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. OF 2016

IN THE MATTER OF:

Shayara Bano
116, R.T.S. Depot,
Hempur Daya, Kashipur,
Udhamsingh Nagar,
Uttarakhand 244713 … 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 … Respondent No. 1

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 … Respondent No. 2

3. Ministry of Minority Affairs,
   Represented by the Secretary,
   11th Floor, Paryavaran Bhawan,
   CGO Complex, Lodhi Road,
   New Delhi - 110 001 … Respondent No. 3

4. National Commission for Women,
   Represented by the Chairperson,
   Plot 21, Jasola Institutional Area,
   New Delhi - 110025 … Respondent No. 4

5. Shri Rizwan Ahmad,
   S/o Iqbal Ahmad,
   37-F/15P/1 V.I.P. Colony,
   Gausnagar, P.S. Karaili,
   Dist. Allahabad,
   Uttar Pradesh … Respondent No. 5

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING A WRIT OR ORDER OR DIRECTION IN THE NATURE OF MANDAMUS DECLARING THE PRACTICES OF TALAQ-E-BIDAT, 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 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 against the Union of India and others seeking a writ or order or direction in the nature of mandamus declaring the practices of *talaq-e-bidat*, *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 her 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. The Petitioner is a female citizen of India, a Muslim by religion, and hails from Kashipur (Uttarkhand). She is sick, unemployed, and the daughter of a government employee who has meagre income. The Petitioner was married to Respondent No. 5 on 11.04.2002 at Allahabad (Uttar Pradesh) as per Muslim Shariyat law rites and customs and has two children from the wedlock. Her parents had been compelled to give dowry before the marriage. Her husband and his family not only subjected her to cruelty after the marriage (including physical abuse and administration of drugs that caused her memory to fade, kept her unconscious, and eventually made her critically ill), but also demanded additional dowry in the form of a car and cash which her family was unable to provide. Due to the unreasonable demands, the torturous behaviour of her husband and his eventual decision to abandon her, the Petitioner has been forced to stay with her parents since April 2015. As a consequence of the drugs administered to the Petitioner-wife by her husband, she is ill, requires the constant care and support of doctors and medicines, and requires to be

financially supported by her father. The Petitioner-wife was divorced by triple-talaq, which was confirmed by a divorce deed dated 10.10.2015 issued by Respondent No. 5.
A true translated copy of the divorce deed dated 10.10.2015 issued to the Petitioner-wife by Respondent No. 5 is attached as **Annexure P-1** (Pages 40 to 42).

BACKGROUND

4. This Hon'ble Court has not only observed that gender discrimination against Muslim women needs to be examined, but has also been pleased to direct that a public interest litigation 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, the Hon'ble Court directed that the 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 public interest litigation and heard separately.

5. 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.
6. 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.
7. The Muslim personal laws of India permit the practice of *talaq-e-bidat* or *talaq-i-badai*, which includes a Muslim man

divorcing his wife by pronouncing more than one *talaq* in a single *tuhr* (the period between two menstruations), or in a *tuhr* after coitus, or pronouncing an irrevocable instantaneous divorce at one go. This practice of *talaq-e-bidat* (unilateral triple-talaq) which practically treats women like chattel is neither harmonious with the modern principles of human rights and gender equality, nor an integral part of Islamic faith, according to various noted scholars. Many Islamic nations, including Saudi Arabia, Pakistan, and Iraq, have banned or restricted 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 divorced women and their children, especially those belonging to the weaker economic sections of the society.

8. The practice of *talaq-e-bidat* and divorce of a woman without proper attempt at reconciliation violates the basic right to live with dignity of every Muslim woman. Muslim women have been given *talaq* over Skype, Facebook and even text messages. There is no protection against such arbitrary divorce. Muslim women have their hands tied while the guillotine of divorce dangles, perpetually ready to drop at the whims of their husbands who enjoy undisputed power. Such discrimination and inequality hoarsely expressed in the form of unilateral triple-talaq is abominable when seen in light of

the progressive times of the 21st century. Further, once a woman has been divorced, her husband is not permitted take her back as his wife even if he had pronounced *talaq* under influence of any intoxicant, unless the woman undergoes *nikah halala* which involves her marriage with another man who subsequently divorces her so that her previous husband can re-marry her. This unfortunate practice was highlighted by the media in the case of Nagma Bibi of Orissa whose husband divorced her in the spur of the moment in a drunken state and wanted her back the next morning when he realized he had committed a terrible mistake. Unfortunately, she was prevented by her community's leaders who forcibly sent her with her three children to her father's house suggesting she will have to undergo *nikah halala* before she can re-unite with her husband.

9. According to many scholars, *talaq-e-bidat* is not a form of divorce recognised in the Holy Quran as the Holy Book provides for reconsideration and reconciliation before recognising divorce as irrevocable. Noted Islamic scholars like Asghar Ali Engineer have opined that *talaq-e-ehsan*, in which a married Muslim couple is given three months to separate if they wish, and also offers an opportunity to reconcile their differences, is the only acceptable and valid form of *talaq*. In any event, the social, economic, humanitarian and moral significance of making attempts over

a period of time to reconcile marital disputes is widely prevalent and very well recognised. According to Prof. Tahir Mahmood (former Dean of Faculty of Law at the University of Delhi, former Chairman of the National Commission for Minorities, author and editor of numerous commentaries on Muslim law, and an internationally recognised expert on Muslim law), *talaq-e-bidat* is not recognised by the Holy Quran which, to the contrary, provides that a person cannot divorce his wife unless there is an arbitration or reconciliation process. He has also expressed the view that *maulvis* have thwarted reforms in the Muslim community in India and it is imperative for the judiciary to step in.

A true copy of an interview dated 05.05.2015 reported on Scroll.in, where the views of Prof. Tahir Mahmood on *talaq-e-bidat* have been reported, is attached as **Annexure P-2** (Pages 43 to 53).

10. Maulana Mohammad Ali in his commentary on the Holy Quran has stated that not only must there be a good cause for divorce, but all means to effect reconciliation must also have been exhausted, since the impression that a Muslim husband may put away his wife at his mere caprice is a grave distortion of the Islamic institution of divorce. This view was referred to in ***Dagdu s/o Chotu Pathan, Latur v. Rahimbi Dagdu Pathan, 2002 (3) Mh LJ 602***, wherein a three judge bench of the Bombay High Court observed that *talaq* must be

for reasonable cause, must be preceded by attempts at reconciliation, and the husband must satisfy the preconditions of arbitration for reconciliation and the reasons for *talaq*, since mere pronouncement of *talaq* by the husband or merely declaring his intentions or his act of having pronounced *talaq* is not sufficient and does not meet the requirements of law. In the words of the judgment, every exercise of right to *talaq* by the husband is required to satisfy the preconditions of arbitration for reconciliation and the reasons for *talaq*.

11. In ***Sri Jiauddin Ahmed v. Mrs. Anwara Begum, (1981) 1 GLR 358***, Baharul Islam, J. as a judge of the High Court of Gauhati (as His Lordship then was), quoted several Quranic verses and commentaries thereon by well-recognized scholars of great eminence like Mahammad Ali and Yusuf Ali as well as the pronouncements of great jurists like Ameer Ali and Fyzee and expressed disapproval of the notion that the whimsical and capricious divorce by a husband is "*good in law though bad in theology*" and even observed that such a statement is based on the concept that women were chattel belonging to men, which the Holy Quran does not brook. Similarly, in ***Must. Rukia Khatun v. Abdul Khalique Laskar, (1981) 1 GLR 375 (DB)***, Baharul Islam, J. stated that the correct law of *talaq* as ordained by the Holy Quran is that *talaq* must be for a reasonable cause and it must be preceded by an attempt of reconciliation between the

husband and the wife by two arbiters, one chosen by the wife from her family and the other by the husband from his. It is submitted that this view was referred to with approval by this Hon'ble Court in ***Shamim Ara versus State of Uttar Pradesh & Another, (2002) 7 SCC 518***, wherein this Hon'ble Court considered valid *talaq* in Islamic law and, referring to these decisions as "illuminating and weighty judicial opinion available in two decisions of Gauhati High Court recorded by Baharul Islam, J", observed that *talaq* must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife.

12. In ***A. Yusuf Rawther v. Sowramma, AIR 1971 Ker 261***, V.R. Krishna Iyer, J. (as His Lordship then was), observed that it is a popular fallacy that Muslim men enjoy unbridled authority to liquidate their marriage under Quranic law and the view that Muslim men enjoy an arbitrary unilateral power to inflict instant divorce does not accord with Islamic injunctions. It was also observed in this case that commentators on the Holy Quran have rightly observed that the husband must satisfy the Court about the reasons for divorce, which view tallied with the law administered even at that time (almost five decades ago) in some Muslim countries like Iraq, although Muslim law as applied in India has taken a course contrary to the spirit of what the Prophet or the Holy

Quran propounds and the same misconception also vitiates the law dealing with a wife's right to divorce.

13. Polygamy is another practice that has been recognised as an evil plague similar to *sati* and has also been banned by law in India for all but Muslim citizens. 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 practices like *talaq-e-bidat*, *nikah halala*, and polygamy are grossly misusing their position, influence and power to subject Muslim women to such gross practices 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 a 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 or beliefs or sectarian, racial or communal constraints.

17. Reform to prohibit *talaq-e-bidat* has already been sought by many citizens from the Muslim community of India. The All India Muslim Women Personal Law Board has expressed the view that *talaq-e-bidat* is against the light of Islam and the Holy Quran does not endorse divorce by such a simplistic procedure that lacks any attempt at reconciliation.
A true copy of an electronic news article titled "Talaq, Talaq, Talaq: The Islamic Legality Behind the Cliche" dated

04.09.2015, where the views of the All India Muslim Women Personal Law Board on *talaq-e-bidat* have been reported, is attached as **Annexure P-3** (Pages 54 to 56).

18. The Bharatiya Muslim Mahila Andolan has written to the Prime Minister seeking codification of Muslim personal law as per a draft based on Quranic tenets prepared by them and has sought that certain prevalent practices be declared illegal, including the practice of *talaq-e-bidat* and polygamy. A true copy of a news article dated 28.11.2015 in the DNA titled “Muslim women write to PM Modi to make triple talaq, polygamy illegal”, where the letter to the Prime Minister from the Bharatiya Muslim Mahila Andolan seeking ban of triple-talaq and polygamy has been reported, is attached as **Annexure P-4** (Pages 57 to 58).

19. 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”, has 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.

A true copy of the news article dated 23.08.2014 in the Hindustan Times titled “High-level panel seeks overhaul of family laws”, in which the high-level committee’s recommendations on personal laws were reported, is attached as **Annexure P-5** (Pages 59 to 61).

20. 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 sinful form of *talaq* and the practice 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. The assumptions and beliefs upon which the *talaq-e-bidat* form of divorce is recognised are factually false, scientifically untenable and contrary to the spirit and provisions of the Constitution. This form of divorce has been declared to be a spiritual offence in the Holy Quran and giving recognition to that form interferes with the Muslim women’s right to profess and practice her

religion, inasmuch as it unleashes a spiritual offence on her to say the least and is, thus, violative of 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 *talaq-e-bidat*, *nikah halala* and polygamy.

21. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 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 (Shariat).*"

It is submitted that this provision, in so far as it seeks to recognise and validate *talaq-e-bidat* as a valid form of divorce and the practices of *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.

A true copy of the Muslim Personal Law (Shariat) Application Act, 1937 is attached as **Annexure P-6** (Pages 62 to 65).

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), “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.

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 arbitrary divorce and second marriage by a Muslim husband during currency of first marriage notwithstanding the guarantees of the Constitution, needs to be examined by this Hon'ble Court.

25. In the Islamic Republic of Pakistan, in terms of Section 7 of the Muslim Family Laws Ordinance, 1961, various safeguards have been introduced to protect the dignity of

women including the requirement that notice of *talaq* must be in writing, prescribing punishment for contravention of such requirement of notice, prescribing a mandatory period of separation and reconciliation for divorce to be effective, prohibiting divorce during pregnancy of wife, introducing an arbitration council for facilitating reconciliation process between husband and wife who seek to divorce, and empowering women to remarry their husband after divorce without the need for an intervening marriage with a third person. Similarly, 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.

A true copy of the Muslim Family Laws Ordinance, 1961 followed by Pakistan and Bangladesh, as available on the electronic legal portal vakilno1.com, is attached as **Annexure P-7** (Pages 66 to 73).

26. It is submitted that in view of the changes in the laws in various Islamic countries that either ban or restrict triple-talaq, as well as the views of scholars of Muslim law which clearly establish that such form of *talaq* is neither a part of the Muslim religion nor the Holy Quran, 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 being presently enforced without any foundation in Muslim law and in violation of the fundamental rights guaranteed by the Constitution.

A true copy of a news article dated 09.09.2015 in The Wire titled "The Muslim Law Board's Decision on Triple Talaq is Irrational and Wrong", which criticizes the practice of triple-talaq and its approval by the All India Muslim Personal Law Board is attached as **Annexure P-8** (Pages 74 to 80).

27. 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 all States. It is accordingly submitted that it is well recognised in international law that polygamy critically undermines the dignity and worth of women. On the same lines, it is also submitted that the practices of *talaq-e-bidat* and *nikah halala* also critically undermine the dignity and worth of women.

A true copy of the Universal Declaration of Human Rights is attached as **Annexure P-9** (Pages 81 to 89).

28. 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.

A true copy of the International Covenant on Civil and Political Rights is attached as **Annexure P-10** (Pages 90 to 120).

A true copy of the International Covenant on Economic, Social and Cultural Rights is attached as **Annexure P-11** (Pages 121 to 137).

29. 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, *talaq-e-bidat* 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 No. 16 of 2005 of the United Nations Economic and Social Council's Committee on Economic, Social and Cultural Rights is attached as **Annexure P-12** (Pages 138 to 157).

30. The Petitioner has not filed any similar Writ Petition either before this Hon'ble Court or any High Court praying for the same reliefs as are claimed in the present Writ Petition.

31. The present Writ Petition is filed *bona fide* and in the interest of justice.

32. The Petitioner has no adequate or equally efficacious remedy but to approach this Hon'ble Court by way of the present Writ Petition.

GROUNDS

33. The importance of ensuring protection of Muslim women from arbitrary *talaq-e-bidat*, *nikah halala*, and 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.

34. Various eminent Muslim scholars, judgments of eminent judges, and Muslim citizens' groups have expressed disapproval of the notion that the whimsical and capricious divorce by a husband is "*good in law though bad in theology*"

as well as observed that such view is not only an affront to the fundamental rights guaranteed by the Constitution, but is also based on the concept that women are chattel belonging to men, which the Holy Quran does not brook.

35. 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.

36. 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 the sinful form of *talaq*, *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.

37. 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.

38. The assumptions and beliefs upon which *talaq-e-bidat* is recognised are factually false, scientifically untenable and contrary to the spirit and provisions of the Constitution and, in any event, this form of divorce has been declared to be a spiritual offence in the Holy Quran itself.

39. Giving recognition to *nikah halala* and to *talaq-e-bidat* as a valid form of divorce interferes with the Muslim women's right to profess and practice her religion, inasmuch as it unleashes a spiritual offence on her to say the least and is, thus, violative of Articles 14, 15, 21 and 25 of the Constitution.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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 and divorce and succession.

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

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

47. Several Islamic nations have banned or restricted the practice of *talaq-e-bidat* while Indian Muslims are still being compelled to follow such practice which neither has any basis in the Holy Quran nor is associated with the practice of Islam as a religion. Thus, the fundamental rights of Indian Muslims are being violated continuously, without any basis in Islam or the Holy Quran, despite reforms introduced by Islamic nations to secure a life of dignity unmarred by gender discrimination.

48. 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, *talaq-e-bidat* 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.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

A. Issue a Writ / Order or Direction in the nature of mandamus to all Respondents declaring the divorce

deed dated 10.10.2015 issued by Respondent No. 5 void *ab initio* for being illegal, unconstitutional, and violative of Articles 14, 15, 21 and 25 of the Constitution;

B. Issue a Writ / Order or Direction in the nature of mandamus to the Union of India declaring Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 unconstitutional and violative of Articles 14, 15, 21 and 25 of the Constitution in so far as it seeks to recognise and validate *talaq-e-bidat* (triple-talaq) as a valid form of divorce;

C. Issue a Writ / Order or Direction in the nature of mandamus to the Union of India declaring Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 unconstitutional and violative of Articles 14, 15, 21 and 25 of the Constitution in so far as it seeks to recognise and validate the practice of *nikah halala*;

D. Issue a Writ / Order or Direction in the nature of mandamus to the Union of India declaring Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 unconstitutional and violative of Articles 14, 15, 21 and 25 of the Constitution in so far as it seeks to recognise and validate the practice of polygamy;

E. Issue a Writ / Order or Direction in the nature of mandamus to the Union of India declaring 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;

F. Issue a Writ / Order or Direction in the nature of mandamus to the Union of India declaring the practice of *talaq-e-bidat* (triple-talaq) as illegal and unconstitutional as it violates the rights guaranteed by the Constitution, including Articles 14, 15, 21 and 25;

G. Issue a Writ / Order or Direction in the nature of mandamus to the Union of India declaring the practice of *nikah halala* as illegal and unconstitutional as it violates the rights guaranteed by the Constitution including Articles 14, 15, 21 and 25;

H. Issue a Writ / Order or Direction in the nature of mandamus to the Union of India declaring the practice of polygamy as illegal and unconstitutional as it violates the rights guaranteed by the Constitution including Articles 14, 15, 21 and 25;

I. Issue a Writ / Order or Direction in the nature of mandamus to the Union of India declaring 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;

J. Issue a Writ / Order or Direction in the nature of mandamus to the Union of India declaring any form of divorce under Muslim personal laws as illegal and unconstitutional if the divorce is not preceded by attempts to reconcile the marriage over three successive *tuhrs*, or ninety days, or any other period of time this Hon'ble Court deems appropriate;

K. Pass any other or future order(s) as this Hon'ble Court deems fit in the facts and circumstances of the present case.

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

DRAWN BY: FILED BY:

ARUNAVA MUKHERJEE **BALAJI SRINIVASAN**

Advocate Advocate for Petitioner

Drawn on: .02.2016

Filed on: .02.2016