IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO 227 OF 2018

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

NAFISA KHAN …PETITIONER

VERSES

UNION OF INDIA & OTHERS ...RESPONDENTS

PAPER BOOK

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(ADVOCATE FOR PETITIONER: ASHWANI KUMAR DUBEY)

SYNOPSIS

Petitioner is filing this petition under Article 32 of the Constitution seeking a writ, order or direction in the nature of mandamus to declare Polygamy and Nikah-Halala, practiced in Muslim Community, illegal and unconstitutional for being violative of Articles 14, 15, 21 and 25 of the Constitution, and a declaration that Extra-Judicial Talaq is a cruelty under Section 498A of the IPC, Nikah-Halala is an offence under Section 375 of the IPC, and Polygamy is an offence under Section 494 of the IPC,1860.

Petitioner is a Muslim by religion, a Journalist, Post Graduate in Mass Communication, daughter of an ex-businessman, who is currently jobless, has no income and resident of B-3, Giriraj Apartment, 887-A,Ward No-6,Mehrauli, Delhi-110030.

Petitioner was married to Mr. Khalid Saiphulla resident of B-3 Giriraj Apartment, 887-A, Ward No-6, Mehrauli, Delhi-110030 on 05.06.2008 as per Muslim Shariyat rites and customs and has two male children from the wedlock.

Petitioner‟s parents had been compelled to give dowry time to time. Petitioner‟s in-laws said before the marriage that they do not want dowry but her father somehow managed to give cash as per his affordability. However, after the marriage, she was tortured for not getting big dowry. Petitioner‟s husband and his parents tortured her physically and mentally not only after the marriage but also tortured her during the pregnancy, and, eventually made her physically and mentally ill.

Petitioner‟s husband demanded additional dowry in the form of cash, which her family was unable to provide. Whenever, anything required in the home, petitioner‟s husband directly called her parents and ask either to send money or the required thing. Her Husband‟s father and mother always taunt her and torture her for not bringing money from her parents. Her Husband uses to beat her on small issues like less salt in food, or more sugar in tea etc.

Due to unreasonable demands and torturous behavior of the husband, petitioner was forced to leave the House and one day petitioner‟s husband beats her, throws her luggage outside and asks her to leave. She firstly left the house on 24.11.2015 and lived separately for almost six months till 30.05.2016. Petitioner‟s husband apologized and promised not to repeat the cruel behavior again but after two months he again use to beat the petitioner on petty issues like getting little late in waking up or giving food or tea etc. Petitioner‟s husband again throws her luggage, burns clothes, during one such episode and asks her to leave the house after beating her badly. She again left the house on 28.03.2017. She had visible marks on the face, even her office colleagues noticed.

Petitioner‟s husband torture her, suspects her character, calls her characterless and prostitute without any reason, and, ultimately, married with a woman on 26.01.2018 without taking legal divorce from her. Petitioner submitted a complaint but Police is not lodging the FIR under Section 494 and 498A of the IPC stating that Polygamy is permitted under the Sharia. Hence, this petition.

LIST OF DATES

05.06.2008: Petitioner married to one Mr. Khalid Saiphullah.

Sep. 2008: Petitioner‟s husband tortured and beats firsttime.

Feb. 2010: After the birth of the first Child, her Husband again beats her badly on petty issues, which continues till the time she left the home finally in 2017. There was a horrible incident where she was making tea in the kitchen and her elder son was sitting on a slab. She went to give tea and kid somehow fell down. This makes her husband so furious that he blames her for this and kicked badly.

Dec. 2010: Petitioner conceived second time and during the pregnancy, husband used to beat her, snatches food from her, locked her inside room without food and medicine, and refuses to take her to the doctor. In addition, he uses to say all the time that he needs son only, not daughter.

09.09.2011: Blessed with second son Master Arsalan Ali

17.09.2011: Petitioner lodged Complaint after her Husband beaten her and insulted her mother. When Police reaches, her husband ran away. Next day he appears before Police and apologies again.

October 2011: Petitioner went to her father's home as she was facing difficulties in taking care of her children and herself after delivery.

Oct 2012: Petitioner‟s Husband beat her when she was ill with a high viral fever. This was the point when she breaks down and thinks of committing suicide. She filed a complaint with Women cell. A counselor from Women Cell came to her house and talked to her husband and in-laws. Her Husband signed the written apology and she also signed document on counselor‟s suggestion. But, all this goes in vain as he continues with taunting, abusing and beating.

Apr 2013: Petitioner‟s Husband had beaten her up badly on the baseless complaint of her mother-in-law. She left house and was thinking of committing suicide but she thinks of her children, went to women cell again, and applies for Divorce. But, her husband again apologies and settled the whole matter.

June 2013: Petitioner‟s Husband received Divorce Summon from Court. This makes her husband furious and forced her to take the complaint back and she took complaint back in hope of getting things settled.

2014: Petitioner remains unwell but husband refuses to provide any help in treatment so she decided to work and starts searching job. On the first day of Ramzaan, she gets little late in serving food, to which he reacted strongly, throws the food on her, abuses and kicked her badly. In one of the incident

when she cooked food for guest (Uncle's daughter and son-in-law) in desi ghee, husband gets angry and beats her in front of guests itself. Petitioner forced her for unnatural sex to torture her.

January 2015: Petitioner gets a hint of Husband having an affair with a lady. He started sleeping in the separate room. She came to know about the affair from the mobile messages. She asks husband's parents to intervene but this makes him angrier.

May 2015: Petitioner Husband planned everything secretly, took her and children to hometown, and asked for a divorce in village's Panchayat. Even during Panchayat, he misbehaved with her. This time Panchayat member supports her and rejected husband's demand for divorce. Then her husband left her and children in the village and came back.

Sep 2015: Petitioner came back to home with Children and joined office. Husband started suspecting her character and called her prostitute/characterless. Unnatural Sexual torture was going on. He literally forced her for sex even if she is not well or tired. He was not at all ready to adjust even a bit. He needs everything on time and any delay results in all kind of torture including physical and sexual. He tries everything to stop her from going to the office.

Nov 2015: Daily fights, abuse, beating and torture make her children scared. On one such day, her husband's brutal behaviour makes her to lose her patience and left home as he beats her and ask her to leave the house, throws her clothes out of the house.

May 2016: Again after almost 6 months she went back to the house as she was worried about her children's safety. All went well for next 2 months and then again, he started abusing, suspecting her character and beating. On the occasion of Bakrid, he starts beating her by taking the false excuse that she didn't do Salaam to his mother, when she defends and raises her voice he locked her inside room for the whole day without food and water.

26.01.2018: Petitioner‟s husband married with a woman without taking legal divorce from her.

09.02.2018: Petitioner submitted complaint to DCP, Delhi and requested to lodge complaint against her husband under Section 494 and 498A of the Indian Penal Code,1860, but FIR was not lodged till date.

14.03.2018: Polygamy and Nikah Halala is violative of fundamental right guaranteed under Article 14, 15, 21 and 25 of the Constitution and also injurious to public order, morality and health. Hence, this petition in larger public interest.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. OF 2018

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Nafisa Khan
[redacted]

… Petitioner

VERSUS

1. Union of India,
   Represented by the Secretary,
   Ministry of Women and Child Development,
   Shastri Bhawan, „A‟ Wing,
   Dr. Rajendra Prasad Road,
   New Delhi - 110 001

2. Ministry of Law and Justice,
   Represented by the Secretary,
   Department of Legal Affairs,
   Shastri Bhawan, „A‟ Wing,
   Dr. Rajendra Prasad Road,
   New Delhi - 110 001

3. Ministry of Minority Affairs,
   Represented by the Secretary,
   11th Floor, Paryavaran Bhawan,
   CGO Complex, Lodhi Road,
   New Delhi - 110 001

4. National Commission for Women,
   Represented by the Chairperson,
   Plot 21, Jasola Institutional Area,
   New Delhi - 110025

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION SEEKING A WRIT, ORDER OR DIRECTION IN THE NATURE OF MANDAMUS DECLARING THE PRACTICES OF POLYGAMY AND NIKAH-HALALA UNDER MUSLIM PERSONAL LAWS AS ILLEGAL, UNCONSTITUTIONAL FOR BEING VIOLATIVE OF ARTICLES 14, 15, 21 AND 25 OF THE CONSTITUTION, AND TO PASS SUCH FURTHER ORDERS AS THIS HON‟BLE COURT MAY DEEM APPROPRIATE TO PROVIDE A LIFE OF DIGNITY UNMARRED BY ANY DISCRIMINATION TO MUSLIM WOMEN

TO,

THE HON"BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. This is a Writ Petition under Article 32 of the Constitution of India praying for a direction to the Union of India and others seeking a writ or order or direction in the nature of mandamus declaring the practices of *nikah halala* and polygamy under Muslim personal laws as illegal, unconstitutional for being violative of Articles 14, 15, 21 and 25 of the Constitution, and to pass such further orders as this Hon"ble Court may deem appropriate to provide a life of dignity to Muslim women. This petition is filed by the Petitioner in larger public interest.

2. The Petitioner has not approached any other court for the reliefs claimed in the present Writ Petition. No representation has been filed with any authority since the constitutional validity of a statute is under challenge and the reliefs claimed can only be granted by this Hon"ble Court.

3. The Petitioner is a female citizen of India and a Muslim by religion. She holds a Post-Graduate degree in Mass Communication, is presently working as journalist.

4. On 05.06.2008, the Petitioner got married to Mr. Khalid Saiphulla, [redacted] as per Muslim Shariat rites and customs. She bore two children from the wedlock.

5. The Petitioner had a deeply disturbed married life that included dowry demands and various forms of torture and harassment at the hands of her husband as well as her in-laws. Ultimately, on 26.01.2018, the Petitioner‟s husband married another woman without obtaining a legal divorce from the Petitioner. Thus, immense mental agony and harassment was caused to the Petitioner.

6. The Petitioner submitted a complaint to the Police and requested that a FIR be lodged against her husband under Section 494 of the Indian Penal Code, 1860 (the "**IPC**"). However, no complaint has been lodged till date.

7. Muslim Personal Law permits Muslim men to have up to four wives at once. Therefore, by virtue of Muslim Personal Law, S.494 is rendered inapplicable to Muslims, and no Muslim wife has the avenue of filing a complaint against her husband for the offence of bigamy. This is in blatant contravention of Articles 14, 15 and 21 of the Constitution of India.

8. This Hon‟ble Court had not only observed that gender discrimination against Muslim women needs to be examined, but had also been pleased to direct that a PIL be separately registered for which notices were directed to be issued to the Ld. Attorney General and the National Legal Services Authority, New Delhi. Referring to ***John Vallamattom v. Union of India, (2003) 6 SCC 611***, it was observed in ***Prakash and Others v. Phulavati and Others, Civil Appeal***

No. 7217 of 2013 decided on 16.10.2015, that laws dealing with marriage and succession are not a part of religion, the law has to change with time, and international covenants and treaties could be referred to examine validity and reasonableness of a provision. Accordingly, Court directed that issue of gender discrimination against Muslim women under Muslim personal laws, specifically the lack of safeguards against arbitrary divorce and second marriage by a Muslim husband during the currency of first marriage notwithstanding the guarantees of the Constitution, may be registered as a PIL and heard separately.

9. A perusal of the decisions of this Hon‟ble Court in ***Prakash v. Phulavati*** (supra), ***Javed and Others v. State of Haryana and Others, (2003) 8 SCC 369***, and ***Smt. Sarla Mudgal, President, Kalyani and Others v. Union of India and Others, (1995) 3 SCC 635*** illustrates that the practice of polygamy has been recognised as injurious to public morals and it can be superseded by the State just as it can prohibit human sacrifice or the practice of *sati*. In fact, in ***Khursheed Ahmad Khan v. State of Uttar Pradesh and Others, (2015) 8 SCC 439***, this Hon‟ble Court has also taken the view that practices permitted or not prohibited by a religion do not become a religious practice or a positive tenet of the religion, since a practice does not acquire the sanction of religion merely because it is permitted.

10. It is accordingly submitted that a ban on polygamy has long been the need of the hour in the interest of public order and health. It is further submitted that this Hon‟ble Court has already expressed the view that polygamy is not an integral part of religion and Article 25 merely protects religious faith, but not practices which may run counter to public order, morality or health.

11. The practice of *polygamy* is neither harmonious with the modern principles of human rights and gender equality, nor an integral part of Islamic faith. Many Islamic nations have banned or restricted/regulated such practice, while it continues to vex the Indian society in general and Indian Muslim women like the Petitioner in particular. It is submitted that the practice also wreaks havoc to the lives of many women and their children, especially those belonging to the weaker economic sections of the society.

12. While Muslim women cannot engage in a polyandrous marriage, Muslim men claim to have a right to re-marry. Such discrimination and inequality hoarsely expressed in the form of polygamy is abominable when seen in light of the progressive times of the 21st century.

13. Polygamy has been recognised as an evil plague similar to *sati* and has also been banned by law in India for all but Muslim men. Unfortunately, even in the 21st century, it continues to vex Muslim women notwithstanding that such

practice poses extremely serious health, social, economic, moral and emotional risks. It is submitted that religious officers and priests like *imams, maulvis*, etc. who propagate, support and authorise the practice are grossly misusing their position, influence and power to subject Muslim women to such gross practice which treats them as chattel, thereby violating their fundamental rights enshrined in Articles 14, 15, 21 and 25 of the Constitution.

14. It has been noted in ***Smt. Sarla Mudgal*** (supra) that bigamous marriage has been made punishable amongst Christians by the Christian Marriage Act, 1872 (No. XV of 1872), amongst Parsis by the Parsi Marriage and Divorce Act, 1936 (No. III of 1936), and amongst Hindus, Buddhists, Sikhs and Jains by the Hindu Marriage Act, 1955 (No. XXV of 1955). However, the Dissolution of Muslim Marriages Act, 1939 does not secure for Indian Muslim women the protection from bigamy which has been statutorily secured for Indian women belonging to all other religion. It is submitted that the citizens of India who followed religions other than Islam also traditionally practiced polygamy, but the same was prohibited not only because laws dealing with marriage are not a part of religion, but also because the law has to change with time and ensure a life of dignity unmarred by discrimination on the basis of gender. It is further submitted that the failure to secure the same equal rights and life of dignity for Muslim women violates their most

basic human and fundamental right to life of dignity unmarred by gender discrimination, which in turn have a critical impact on their social and economic rights to say the least.

15. In ***State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84***, wherein the constitutional validity of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 was challenged on the ground of violation of Articles 14, 15 and 25 of the Constitution, a Division Bench consisting of Chief Justice Chagla and Justice Gajendragadkar (as His Lordship then was), held that a sharp distinction must be drawn between religious faith and belief and religious practices, since the State only protects religious faith and belief while religious practices that run counter to public order, morality or health or a policy of social welfare must give way to the good of the people of the State. It is submitted that this view has been referred to with approval by this Hon‟ble Court in ***Khursheed Ahmad Khan*** (supra).

16. The observations of the Constitution Bench in ***Danial Latifi & Another v. Union of India, (2001) 7 SCC 740***, are of utmost relevance. This Hon‟ble Court stated that when interpreting provisions where matrimonial relationship was involved it has to consider the social conditions prevalent in our society, where a great disparity exists in the matter of economic resourcefulness between a man and a woman whether they belong to the majority or the minority group, since our society

is male dominated both economically and socially and women are invariably assigned a dependent role irrespective of the class of society to which they belong. This Hon'ble Court further observed that solutions to societal problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity, decency of life, and dictates of necessity in the pursuit of social justice should be invariably left to be decided on considerations other than religion or religious faith/beliefs/sectarian, racial/communal constraints.

17. The Bharatiya Muslim Mahila Andolan had written to the Prime Minister seeking codification of Muslim personal law as per a draft based on Quranic tenets prepared by them and sought that certain prevalent practices be declared illegal, including the practice of *talaq-e-bidat* and polygamy.

18. A high-level committee set up by the Union Government, in its report to the Ministry of Women and Child Development in 2015 titled "Women and the law: An assessment of family laws with focus on laws relating to marriage, divorce, custody, inheritance and succession", had recommended a ban on various practices that are purportedly Islamic but require reform, including the practice of *talaq-e-bidat* and polygamy. According to a news article in the Hindustan Times titled "High-level panel seeks overhaul of family laws", the report of the high-level committee not only recommends a complete ban on triple-talaq as it renders Muslim wives extremely

insecure and vulnerable, but also recognises that equality should be the basis of all personal law since the Constitution envisages equality, justice and dignity for women. The news article also reports that it is the view of the high-level committee that the Dissolution of Muslim Marriages Act, 1939 must be amended to introduce specific provisions to render triple-talaq and polygamy void and to provide for statutory interim maintenance to Muslim women.

19. It is submitted that Muslim Personal Law (Shariat) Application Act, 1937, by providing for the application of Muslim personal law in matters relating to marriage where the parties are Muslims, conveys a wrong impression that the law sanctions the practices of *halala* and polygamy, which is grossly injurious to the fundamental rights of the married Muslim women and offends Articles 14, 15, 21 and 25 of the Constitution. It is, accordingly, submitted that the Muslim Personal Law (Shariat) Application Act, 1937, which is subject to the Constitution, is invalid in so far as it seeks to recognise and validate the practices of *nikah halala* and polygamy.

20. Muslim Personal Law Application Act, 1937, Section 2 reads:

"Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal properly inherited or obtained under contract or gift or any other provision of Personal Law.

marriage, dissolution of marriage, 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 religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law."

21. It is submitted that this provision, in so far as it seeks to recognise and validate *nikah halala* and polygamy, is void and unconstitutional as such practices are not only repugnant to the basic dignity of a woman as an individual but also violative of the fundamental rights guaranteed under Articles 14, 15, 21 and 25 of the Constitution.

22. The Constitution neither grants any absolute protection to the personal law of any community that is arbitrary or unjust, nor exempts personal laws from the jurisdiction of the Legislature or the Judiciary. To the contrary, Entry 5 of List III in the Seventh Schedule confers power on the Legislature to amend and repeal existing laws or pass new laws in all such matters (including marriage and divorce) which were on August 15, 1947, governed by personal laws.

23. The freedom of conscience and free profession, practice and propagation of religion guaranteed by Article 25 of the Constitution is not absolute and, in terms of Article 25(1), is "*subject to public order, morality and health and to the other provisions of this Part*". It is submitted that a harmonious

reading of Part III of the Constitution clarifies that the freedom of conscience and free profession, practice and propagation of religion guaranteed by Article 25 is subject to the fundamental rights guaranteed by Articles 14, 15 and 21. In fact, Article 25 clearly recognises this interpretation by making the right guaranteed by it subject not only to other provisions of Part III of the Constitution but also to public order, morality and health. It is further submitted that the concept of "constitutional morality" has been expounded by a 5-judge bench of this Hon"ble Court in ***Manoj Narula v. Union of India, 2014 (9) SCC 1*** wherein it was observed that the Constitution of India is a living instrument and the principle of constitutional morality essentially means to bow down to the norms of the Constitution and to not act in a manner which is arbitrary or violative of the rule of law. In this context, it was also observed by this Hon"ble Court that the traditions and conventions have to grow to sustain the value of such morality and the democratic values can survive and become successful when the people at large are strictly guided by the constitutional parameters, since commitment to the Constitution is a facet of constitutional morality.

24. It is submitted that the Legislature has failed to ensure the dignity and equality of women in general and Muslim women in particular especially when it concerns matters of marriage, divorce and succession. Despite the observations of this

Hon‟ble Court for the past few decades, Uniform Civil Code remains an elusive Constitutional goal that the Courts have fairly refrained from enforcing through directions and the Legislature has dispassionately ignored except by way of paying some lip service. However, it is submitted that laws dealing with marriage and succession are not part of religion and the law has to change with time, which finds support from the views expressed by this Hon‟ble Court in ***John Vallamattom*** (supra) and ***Prakash v. Phulavati*** (supra). It is further submitted that this Hon‟ble Court has already held that the issue of gender discrimination against Muslim women under Muslim personal laws, specifically the lack of safeguards against second marriage by a Muslim husband during currency of first marriage notwithstanding the guarantees of the Constitution, needs to be examined.

25. Eventually, the practice of instantaneous triple-talaq was declared illegal by a Constitution Bench of this Hon‟ble Court in ***Shayara Bano v. Union of India*** (2017) 9 SCC 1.

26. In the Islamic Republic of Pakistan, in terms of Section 6 of the Muslim Family Laws Ordinance, 1961, polygamy has been severely restricted by prescribing that a married man may not enter into another marriage without just reasons for the proposed marriage, seeking the consent of existing wife or wives, and obtaining the approval of an Arbitration Council established by the law, which Arbitration Council must

necessarily consult the existing wife or wives to consider whether the proposed marriage is necessary and just. Violation of this law has also been declared a punishable offence. It is submitted that the same law of divorce and polygamy is also followed by Bangladesh.

27. It is submitted that in view of the changes in the laws in various Islamic countries that either ban or restrict polygamy, as well as the development of international laws, this Hon‟ble Court is the sole hope not only for Muslim women but also for the Muslim community which has been suffering on account of personal laws that are in violation of the fundamental rights guaranteed by the Constitution.

28. Article 3 of the Universal Declaration of Human Rights provides that everyone has the right to life, liberty and security of person while Article 7 provides that everyone is equal before the law and is entitled without any discrimination to equal protection of the law. Since the adoption of the Universal Declaration of Human Rights, the universality and indivisibility of human rights have been emphasised and it has been specifically recognised that women‟s human rights are part of universal human rights. In the year 2000, on the grounds that it violates the dignity of women, the United Nations Human Rights Committee considered polygamy a destruction of the internationally binding International Covenant on Civil and Political Rights (to which India acceded on 10.04.1979) and

recommended that it be made illegal in States. It is accordingly submitted that it is well recognised in international law that polygamy critically undermines dignity and worth of women.

29. Non-discrimination and equality between women and men are central principles of human rights law. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (to both of which India acceded on 10.04.1979) prohibit discrimination on the basis of gender and guarantee women and men equality in the enjoyment of the rights covered by the Covenants. Article 26 of the International Covenant on Civil and Political Rights provides for equality before the law and equal protection of the law, while Article 2(2) of the International Covenant on Economic, Social and Cultural Rights requires States to guarantee that the rights enunciated in the Covenant can be exercised without any discrimination of any kind including on the lines of gender or religion. It is submitted that discrimination and inequality can occur in different ways, including through laws or policies that restrict, prefer or distinguish between various groups of individuals. It is further submitted that to achieve actual equality, the underlying causes of women"s inequality must be addressed since it is not enough to guarantee identical treatment with men.

30. The United Nations Economic and Social Council"s Committee on Economic, Social and Cultural Rights explained in its

General Comment No. 16 of 2005 that the parties to the International Covenant on Economic, Social and Cultural Rights are obliged to eliminate not only direct discrimination, but also indirect discrimination, by refraining from engaging in discriminatory practices, ensuring that third parties do not discriminate in a forbidden manner directly or indirectly, and taking positive action to guarantee women‟s equality. It is submitted that failure to eliminate *de jure* (formal) and *de facto* (substantive) discrimination constitutes a violation of the rights of women envisaged in such international treaties and covenants. It is further submitted that not only must the practices of polygamy and *nikah halala* be declared illegal and unconstitutional, but the actions of religious groups, bodies and leaders that permit and propagate such practices must also be declared illegal and unconstitutional. A true copy of *General Comment 16 of 2005 of the Committee on Economic, Social and Cultural Rights (United Nations Economic and Social Council)* is attached as **Annexure P-1** (Pages).

31. In its General Comment No. 28 (2000), the Committee on Civil and Political Rights very clearly issued a declaration against the practice of polygamy by saying that it completely violates the right to equality guaranteed by Article 3 of the Convention. The Committee noted that “equality of treatment with regard to the right to marry implies that polygamy is incompatible with this principle. Polygamy violates the dignity of women. It is an

inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist." A true copy of *General Comment No. 28 (2000) : Equality of Rights between Men and Women of the United Nations International Covenant on Civil and Political Rights* is annexed herewith as **Annexure P-2.** (Pages)

32. The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). Article 5(a) of the CEDAW explicitly places an obligation on all State Parties to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."In its General Recommendation No. 21 (1994), the Committee on the Elimination of Discrimination against Women elaborated on equality in marriage and family relations, and observed that polygamous marriages contravene a woman‟s right to equality with men, and can have very serious emotional and financial ramifications for her and her dependents. The Committee noted "with concern" despite their Constitutions guaranteeing the right to equality, some States parties continued to permit polygamous marriages in accordance with personal or customary law. This, as per the Committee, violated the constitutional rights of women, as also Article 5(a),CEDAW.

33. Petitioner is filing this petition to declare Polygamy and Nikah-Halala, illegal and unconstitutional for being violative of Articles 14, 15 and 21 of the Constitution, and also a declaration that extra-Judicial Talaq is a Cruelty under Section 498A, Nikah-Halala is an offence under Section 375 and Polygamy is an offence under Section 494 of the IPC,1860.

34. Petitioner has not filed any other petition either in this Hon‟ble Court or in any other High Court seeking same and similar directions as prayed in this petition.

[redacted]Petitioner‟s Name is Nafisa Khan, [redacted]

36. The facts constituting cause of action accrued on 26.01.2018 and every subsequent date, when petitioner‟s husband married with another women without legally divorcing her and Delhi Police refused to lodge FIR against him under Sections 494 and 498A of the Indian Penal Code,1860.

37. The injury caused to petitioner because polygamy is illegal, unconstitutional and violative of Articles 14, 15, 21 of the Constitution but Police refused to lodge FIR under Section 494 and 498A on the basis of religion.

38. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this petition. It is not guided for gain of any other individual person, institution or body. There is no motive other than the larger public interest.

39. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with the issue involved in this petition. It is totally bona-fide.

40. There is no requirement to move concerned government authority for relief sought in this petition. There is no other remedy available except approaching this Hon"ble Court.

GROUNDS

A. The importance of ensuring protection of Muslim women from polygamy has profound consequences on the quality of justice rendered in the country as well as ensuring a life of dignity for the citizens as guaranteed by Part III the Constitution.

B. A life of dignity and equality is undisputedly the most sacrosanct fundamental right guaranteed by the Constitution and it prevails above all other rights available under the laws of India. It is therefore submitted that the solutions to societal problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity, decency of life, and dictates of necessity in the pursuit of social justice should be decided on considerations other than religion or religious faith or beliefs, or sectarian, racial or communal constraints.

C. The Muslim Personal Law (Shariat) Application Act, 1937, by providing for the application of Muslim personal law in matters relating to marriage where the parties are Muslims, conveys a wrong impression that the law sanctions *nikah halala* and polygamy which is grossly injurious to the fundamental rights of married Muslim women and offends Articles 14, 15, 21 and 25 of the Constitution of India.

D. The Dissolution of Muslim Marriages Act, 1939 fails to secure for Indian Muslim women the protection from bigamy, which protection has been statutorily secured for Indian women belonging to all other religions, and is to that extent violative of Articles 14, 15, 21 and 25 of the Constitution.

E. The Constitution neither grants any absolute protection to the personal law of any community that is unjust, nor exempts personal laws from the jurisdiction of the Legislature or the Judiciary.

F. Entry 5 of List III in the Seventh Schedule confers power on the Legislature to amend and repeal existing laws or pass new laws in all such matters (including marriage and divorce) which were on August 15, 1947, governed by personal laws, and the Legislature has practically abdicated its duties and permitted the basic fundamental rights of Muslim women to be widely violated which also affects the entire country as a matter of public order, morality and health.

G. The freedom of conscience and free profession, practice and propagation of religion guaranteed by Article 25 of the Constitution is, in terms of Article 25(1), "*subject to public order, morality and health and to the other provisions of this Part*". It is submitted that the Constitution does not preclude the State from introducing social reforms and enacting laws on subjects traditionally associated with religion, especially when such laws aim to secure public order, morality, health and the rights guaranteed by Part III of the Constitution. It is further submitted that the concept of "constitutional morality" has been expounded by a 5-judge bench of this Hon"ble Court in ***Manoj Narula v. Union of India*** *(supra)* wherein it was observed that the Constitution of India is a living instrument and the principle of constitutional morality essentially means to bow down to the norms of the Constitution and to not act in a manner which is arbitrary or violative of the rule of law since commitment to the Constitution is a facet of constitutional morality.

H. The Constitution only protects religious faith and belief while the religious practices under challenge run counter to public order, morality, and health and must therefore yield to the basic human and fundamental right of Muslim women to live with dignity, under equal protection of laws, without any discrimination on the basis of gender or religion.

I. The Legislature has failed to ensure the basic dignity and equality of women in general and Muslim women in particular when it concerns matters of marriage, divorce and succession.

J. A bench of 3 judges of this Hon‟ble Court in ***Ahmedabad Women Action Group v. Union of India (1997) 3 SCC 573***, when faced with partially similar prayers as raised in this petition, decided to not interfere with the practices in Muslim Personal Law on the ground that such matters were policy decisions and did not warrant any interference by Courts of law. It is submitted with the utmost respect that this approach amounts to an abdication of responsibility vested on writ courts under the Constitution. Questions involving violations of fundamental rights are not merely questions of policy to be sent back to the Parliament. They are concrete questions, the duty to answer which has been placed upon the Supreme Court by Art.32 of the Constitution. Hence, it is most humbly submitted that questions involving discrimination against marginalized groups (such as women) cannot be left unanswered by constitutional courts of this country. The Parliament may have the power to legislate on such issues, as also a constitutional responsibility to do so, but if it abdicates the said responsibility by folding its hands, the Court must not merely follow suit. Therefore, it is submitted that the decision in AWAG (supra) merits reconsideration by a larger bench of this Hon‟ble Court.

K. A complete ban on polygamy and *nikah halala* has long been the need of the hour as it renders Muslim wives extremely insecure, vulnerable and infringes their fundamental rights.

L. Muslim Personal Law, insofar as it allows Muslim men to have multiple wives and does not extend the same permission to women, is void for being violative of Arts.14, 15 and 21 of the Constitution. Muslim Personal Law falls within the expression "laws in force" as contained in Art.13(1) of the Constitution. Therefore, by virtue of Art.13(1), any part of Muslim Personal Law that contravenes Part III of the Constitution would, to that extent, be void. The definition of the term "law" contained in Art.13(3)(a) of the Constitution will apply to the phrase "laws in force" as used in Article 13(1).This principle was laid down by a bench of 5 judges of this Hon"ble Court in *Sant Ram v. Labh Singh* (1964) 7 SCR 756. It was also held that custom and usage, which found place in the definition of "law" u/Art.13(3)(a), would be included in the phrase "laws in force" for the purposes of Art.13(1). Therefore, any custom or usage in force within the territory of India since before the commencement of the Constitution is void.

M. The definition of the word "law" in Art.13(3)(a) is an inclusive one. It is submitted that personal law is very similar in nature to custom or usage, because like customs and usages, even personal law is an age-old practice observed by a given community. If that is so, there is no reason to exclude personal

law from the ambit of the wide & inclusive definition of the term "law" in Art.13(3)(a).There could be no rationale as to why the framers of our Constitution intended to subject customs and usages to the rigours of Part III, but not personal law. In fact, personal law is different from custom and usage in that it is actively recognized and sanctioned by the State through legislation (e.g. the Muslim Personal Law (Shariat) Application Act, 1937 gives express legal sanction to the Shariat). This intense proximity with State action is all the more reason to include personal law within the ambit of "law" for the purposes of Art.13. In any event, it is humbly submitted that the democratic republic of India cannot conceive of a system that possesses absolute immunity from constitutional scrutiny and review, despite governing people in the most intimate matters of their lives. What the State cannot to directly, it cannot be permitted to do indirectly. Fundamental rights are not empty guarantees; their infringement – whether perpetrated by the State through its actions, or condoned by the State through its omissions –must be guarded against at all costs.

N. Two coordinate Benches of this Hon"ble Court in the past have made certain observations on this point in the nature of obiter dicta. In C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil (1996) 8 SCC 525, a bench of 3 judges observed that:

15. It is seen that if after the Constitution came into

force, the right to equality and dignity of person enshrined in the Preamble of the Constitution, Fundamental Rights and Directive Principles which are a trinity intended to remove discrimination or disability on grounds only of social status or gender, removed the pre-existing impediments that stood in the way of female or weaker segments of the society. In S.R. Bommai v. Union of India [(1994) 3 SCC 1] this Court held that the Preamble is part of the basic structure of the Constitution. Handicaps should be removed only under rule of law to enliven the trinity of justice, equality and liberty with dignity of person. The basic structure permeates equality of status and opportunity. The personal laws conferring inferior status on women is anathema to equality. Personal laws are derived not from the Constitution but from the religious scriptures. The laws thus derived must be consistent with the Constitution lest they become void under Article 13 if they violate fundamental rights. Right to equality is a fundamental right. Parliament, therefore, has enacted Section 14 to remove pre-existing disabilities fastened on the Hindu female limiting her right to property without full ownership thereof. The discrimination is sought to be remedied by Section 14(1) enlarging the scope of acquisition of the property by a Hindu female appending an explanation with it.

26. It is true that Section 30 of the Act and the relevant provisions of the Act relating to the execution of the Wills need

to be given full effect and the right to disposition of a Hindu male derives full measure there under. But the right to equality, removing handicaps and discrimination against a Hindu female by reason of operation of existing law should be in conformity with the right to equality enshrined in the Constitution and the personal law also needs to be in conformity with the constitutional goal. Harmonious interpretation, therefore, is required to be adopted in giving effect to the relevant provisions consistent with the constitutional animation to remove gender-based discrimination in matters of marriage, succession etc.…"

O. However, contrary observations were made by a bench of 2 judges in Krishna Singh v. Mathura Ahir (1981) 3 SCC 689:

17. It would be convenient, at the outset, to deal with the view expressed by the High Court that the strict rule enjoined by the Smriti writers as a result of which Sudras were considered to be incapable of entering the order of yati or sanyasi, has ceased to be valid because of the fundamental rights guaranteed under Part III of the Constitution. In our opinion, the learned Judges failed to appreciate that Part III of the Constitution does not touch upon the personal laws of the parties. In applying the personal laws of the parties, he could not introduce his own concepts of modern times but should have enforced the law as derived from recognised and authoritative sources of Hindu law, i.e., Smritis and

commentaries referred to, as interpreted in the judgments of various High Courts, except, where such law is altered by any usage or custom or is modified or abrogated by statute."

P. These observations were followed and affirmed by a bench of 3 judges in AWAG (supra). Thus, the two conflicting observations having been endorsed by two benches of equal strength, the same calls for resolution of this issue by a larger bench. This is without prejudice to the submissions made above, i.e., that personal law is in fact subject to Part III of the Constitution because of the interpretation given to Arts. 13(1) & 13(3) by the Constitution Bench in Sant Ram (supra).

Q. Muslim Personal Law, like all other personal law, is subject to the rigours of Part III of the Constitution. Consequently, any part of Muslim Personal Law contravening Part III would, to that extent, be void and ineffective.

R. Muslim Personal Law, insofar as it allows Muslim men to have multiple wives and does not extend the same permission to women, contravenes Arts.14& 15(1) of the Constitution. Arts.14& 15(1) enshrine the principle of equality. All persons within the territory of India are required to be afforded equality before the law as well as the equal protection of laws. A law that discriminates against any person on the sole ground of sex is violative of the guarantee of equality. It is well settled that Muslim Personal Law permits (though it also discourages) the practice of polygamy. The Holy Quran permits Muslim men

to marry upto four women. However, no similar provision exists for multiple marriages for women. This system places the man at the centre of marriage as an institution. It seeks to degrade women to a position inferior to that of men. It treats women as men‟s chattel, and reduces their status to an object of desire to be possessed by men. Consequently, it offends the core ideal of equality of status. Therefore, by virtue of the command of Art.13(1), Muslim Personal Law, insofar as it allows Muslim men to have multiple wives and does not extend the same permission to women, is void and incapable of operation within the territory of India.

S. Muslim Personal Law of polygamy contravenes Article 21 of the Constitution. Firstly, the discrimination between men and women as regards the permission to have multiple spouses grossly offends the right to dignity of women, which has been recognized as an integral part of the right to life and personal liberty under Art.21.Such a distinction has the effect of reducing the woman‟s status to one much inferior to that of the man. By considering the woman but an object of the man‟s desire, such a system of polygamy causes gross affront to the dignity of women. Secondly, in Itwari v. Asghari 1959 SCC On Line All 150, it has been held that the actions of a Muslim man in marrying a second woman would constitute cruelty as against the first wife and furnish a ground for dissolution of marriage.It has also been held that in such situations, Courts

should refuse to grant the husband‟s prayers of restitution of conjugal rights, for the second marriage is a “continuing wrong” to the first wife. It is submitted that the first wife undergoes severe mental agony when her husband marries a second woman. Since it has been held that the right to life implies a right to a meaningful life and not to a mere animal existence, it must follow that there exists within the folds of Article 21 a right to live in mental peace. Systemic violence against women that results in mental or psychological anguish cannot but be understood as taking away the said right. Therefore, it is submitted that the system of polygamy in Muslim Personal Law interferes with the right conferred byArt.21 of the Constitution. The said right may only be taken away by a just, fair and reasonable law, which is lacking in the instant case. Therefore, the part of Muslim Personal Law sanctioning the practice of polygamy stands in contravention of Articles 14, 15 and 21 of the Constitution, and is void for that reason.

T. In any event, S.2 of the Muslim Personal Law (Shariat) Application Act, 1937 (the “**Shariat Act**”), insofar as it recognizes and sanctions the practice of polygamy in Islam, is contrary to Arts. 14, 15(1) and 21 of the Constitution, and therefore void and inoperative. S.2 of the Shariat Act recognizes and sanctions the Muslim Personal Law (Shariat) as the applicable rule in matters of marriage where the parties

are Muslims. By extension, S.2 of the Act positively affirms and gives legal backing to discriminatory and unconstitutional practice of polygamy practised by Muslim men.

U. In Shayara Bano v. Union of India (2017) 9 SCC 1, Nariman, J., writing for himself and for Lalit, J., held another portion of S.2 of the Shariat Act ultra vires the constitution, on the ground that the practice of Muslim Personal Law that it affirmed was manifestly arbitrary. It is submitted that on that count alone, S.2 of the Act is contrary to Arts. 14, 15(1) and 21 of the Constitution insofar as it recognizes and sanctions the practice of polygamy in Islam.

V. ARGUENDO, S.494 of the IPC stands in total contravention of Arts. 14, 15(1) and 21 of the Constitution. S.494, IPC bears the marginal note "Marrying again during lifetime of husband or wife". The main part of the Section reads as follows:

"Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during 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."

W. It creates an additional filter or condition that decides the applicability of the provision. A person is liable under S.494 IPC only when the second marriage is void by reason of it taking place during the life of the first spouse. It is this additional filter or condition that is discriminatory and falls foul

of Part III of the Constitution. This is so for two reasons. Firstly, under Muslim Personal Law, while men are permitted to marry more than one women (up to a limit of four), no similar permission exists for Muslim women. This distinction, coupled with the aforementioned condition prescribed in S.494 IPC, results in blatant discrimination against Muslim women – while a Muslim husband may file a criminal complaint against her wife if she contracts a second marriage, no similar remedy exists qua a Muslim wife whose errant husband marries again while she lives. This classification between Muslim husbands and Muslim wives has no rational basis, is totally arbitrary and falls foul of the guarantees of equality and non-arbitrariness enshrined in Arts. 14 & 15(1) of the Constitution. Such treatment at the hands of law is bound to generate a notion of subordination qua Muslim women.S.494, insofar as it perpetrates the aforementioned discrimination, offends their inherent equal status vis-à-vis men and causes gross affront to their dignity and equal social standing. Secondly, by virtue of this additional filter, while women belonging to all other religions – Hindus, Jains, Sikhs, Buddhists, Parsis, Christians, etc. –have a remedy against their errant husbands by virtue of S.494 IPC, no similar remedy exists in favour of Muslim women. There could be no reasonable basis for this discrimination. Evidently, the very purpose behind criminalization of bigamy was to prevent the immense mental

anguish that the first wife undergoes upon her husband contracting a second marriage during the subsistence of the first. The existence of different personal laws would make no difference to this anguish. In fact, it has been held that the contracting of a second marriage by a Muslim husband amounts to cruelty against the first wife. Therefore, it is too late in the day to contend that owing to different personal laws, the effects of the husband‟s actions upon the wife‟s mental peace would vary. Also, therefore, by allowing Muslim men to cause immense mental anguish to their wives, the exception effectively carved out by S.494 IPC against Muslim wives runs counter to Art.21 of the Constitution. For these reasons, it is submitted that the words “in any case in which such marriage is void by reason of its taking place during the life of such husband or wife” occurring in S.494 IPC are wholly contrary to Arts. 14, 15(1) & 21 of the Constitution, and must accordingly be declared to be void. Such regressive notions have no place in a society that rests its foundations on inherent, constitutionally recognized human rights, irrespective of whether they are found in customs or holy books.

X. Article 25 of the Constitution offers no protection to polygamy in Islam. It has been held on multiple occasions that Islam merely recognizes polygamy without mandating it. In fact, the practice of polygamy is looked down upon and strongly discouraged even in the Islamic texts. For example, in Javed

v. State of Haryana (2003) 8 SCC 367, 3 Judges of this Hon‟ble Court held that polygamy would not attain the status of an essential facet of Islam merely because it is not prohibited in Islam. This approach was followed by a bench of 2 judges of this Hon‟ble Court in Khursheed Ahmad Khan v. State of U.P. (2015) 8 SCC 439. It is therefore a settled position that polygamy is merely permitted in Islam, and that even such permission is coupled with warning and discouragement. In such a situation, it is not possible to argue that the practice of polygamy is protected as an integral part of the practice of Islam u/Art.25. In any event, it has been held that marriage is a secular practice while Art.25 seeks to preserve matters of religion. Therefore, no protection u/Art.25 is available to Islamic rules governing marriage. In John Vallammattom v. Union of India (2003) 6 SCC 611, Khare, C.J., on behalf of a bench of 3 judges of this Hon‟ble Court, observed that marriage, succession and similar matters of a secular character cannot be brought within the guarantee of freedom of religion. Therefore, Islamic rules that govern marriage may be part of personal law, but in no manner can they be understood as forming part of Islam as a religion. In other words, no protection u/Art.25 is available to rules governing the various aspects of Islamic marriages, including polygamy. Arguendo, the right u/Art.25 is subject to constitutional morality as well as to Art.14, both of which have

the ideal of equality at their hearts. Therefore, the right u/Art.25 has no bearing on the issue of polygamy. It has already been submitted supra that Muslim personal laws permitting polygamy (or, in the alternative, some portions of S.494 IPC) fall foul of Article14.

Y. The idea of "constitutional morality" was elaborated on by a bench of 5 judges of this Hon"ble Court in Manoj Narula v. Union of India (2014) 9 SCC 1. Dipak Misra, J. (as he then was), speaking on behalf of the majority of this Hon"ble Court, held that traditions and conventions must grow to sustain the value of constitutional morality. It is most respectfully submitted that the word "morality" occurring in Article 25 of the Constitution must be interpreted to mean "constitutional morality". It is further submitted that "constitutional morality" encompasses equality as a core value, as held by a bench of 5 judges of this Hon"ble Court in Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697. Therefore, it is beyond doubt that the right to freely profess, practice and propagate one"s religion is subject to the idea of equality, to which the practice of polygamy is abhorrent.

Z. Equality should be the basis of all personal law since the Constitution envisages equality, justice and dignity for women.

AA. Several Islamic nations have banned or restricted the practice of *polygamy* while Indian Muslim women are still suffering on account of such practice. Thus, the fundamental rights of

Indian Muslims are being violated continuously, despite reforms introduced by Islamic nations to secure a life of dignity unmarred by gender discrimination.

BB. The practice of polygamy is antithetical to India‟s international law obligations towards the fulfilment of fundamental, human rights. India acceded to the UN International Covenant on Civil and Political Rights (“ICCPR”) in 1979. In its General Comment No. 28 (2000), the Committee on Civil and Political Rights very clearly issued a declaration against the practice of polygamy by saying that it completely violates the right to equality guaranteed by Article 3 of the Convention. The Committee noted that “equality of treatment with regard to the right to marry implies that polygamy is incompatible with this principle. Polygamy violates the dignity of women. It is an inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist.” India acceded to the UN International Covenant on Economic, Social and Cultural Rights (“ICESCR”) in 1979. Article 3 of ICESCR recognizes the “equal right of men and womento the enjoyment of all economic, social and cultural rights”. In its General Comment No. 16 (2005), the Committee on Economic, Social and Cultural Rights expanded on the aforementioned Article 3, and stated in very clear terms that State Parties to the ICESCR have a positive obligation to eliminate “prejudices, customary and all other practices that

perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women". This includes the positive obligation to prevent third parties (non-State actors) from interfering directly or indirectly with the enjoyment of the right to equality.

CC. The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). Article 5(a) of the CEDAW explicitly places an obligation on all State Parties to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."In its General Recommendation No. 21 (1994), the Committee on the Elimination of Discrimination against Women elaborated on equality in marriage and family relations, and observed that polygamous marriages contravene a woman‟s right to equality with men, and can have very serious emotional and financial ramifications for her and her dependents. The Committee noted "with concern" despite their Constitutions guaranteeing the right to equality, some States parties continued to permit polygamous marriages in accordance with personal or customary law. This, as per the Committee, violated the constitutional rights of women, as also Article 5(a),CEDAW. Crucially, Article 16(1) of CEDAW mandates States Parties to

take all appropriate measures to eliminate discrimination against women in all matters relating to marriage, and in particular, to ensure, on a basis of equality of men and women, the following:

i) The same right to enter into marriage;

ii) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

iii) The same rights and responsibilities during marriage and at its dissolution;

iv) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

v) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

vi) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

vii) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

viii) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Given the above international obligations, it is amply clear that the democratic republic of India cannot conceive of an institution such as polygamy that rests itself on regressive notions of inherent inequality between men and women.

DD. Failure to eliminate *de jure* (formal) and *de facto* (substantive) discrimination against women including by non-State actors, either directly or indirectly, violates not only the most basic human rights of women but also violates their civil, economic, social and cultural rights as envisaged in international treaties and covenants. It is submitted that not only must the practices of polygamy and *nikah halala* be declared illegal and unconstitutional, but the actions of religious groups, bodies and leaders that permit and propagate such practices must also be declared illegal, unconstitutional, and violative of Articles 14, 15, 21 and 25 of the Constitution.

EE. This is basic doctrine that the Constitution of India has primacy over the Common Laws and Common Law has primacy over the personal Laws. Hence, this Hon‟ble Court may declare that provisions of the Indian Penal Code including Sections 375, 494 and 498A are applicable on all citizens throughout the territory of India without any discrimination.

PRAYER

It is, therefore, prayed that this Hon‟ble Court may be pleased to issue a Writ/Order/Direction in the nature of mandamus to:

a) declare the practice of polygamy as illegal, unconstitutional, and violative of Articles 14, 15, 21 and 25 of the Constitution;

b) declare Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 unconstitutional and void for being violative of Articles 14, 15, 21 and 25 of the Constitution in so far as it seeks to validate the practice of polygamy;

c) declare (in the alternative to Prayers A & B above) that the words *“in any case in which such marriage is void by reason of its taking place during the life of such husband or wife”* occurring in Section 494 IPC are contrary to Articles 14, 15 and 21 of the Constitution, and hence void and inoperative;

d) declare the Dissolution of Muslim Marriages Act, 1939, unconstitutional and violative of Articles 14, 15, 21 and 25 of the Constitution in so far as it fails to secure for Indian Muslim women the protection from bigamy which has been statutorily secured for Indian women belonging to other religions;

e) declare that a Muslim wife whose marriage has been terminated by a valid and legally recognised form of *talaq* by her husband may remarry her husband without an intervening *halala* marriage with another man;

f) Pass any other order as this Hon‟ble Court deems fit/proper.

Drawn on: 15.02.2018 (ASHWANI KUMAR DUBEY)
Filed on: 20.02.2018 ADVOCATE FOR PETITIONER