

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2019

IN THE MATTER OF:-

JAMIAT ULAMA-I-HIND & ANR. ... PETITIONERS

VERSUS

UNION OF INDIA & ANR. ... RESPONDENTS

WITH

I. A. NO. OF 2019 : APPLICATION FOR INTERIM EX-
PARTE STAY.

PAPER BOOK

(PLEASE SEE INDEX INSIDE)

FILED BY:-

EJAZ MAQBOOL, ADVOCATE FOR THE PETITIONERS

INDEX

Sl. No.	Particulars of Document	Page No. of part to which it belongs		Remarks
		Part I (Contents of Paper Book)	Part II (Contents of file alone)	
(i)	(ii)	(iii)	(iv)	(v)
1.	Court Fees			
2.	Listing Proforma	A - A1	A - A1	
3.	Cover Page of Paper Book		A-2	
4.	Index of Record of Proceedings		A-3	
5.	Limitation Report prepared by the Registry		A-4	
6.	Defect List		A-5	
7.	Note Sheet		NS1 to ...	
8.	Synopsis and List of Dates	B - I		
9.	Writ Petition under Article 32 of the Constitution of India with affidavit.	1 - 19		
10.	Appendix of relevant statutory provisions:- (i) A copy of the Sections 171E, 177, 272, 279, 304A, 318, 363, 494 & 496 of the Indian Penal Code, 1860. (ii) A copy of the Articles 14, 15, 21 & 32 of the Constitution of India, 1949. (iii) A copy of the Sections 3, 4, 6 & 7 of the Muslim Women (Protection of Rights Marriage) Act, 2019.	20 - 23 24 - 25 26 - 27		

11.	ANNEXURE P-1 A true copy of the Muslim Women (Protection of Rights on Marriage) Act, 2019 dated July 31, 2019	28 - 29		
12.	I.A. NO. ____ OF 2019 Application for interim ex-parte stay.	30 - 33		
13.	F/M		34	
14.	V/A		35	

A

LISTING PROFORMA
IN THE SUPREME COURT OF INDIA

SECTION - (IX)

The case pertains to (Please tick/check the correct box):

- Central Act: **Constitution of India, Muslim Women (Protection of Rights on Marriage) Act, 2019**
- Section: **Article 14, 15, 21 & 32 of the Constitution of India. Sections 3, 4, 5, 6 and 7 of Muslim Women (Protection of Rights on Marriage) Act, 2019**
- Central Rule : **NA**
- Rule No(s) : **NA**
- State Act : **NA**
- Section : **NA**
- State Rule : **NA**
- Rule No(s) : **NA**
- Impugned Interim order: (Date) **NA**
- Impugned Final Order/Decree : (Date) **NA**
- High Court : - **NA**
- Names of Judges: **NA**
- Tribunal/Authority: **NA**

-
1. Nature of matter : – **Civil matter**
 2. (a) Petitioner No.1: – **Jamiat Ulama-i-Hind**
(b) e-mail ID: – **NA**
(c) Mobile phone number : – **NA**
 3. (a) Respondent No.1: – **Union of India**
(b) e-mail ID: – **NA**
(c) Mobile phone number: – **NA**

4. (a) Main category classification: – **08 - Letter Petition & PIL Matters**
(b) Sub classification: – **0812- Others**
5. Not to be listed before: – **NA**
6. (a) Similar disposed of matter with citation, if any, & case details: **No Similar matter disposed of.**
(b) Similar pending matter with case details: – **No Similar matter is pending.**
7. **Criminal Matters:– NA**
 - (a) Whether accused/convict has surrendered: Yes No
 - (b) FIR No. **NA** Date: **NA**
 - (c) Police Station: **NA**
 - (d) Sentence Awarded: **NA**
 - (e) Period of sentence undergone including period of Detention/Custody Undergone: **NA**
8. **Land Acquisition Matters: – NA**
 - (a) Date of Section 4 notification: **NA**
 - (b) Date of Section 6 notification: **NA**
 - (c) Date of Section 17 notification: **NA**
9. **Tax Matters: State the tax effect: NA**
10. **Special Category** (first petitioner/appellant only): **NA**
 Senior citizen > 65 years SC/ST Woman/child Disabled Legal Aid case In custody
11. Vehicle Number (in case of Motor Accident Claim matters): **NA**

SYNOPSIS

The Petitioners herein are filing the present Writ Petition under Article 32 of the Constitution of India to challenge the Muslim Women (Protection of Rights on Marriage) Act, 2019 (hereinafter referred to as the “Impugned Act”) as unconstitutional.

It is relevant to note that the preamble of the Impugned Act stipulates that the said Act has been enacted *inter alia* to protect the rights of Muslim women after marriage. It is important to mention that under the Impugned Act ‘*talaq*’ has been defined to mean “‘*talaq-e-biddat*’ or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband”. Pertinently, such a form of divorce had already been declared unconstitutional by this Hon’ble Court *vide* its judgment dated August 22, 2017 rendered in *Shayara Bano v. Union of India & Ors. (2017)9 SCC 1*.

It is submitted that as the pronouncement of *talaq* by a Muslim husband upon his wife had already been declared void and illegal, no circumstance, whatsoever, existed in the first place requiring the enactment of the Impugned Act. It is relevant to mention that though this Hon’ble Court did not express any opinion to criminalize the pronouncement of *talaq* by a Muslim husband. However, the Impugned Act criminalizes the act of pronouncement of *talaq* by a Muslim husband and makes it a cognizable offence, without appreciating that such pronouncement had already been declared unconstitutional and amounted to nullity in the eyes of law. Needless to say, that the Act criminalizes the pronouncement despite the fact that the marriage subsists even after the said pronouncement.

C

It is pertinent to note that instead of addressing the core issues of implementation of the judgment *Shayara Bano v. Union of India & Ors. (2017)9 SCC 1*, the Impugned Act seeks to merely reiterate what this Hon'ble Court had already declared to be the law of the land. Section 3 of the Impugned Act stipulates that pronouncement of talaq by a Muslim husband upon his wife shall be void and illegal. In view of the foregoing, it is clear that the Impugned Act was enacted without appreciating that the problem that needs to be addressed is the implementation of the judgment of *Shyara Bano*, however the Impugned Act completely ignores that actual mischief to be addressed and instead reiterates that the pronouncement of triple talaq is illegal which was already the law of the land in terms of the judgment of this Hon'ble Court in *Shayara Bano*.

Furthermore, Section 4 of the Impugned Act stipulates that a husband who pronounces talaq referred to in Section 3 shall be punished with imprisonment of upto 3 years and shall also be liable to pay fine. This is an ill-conceived provision which imposes excessive and disproportionate punishment. This is evident from the fact that lesser punishment is prescribed for many offences which are far graver. Some such offences are Rioting (Section 147 of IPC – punishment of imprisonment upto 2 years or fine or both), Bribery (Section 171E of IPC– punishment of imprisonment of upto 1 year or fine or both), Adulteration of food or drink intended for sale (Section 272 of IPC– punishment of imprisonment of upto 6 months or fine of Rs. 1000 or both), Punishment for causing death by negligence (Section 304 A– punishment of imprisonment of upto 2 years or fine or both), Rash driving or riding on a public way (Section 279– punishment of imprisonment of upto 6 months or fine of Rs. 1000 or both) etc. It is submitted that

D

prescribing a punishment of imprisonment of upto 3 years for a pronouncement of talaq having the effect of instantaneous divorce, when the same pronouncement can be lawfully made within a period of three months, without attracting any penal consequences, whatsoever, is not only disproportionate but extremely excessive and stringent, which is completely arbitrary and has no nexus, whatsoever, with the object sought to be achieved, thereby falling foul of Articles 14, 15 and 21.

Furthermore, Section 7 of the Impugned Act makes the pronouncement of *talaq* (having the effect of instantaneous divorce) a cognizable and a non-bailable offence. It is submitted that even offences like Kidnapping (Section 363 of IPC) which are far graver are bailable. Some other offences such as causing death by negligence (Section 304A of IPC), Concealment of birth by Secret Disposal of Body (Section 318 of IPC), Rash driving or riding on a public way (Section 279 of IPC), Bigamy (Section 494 of IPC), Marriage ceremony fraudulently gone through without lawful marriage (Section 496 of IPC) are also bailable, which show that such making the pronouncement of instantaneous *talaq* non-bailable is excessive and evidently unwarranted.

It is settled law that a statutory provision can be struck down on the ground of manifest arbitrariness, when the provision is capricious, irrational and/or without adequate determining principle, as also if it is excessive or disproportionate (Please see *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (para 101)). In fact, crime and punishment are two sides of the same coin, therefore, every punishment must fit the crime. The notion of 'just deserts' which requires that a sentence being imposed must be proportionate to the offender's culpability is applicable to criminal jurisprudence. (*Mohd. Arif @ Ashfaq v. The Registrar, Supreme Court of India*, (2014) 9 SCC 737). In view

E

of the foregoing, it is submitted that making pronouncement of instantaneous talaq a cognizable and a non-bailable offence, being punishable with an imprisonment of upto 3 years, is not only excessive but disproportionate.

As mentioned above, there are several more grave offences which are not punishable with such a stringent punishment and are bailable, in fact desertion of a wife by the husband is not even an offence, this clearly shows that the provisions *qua* criminality of the pronouncement of instantaneous talaq are disproportionate and excessive.

In view of the foregoing it is submitted that the Impugned Act is manifestly erroneous and provides for an unreasonable, disproportionate and excessive provisions *qua* criminality of Instantaneous *Talaq* and therefore, deserves to be set aside as being violative of Articles 14, 15 and 21 of the Constitution of India.

LIST OF DATES

November,
1919

The Petitioner No.1 organization was established in November 1919 and the main aims and objectives of the Petitioner No.1 organization are inter alia as follows:

- a) Protection of Islam, Islamic Culture, tradition, Islamic heritage and places of worship.
- b) Protection and promotion of religious, cultural, educational and citizenship rights of the Muslim Community.

F

- c) Reformation of religious, social and educational life of the Muslim community.
- d) Establishment of such institutions, which could empower Muslims educationally, culturally, socially, economically.
- e) In accordance with the teachings of Islam promotion of cordial and friendly relations among members of different Indian Communities.
- f) Any male or female Muslim is eligible to become a member of the Applicant organization if he/she is of sound mind and fully agrees with the aims and objects of the Applicant Organization.

The Petitioner No.1 Organization is regularly involved in several philanthropic activities, some of the recent instances of the work done by the Petitioner No.1 Organization includes extending relief to Nepal Earthquake victims, extending relief for victims of fire in Pune, building of colonies for the homeless in Assam, extending relief to victims of flood in Kashmir and undertaking other relief work such as providing ambulances in the flood affected areas, rehabilitating the flood victims by building homes for them. Further the Petitioner No.1 organization has also built homes in Malegaon for the victims who lost their houses due to fire, built homes in Bihar for the victims who lost their houses

G

due to flood, has extended relief to the Rohingya refugees and has set up medical camps in tribal areas including the district of Palghar in Maharashtra. Apart from such services, the Petitioner No.1 organization has worked in several other areas affected by riot and natural calamities and has been spending huge amount of money for provision of Education, Medical and Legal Aid.

1937 The Petitioner No.1 organization campaigned for the demand that customary law should in no case take the place of Muslim Personal Law in British India which ultimately led to the enactment of the Muslim Personal Law (Shariat) Application Act,1937.

22.08.2017 This Hon'ble Court declared instantaneous triple talaq unconstitutional *vide* its judgment dated August 22,2017 rendered in *Shayara Bano v. Union of India & Ors.* (2017)9 SCC 1. It is relevant to note that the Petitioner No. 1 herein was a party in the said proceedings and had submitted that triple talaq was protected under Article 25 and 26 of the Constitution of India and formed part of the personal laws of the Hanafi Muslims under Sharia. However, after the judgment of the Hon'ble Supreme Court in the *Shayara Bano Case*, the parties have been abiding by the same.

H

- 19.09.2018 The Central Government promulgated the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 providing inter alia as follows:
- a) '*Talaq*' means '*talaq-e-biddat*' or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.
 - b) Any pronouncement of talaq by a Muslim Husband upon his wife shall be void and illegal.
 - c) Such pronouncement shall be a non bailable offence and would be punishable with imprisonment of upto 3 years and fine.
- 10/12.01.2019 Since the Triple Talaq ordinance was to expire on January 22,2019, the Government of India on January 10,2019, re-promulgated the Ordinance which received the assent of the President on January 12,2019.
- 21.02.2019 The Central Government again promulgated the Ordinance for the third time.
- 31.07.2019 The third ordinance was set to expire on August 29,2019, however before that the Parliament passed the Muslim Women (Protection of Rights on Marriage) Act, 2019 which received the assent of the President on July 31,2019.

I

It is submitted that Clause 3 to Section 1 of the Impugned Act provides that Impugned Act shall be deemed to have come into force on September 19, 2018.

06.08.2019 It is submitted that the Impugned Act has been enacted without the existence of any reasonable ground to criminalise the act of pronouncement to triple talaq despite the said mode of instantaneous talaq already being declared unconstitutional. Therefore, criminalization of an act which has already been declared unconstitutional by this Hon'ble Court in *Shayara Bano v. Union of India* (2017) 9 SCC 1 is manifestly erroneous being excessive and disproportionate. Further, the Impugned Act fails in any manner to protect the rights of Muslim Women even as per its own envision as elaborated in the preamble of the Act.

06.08.2019 Hence, the Present Writ Petition.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2019

IN THE MATTER OF:

1. JAMIAT ULAMA-I-HIND

Petitioner No.1

2. MR. MUSTAQEEM AHSAN AZMI

... Petitioner No.2

-VERSUS-

1. UNION OF INDIA
Through the Secretary,
Ministry of Law and Justice,
Shastri Bhawan, New Delhi

... Contesting
Respondent No.1

2. UNION OF INDIA
Through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi- 110001

... Contesting
Respondent No.2

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA
TO DECLARE THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON
MARRIAGE) ACT, 2019 AS UNCONSTITUTIONAL.**

To,

The Hon'ble Chief Justice of India
and his companion justices of the
Hon'ble Supreme Court of India

The humble petition of the
above named Petitioners:

MOST RESPECTFULLY SHOWETH:

1. By way of the present Writ Petition under Article 32 of the Constitution of India, the Petitioners herein seek the kind indulgence of this Hon'ble Court for declaring the Muslim Women (Protection of Rights on Marriage) Act, 2019 (hereinafter referred to as the "Impugned Act") unconstitutional as the same is violative of Articles 14, 15 and 21 of the Constitution of India and has been enacted, criminalizing mere pronouncement of *triple talaq*, which had already been declared unconstitutional and void by this Hon'ble Court *vide* its judgment dated August 22, 2017 rendered in *Shayara Bano vs Union of India & Ors. (2017)9 SCC 1*.

1A. That the necessary details of the Petitioner No.2 required to be disclosed as per the rules are as follows:-

(i) Name :-

(ii) Address :-

(iii) E-mail :-

(iv) Mobile Number :-

(v) Personal Identification Proof have been enclosed;

(vi) Occupation :-

(vii) PAN Number:-

(viii) UID (Aadhaar Number):-

1B. The facts constituting the cause of Action accrued on September 19, 2018 when Central Government promulgated the Muslim Women

(Protection of Rights on Marriage) Ordinance, 2018 which made pronouncement of *talaq-e-biddat* or any other similar form of talaq by a Muslim man, a non bailable offence punishable with imprisonment of upto 3 years and fine and subsequent dates of January 10,2019 and February 21,2019 when the Ordinance, 2018 was re-promulgated by the Central Government and again on July 31, 2019 when the Muslim Women (Protection of Rights on Marriage) Act, 2019 passed by Parliament received the assent of the President.

1C. The injury is caused to the public by the nature of provisions being introduced by the Impugned Act whereby by *talaq-e-biddat* or any other similar form of talaq by a Muslim man is made a non bailable offence punishable with imprisonment of upto 3 years and fine. It is submitted that marriage is civil contract as per Islamic Law and talaq is only a mode to repudiate the contract. Therefore, imposition of criminal liability for a civil wrong violates the Fundamental Rights of Muslim men, on whose behalf the Petitioners have filed the present Petition.

1D. That the Petitioners have no personal interests, individual gain, private motive or oblique reasons in filing this petition. It is not guided by the gain of any other individual, institution or body. There is no motive other than public interest.

1E. There is no civil, criminal or revenue litigation, involving the Petitioners, which has or could have legal nexus, with the issue involved in this Petition and it is *bona fide*.

1F. There is no requirement to move the Central Government or any other public authority for relief sought in this writ petition. There is no other remedy available except approaching this Hon'ble Court except by way of the instant petition under the Article 32.

2. The brief facts leading to the filing of the present Writ Petition are as under:-

- (i) The Petitioner No.1 organization was established in November, 1919 and the main aims and objectives of the Petitioner No.1 organization are inter alia as follows:
 - a) Protection of Islam, Islamic Culture, tradition, Islamic heritage and places of worship.
 - b) Protection and promotion of religious, cultural, educational and citizenship rights of the Muslim Community.
 - c) Reformation of religious, social and educational life of the Muslim community.
 - d) Establishment of such institutions, which could empower Muslims educationally, culturally, socially, economically.
 - e) In accordance with the teachings of Islam promotion of cordial and friendly relations among members of different Indian Communities.
 - f) Any male or female Muslim is eligible to become a member of the Applicant organization if he/she is of sound mind and fully agrees with the aims and objects of the Applicant Organization.
- (ii) The Petitioner No.1 Organization is regularly involved in several philanthropic activities, some of the recent instances of the work done by the Petitioner No.1 Organization includes extending relief to Nepal Earthquake victims, extending relief for victims of fire in Pune, building of colonies for the homeless in Assam, extending relief to victims of flood in Kashmir and undertaking other relief work such as providing ambulances in the flood affected areas, rehabilitating the flood victims by building homes for them. Further the Petitioner No.1 organization

has also built homes in Malegaon for the victims who lost their houses due to fire, built homes in Bihar for the victims who lost their houses due to flood, has extended relief to the Rohingya refugees and has set up medical camps in tribal areas including the district of Palghar in Maharashtra. Apart from such services, the Petitioner No.1 organization has worked in several other areas affected by riot and natural calamities and has been spending huge amount of money for provision of Education, Medical and Legal Aid.

- (iii) The Petitioner No. 1 organization campaigned for the demand that customary law should in no case take the place of Muslim Personal Law in British India which ultimately led to the enactment of the Muslim Personal Law (Shariat) Application Act, 1937.
- (iv) That the Petitioner No. 2 is a member of the working committee of the Petitioner No.1 Organization and being aggrieved by the nature of the provisions introduced by the Impugned Act, is also invoking his fundamental right under Article 32 to challenge the provisions of the Impugned Act.
- (v) This Hon'ble Court declared instantaneous *triple talaq* unconstitutional *vide* its judgment dated August 22, 2017 rendered in *Shayara Bano v. Union of India & Ors.* (2017)9 SCC 1. It is relevant to note that the Petitioner No. 1 herein was a party in the said proceedings and had submitted that triple talaq was protected under Article 25 and 26 of the Constitution of India and formed part of the personal laws of the Hanafi Muslims under Sharia. However, after the judgment of the Hon'ble Supreme Court in the *Shayara Bano Case*, the parties have been abiding by the same.

- (vi) On September 19,2018, the Central Government promulgated the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 providing *inter alia* as follows:
- a) '*Talaq*' means '*talaq-e-biddat*' or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.
 - b) Any pronouncement of *talaq* by a Muslim Husband upon his wife shall be void and illegal.
 - c) Such pronouncement shall be a non bailable offence and would be punishable with imprisonment of upto 3 years and fine.
- (vii) Since the Triple *Talaq* ordinance was to expire on January 22,2019, the Government of India on January 10,2019, re-promulgated the Ordinance which received the assent of the President on January 12,2019.
- (viii) On February 21,2019, the Central Government again promulgated the Ordinance for the third time.
- (ix) The third ordinance was set to expire on August 29,2019, however before that the Parliament passed the Muslim Women (Protection of Rights on Marriage) Act, 2019 which received the assent of the President on July 31,2019. The Impugned Act *inter alia* provides as follows:
- a) Impugned Act shall be deemed to have come into force on September 19, 2018
 - b) '*Talaq*' means '*talaq-e-biddat*' or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

- c) Any pronouncement of *talaq* by a Muslim Husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be *void* and illegal.
- d) Such pronouncement shall be a cognizable and non-bailable offence and would be punishable with imprisonment of upto 3 years and fine.

A copy of the Muslim Women (Protection of Rights on Marriage) Act, 2019 dated July 31, 2019 is annexed hereto and marked as **Annexure P-1 [Page Nos. 28 to 29]**.

- (x) It is submitted that the provisions of the Impugned Act, *qua* the criminality of the pronouncement of instantaneous *talaq*, are manifestly erroneous, being excessive and disproportionate and fails to satisfy intelligible differentia. Hence, the present Writ Petition.

3. That the Petitioners are therefore filing the present Writ Petition under Article 32 of the Constitution of India on the following amongst other grounds, which are taken without prejudice to one another:-

GROUND

- A. For that the preamble of the Impugned Act stipulates that the said Act has been enacted, *inter alia*, mainly to '*protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands*'. Furthermore, '*talaq*' has been defined to mean '*talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband*'. The fact, that no circumstance requiring the enactment of the Impugned Act existed in the first place, it is evident that such a form of divorce had already been declared unconstitutional by this Hon'ble Court *vide* the majority judgment of a Constitution Bench in *Shayara Bano v. Union of India & Ors.* (2017) 9 SCC 1 rendered on

August 22, 2017 and this Hon'ble Court did not express any opinion to criminalize the pronouncement of *talaq* by a Muslim husband.

- B. For that instead of addressing the core issues of implementation of the *Shayara Bano v. Union of India & Ors.* (2017) 9 SCC 1 judgment in order to protect the rights of married Muslim women, the Act seeks to merely reiterate what this Hon'ble Court had already declared to be the law of the land and criminalizes the pronouncement of *talaq* with incarceration upto three years. Apparently, the Impugned Act lost way to its intended ultimate object of protecting the rights of married Muslim women, as no rights, occasioned to such women after marriage, can be assured and/or guaranteed a protection by way of imposing punishment for incarceration upon the husband, who, is the only one as per the provisions of the Impugned Act, responsible for the maintenance of such hapless Muslim women and their children. Therefore, on this ground of inconsistency alone the said Act deserves to be declared unconstitutional.
- C. For that Section 3 of the impugned Act stipulates that pronouncement of *talaq* by a Muslim husband upon his wife shall be *void* and illegal. Furthermore, Section 4 of the Impugned Act stipulates that such husband, who pronounces *talaq*, as referred to under Section 3, shall be punished with imprisonment upto 3 years and shall also be liable to pay fine. It is submitted that this is an ill-conceived provision which imposes excessive and disproportionate punishment to an act of mere pronouncement of *talaq* completely disregarding the fact that the pronouncement is of no consequence after the *Shayara Bano v. Union of India & Ors.* (2017) 9 SCC 1. Moreover, it is evident from the fact that lesser punishment is prescribed for many offences which are far graver. Some such offences are Rioting (Section 147 of IPC – punishment of imprisonment upto 2 years or fine or both), Bribery (Section 171E of IPC– punishment of imprisonment of upto 1 year or

fine or both), Adulteration of food or drink intended for sale (Section 272 of IPC– punishment of imprisonment of upto 6 months or fine of Rs. 1000 or both), Punishment for causing death by negligence (Section 304 A– punishment of imprisonment of upto 2 years or fine or both), Rash driving or riding on a public way (Section 279– punishment of imprisonment of upto 6 months or fine of Rs. 1000 or both) etc.

- D. For that Section 5 entitles a married Muslim woman, on whom *talaq* has been pronounced, to receive subsistence allowance, as may be determined by the Magistrate, for her and her children. Though the provision intends well and aims to make a provision for the sustenance of the woman and her children, it does not consider as to how such a provision will be implemented, particularly if such man belongs to an economically weaker section of society. He would be unable to provide such a subsistence allowance, as he will be unable to undertake any work/job while being imprisoned. Moreover, the Impugned Act fails to consider as to who shall be liable to maintain the wife in case the husband is behind bars and/or is incapable in providing subsistence allowance to the wife and for maintenance of children.
- E. For that Section 7 of the Impugned Act makes the pronouncement of *talaq* (having the effect of instantaneous divorce) a cognizable and a non-bailable offence. It is submitted that even offences like Kidnapping (Section 363 of IPC) which are far more grave are bailable. Some other offences such as causing death by negligence (Section 304A of IPC), Concealment of birth by Secret Disposal of Body (Section 318 of IPC), Rash driving or riding on a public way (Section 279 of IPC), Bigamy (Section 494 of IPC), Marriage ceremony fraudulently gone through without lawful marriage (Section 496 of IPC) are also bailable, which show that such making the

pronouncement of instantaneous *talaq* non-bailable is far more excessive.

- F. For that it is a settled law that a statutory provision can be struck down on the ground of manifest arbitrariness, when the provision is capricious, irrational and/or without adequate determining principle, as also if it is excessive or disproportionate (Please see *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (para 101)). In fact, crime and punishment are two sides of the same coin and the punishment must fit the crime. The notion of 'just deserts' which requires that a sentence being imposed must be proportionate to the offender's culpability is applicable to criminal jurisprudence. (*Mohd. Arif @ Ashfaq v. The Registrar, Supreme Court of India*, (2014) 9 SCC 737) In view of the foregoing, it is submitted that the making pronouncement of instantaneous *talaq* a cognizable and a non-bailable offence, being punishable with an imprisonment of upto 3 years, is not only excessive but disproportionate, particularly when the same pronouncement can be made lawfully during a course of 3 months without any penal consequences.
- G. For that there are several more grave offences which are not punishable with such a stringent punishment and are bailable, in fact desertion of a wife by the Husband is not even an offence, this clearly shows that the provisions *qua* criminality of the pronouncement of instantaneous *talaq* are disproportionate and excessive.
- H. For that it is relevant to note that 'desertion' which plagues all the communities in the Indian Society is not a crime at all. In such circumstances, enacted an Act to declare *talaq* as *void* and impose criminal consequences on such pronouncement is excessive and disproportionate. Furthermore, the fact that 'desertion' has not been

criminalized yet, only furthers the assertion of the Petitioners that the Impugned Act is violative of Article 14 of the Constitution of India.

- I. For that the Impugned Act fails to address the real issue of implementation of a provision which declares instantaneous *talaq void*. Moreover, no attempt has been made to establish as to how such a severe and disproportionate punishment is reasonable and/or even necessary in the present circumstances.
- J. For that a Muslim Marriage is in the nature of a civil contract between the two parties, i.e., the husband and the wife, therefore, an Act which interferes with a private contract between the parties ought not to have been enacted.
- K. For that the Impugned Act by making a husband criminally culpable has failed to take in to account that the pronouncement of *talaq* is already *non est* in law after the judgment in *Shayara Bano v Union of India* (2017) 9 SCC 1 and the criminalization of mere utterance of *talaq* (leading to instantaneous divorce) would in fact lead to excessive interference with the institution of marriage and may cause irretrievable breakdown of the marriage.
- L. For that Section 6 of the Impugned Act provides that notwithstanding anything, in the event of pronouncement of *talaq*, the wife shall be entitled to the custody of her minor children. It is submitted that such a wide, all-encompassing provision, which leaves no scope whatsoever, for the custody of the children to be given to the husband or the grandparents or any other agnate or cognate relative, is arbitrary as it does not provide for any exceptional circumstances. It is relevant to note that there might arise circumstances when it is in the interest of the minor children that they be given in the custody of someone other than their mother, for instance, when the mother is of unsound mind or when the mother is not willing to look after the

children or when the children are unwilling to reside with the mother. However, Section 6 of the Impugned Act does not even envisage the existence of any such exceptional circumstances and provides an all-encompassing, overarching provision in favour of the wife, without taking into consideration the best interests of the children.

- M. For that it is relevant to note that punishment for any crime must be in proportion to the culpability of the criminal conduct and it is what the perpetrator deserves for his crime. The scale itself must be pitched at a level neither too high nor too low. Even though punishments for different crimes might not be out of proportion to one another on the scale, the scale itself might be generally and of proportion as uniformly excessive or uniformly deficient. In the present matter, in view of the fact that several offences of more serious nature are not punishable with a term of 3 years, it is apparent that such imprisonment of 3 years is excessive and disproportionate.
- N. For that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for the crime. The ultimate justification of serious or grave punishment cannot be that it is a deterrent, but it can be that the punishment is the emphatic denunciation by the community for the crime. It is from this point of view, there are some crimes/offences which demand the emphatic denunciation, however, the present case is not covered under it.
- O. For that the justification of a sentence of imprisonment or a similar measure depriving the liberty is ultimately to protect the society against crime. This can be achieved only if the period of imprisonment is used to ensure that upon his return to society, the offender is not only willing but also able to lead a law-abiding and self-supporting life. However, prescribing an imprisonment of 3 years is too grave with respect to the concerned offence, especially when the

pronouncement of *triple talaq* has been recently made an offence by the Impugned Act.

- P. For that the object of punishment must not be to wreak vengeance but to reform the criminal as to prevent him from further crime.
- Q. For that the Impugned Act has been given retrospective effect from September 19,2018 and it is settled law that criminal liability cannot be introduced with retrospective effect.
- R. For that principle which is generally applied in prescribing a punishment for an offence is that the sentence is imposed for the protection of the public; it should not exceed the maximum merited by the gravity of the offence. Needless to say, that severity of punishment should be linked to the antecedents and various social factors attending the criminal along with the nature of crime. However, the fact that pronouncement of *talaq* having the effect of instantaneous divorce has already been declared unconstitutional, a stringent punishment of imprisonment upto 3 years is not merited.
- S. For that the Impugned Act suffers from internal inconsistency, wherein, on one hand it seeks to protect the rights of married Muslim women and on the other hand, by criminalizing the utterance of *talaq* leading to instantaneous divorce, the very object and scope of reconciliation is left out from the wedlock.
- T. For that the Impugned Act fails to recognize that Muslim marriage is a form of civil contract, duly protected by Muslim Personal Law (Shariat) Application Act, 1937 and that "*triple talaq*" was merely a mode of termination of the same. It is submitted that whilst a mode can be declared as invalid mode of termination of a civil contract, as already done by this Hon'ble Court in the *Shayara Bano Case* (supra), it cannot be used as a tool to invoke criminality in the same.

- U. For that the Impugned Act fails to justify the State coercion in putting the husband behind the bars within the precincts of Article 21 of the Constitution of India. This Hon'ble Court has itself clarified in the judgment of *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 that a law which takes away the liberty of citizen under Article 21, must be fair, just and reasonable. It is submitted that the Impugned Act, by criminalizing mere utterance of "*talaq*" wherein in the said pronouncement does not lead to termination of marriage, is nothing but an example of over criminalization.
- V. For that the Impugned Act by providing for imprisonment of the husband fails to ensure cordiality in marriage and would in fact, lead to irretrievable breakdown of the marriage.
- W. For that the Impugned Act has failed to distinguish between the major and minor crimes in the scheme of the Indian Penal Code, 1860. Furthermore, Sections 3 and 4 of the Impugned Act by criminalizing the mere pronouncement of *talaq* has failed to consider the plight of under trials and the overburdened judiciary in the criminal justice system in the country.
- X. For that the Impugned Act in meeting its twin objectives of declaring *talaq* (leading to instantaneous divorce) as illegal and its pronouncement as a crime, failed to consider that the illegality of such a pronouncement is *res integra* and that attracting criminality to such an utterance, assuming but not conceding is cruel, can be covered under other existing legislations like Indian Penal Code, 1860 and the Protection of Women from Domestic Violence Act, 2005.
- Y. For that in the absence of any compelling State interest, the Impugned Act criminalizing mere pronouncement of "*talaq*" (leading to instantaneous divorce) is not in conformity with the mandate of Article 21.

- Z. For that even though in several Islamic Countries pronouncement of *triple talaq* is considered invalid and the three pronouncements made instantaneously are regarded only as one pronouncement. It is relevant to note that there is no punishment, whatsoever, that has been prescribed for mere pronouncements. Thus, mere pronouncement of *triple talaq* has not been declared to be an offence and consequently, has not been made punishable.
- AA. For that it is settled law that a Court, while exercising powers for grant of bail, is not bound to issue notice to the Complainant/Victim or hear them. However, Section 7(c) of the Impugned Act stipulates that no bail shall be granted without hearing the Muslim woman upon whom *talaq* is pronounced. It is submitted that this is a clear departure from the settled principles of Criminal Law. Furthermore, there maybe cases where the Muslim woman is unable to appear before the Learned Magistrate, in such cases the detained husband will suffer for no fault, even if reasonable grounds for bail exist.
- BB. For that the practice of deserting/abandoning the wife which exists in all communities is not a criminal offence at all, in such circumstances only criminalizing the act of pronouncement of *talaq* resulting in instantaneous divorce, which is limited to only one particular community, i.e., the Muslims, results in unfair discrimination against the Muslim husbands.
- CC. For that criminalizing a mode of divorce in one particular religion while keeping the subject of marriage and divorce in other religions only within the purview of civil law, also leads to discrimination, which is not in conformity with the mandate of Article 15.
- DD. For that the Impugned Act does not define marriage, and it is implied that the definition of the said term has to be derived from Sharia Law wherein 'Marriage' is regarded as a civil contract. It is submitted that

talaq is nothing but a repudiation of such a civil contract. It is pertinent to mention that not only does the Impugned Act criminalizes such form of repudiation but it also imposes a standard of strict liability, as no element of *mens rea* has been mandated in the provisions of the Impugned Act and mere pronouncement has been made an offence.

- EE. For that desertion of a wife by husband has not been declared an offence under any other law governing other religions, therefore, the Impugned Act even fails to qualify intelligible differentia. For the reason of criminalization of the pronouncement of *talaq* being *void* in itself, the ultimate object of the Impugned Act has got vitiated and blemished. It is submitted that the Impugned Act had been enacted for the protection of rights of a Muslim woman after marriage and therefore, qualifies to be a welfare oriented legislation, thus, there was no point of declaring an act of mere desertion a cognizable offence and imposing a serious incarceration upon the husband for doing an act which ultimately amounts to nothing.
- FF. For that criminalization of an offence should not be used if it may not be effective in controlling the act in question. The Impugned Act is bound to fail, especially in cases of oral *talaq* divorce given by husbands when no one other than the couple was present, as discharging such burden of proof would definitely be a herculean or almost an impossible task for the one facing prosecution.
- GG. For that the State shall not make any law violating the fundamental rights of the citizens of the country, therefore, the Impugned Act, being evidently operating in contravention of the fundamental rights ought to be declared unconstitutional.

4. The Petitioners have not filed any other Petition either before this Hon'ble Court or before any High Court seeking the same and/or similar directions as prayed for in the present Writ Petition.

5. The Petitioners have not approached any other Court for the reliefs claimed in this Petition. It is further submitted that no representation has been filed with any authority since constitutional validity of an Act is under challenge and the reliefs claimed herein can only be granted by this Hon'ble Court.

6. In the aforesaid premises and in the interests of justice, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:-

PRAYER

- (a) declare that the Muslim Women (Protection of Rights on Marriage) Act, 2019 is unconstitutional being violative of Articles 14, 15 and 21 of the Constitution of India; and/or
- (b) pass such other/further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN DUTY BOUND, SHALL EVER PRAY.

FILED BY:-

New Delhi

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2019

IN THE MATTER OF:-

JAMIAT ULAMA-I-HIND & ANR. ... PETITIONERS

VERSUS

UNION OF INDIA & ANR. ... RESPONDENTS

AFFIDAVIT

I,

do hereby solemnly affirm and state as under:-

1. That I am the Member of Working Committee of the Petitioner No.1 and Petitioner No.2 in the above mentioned Writ Petition and as such I am well conversant with the facts and circumstances of the case and competent to swear the present affidavit on my own behalf and also on behalf of the Petitioner No.1.
2. That I have gone through a copy of the Synopsis and List of Dates running from pages B to I and a copy of the Writ Petition from paragraphs 1 to 6 running from pages 1 to 17 and I state that the contents thereof are true and correct to my knowledge and belief.
3. That I have gone through a copy of the Interlocutory Application and state that the contents thereof are true and correct to my knowledge and belief.
4. That the annexures annexed to the present Writ Petition are true and correct copies of their respective originals.

5. That the Petitioners have no personal interests, individual gain, private motive or oblique reasons for filing the present petition. The present petition is not guided for the gain of any individual person, institution or body and there is no motive other than Public Interest in filing the present Petition.

DEPONENT

VERIFICATION

Verified at Mumbai on this _____ that the contents of the above Affidavit are correct and true to the best of my knowledge, belief and nothing material has been concealed therefrom.

DEPONENT

APPENDIX – (I)

INDIAN PENAL CODE, 1860

Section 171E – Punishment for bribery. – Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.- “Treating” means that form of bribery where the gratification consists in food, drink, entertainment, or provision.]

Section 177 – Furnishing false information. – Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

- (a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

- (b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause, 5, section VII, 1[Regulation III, 1821], of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the later part of this section. 2[Explanation.—In section 176 and in this section the word “offence” includes any act committed at any place out of 3[India], which, if committed in 3[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word “offender” includes any person who is alleged to have been guilty of any such act.]

Section 272 – Adulteration of food or drink intended for sale. – Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 279 – Rash driving or riding on a public way. – Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term

which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 304A – Causing death by negligence. – Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

Section 318 – Concealment of birth by secret disposal of dead body. Whoever, by secretly burying or otherwise disposing of the death body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 363 – Punishment for kidnapping. – Whoever kidnaps any person from ¹[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 494 – Marrying again during lifetime of husband or wife. – Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(Exception)—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at

the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

Section 496 – Marriage ceremony fraudulently gone through without lawful marriage. – Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

// TRUE COPY //

APPENDEX – (II)

THE CONSTITUTION OF INDIA, 1949

Article 14 - Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them;
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to;
 - (a) access to shops, public restaurants, hotels and palaces of public entertainment; or
 - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children;
- (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any

socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 21 - Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 32 - Remedies for enforcement of rights conferred by this Part-

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed;
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part;
- (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2);
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

// TRUE COPY //

APPENDIX – (III)

**THE MUSLIM WOMEN
(PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019****Section 3 – Talaq to be void and illegal**

Any pronouncement of *talaq* by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

Section 4 – Punishment for pronouncing talaq

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

Section 6 – Custody of Minor children

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

Section 7 – Offence to be Cognizable Compoundable etc.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

- (a) an offence punishable under this Act shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon

whom *talaq* is pronounced or any person related to her by blood or marriage;

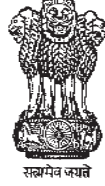
(b) an offence punishable under this Act shall be compoundable, at the instance of the married Muslim woman upon whom *talaq* is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;

(c) no person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom *talaq* is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

// TRUE COPY //

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—19

REGISTERED NO. DL—(N)04/0007/2003—19



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 39] नई दिल्ली, बुधवार, जुलाई 31, 2019/ श्रावण 9, 1941 (शक)
No. 39] NEW DELHI, WEDNESDAY, JULY 31, 2019/SHRAVANA 9, 1941 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 31st July, 2019/Shravana 9, 1941 (Saka)

The following Act of Parliament received the assent of the President on the 31st July, 2019, and is hereby published for general information:—

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019

No. 20 OF 2019

[31st July, 2019.]

An Act to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Muslim Women (Protection of Rights on Marriage) Act, 2019.

Short title,
extent and
commencement.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 19th day of September, 2018.

2. In this Act, unless the context otherwise requires,—

Definitions.

21 of 2000.

(a) "electronic form" shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000;

2 of 1974.

(b) "Magistrate" means a Judicial Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973, in the area where the married Muslim woman resides; and

(c) "*talaq*" means *talaq-e-biddat* or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

CHAPTER II

DECLARATION OF *TALAQ* TO BE VOID AND ILLEGAL

Talaq to be void and illegal.

3. Any pronouncement of *talaq* by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

Punishment for pronouncing *talaq*.

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

CHAPTER III

PROTECTION OF RIGHTS OF MARRIED MUSLIM WOMEN

Subsistence allowance.

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

Custody of minor children.

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

Offence to be cognizable, compoundable, etc.

7. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— 2 of 1974.

(a) an offence punishable under this Act shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom *talaq* is pronounced or any person related to her by blood or marriage;

(b) an offence punishable under this Act shall be compoundable, at the instance of the married Muslim woman upon whom *talaq* is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;

(c) no person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom *talaq* is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

Repeal and savings.

8. (1) The Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019 is hereby repealed.

Ord. 4 of 2019.

(2) Notwithstanding such repeal, anything done or any action taken under the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019, shall be deemed to have been done or taken under the provisions of this Act.

Ord. 4 of 2019.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I. A. NO. OF 2019

IN

WRIT PETITION (CIVIL) NO. _____ OF 2019

IN THE MATTER OF:-

Jamiat Ulama-i-Hind & Anr. ... Applicants/Petitioners

VERSUS

Union of India & Anr. ... Respondents

APPLICATION FOR INTERIM EX-PARTE STAY

To,

Hon’ble the Chief Justice of India
and his companion judges of the
Supreme Court of India

The humble application of the
above named
Applicants/Petitioners:

MOST RESPECTFULLY SHEWETH :

1. The Applicants/Petitioners have preferred the above Writ Petition under Article 32 of the Constitution of India seeking the kind indulgence of this Hon’ble Court for declaring that the Muslim Women (Protection of Rights on Marriage) Act, 2019 (hereinafter referred to as the “Impugned Act”) is unconstitutional as the same is violative of Articles 14, 15 and 21 of the Constitution of India and has been enacted, criminalizing mere pronouncement of *triple talaq*, which had already been declared unconstitutional and void by this Hon’ble Court *vide* its judgment dated August 22, 2017 rendered in *Shayara Bano vs Union of India & Ors.* (2017)9 SCC 1.

2. That the Applicants/ Petitioners submit that the grounds of the accompanying Writ Petition be taken to be a part of the present application and the said grounds are not being repeated herein.

3. That the present application is *bonafide* and in the interest of justice as grave prejudice and irreparable loss shall be caused to Muslim Husbands as the Impugned Act seeks to criminalize mere pronouncement of *talaq* by virtue of Sections 4 and 7. The Impugned Act provides for extremely stringent provisions, by making the mere pronouncement a cognizable and a non-bailable offence. Further, it also stipulates that bail shall not be granted to the Muslim Husband without hearing the Muslim Woman upon whom *talaq* is pronounced, which is a clear departure from settled principles of criminal law which do not mandate any hearing to the victim/complainant at the stage of grant of bail. Moreover, the Impugned Act fails to consider cases wherein the Muslim Woman is unable to appear before the Learned Magistrate or deliberately does not appear which would lead to a delay in the grant of bail to the Muslim Husband, even if good reasons for grant of bail exist. It is thus submitted that if these provisions are not immediately stayed then they might be misused causing wrongful deprivation of liberty.

4. Further Section 6 of the Impugned Act provides that notwithstanding anything, in the event of pronouncement of *talaq*, the wife shall be entitled to the custody of her minor children. It is submitted that such a wide, all-encompassing provision, which leaves no scope whatsoever for the custody of the children to be given to the husband or the grandparents or any other relative, is arbitrary as it does not provide

for any exceptional circumstances. It is relevant to note that there might arise circumstances when it is in the interest of the minor children that they be given in the custody of someone other than their mother, for instance when the mother is of unsound mind or when the mother is not willing to keep the children or when the minor children are unwilling to reside with the mother. However, Section 6 of the Impugned Act does not even envisage the existence of any such exceptional circumstances and provides an all-encompassing, overarching provision in favour of the wife, without taking into consideration the best interests of the children. It is submitted that if this provision is not stayed immediately, then there might arise circumstances where the custody of the children is handed over to the mother even though that is not in the best interest of the children.

5. That the present application is being filed *bonafide* and in the interests of justice.

6. That the Applicants/Petitioners therefore, most respectfully pray:-

PRAYER

- a) grant ad-interim ex-parte stay of the effect and operation of the Muslim Women (Protection of Rights on Marriage) Act, 2019; and/or
- b) declare that the enforcement of the Muslim Women (Protection of Rights on Marriage) Act, 2019 be stayed during the pendency off the present Writ Petition; and/or

- c) pass such other / further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE APPLICANTS/PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:-

New Delhi
Dated: