

27512/2019  
IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(ORDER XXXVIII, S.C.R, 2013)

WRIT PETITION (CIVIL) No. 993 OF 2019

[A Writ Petition under Article 32 of the Constitution of India  
read with Order XXXVIII, Rules 1 & 2 of Supreme Court Rules, 2013].

IN THE MATTER OF:-

Amir Rashadi Madani

... PETITIONER

VERSUS

Union of India

..... RESPONDENT

AND IN THE MATTER OF:-

CHALLENGING THE CONSTITUTIONAL VALIDITY OF "THE  
MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE)  
BILL, 2019".

**[PAPER – BOOK]**

[For Index: Kindly See Inside]

ADVOCATE FOR THE PETITIONER:

MD. IRSHAD HANIF

09-08-19

# RECORD OF PROCEEDINGS

SR. NO. RECORD OF PROCEEDINGS

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# **LISTING PROFORMA**

## **SECTION-X**

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

- |   |                            |
|---|----------------------------|
| <input type="checkbox"/> Central Act:                         | N.A.                       |
| <input type="checkbox"/> Section:                             | N.A.                       |
| <input type="checkbox"/> Central Rule: (Title)                | The Constitution of India. |
| <input type="checkbox"/> Rule/ Section No.(s) :               | 32                         |
| <input type="checkbox"/> State Act: (Title)                   | N.A.                       |
| <input type="checkbox"/> Section:                             | N.A.                       |
| <input type="checkbox"/> State Rule:                          | N.A.                       |
| <input type="checkbox"/> Rule No(s):                          | N.A.                       |
| <input type="checkbox"/> Impugned Interim Order: (Date)       | N.A.                       |
| <input type="checkbox"/> Impugned Final order/ Decree: (Date) | N.A.                       |
| <input type="checkbox"/> High Court:                          | N.A.                       |
| <input type="checkbox"/> Names of Judges:                     | N.A.                       |
| <input type="checkbox"/> Tribunal/Authority:                  | N.A.                       |

- 
1. Nature of Matter: ☒ Civil ☐ Criminal
2. (a) Petitioners/appellant No. : **Amir Rashadi Madani**  
 (b) E-mail ID: N.A.  
 (c) Mobile phone number: N.A.
3. (a) Respondent No.: **Union of India,**  
 (b) E-mail ID: N.A.  
 (c) Mobile phone number: N.A.
4. (a) Main category classification: **18**  
 (b) Sub classification: **1801**
5. Not to be listed before: **N.A.**
6. (a) Similar disposed off matter with citation If any case & detail:  
**No Similar Matter is disposed of.**  
 (b) Similar pending matter with case details!- **No Similar Matter is pending.**
7. Criminal Matters:  
 (a) Whether accused/convict has surrendered: ☐ yes ☒ No

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- (b) FIR No./ C.R. Case No. N.A.      **Date:**      N.A.
- (c) Police Station:      N.A.
- (d) Sentence Awarded:      **N.A.**
- (e) Sentence Undergone:      N.A.
8. **Land Acquisition Matters:**      **N.A.**
- (a) Date of section 4 notification:
- (b) Date of Section 6 notification:
- (c) Date of Section 17 notification
9. **Tax Matters:** State the tax effect:      **N.A.**
10. **Special Category** (first petitioners/appellant only): **N.A.**
- ☒ Senior citizen: 65 years |   ☐ SC/ST   |   ☐ Woman/child
- |   ☐ Disabled |   ☐ Legal Aid case |   ☐ In custody
11. Vehicle Number (in case of Motor Accident Claim matters: **N.A.**

Date: 02.08.2019

### SYNOPSIS

**"The fundamental rights may not be submitted to a vote; they depend on the outcome of no elections." US Supreme Court In West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).**

Islam is the first religion in the world which has recognized the termination of marriage by way of divorce notwithstanding "with Allah, the most detestable of all things permitted is divorce". The Quran ordains "If ye fear a breach between them twain (the husband and wife) appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment, Allah will make them of one mind." if the attempts fail, Talaq may be effected.

Under the Islamic law, divorce is classified into three categories. Talaq understood simply, is a means of divorce, at the instance of the husband. 'Khula', is another mode of divorce, this divorce is at the instance of the wife. The third category of divorce is 'mubaraat' - divorce by mutual consent.

Talaq namely, divorce at the instance of the husband, is also of three kinds - 'Talaq-e-Ahsan', 'Talaq-e-Hasan' and 'Talaq-e-Biddat' which is commonly known as "Triple Talaq". The 'Talaq-e-Ahsan', and 'Talaq-e-Hasan' both are approved by the 'Quran' and 'Hadith'. 'Talaq-e-Ahsan', is considered as the 'most reasonable' form of divorce, whereas, 'Talaq-e-Hasan' is also considered as 'reasonable'. However, 'Talaq-e-Biddat' is neither recognized by the 'Quran' nor by 'Hadith'.



The constitutional validity of Triple Talaq "Talaq-e-Biddat" i.e. three pronouncements made in one instance or either in one sentence, e.g., "I divorce thee *thrice*," - or in separate sentences e.g., "I divorce thee, I divorce thee, I divorce thee" at the behest of Muslim Husband came to be challenged before this Hon'ble Supreme Court in the case of **Shayara Bano Vs. Union of India & Ors., (2017) 9 SCC 1** whereby, the Constitution Bench of this Hon'ble Court by majority of 3:2 declared the practice of instant triple talaq to be unconstitutional and hence it can no longer dissolve marriage. The majority judgment delivered by this Hon'ble Court reads as under:

*"What is held to be bad in the Holy Quran cannot be good in Shariat and, in that sense, what is bad in theology is bad in law as well".*

It was further held that *"It can be seen that the 1937 Shariat Application Act is a pre-constitutional legislative measure which would fall directly within Article 13(1) of the Constitution of India, As we have concluded that the 1937 Act is a law made by the legislature before the Constitution came into force, it would fall squarely within the expression "laws in force" in Article 13(3)(b) and would be hit by Article 13(1) if found to be inconsistent with the provisions of Part III of the Constitution, to the extent of such inconsistency. As Triple Talaq forms part of Talaq which is irrevocable and manifestly arbitrary and "therefore, the 1937 Act, insofar as it seeks to recognize and*

*enforce Triple Talaq, is within the meaning of the expression laws in force in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq".*

It is submitted that in way back 1886 Justice Mahmood in **Abdul Qadir Vs Salima (1886) 8 All 149** observed as follows "Marriage among Mohammadans is not a sacrament but purely a Civil Contract, and though it is solemnised generally with recitation of certain verses from the Quran, yet the Mohammadan law does not positively prescribe any service peculiar to the occasion".

Since the marriage in Islam is a contract, and like other contracts, may under certain circumstances, be terminated. The termination of civil contract has no criminality. The wife cannot be compelled to suffer cruelty at the hands of husband and his family members if she believes that that the marriage has been dissolved according to her sect.

The Government of India in its second attempt introduced The Muslim women (Protection of Rights on Marriage) Bill, 2019 (hereafter referred as 'Act') in parliament which was passed in Lok Sabha on 25<sup>th</sup> July, 2019 and subsequently on 30<sup>th</sup> July, 2019 the bill was passed in Rajya Sabha. The bill make instant triple Talaq (*Talaq-e-Biddat*) in any form — spoken, in writing or by electronic means such as email, SMS and WhatsApp illegal and void, with upto three years in jail for the husband. The Bill got assent of the President of India on 31.07.2019.

The petitioner is approaching this Hon'ble Court by way present Writ petition under article 32 of the Constitution of India challenging the Muslim Women (Protection of Rights on Marriage) Bill, 2019 seeking issuance of writ, order in the nature of mandamus to declare the entire Act ultra vires the Constitution of India.

It is submitted that the Act passed by government is arbitrary and unconstitutional. The government has enacted the aforesaid Bill in an arbitrary and illegal manner. It is submitted that when this Hon'ble Court in Shayara Bano vs. Union of India by a majority judgment of 3:2 has already declared the said form of talaq as invalid and unconstitutional, there is no necessity for bringing an Act to make it criminal offence, when the triple talaq pronounced is invalid. Under Article 141 of the Constitution of India the law declared by this Court is binding.

It is submitted that Bill is manifestly arbitrary and its provisions are contrary to the part III of the Constitution. In **Obergefell v. Hodges**, 135 S. Ct. 2584 at 2605, decided on June 26, 2015, by the U.S. Supreme Court and adopted by this Hon'ble Court in of **Shayara Bano Vs. Union of India & Ors., (2017) 9 SCC 1** : "The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. The Nation's courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is

harm, even if the broader public disagrees and even if the legislature refuses to act. The idea of the Constitution "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."

The Act referred to in this petition is an extreme example of malafide and prejudice by the Government against a class of the Indian Citizens by criminalizing a civil wrong thereby violating the fundamental rights of the Citizens of this Country which is illegal and invalid under the Law declared by this Hon'ble Court.

The Bill offends the very foundation of rule of law and equal protection of law granted to every citizens of this country enshrined in our Constitution of India. This Bill has given grave threat to violations of fundamental rights of a class of citizens, hence a sense of insecurity and helplessness has grabbed the entire community the only hope community looks for justice is towards the guardian of the Constitution and the temple of justice to protect their personal liberty, right to life with dignity, equality as enshrined in the Constitution of India.

The Bill passed enacted by Government making pronouncement of triple talaq criminal is contrary to the Part III of the Constitution of India. The Bill is violative of Article 13, 14,

15, 21 and 25 of the Constitution of India. Hence the present petition.

#### LIST OF DATES

##### **Date**

##### **Particulars**

##### Pre-Islamic Arabia:

Among the pre-Islamic Arabic, the power of divorce possessed by the husband was unlimited. The men could divorce their wife at any time and for any reasons or without any reason. The men could also revoke their divorce, and divorce again as many times as they preferred. The men could, moreover, if they were so inclined, swear that they would have no intercourse with their wives, though still living with them. They could arbitrarily accuse their wives of adultery, dismiss them, and leave them with such notoriety as would deter other suitors, while they themselves would go exempted from any formal responsibility of maintenance or legal punishment.

According to Islamic scholars, at least four various types of dissolution of marriage were known in pre Islamic

Arabia. These were Talaq, Ila, Zihar and Khula. A woman if absolutely separated through any of these four modes was probably free to re-marry, but she could not do so until some time, called the period of Iddat, had passed. It was to ascertain the legitimacy of the child. But it was not a strict rule. Sometimes, pregnant wife was divorced and was married to another person under an agreement. It is interesting to note that the period of Iddat in case of death of husband then was one year.

**After the advent of Islam:**

The Prophet of Islam Muhammad (SAW) looked upon these customs of divorce with extreme disapproval, and regarded their practice as calculated to undermine the foundation of society. It was impossible, however, under the existing conditions of society to abolish the customs entirely. The Prophet Muhammad (SAW) had to mould the mind of an uncultured and semi-barbarous community to a higher development.

Accordingly, he allowed the exercise of the power of divorce to husbands under certain conditions. He permitted to divorce the wife in three distinct and separate periods within which they might endeavor to become reconciled, but should all attempts at reconciliation prove unsuccessful, then in the third period the final separation become effective.

The reforms of the Prophet Muhammad (SAW) marked a new departure in the history of mankind. He restrained the unlimited power of divorce by the husband, and gave to the woman the right of obtaining the separation on reasonable grounds. He pronounced "Talaq to be the most detestable thing before God of all permitted things" for it prevented conjugal happiness and interfered with the proper bringing up of children.

The Quran ordains "If ye fear a breach between them twain (the husband and wife) appoint an arbiter from his folk and an arbiter from her folk. If they desire

amendment, Allah will make them of one mind." if the attempts fail, Talaq may be effected.

16.10.2015

This Hon'ble Court while pronouncing the judgment in the case ***Prakash & Ors v. Phulavati & Ors.*** [2015 SCC Online SC 114] on October 16, 2015 directed that a separate Public Interest Litigation be registered and placed before the appropriate Bench as per the order of the Hon'ble Chief Justice of India to consider the rights of Muslim women as there was no safeguard against arbitrary divorce and second marriage by Muslim men during currency of their first marriage. While directing registration of a separate matter, this Hon'ble Court also directed that notice be issued to the Attorney General and National Legal Services Authority, New Delhi and also gave liberty to the counsel appearing in *Prakash & Ors v. Phulavati & Ors* to assist this Hon'ble Court, for either view point.

2016

That, in accordance with the aforesaid direction, the case was registered as Suo



Motu Writ Petition (Civil) No. 2 of 2015 as  
**In Re: Muslim Women's Quest For  
Equality.** It is submitted that various  
other petitions were also filed before this  
Court including Writ Petition (C) No. 118  
of 2016 Shayara Bano versus Union of  
India and others.

22.08.2017

The Constitution Bench of this Hon'ble  
Court in the case of **Shayara Bano Vs.  
Union of India & Ors., (2017) 9 SCC 1** by  
majority of 3:2 declared the practice of  
instant triple talaq to be unconstitutional.  
The majority judgment delivered by this  
Hon'ble Court reads as under:

*"What is held to be bad in the Holy  
Quran cannot be good in Shariat and, in  
that sense, what is bad in theology is bad  
in law as well".*

It was further held that *"It can be  
seen that the 1937 Shariat Application Act  
is a pre-constitutional legislative measure  
which would fall directly within Article  
13(1) of the Constitution of India, As we  
have concluded that the 1937 Act is a law  
made by the legislature before the*

*Constitution came into force, it would fall squarely within the expression "laws in force" in Article 13(3)(b) and would be hit by Article 13(1) if found to be inconsistent with the provisions of Part III of the Constitution, to the extent of such inconsistency. As Triple Talaq forms part of Talaq which is irrevocable and manifestly arbitrary and "therefore, the 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression laws in force in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq".*

It is submitted that as per the law laid down by this Hon'ble Court the instant triple has become invalid and it can no longer dissolve the marriage and thus has no legal sanctity in the eyes of law.

19.11.2018 & That the Government of India promulgated  
12.01.2019 ordinance The Muslim Women (Protection  
of Rights on Marriage) Ordinance, 2018 on  
19.11.2018 & on 10.02.2019 in 2019 to

criminalize the Triple Talaq.

25.07.2019 & The Government of India introduced  
 30.07.2019 The Muslim women (Protection of Rights  
 on Marriage) Bill, 2019 in Parliament  
 which was passed in Lok Sabha on 25<sup>th</sup>  
 July, 2019 and subsequently on 30<sup>th</sup> July,  
 2019 the bill was passed in Rajya  
 Sabha. The bill make instant triple Talaq  
 (*Talaq-e-Biddat*) in any form — spoken, in  
 writing or by electronic means such as  
 email, SMS and WhatsApp illegal and  
 void, with up to three years in jail for the  
 husband.

The Bill passed enacted by  
 Government making pronouncement of  
 triple talaq is contrary to the Part III of the  
 Constitution of India. The Bill is violative  
 of Article 13, 14, 15, 21 and 25 of the  
 Constitution of India.

It is submitted that the Bill enacted  
 by government is arbitrary and  
 unconstitutional. The government has  
 enacted the aforesaid Bill in an arbitrary  
 and illegal manner. It is submitted that  
 when this Hon'ble Court in Shayara Bano

vs. Union of India (supra) by a majority judgment of 3:2 has already declared the said form of talaq as invalid and unconstitutional, there is no necessity for bringing an Act to make it criminal offence, when the triple talaq pronounced is void ab initio and invalid. Under **Article 141** of the Constitution of India the law declared by this Court is binding.

31.07.2019 The Bill got assent from the Hon'ble President of India on 31.07.2019 and was published in the Official Gazette and thus becomes law.

02.08.2019 Hence present petition.

**IN THE SUPREME COURT OF INDIA**

CIVIL ORIGINAL JURISDICTION

(ORDER XXXVIII, S.C.R, 2013)

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

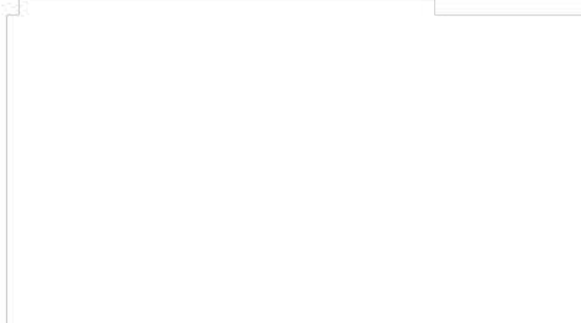
WRIT PETITION (CIVIL) No. <sup>993</sup> OF 2019

**IN THE MATTER OF:**

Amir Rashadi Madani ..... PETITIONER  
VERSUS

Union of India ..... RESPONDENT

**AND IN THE MATTER OF:-**



.... PETITIONER

Versus

1. Union of India  
Ministry of Law & justice  
Through Secretary  
4th Floor, A-Wing, Shastri Bhawan  
New Delhi-110 001 ...RESPONDENT

**AND IN THE MATTER OF:-**

WRIT PETITION UNDER ARTICLE 32 OF THE  
CONSTITUTION OF INDIA SEEKING A WRIT OR ORDER OR  
DIRECTION IN THE NATURE OF MANDAMUS DECLARING  
"THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON  
MARRIAGE) BILL, 2019" AS ILLEGAL, UNCONSTITUTIONAL  
FOR BEING VIOLATIVE OF ARTICLES 14, 15, 21 AND 25 OF

THE CONSTITUTION OF INDIA, AND TO PASS SUCH FURTHER ORDERS AS THIS HON'BLE COURT MAY DEEM APPROPRIATE TO PROTECT LIFE, PERSONAL LIBERTY AND DIGNITY OF THE MUSLIM MEN.

=====

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 writ or order or direction seeking a writ or order or direction in the nature of mandamus declaring the entire the Muslim Women (Protection of Rights on Marriage) Bill, 2019 as illegal, unconstitutional for being violative of articles 14, 15, 21 and 25 of the Constitution of India, and to pass such further orders as this Hon'ble Court may deem appropriate to protect life, personal liberty and dignity of the Muslim Mens. This petition is filed by the Petitioner in his individual capacity.
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. That the petitioner (Maulana Aamir Rashadi Madani) is a distinguished Islamic scholar and an internationally acclaimed expert on different schools of Interpretation of Islamic Jurisprudence such as Hanafi, Maliki, Hanbali, Fiq-e-Jafariya etc. He is the Chief Editor of a monthly digest namely Al-Rashad. He is the rector of an Islamic Educational Institution namely "Jameatur Rashad".

4. That the petitioner is the national President of "Rashtriya Ulama Council", a socio-political organization having its roots all over the country. The petitioner has become the voice of the oppressed class in the country. The sections of Indian citizenry who are victims of excessiveness of State Instrumentalities or the targeted violence are being represented by the petitioner for the cause of justice. He is deeply concerned with the protection of the Rule of Law and constitutional ethos which is the foundation of a civilized society.

5. Brief facts of the case leading to the present petition are stated as under:

1. In pre-Islamic Arabia, the power of divorce possessed by the husband was unlimited. The men could divorce their wife at any time and for any reasons or without any reason. The men could also revoke their divorce, and divorce again as many times as they preferred. The men could, moreover, if they were so inclined, swear that they

would have no intercourse with their wives, though still living with them. They could arbitrarily accuse their wives of adultery, dismiss them, and leave them with such notoriety as would deter other suitors, while they themselves would go exempted from any formal responsibility of maintenance or legal punishment.

II. According to Islamic scholars, at least four various types of dissolution of marriage were known in pre Islamic Arabia. These were Talaq, Ila, Zihar and Khula. A woman if absolutely separated through any of these four modes was probably free to re-marry, but she could not do so until some time, called the period of Iddat, had passed. It was to ascertain the legitimacy of the child. But it was not a strict rule. Sometimes, pregnant wife was divorced and was married to another person under an agreement. It is interesting to note that the period of Iddat in case of death of husband then was one year.

III. **After the advent of Islam:** The Prophet of Islam Muhammad (SAW) looked upon these customs of divorce with extreme disapproval, and regarded their practice as calculated to undermine the foundation of society. It was impossible, however, under the existing conditions of society to abolish



the customs entirely. The Prophet Muhammad (SAW) had to mould the mind of an uncultured and semi-barbarous community to a higher development. Accordingly, he allowed the exercise of the power of divorce to husbands under certain conditions. He permitted to divorce the wife in three distinct and separate periods within which they might endeavor to become reconciled, but should all attempts at reconciliation prove unsuccessful, then in the third period the final separation become effective.

IV. The reforms of the Prophet Muhammad (SAW) marked a new departure in the history of mankind. He restrained the unlimited power of divorce by the husband, and gave to the woman the right of obtaining the separation on reasonable grounds. He pronounced "Talaq to be the most detestable thing before God of all permitted things" for it prevented conjugal happiness and interfered with the proper bringing up of children.

V. The Quran ordains "If ye fear a breach between them twain (the husband and wife) appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment, Allah will make them of

one mind." if the attempts fail, Talaq may be effected.

VI. This Hon'ble Court while pronouncing the judgment in the case ***Prakash & Ors v. Phulavati & Ors.*** [2015 SCC Online SC 114] on October 16, 2015 directed that a separate Public Interest Litigation be registered and placed before the appropriate Bench as per the order of the Hon'ble Chief Justice of India to consider the rights of Muslim women as there was no safeguard against arbitrary divorce and second marriage by Muslim men during currency of their first marriage. While directing registration of a separate matter, this Hon'ble Court also directed that notice be issued to the Attorney General and National Legal Services Authority, New Delhi and also gave liberty to the counsel appearing in *Prakash & Ors v. Phulavati & Ors* to assist this Hon'ble Court, for either view point.

VII. The Constitution Bench of this Hon'ble Court in the case of ***Shayara Bano Vs. Union of India & Ors.***, (2017) 9 SCC 1 by majority of 3:2 declared the practice of instant triple talaq to be unconstitutional. The majority judgment delivered by this Hon'ble Court reads as under: "What is held to be bad in the Holy Quran cannot be good in

*Shariat and, in that sense, what is bad in theology is bad in law as well". It was further held that "It can be seen that the 1937 Shariat Application Act is a preconstitutional legislative measure which would fall directly within Article 13(1) of the Constitution of India, As we have concluded that the 1937 Act is a law made by the legislature before the Constitution came into force, it would fall squarely within the expression "laws in force" in Article 13(3)(b) and would be hit by Article 13(1) if found to be inconsistent with the provisions of Part III of the Constitution, to the extent of such inconsistency. As Triple Talaq forms part of Talaq which is irrevocable and manifestly arbitrary and "therefore, the 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression laws in force in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq".*

VIII. It is submitted that as per the law laid down by this Hon'ble Court the instant triple has become invalid and it can no longer dissolve the marriage thus has no legal sanctity in the eyes of law.

IX. The Government of India introduced The Muslim women (Protection of Rights on Marriage) Bill, 2019 in parliament which was passed in Lok

Sabha on 25<sup>th</sup> July, 2019 and subsequently on 30<sup>th</sup> July, 2019 the bill was passed in Rajya Sabha. The bill make instant triple Talaq (*Talaq-e-Biddat*) in any form — spoken, in writing or by electronic means such as email, SMS and WhatsApp illegal and void, with up to three years in jail for the husband.

- X. The Bill got assent from the Hon'ble President of India on 31.07.2019 and was published in the Official Gazette thus becomes law of the land. True Copy of The Muslim women (Protection of Rights on Marriage) Bill, 2019 is annexed herewith as **Annexure P-1**.
- XI. The Bill passed and enacted by Government making pronouncement of triple talaq criminal is contrary to the Part III of the Constitution of India. The Bill is violative of Article 13, 14, 15, 21 and 25 of the Constitution of India.
- XII. It is submitted that the Bill enacted by government is arbitrary and unconstitutional. The government has enacted the aforesaid Bill in an arbitrary and illegal manner. It is submitted that when this Hon'ble Court in *Shayara Bano vs. Union of India* by a majority judgment of 3:2 has already declared the said form of talaq as invalid and unconstitutional, there is no necessity for

bringing an Act to make it criminal offence, when the triple talaq pronounced is invalid. Under **Article 141** of the Constitution of India the law declared by this Court is binding.

XIII. That the bill is manifestly arbitrary and contravenes the provisions of the Constitution of India. The Bill enacted by the Government is fraud with the Constitution of India.

#### GROUNDS

- A. BECAUSE the Bill is un-islamic, unconstitutional and it has the potential of suffocating the rights of Muslim men and it undermines the secular character, which is the basic feature of the Constitution; that there is no rhyme or reason to punish the Muslim men for an act which is invalid and have no effect on the continuance of marriage.
- B. BECAUSE The Muslim Women (Protection of Rights on Marriage) Bill, 2019 is contrary to the wisdom inherent in the Constitution of India and the ethos of Preamble contained in our Constitution which promised to secure to all its citizens Justice, Liberty, Equality, Fraternity and assuring the dignity of the individual.
- C. BECAUSE the provisions of the Bill are manifestly arbitrary which infringes the fundamental rights contained in Article 14, 15, 21 and 25 under the Constitution of India of a "class" citizens of India. The

classification to penalize the Muslim husbands is not based on "intelligible differentia".

- D. BECAUSE** the Bill offends the very foundation of Right to Life with Dignity and Personal Liberty and thus violates the Article 21 of the Constitution of India. Making civil wrong criminal and cognizable, and prescribing three years punishment is absolutely unnecessary and contrary to Article 21 and the laws laid down by this Hon'ble Court in **Joginder Kumar V. State of U.P. 1994 AIR 1349** and **Arnesh Kumar V. State of Bihar (2014) 8 SCC 273**.
- E. BECAUSE** The Constitution Bench of this Hon'ble Court in the case of **Shayara Bano Vs. Union of India & Ors., (2017) 9 SCC 1** by majority of 3:2 declared the practice of instant triple talaq to be unconstitutional. The majority judgment delivered by this Hon'ble Court reads as under: *"What is held to be bad in the Holy Quran cannot be good in Shariat and, in that sense, what is bad in theology is bad in law as well"*. It was further held that *"It can be seen that the 1937 Shariat Application Act is a preconstitutional legislative measure which would fall directly within Article 13(1) of the Constitution of India, As we have concluded that the 1937 Act is a law made by the legislature before the Constitution came into force, it would fall squarely within the expression "laws in force" in Article 13(3)(b) and would be hit by Article 13(1) if found to be inconsistent with the provisions of Part III of the Constitution, to the extent of*

*such inconsistency. As Triple Talaq forms part of Talaq which is irrevocable and manifestly arbitrary and "therefore, the 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression laws in force in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq".*

- F. BECAUSE** the Marriage in Islam is a contract, and like other contracts, may under certain circumstances, be terminated. The termination of civil contract has no criminal liability. The wife cannot be compelled to suffer cruelty in hands of husband and his family members if she believes that that the marriage has been dissolved according to her sect.
- G. BECAUSE** Article 15 of the Constitution of India prohibits discrimination on the basis of religion, race, caste, sex place of birth. The Bill discriminates on the basis of religion as the applicability of criminal law is religiously neutral, however, this particular bill is enacted to penalise to a class of persons professing Islamic faith.
- H. BECAUSE** In **S.G. Jaisinghani v. Union of India**, (1967) 2 SCR 703, this Court held: "In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive

authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. It must be governed by rule, not by humour: it must not be arbitrary, vague, and fanciful".

I. **BECAUSE in Shayara Bano Vs. Union of India & Ors., (2017) 9 SCC 1** this Court held as follows:- *"It is, therefore, clear from a reading of even the aforesaid two Constitution Bench judgments that Article 14 has been referred to in the context of the constitutional invalidity of statutory law to show that such statutory law will be struck down if it is found to be "arbitrary"...*

*The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of*



*manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."*

- J. BECAUSE prescribing the punishment of three years for a invalid act which has no legal validity in the eyes of law is absolutely unnecessary, arbitrary and discriminatory as certain other serious offences like offences punishable under Section 147, 304A, 171E of the IPC prescribed lesser punishment of 1 to 2 years.
- K. BECAUSE the Bill offends the very basis of rule of law and equal protection of law granted to every citizens of this country as enshrined in our Constitution of India.
- L. BECAUSE this Bill has given grave threat to violations of fundamental rights of a class of citizens, hence a sense of insecurity and helplessness has grabs the entire community the only hope community people looks for justice is towards judiciary.
- 6. The petitioner submits that he has not filed any similar petition in any of the Hon'ble High Courts of India or before Hon'ble Supreme Court of India.
- 7. The petitioner also submit that he has no other efficacious alternative remedy except to approach this Hon'ble Court by way of the present public interest litigation under Article 32 of the Constitution of India.

PRAYERS

In the view of aforesaid facts and circumstances mentioned herein above, the petitioner most humble prays that this Hon'ble Court may be pleased to: -

- a) issue an appropriate writ, order or direction in nature of mandamus declaring that "The Muslim women (Protection of Rights on Marriage) Bill, 2019 unconstitutional and violative of Article 14, 15, 21 and 25 of the Constitution of India and hence unconstitutional and unenforceable or;
- b) pass any such further order or direction as this Hon'ble Court may in the facts and circumstances deem fit against the respondents in the facts and circumstances of the present case;

AND FOR THIS ACT OF KINDNESS THE  
PETITIONER AS IN DUTY BOUND SHALL EVER  
PRAY

Filed By:-

FILED ON:

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) No. OF 2019

IN THE MATTER OF:

Amir Rashadi Madani

VERSUS

.....PETITIONER

Union of India

.....RESPONDENT

AFFIDAVIT

I,

do hereby solemnly affirm and declare on oath as  
under:-

1. I am the Petitioner in the above matter and I am fully conversant with the facts and circumstances of the case and competent to swear the present affidavit.
2. I have read and understood the contents of the accompanying writ petition Synopsis and List of Dates from Page No. B to N and also the accompanying writ petition (page no. 1 to 16) which have been drafted under my instructions and I say that the contents of the same are true and correct.
3. I say that the contents of the petition are based through the knowledge derived by various news papers and from the personal sources of the petitioner.
4. I say that the Annexure P-1 annexed with the petition is true copy of its original.

DEPONENT

**Verification:**

I,  do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 2<sup>nd</sup> day of August, 2019.

**DEPONENT**

**APPENDIX****Article 14 in The Constitution Of India 1949**

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 in The Constitution Of India 1949**

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 in The Constitution Of India 1949**

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 25 in The Constitution Of India 1949**

25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

**Article 32 in The Constitution Of India 1949**

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 ///

रजिस्ट्री सं० डी० एल—(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

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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.

(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;

(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.