the most historic landmark case judgments, "**Shayra Bano v Union of India and others**"¹⁶. The landmark ruling in the "**Shayra Bano**" case is undeniably a step toward equality, and it has laid the groundwork for future personal law and social reforms. This ruling in "**Shayra Bano v UOI**" addressed the minority in a feasible way, which is a step toward secularism.

Although gender justice was not the principal objective, it will have enormous beneficial ramifications for improving women's rights and gender equality in India. This decision is anticipated to be considered objectively and to aid Muslim women in enjoying a better and more secure life as promised by the state's law.

"**Ban on Instant "Triple Talaq" is Justifiable, Not its Criminalisation**"¹⁷ authored by "**Pk Balachandran**" and published by "**the citizen journal**"²³ another interesting yet somewhat ironic article referred by the researcher which facilitates the researcher for a better understanding and knowledge of the subject matter of the research. The mentioned article is a great secondary resource for the pertinent of the topic in a very efficient manner. It includes various opinions and views given by jurists and professionals on the issue. This would help the researcher compose and compare the references made in the further mentioned functional changes and cases and human rights laws of the subject matter. Out of many, One other relevant literature review relevant to the topic of "the effects of divorce on family" exists. Thus, the researcher opts to choose it as the most appropriate source of information and draw the references respectively to the ones that have made the significant and utmost difference in understanding the topic.

"The above-mentioned article, journals and studies have a standard reach of understanding and conclusion that, The current discussion over "**triple talaq**", focusing on the "**Shayra Bano**". Many batches of petitions, as well as the Supreme Court's own Suo moto PIL, addresses various parts of Islamic personal regulations that amount to gender discrimination and hence violate the constitution". "This research paper will explain the fundamental concept of "**triple talaq**" as specified in the Muslim marriage and divorce statute and its path until its

¹⁶ Shayra Bano v Union of India and others, AIR 2017 9 SCC 1 (SC)

¹⁷ Ban on Instant "Triple Talaq" is Justifiable, Not its Criminalisation, PK Balachandran, <https://www.thecitizen.in/index.php/en/newsdetail/index/7/17342/banon-instant-triple-talaq-is-justifiable-not-its-criminalization> ²³ the citizen journal, Mumbai 1975 ¹⁶ THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937 ACT NO. 26 OF 1937, 7th October, 1937.

unconstitutionality was recognised. The problems in obtaining permission and a majority from both chambers of parliament (Lok Sabha and Rajya Sabha) will also be discussed. “Divorce and marriage forms under Muslim law will be explored and their fundamental qualities. Is “**Talaq-e-Biddat**” Islamic in nature, and if so, does it fall within the protection of Article 25 of the constitution? Is instant talaq a violation of the Indian Constitution Article 14? Can the legislature pass measures safeguard Muslim women in accordance with articles 15(3) and (4) of the constitution? Whether the **Muslim Personal Law (Shariat) Application Act, 1937**¹⁶ bestows statutory character on the topics controlled by it or is it still shielded under "Personal Law, which does not fall within the definition of the word "law" under Article 13 of the Indian Constitution?”

The research will rear on a common, basic agenda of The rationale for declaring triple talaq invalid and amending it will also be discussed. The undeniable case of maintenance for Muslim women (**Shah Bano case**¹⁸) will also be reviewed in length, with its ratio descending and the binding authority of the changes made thus far, as well as the prohibition of triple talaq. The continued unlawful usage of triple talaq even after its abolition and the actions taken by police authorities and the judiciary in this respect. Why has the legislation ruled just immediate talaq invalid and not other kinds of talaq? What were the impediments to the legislation's passage? The hardships that Muslim women had to endure due to this type of divorce, how it was invalid, and how Muslim men made a mockery of their rules. The act's constitutional legality will also be addressed. Finally, it will be determined if rendering triple talaq unconstitutional benefits or a curse for Muslim women.

Such references and comparisons would enhance the quality of the current case study and analysis of the maxim on a deeper level.

¹⁸ *Shah Bano case* 1985 AIR 945, 1985 SCR (3) 844

CHAPTER 2:

The main body of the research paper

On July 30, 2019, India approved legislation criminalising “**talaq-e-biddat, or triple Talaq**”. The law was widely seen in India as a win for Muslim women. “**Triple Talaq**” may leave a wife without a house, money, or children in a moment — even within a text message. India was one of the newest countries to legalise talaq-e-biddat. Even though the practice was deemed unconstitutional in 2017 by the Shayra Bano ruling, it persisted in some areas. However, there are concerns about the bill's impact due to the prime minister's anti-Muslim beliefs and, therefore, the bill's lack of protection. This study will explain what **triple Talaq** is, the shortage of protections within the Muslim Women (Protection of Rights on Marriage)

Law of 2019, and how the bill represents the Bharatiya Janata Party's tendency. “**Triple Talaq**, also referred to as **Talaq-e-biddat**”. In Islamic law, there are some three kinds of divorce: 'talaq' divorce by the husband, “**khula**” divorce by the lady, and “**mubaarat**” divorce by mutual consent. “**Talaq**” is further classified into three types:” “**talaq-e-Ahsan, talaq-e-**

Hasan, and talaq-e-biddat”. The Quran and hadith support the primary two. In “**talaq-e-Ahsan**”, the husband speaks 'talaq' once, and then there's a ninety-day period of abstinence called '**iddat**'. If the couple reconciles, cohabitates, or is intimate during 'iddat,' the divorce is deemed revoked. Unless they plan to remarry, the divorce is complete after this era. If the word 'talaq' is employed a 3rd time, the pair will be unable to remarry until the lady has married somebody else which marriage has been annulled. In talaq-e-Hasan, rather than one declaration, Talaq is pronounced three times, with a one-month gap between each Talaq. the wedding is irreversible after the third Talaq.

In “**talaq-e-biddat, Talaq**” is spoken three times during a row, leading to an instantaneous divorce. The “**Quran or hadith**¹⁹” don't accept “**Talaq-e-biddat**”, yet it will be dated back to the second century. Only a couple of Sunni schools, most notably the Hanafi sect, acknowledge the “**talaq-e-biddat**” sort of divorce, although these schools see it as a wicked quiet divorce. “**The Muslim Women's Rights (Protection of Marriage Rights) Bill**²⁰” caused the subsequent problems:

¹⁹ Quran or hadith, holy textbook of Islam

²⁰ The Muslim Women's Rights (Protection of Marriage Rights) act no. 20 of 2019 Bill

The bill causes two sorts of dissatisfaction: (1) it pays less allowance to divorced wives than primary legislation, and (2) it lacks protections to avoid false persecutions. The Muslim

Women Bill provided a subsistence allowance, whereas the sooner “**Muslim Women's Act of 1986**²¹” required “fair and acceptable settlement following divorce.” The question is whether or not the language change would diminish instead of increase Muslim women's divorce rights. However, the prior law proved ineffective in offering relief to Muslim women. In India, only 79 per cent of girls reported getting no maintenance from their spouse following a talaq-e-biddat divorce. Entirely 40% of girls could not gather their items following the divorce. Sixty-six per cent of the ladies surveyed didn't get their “**Mehr**” following the divorce. “**Mehr**” may be a Quranic right that gives the bride's financial stability in exchange for marriage and is to be handed to the bride by the husband. As a result, Muslim women possessed economic rights before the “**Muslim Women Bill**”, but those rights weren't enforced.

Another source of worry is that the results for “**triple Talaq**” might include three years in prison, a fine, and therefore the violation isn't bailable. The low standard of proof adds to the harshness of the punishment; if a married Muslim woman or someone connected to her by blood or marriage alleges the husband has declared triple Talaq, a court may inflict punishment. Perhaps another country's model could be a far better fit. Only a couple of nations punish “**triple Talaq**” with incarceration, and most demand payment to the wife or a fine. “**Tunisia**” and, therefore, the “**United Arab Emirates**” are two nations that may function as feasible reform models for India. Tunisia's official religion is Islam, and consequently, most of its residents belong to the “**Sunnitesect**²²”. The Code of private Status of Tunisia states that “the party inflicting material or mental harm by the very fact of divorce... must be directed to reimburse the aggrieved spouse.”

“In terms of the lady being reimbursed for material harm in monetary terms, an equivalent shall be provided to her after the expiry of “**Iddat**”. It should take the shape of retention of the marital residence. This indemnity will be revised, increased, or decreased in line with the

²¹ Muslim Women's Act of 1986, 19th may 1986

²² Sunnitesect, particular group of Islam

divorced wife's changing circumstances until she is alive or until she modifies her legal status by marrying again”.

The United Arab Emirates features a Federal Constitution that defines Arabic because the official language, and therefore the “**Shia**” religion is that of the majority. Consistent with Article 140(1) of the “**Law of private Status 2005 Federal Law**”²³, “if a husband divorces his wife after the consummation of a legitimate marriage by his unilateral action and with no move for divorce from her side, she is going to be entitled to compensation additionally to maintenance for “**Iddat**”. The quantity of compensation shouldn't be quite one year's maintenance given by law to a woman of her position”.

“While these models would be efficient methods of prohibiting “**triple Talaq**”, they're unlikely to be implemented thanks to the Indian government's ulterior intentions. The argument has engaged the government of India and hence the Supreme Court of India, and it is related to the discussion about a “**unified civil code (Article 44)**”²⁴ in India. According to Article 44:

“Citizens should have a uniform civil code. The State shall make every effort to provide people with a standard civil code throughout India's territory. “**Triple talaq**” became outlawed in India on August 1, 2019, replacing the February 2019 “**triple talaq**” regulation.

After a protracted debate and resistance, the “**Muslim Women (Protection of Rights on Marriage) Bill, 2019**”²⁵, was approved on July 26, 2019, with the judgement (the Indian Supreme Court verdict of August 2017 detailed below) to all or any women. It renders immediate triple talaq (talaq-e-biddah) in any form – spoken, written, or technological means like email or SMS – unlawful and invalid, with the husband facing up to three years in prison. Because of these historical circumstances, the checks that other nations' governments impose on the husband's unilateral power to divorce and the prohibition of triple talaq weren't implemented in India”. “ On the summer solstice of 2019, the Minister of Law and Justice,

²³ Law of private Status 2005 Federal Law No. 28 of 2005

²⁴ Unified civil code, 1835

²⁵ Muslim Women (Protection of Rights on Marriage) Bill, 2019, act no. 20 of 2019

"Mr Shankar Prasad, introduced the Muslim Women (Protection of Rights on Marriage) Bill 2019 in Lok Sabha. It supersedes an Ordinance issued on February 21, 2019²⁶."

"The mentioned Bill legally declares all **"talaq"** declarations, whether written or electronic, invalid (i.e. not legally enforceable) and unlawful. It defines **"talaq as talaq-e-biddat"** or another comparable form of talaq delivered by a Muslim male, which eventually leads to an immediate and irreversible divorce. Talaq-e-biddat is a process under Muslim personal law.

A Muslim man says the word 'talaq' three times in one sitting to his wife, resulting in a spontaneous and irreversible divorce. Offence and penalty: The Bill makes talaq declaration a punishable offence by up to three years in jail Or even pay for fine. The offence will be cognizable as long as information about it is provided by: I the wife, or (ii) a person related to her by blood".

"The Bill states that the Magistrate can issue bail to the accused. Bail might potentially be given only after the lady (against whom talaq has been proclaimed) has been heard, and the Magistrate is convinced that there are legitimate grounds for granting bail. The Magistrate might even compound the offence at the lady's request (against whom talaq has been proclaimed). Compounding is how two parties agree to end legal proceedings and resolve their disagreement. The Magistrate will establish the terms and circumstances of the compounding of the crime".

"Allowance: A Muslim woman who has been subjected to **"talaq"** is entitled to sustenance compensation from her spouse for herself and her dependent children. The amount of the allowance will be decided by the Magistrate".

"Custody: A Muslim woman proclaimed **"talaq"** has the right to seek custody of her young children. The Magistrate will determine the method of custody".

NOTION AGAINST TRIPLE TALAQ

"Muslim women objected to the practice, and several of them filed a public interest lawsuit against it in the Supreme Court, calling it "regressive." The petitioners requested that Section 2 of the **"Muslim Personal Law (Shariat) Application Act, 1937"**, be repealed, claiming that

²⁶ The Muslim Women's Rights (Protection of Marriage Rights) Act no. 20 of 2019 Bill

it violated Article 14 of the Constitution (equality before the Law)”.

“According to Section 2 of the “Muslim Personal Law (Shariat) Application Act of 1937”: 2. Muslim application of private law.

“Regardless of any tradition or usage to the contrary, marriage is required in all cases (excluding those involving agricultural land) involving intestate succession, the unique property of females, including personal estate inherited or gained by contract or gift, or any other requirement of private Law, marriage, marital dissolution (including “**talaq, ila, zihar, lian, khula, and mubaraat**”), maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and nonsecular endowments) In matters involving Muslims, the rule of determination will be “**Muslim Personal Law (Shariat)**”.

TRIPLE TALAQ SUPPORT

“**All India Muslim Personal Law Board (AIMPLB)**”, “a non-governmental organisation that oversees the application of “Muslim Personal Law”, has endorsed **triple talaq**. It states and firmly believes that the State has no right to meddle in religious affairs.

In response to the controversy surrounding the practice of **triple talaq**, “**AIMPLB**” released a rule of conduct addressing talaq in April 2017. It further cautioned that people who divorce for reasons other than those authorised by Shariat would be socially shunned, in addition to calling for a boycott of those who utilise triple talaq irresponsibly and without cause”.

It was also mentioned that it should be provided in three sittings, with a minimum niche of one month between each.

CHAPTER 3:

a) Significance of the scope of study

In earlier times, in India the practice of triple talaq was very enraging and very overpowering was considered holy in accordance to the Islamic principles of religion. With the change in time, values, ethics and inclination of women in legal knowledge things in society have started to change, steadily. The number of Cases of triple talaq which was cruel and surreal for Islamic women in India, have come down at some certain point and degree.. The idea of Triple talaq was very unfair and unjust for the Muslim women of India but ironically it was strongly encouraged by the Muslim people of the the Indian society. Earlier married Muslim women were always in verge to loose their marriage anytime. And were compelled and fight for keeping their marriage intact just for the sake of their reputation in front of the community. However, with the improvements in the literacy rate and modernisation of the culture, the horrific practice of triple talaq has been abolished by the Government of India. Women should their immense courage and bravery and came forward to raise their voice against such evil practice., Triple talaq does had its many horrific repercussions. They give birth to a particularly robust emotional turmoil not only for the married Muslim women but also for their family and associates. Thus, this topic has to be dealt with on a large scale at the earliest to gain a precise, unbiased understanding and knowledge of the agenda.

b) Conclusion :

“The country's Constitution calls for adopting a standard civil code for the whole country. The National Commission for Women, on the other hand, claims that this is unrelated to the universal civil code. Regardless, it should be prohibited to defend Muslim women's rights because Triple Talaq was not a fundamental characteristic of Islam. The Supreme Court further declared that this practise was illegal and not protected by Article 25 regarding religious freedom. Triple Talaq is an immediate divorce procedure under Islamic Law practised by Muslim males in India. It permits a Muslim husband to divorce his wife lawfully, simply saying 'Talaq, talaq, talaq' three times. It can be said orally, in writing, or through technological media like email, SMS, or WhatsApp. In Arabic, Talaq implies divorce. According to Muslim law, once a guy says that his marriage is over. This quick divorce is often referred to as 'Talaq-e-bidat.' The new regulation is a welcome boost to India's women's empowerment drive. The court has shown progressive views on personal law in society. The abolition of Triple Talaq

would eliminate prejudice and injustice in the lives of Muslim women in the future. The community should also take a stand against this social evil to end this behaviour because women's empowerment is critical to the nation's growth”.

“In 2019, Government of India declared that anyone who pronounces **Triple Talaq** on his wife shall be punished with three years in jail and a fine.”

India may be a diverse country in culture, religion, and customs. In India, each religious group has its own set of rules governing family affairs that are supported their sacred books.

Moreover, a delicate, fine and precise balance must be struck and is adhered to between the freedom to follow any faith and social justice. The approval of the Triple Talaq Bill by Parliament is a crucial step toward providing social justice to Muslim women”.