

Abolition of Triple Talaq: Impact on Muslim Women in Punjab

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Abstract: This article critically examines the provisions of the Muslim Women (Protection of Rights in Marriage Act) 2019 pertaining to Muslims in India, particularly the provision related to criminalisation of triple talaq. Investigating the genesis, development, and history of the notion of *talaq-e-biddat* from the time of the *jahilliyah* until present, the focus of this article remains on the concept of talaq considering the Quran, *hadith*, and opinions of different schools of Islamic law. The overall objective is to bridge the law and practice of *talaq* in Islam, highlighting the possible misuse of triple talaq and the relevance of ‘digital triple talaq’ in contemporary Indian society, specifically in the state of Punjab. The primary aim of this article is to address gaps in current law by analysing the existing legislation and judicial decisions on the matter of triple talaq. The article evaluates the role of the Indian judiciary in establishing principles for the protection of the matrimonial rights of women, considering the worldwide and national perspectives on the protection of the rights of Muslim women. Based on a survey in the state of Punjab generally, but particularly in Malerkotla and Qadian, where Muslims are heavily populated, this article identifies the challenges that will arise for Muslims following the implementation of the Act.

Keywords: Digital Triple Talaq, Hadith, Islamic Law, Quran, Talaq-e-Biddat, Triple Talaq.

I. INTRODUCTION

The Islamic social system builds upon the principles of high standards of human values, piety, purity, and dignity. Islam attaches great importance to the institution of marriage, which people regard as an act of devotion. However, in pre-Islamic Arabian society, men treated women very poorly. In those days, the customary laws of Arabia favoured males. People treated females as property and not as human beings. The only purpose of marriage was to enjoy sex and procreate children. Limitless polygamy prevailed, allowing a man to have as many wives at a time as he liked. Except for a very few blood relations, such as the real mother or real sister, men

faced no restrictions on marrying a girl, even in close relationships. Several kinds of marriages existed, but they resembled different forms of prostitution. The form of marriage that closely resembles present marriage involved the father or any other guardian selling the girl to the husband in the same manner he sold his camels or sheep. Consequently, wives had no certainty about their matrimonial status. Arabs used to divorce their wives and take them back, sometimes repeating this process a thousand times. Thus, women always lived under this threat. To be precise, women in those days were no better than slaves and lacked their own status. Prophet Mohammad brought about a complete change in the position of women. The improvement was vast and striking, making their position unique regarding their legal status. Islam strongly advocates for marriage.

This article starts with brief overview of pre-Islamic period. This discussions in this article are structured as follows: Part II presents the ideology of Islam on marriage. Part III describes the meaning and kinds of talaq in Islamic law. Part IV provides a historical background of triple talaq, and part V highlights the controversy about triple talaq. The subsequent discussion moves on the law and practice of triple talaq in India. Part VI examines the judicial approach towards triple talaq, part VII evaluates the salient features of the Muslim Women (Protection of Rights on Marriage) Act, 2019, and part VIII presents and empirical analyses of the impact of abolition of triple talaq in State of Punjab. Part IX then presents the critical analysis of the Muslim Women (Protection of Rights on Marriage) Act, 2019. Part X concludes the article by suggesting the requisite reforms to reconcile the couple, along with the abolition of triple talaq, so that the Act can be implemented in its practical form.

II. IDEOLOGY OF ISLAM ON MARRIAGE

Islam views marriage as one of the most virtuous and approved institutions. Every Muslim must fulfill the religious duty of marriage, which serves as a moral safeguard and social need. The Holy Prophet declared, "There is no monasticism in Islam." He further ordained, "Marriage is my Sunnah, and whosoever keeps away from it is not from my followers." Marriage holds a very important place in the Islamic legal and ethical system. The family unit builds society; relationships within a family and the observance of the rights and duties of spouses and children contribute to a peaceful and flourishing society. Islam encourages marriage as an institution because family life ensures the survival of the human race and guarantees social stability and a dignified existence for both women and men. According to Quranic philosophy, nothing wrong exists with sex if couples use it for procreation within the marital framework instead of merely for enjoyment and pleasure. *Al-Quran* states, "Husband and wife are each other's garments." Thus, marriage transcends mere sexual urges that bring woman and man together; it has a higher end, an exalted motive, and embodies a relationship of love and mutual respect. According to *Al-Quran*, Islamic doctrine refers to marriage using terms such as *mawadda* wa *rahma*, *rehmat*, and *sukun*. This underscores the multifaceted nature of the marital relationship, which is both *Ibadat* and *Mu'amlat*. From a legal perspective, marriage constitutes a civil contract requiring the free consent of both contracting parties for its accomplishment. Viewed from one perspective, marriage represents a contractual relationship based on the consent of the parties; from another perspective, it acts as *Ibadat*. Legally, marriage in Islam is treated as a civil contract requiring the free consent of both parties involved. It is this dual nature of marriage—as both a contractual agreement and a spiritual act—that underscores its profound significance in Islamic life and society.

Marriage, as Divine Scripture illustrates, bestows blessings and aims to be a lasting union. It emphasises that couples should fortify the marital bond to the greatest extent and encourages them to make all possible efforts to maintain the integrity of the marriage. However, when partners find their relationship deteriorating to the point where love and compassion vanish and the marriage threatens the very objectives of the law, it becomes unwise to force the unwilling partners to stay together amid

mutual hatred, dislike, and distrust. Recognising the complexity of human relationships, the Islamic social system accommodates the reality of marital breakdown by providing a structured process for dissolution. Islam introduces a reasonable method for separation known as *talaq*, allowing the spouses to re-evaluate and seek new paths according to their altered circumstances. Specific conditions meticulously regulate *talaq*, ensuring that people do not resort to it hastily or without justification. Despite this provision, Islamic teachings consider divorce a highly distasteful and reprehensible act, underscoring the preference for reconciliation and the preservation of the marital relationship whenever possible.

III. MEANING AND KINDS OF TALAQ

The Arabic term for divorce is "*talaq*," which signifies the act of liberating or untying the marital knot. In the context of Islamic jurisprudence, *talaq* denotes the termination of a marriage through the pronouncement of specific words. Occasionally, a husband and wife may find it challenging to coexist due to irreconcilable differences in their personalities, thoughts, habits, and other aspects of their lives. In such cases, forcing them to stay together would defeat the purpose of marriage. While a husband has the right to initiate a divorce, this right is heavily regulated and is intended to be exercised only as a last resort. According to the Prophet Muhammad, "In the eye of Allah, it is the most unbearable of the lawful things." The Prophet also warned that God's curse would rest upon a man who divorces his wife without just cause and that such an act would shake the throne of Allah. Prophet Muhammad strongly disapproved of the practice of *talaq*, asserting that it should only be employed when living together becomes absolutely impossible. Therefore, the religion of Islam strongly condemns divorce. In Islam, divorce can take various forms, with some initiated by the husband and others by the wife. The primary traditional legal categories of divorce include *talaq*, *khula*, judicial divorce, and oaths.

Talaq can be further divided into two forms:

(a) *Talaq-ul-Sunnat*

(b) *Talaq-ul-biddat*

(a) *Talaq-ul-Sunnat*: According to the teachings of the Prophet, one must adhere to specific rules for *Talaq-ul-Sunnat*. To prevent hasty decision-making and allow for the possibility of reconciliation, the

Quran and traditions advise pronouncing *talaq* only when necessary and when the wife is in a state of purity. The Holy Quran mentions two types of *talaq-ul-sunnat: ahsan* and *hasan*. In both cases, the husband must declare *talaq* when the wife is in a state of *tuhr*.

(b) *Talaq-ul-biddat*: *Talaq-ul-biddat* is purely un-Quranic and contradicts the traditions of Islam. This neo-logical procedure of divorce contravenes the provisions of the Sunnah. In this form, a Muslim husband makes three pronouncements in a single sitting, either in one sentence or in three sentences. The ignorant individuals who pronounce divorce all at once commit a heinous

IV. HISTORICAL BACKGROUND OF TRIPLE TALAQ

More than a hundred years after the death of the Prophet, Islamic Shariah was established. It evolved under the complex influences of numerous cultures. It deprived women of the rights and privileges that the Quran and the Prophet had granted them. The issue of *talaq-ul-biddat* in a single sitting perfectly exemplifies this. Before the advent of Islam, societies practised it during the *jahiliyah* period. At that time, men followed the standard procedure of saying the word *Talaq* twice and then stopping, which left the woman in perpetual anxiety about the third utterance. During the Prophet's time, during the reign of the first Caliph, Hazrat Abu Bakr, and for more than two years during the reign of the second Caliph, Hazrat Umar, they strictly prohibited triple *talaq*.

But Hazrat Umar later allowed it due to unique circumstances. The word itself indicates *biddat*, meaning sinful. According to Ameer Ali, the second century of Islam saw the emergence of a phenomenon when the Umayyad rulers recognised that the Prophet's restriction on the facility of repudiation interfered with their whims. Seeking to escape the strictness of the law, they discovered a loophole to achieve their objective. When the Arabs conquered Egypt, Syria, Persia, and other countries, they found the women there to be much more attractive than Arabian women, which led them to desire to marry them. On the other hand, the women of Syria and Egypt insisted that the men must immediately divorce their existing wives by proclaiming three divorces in a single sitting in order to marry them. The Arabs readily accepted this condition because they understood that Islam

permits *talaq* only twice during two distinct periods of *tuhr*, and that repeating it in one sitting is un-Islamic, void, and ineffective. So they were able to marry these women while keeping their current wives. The second caliph, Hazrat Umar, was informed of the situation. In order to prevent unscrupulous husbands from abusing the religion, Caliph Umar then ordered that merely uttering the words *talaq, talaq, talaq* three times in a single sitting would irrevocably dissolve the marriage.

However, Caliph Umar's administrative decision was only to address an emergency situation, and he had no intention of making it a permanent law. Unfortunately, the Hanafi jurists eventually declared this type of divorce valid and sanctioned it religiously based on the administrative ruling of the second caliph. It is also worth noting that the legitimacy of these divorces was granted by Umayyad traditions and not by Islam. Sunni law is the only one that recognises them. What is special about this *talaq* is that it comes into effect immediately after the words are uttered, without the spouses being able to reconcile. The aim of treating divorce as *mughallazah* divorce by 'Caliph Umar' was certainly to discourage people from repeating divorces and treating divorce nonsensically and frivolously. Hazrat Umar used to punish those who divorced three times in the same session with public flogging. Hazrat Umar wanted to warn people of the negative consequences of un-Islamic practice with the three divorces he pronounced in one sitting, but the result was the opposite of what he intended.

V. CONTROVERSY ABOUT TRIPLE TALAQ

In India, people frequently practised *talaq-ul-biddat*, or triple *talaq*. Triple *Talaq* in the current scenario has indeed turned into a debatable issue, and one should return to the instructions prescribed by the Quran regarding divorce. It is high time to maintain or stay within the limits set by Islamic rules and regulations. However, if society fails to address the matter, then it becomes prey to multiple contagions, leading to a loss of faith in the peaceful state of love, matrimony, and long-lasting relationships, ultimately turning life into a chaotic experience.

Even if a husband pronounces a triple divorce in a state of anger, or worse, while inebriated, the divorce remains valid. This practice of triple *talaq* has sparked discussions about gender equality, justice, secularism, and human rights. It directly

undermines the dignity of women and compromises gender equality. Numerous international efforts have been made to protect women's rights around the world, either directly or indirectly. Despite this, India agreed to ratify international conventions and declarations, even though the practice of triple talaq clearly contravened them. The continued practice of '*talaq-e-biddat*' tarnished India's global image, portraying the nation as a violator of conventions and declarations designed to protect women from various forms of atrocities. By not actively banning *talaq-e-biddat* and allowing its continued practice, India was seen as persisting in and propagating what the international community deems abhorrent.

This practice conflicts with international conventions such as the Universal Declaration of Human Rights (1948), the Declaration on the Elimination of Discrimination Against Women (1967), and others. Nationally, it violates constitutional and legislative enactments. The Constitution of India guarantees equality for women, but Triple Talaq contradicts principles of gender equality, secularism, and the right to life and dignity. It also breaches laws like the Indian Penal Code (1860), the Dowry Prohibition Act (1961), the Child Marriage Restraint Act (1929), the Domestic Violence Act (2005), and the Muslim Women (Protection of Rights on Marriage) Act (2019).

Triple talaq allows a Muslim husband to instantly and irrevocably divorce his wife in any form, such as written, spoken, or electronic, without attempting reconciliation. This practice shows no kindness towards the wife and fails to meet Quranic conditions. Consequently, most countries, including Egypt, Iraq, Jordan, Kuwait, Morocco, the Philippines, Sudan, Syria, the UAE, and Yemen, have abolished it. In these countries, every talaq, even if repeated three times, results in a single revocable divorce that can be annulled during the wife's iddat period, allowing for remarriage with her consent. The practice of *halala*, which requires the wife to marry and divorce someone else before remarrying her first husband, is also abolished.

In India, numerous petitions have been filed by Muslim women who have either been victimised by maintenance issues after divorce or lived under constant threat of triple talaq. On 22nd August 2017, the Supreme Court made a groundbreaking decision in the case of *Shayara Bano v Union of India*,

striking down the practice of triple talaq and deeming it unconstitutional. As a result, the legislature passed the 'Muslim Women (Protection of Rights on Marriage) Act (2019)' to enforce this judgement. However, this Act has failed to provide adequate social security for women and their children.

VI. JUDICIAL APPROACH TOWARDS TRIPLE TALAQ

No one can deny the prominent role that the third organ of the Government, i.e., the judiciary, plays. The Indian judiciary actively protects the rights of Muslim women. The Indian Muslim women fought their legal battle through some not reported in Courts since 71 years from very dawn of civilization in 1947 specifically from their journey since Shah Bano case decided on 23rd April, 1985 to Shayara Bano case decided on 22nd August, 2017.

In Shah Bano case, the Court held that the Muslim husband must provide maintenance for his divorced wife and children after triple talaq under section 125 of the Code of Criminal Procedure, 1973, even though Muslim Personal Law (Shariat) Application, 1937, does not allow this.

In *Shayara Bano v Union of India*, the Apex Court considered the constitutional validity of Triple Talaq' (*talaq-ul-biddat*). The Constitutional Bench pronounced the judgment with a 3:2 majority. The majority of the Judges held that a Muslim husband exercising triple divorce against his wife in one go is arbitrary and violates Article 14 of the Constitution. Justice R.F. Nariman and Justice U.U. Lalit observed that applying the test of manifest arbitrariness to case at hand, it is clear that triple divorce is a form of talaq which is itself considered something innovative i.e. it is not Sunna, being an irregular form of talaq. The Hanafi school which recognizes this form of talaq, specifically states that though lawful, it is sinful in that it incurs wrath of God. Since triple divorce is instant and irrevocable, it is obvious that any attempt at reconciliation between husband and wife by two arbiters from their families, which is essential to save marital tie, cannot ever take place. It is also clear that this form of talaq is manifestly arbitrary in sense that marital tie can be broken whimsically and capriciously by Muslim man without any attempt at reconciliation so as to save it. This form of 'talaq' must, therefore, be held to be violative of fundamental right contained under Article 14 of Constitution of India.

Justice Kurian Joseph also concurred with the opinion of the above two Judges. He says that the verse in Holy Quran relating to talaq is quite clear and unambiguous. Holy Quran has attributed sanctity to performance of matrimony. However, he opines that in extremely unavoidable situations, talaq is permissible. But an attempt for reconciliation must be made and if it fails, then revocation are Quranic essential steps before talaq attains finality. In Triple Talaq, this door is closed, hence, triple talaq is against basic tenets of Holy Quran and consequently, it violates Sharia.

On the other hand, Chief Justice Khehar and Justice Abdul Nazeer gave a dissenting opinion holding that religion is a matter of faith and not of logic. It is not open to court to accept egalitarian approach, over practice (followed for the past 1400 years) which constitutes integral part of religion. Constitution allows followers of every religion, to follow their beliefs and religious traditions. Constitution assures believers of all faiths that their way of life, is guaranteed and would not be subject to any challenge, even though they may seem to others unacceptable, in today's world and age. Constitution extends this guarantee, because faith constitutes religious consciousness of followers. It is this religious consciousness which binds believers into separate entity. Constitution endeavours to protect and preserve, beliefs of each of separate entities under Article 25.

The Shayara Bano case demonstrates that a Muslim man can capriciously and whimsically break the marital tie without any attempt at reconciliation to save it. Therefore, this form of talaq violates the fundamental rights contained under Article 14 of the Indian Constitution. Therefore, the Muslim Personal Law (Shariat) Application Act (1937) insofar as it seeks to recognize and enforce triple talaq, is within the meaning of the expression "laws in force" in Article 13(1) of the Constitution of India and must be struck down being void to the extent that it recognizes and enforces triple talaq. The Court declared section 2 of the 1937 Act to be void to the extent indicated above on the narrower ground of it being manifestly arbitrary. On these grounds the present law of 2018 abolishing triple talaq is a vane, constitutional and protective umbrella for the Muslim women in India.

The other points in this case were:

- (i) Though triple talaq is governed by Shariat, the specific grounds and procedure for talaq have

not been codified in the Muslim Personal Law (Shariat) Application Act, 1937;

- (ii) Triple Talaq is against the basic tenets of Holy Quran and hence it violates Shariat;
- (iii) Triple Talaq is stated to be sinful by the very Hanafi School which tolerates it;
- (iv) Triple Talaq forms no part of Article 25(1) of the Constitution of India;
- (v) A statutory law like Muslim Personal Law (Shariat) Application Act (1937) can be struck down if it found to be "arbitrary", and there is no reason why arbitrariness cannot be used to strike down legislation under Article 14 of Constitution of India.

For the above reasons, in this judgment, the court struck down the practice of instantaneous triple talaq. Additionally, the Esteemed Supreme Court of India directed the Indian Government to enact specific legislation that would abolish the practice of instant triple talaq. In light of this ruling, the Indian Government passed The Muslim Women (Protection of Rights on Marriage) Act (2019) to outlaw the practice of triple talaq, which errant husbands practiced against their Muslim wives.

VII. SALIENT FEATURES OF THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019

In light of the cause and concern over the illegal and unconstitutional triple talaq, the Supreme Court of India directed the Government of India in the case of *Shayara Bano v. Union of India*, which it decided on August 22, 2017, to enact a specific law within six months to abolish the instant triple talaq. Obeying this direction, the Government of India brought a bill, namely the Muslim Women (Protection of Rights on Marriage Bill) (2017). The bill was passed in the Lok Sabha but not in the Rajya Sabha due to blunt protests from opposition leaders during the Monsoon Session of Parliament in 2018. Consequently, the Union Cabinet approved the Muslim Women (Protection of Rights on Marriage) Ordinance (2018), on September 19, 2018. The President of India promulgated and assented to the ordinance on the same day, thereby making it a law within the meaning of Article 123(2) and providing relief to Muslim women from their errant husbands with effect from September 19, 2018.

As the triple talaq ordinance of 2018 was to expire on January 22, 2019, and also because the Muslim

Women (Protection of Rights on Marriage) Bill of 2018 could not be passed, the Government re-enacted the ordinance on January 10, 2019. On January 12, 2019, the President approved the 2019 ordinance. The Government repealed The Muslim Women (Protection of Rights on Marriage) Ordinance (2019), on July 31, 2019, when both houses of the legislature, Lok Sabha and Rajya Sabha, passed the bill. The President of India then notified the bill in the official gazette, and it became an Act of Parliament known as "The Muslim Women (Protection of Rights on Marriage) Act (2019). The Act came into force on August 1, 2019, which is observed nationwide as Muslim Women's Rights Day. Honoring the legislation, the Ministry of Minority Affairs announced in 2019 that it would recognize August 1 as Muslim Women's Rights Day. Consequently, Muslim Women's Rights Day was commemorated for the first time in 2021.

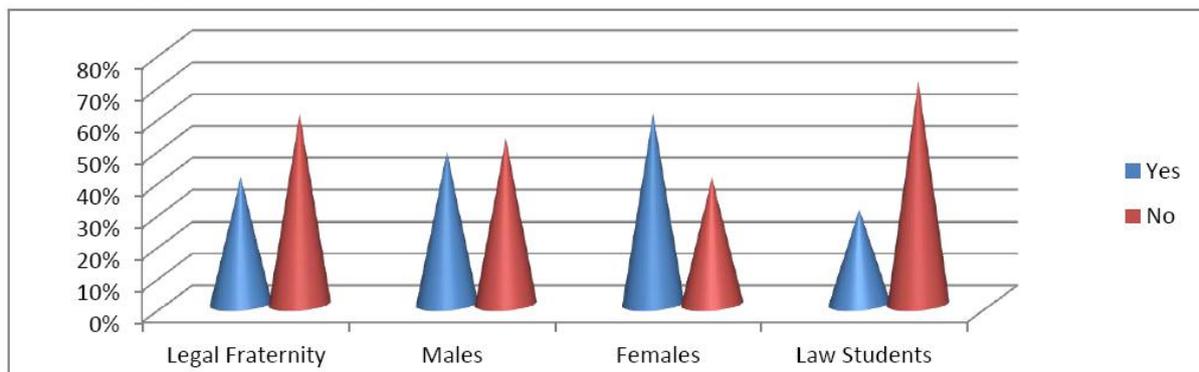
This Act aims to safeguard the rights of married Muslim wives and forbids their husbands from divorcing them by uttering *talaq*. This Act empowers to local Magistrate of local jurisdiction where the victim of triple talaq resides. This law declares the pronouncement of triple talaq (whether by spoken words, written form, or electronic means) by Muslim husband against his wife as void, illegal and unconstitutional. This law specifies a punishment of imprisonment for up to 3 years along with a fine to Muslim husband who will pronounce triple talaq. It also provides that the victimised Muslim women will receive subsistence allowance

from husband for herself and for their children. Additionally, it provides that the custody of minor children shall be given to victimized Muslim women which shall be decided or determined by the Magistrate of local jurisdiction. As per the provisions under such law, the police can arrest to accused husband without warrant of Court upon the complaint of victimised Muslim wife or her legal representative. It further makes provision that there can be compromise between Muslim husband and Muslim wife if the wife will give her consent or if such agrees and still it depends on reasonable or plausible grounds under which the local Magistrate shall decide or shall be satisfied. The stringent provision under this Act is that the bail cannot be granted to errant or accused Muslim husband without consent or desire or hearing of victimised Muslim wife, subject to satisfaction of Magistrate of local jurisdiction where such Muslim wife resides.

VIII. IMPACT OF ABOLITION OF TRIPLE TALAQ IN STATE OF PUNJAB: AN EMPIRICAL STUDY

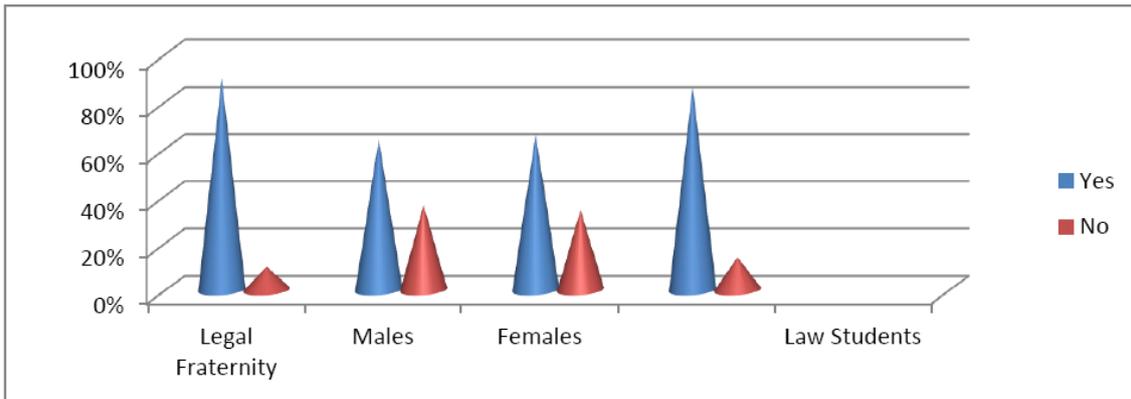
Researchers adopted the questionnaire method to collect the data, which they subsequently analysed. They prepared four types of questionnaires, which the 200 respondents, including judges, advocates, faculty members, Muslim males, Muslim women, and law students, completed. Some important points from the data analysis are described as follows:

Chart 1.1: Appropriateness of the provision for subsistence allowance for wife for her livelihood.



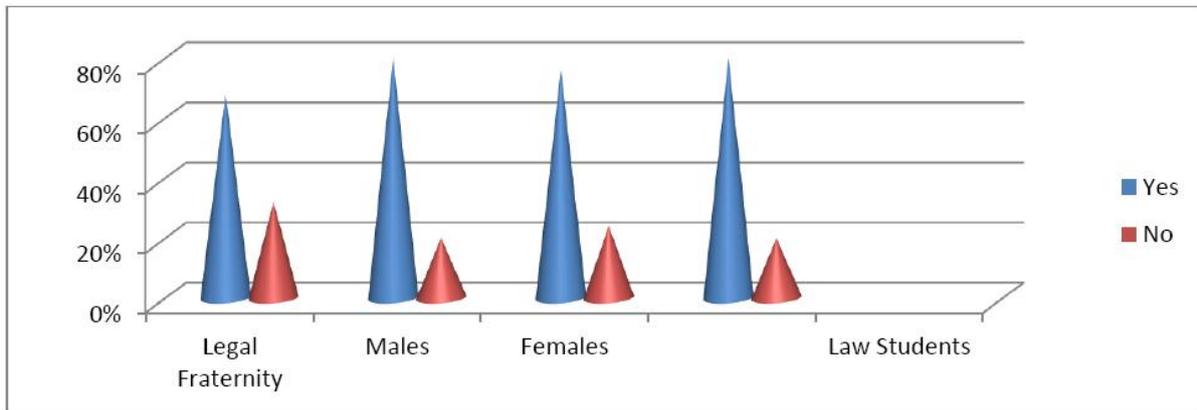
- On average, 50% of the views are negative.
- The majority believes that the subsistence allowance is far less than the maintenance amount, making it difficult to survive on such a meagre sum.

Chart 1.2: Abolition of social evils in Muslim society like Nikah Halala by banning triple talaq.



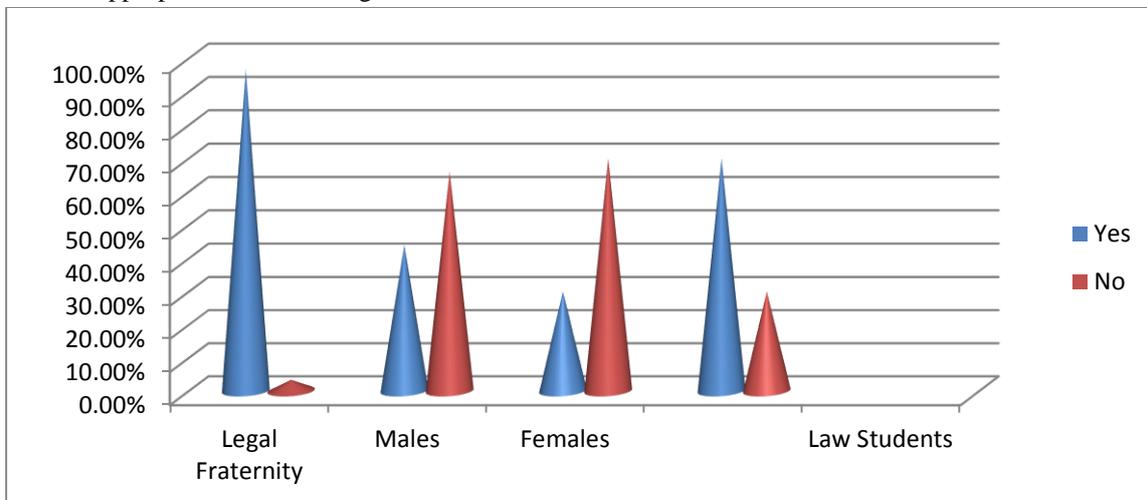
- On average, 75% of the views are positive.
- The prevailing opinion suggests that people closely associate Nikah Halala with the practice of triple talaq. Abolishing triple talaq will directly affect the reduction of Nikah Halala.

Chart 1.3: Possibility of Muslim wife to misuse the Act to harass their husband.



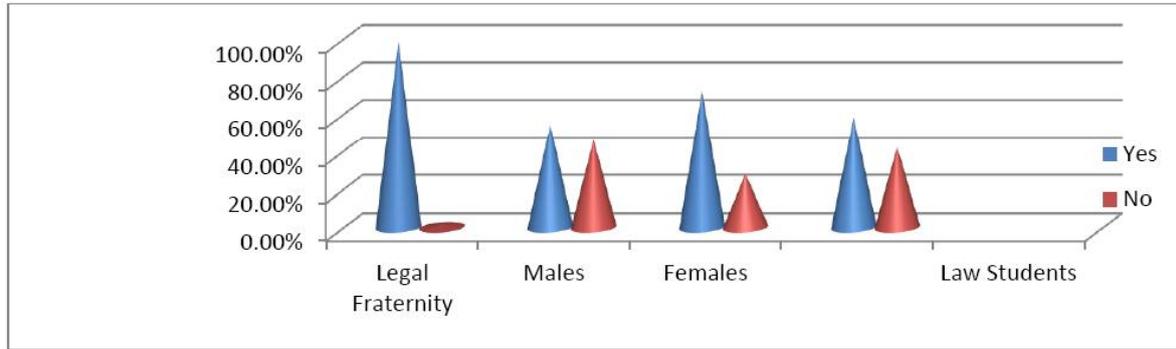
- On average, 71.25% of the respondents hold a positive view.
- The majority view asserts that Muslim women can use this act to harass their Muslim husbands, similar to how women of other religions leverage dowry and cruelty laws to their advantage.

Chart 1.4: Appropriateness of the legislature to intervene into Personal Law.



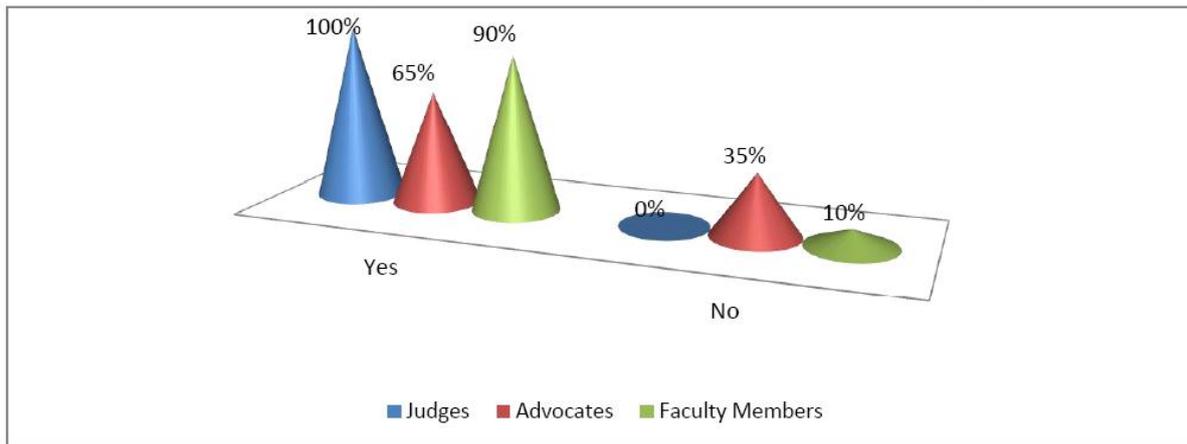
- On average, 75% of the views are positive.
- The majority view asserts that the Indian Government has the right to protect the rights of Muslim women residing in India and to take appropriate steps to secure their marital lives.

Chart 1.5: Best legal remedy to protect the socio-legal status of a married victim of the Triple talaq.



- On average, 70.5% of the views are positive.
- The prevailing opinion is that imposing a ban on triple talaq is the best legal remedy to protect the socio-legal status of a married victim of triple talaq. Additionally, proper maintenance must also be provided for her.

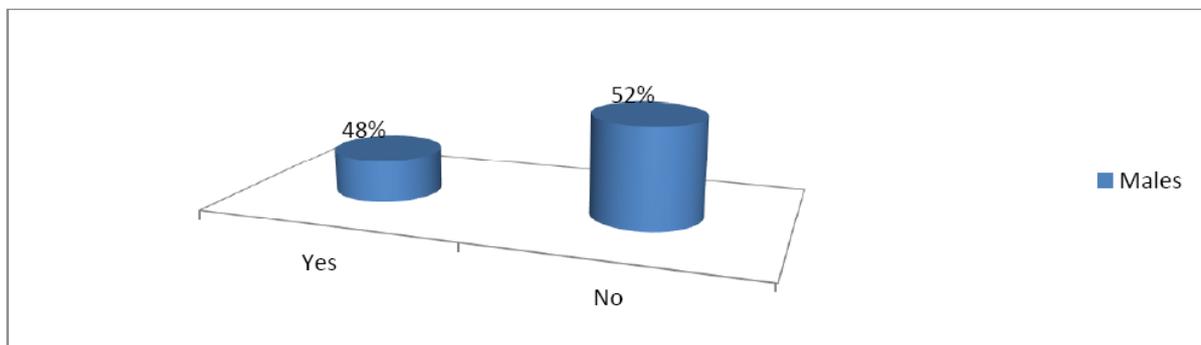
Chart 1.6: Justifiability Of The Right Given To Muslim Women Relative To File The Complaint.



The majority of legal experts (i.e., 85%) support the rights that allow Muslim women's relatives to file a complaint alongside the woman herself, which is justified. Sometimes, for various reasons, a woman

may be unable to file the complaint on her own. In such cases, family members, as her nearest supporters, can step in to render the effects of talaq null and void.

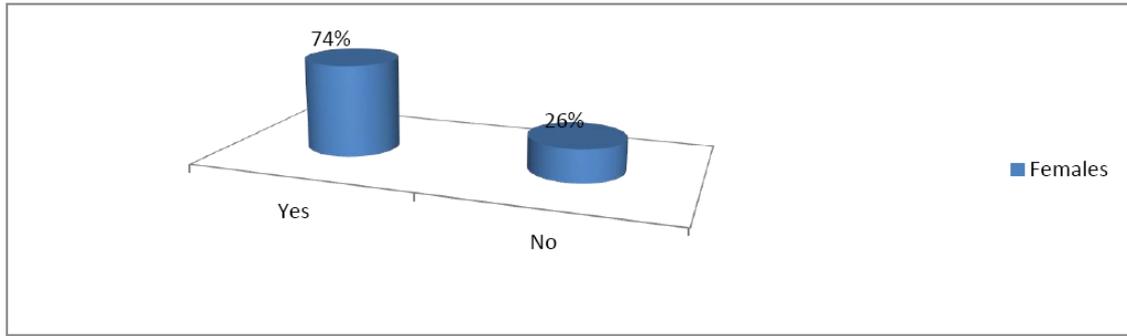
Chart 1.7: Relinquishment of Muslim male from all his marital obligations by invoking triple talaq as mode of divorce.



- The majority of Muslim males (i.e. 52%) have responded negatively.
- Most Muslim males believe that invoking triple talaq does not free a Muslim male from his marital obligations because he must pay

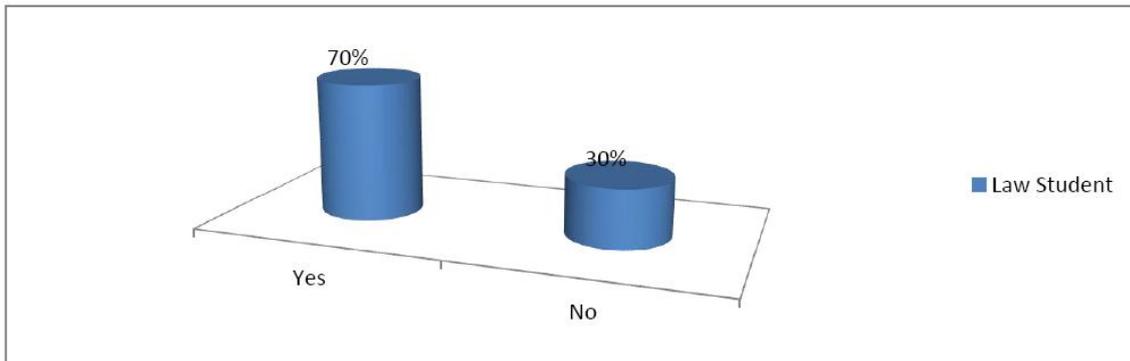
maintenance to his wife until the iddat period. Furthermore, she can claim maintenance under S. 125 of the CrP.C. In addition, the Muslim husband must provide maintenance for the children resulting from such a matrimonial union.

Chart 1.8: Triple talaq thrice is violation of human and fundamental rights of woman's right.



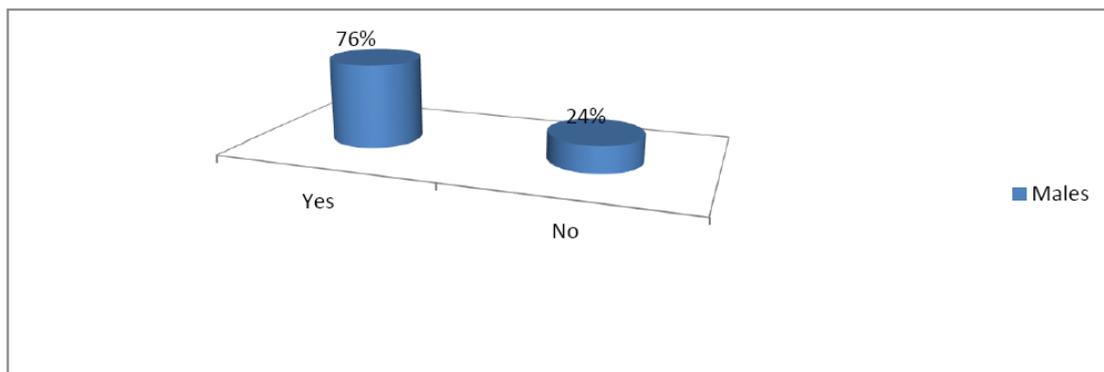
- The majority of Muslim women (i.e. 74%) have responded positively.
- These women support the practice of instant triple talaq, which dissolves the marriage within seconds without any attempt at reconciliation. As a result, they suddenly find themselves homeless. Therefore, invoking triple talaq three times to divorce violates women's human and fundamental rights

Chart 1.9: Appropriateness of the legislature to intervene into Personal Law.



- The majority of law students (i.e. 70%) have responded positively.
- They are of the view that it is justified to enter Muslim personal law to protect Muslim women as they are residents of India. So it is the responsibility of the government to provide gender equality along with dignity.

Chart 1.10: Deterioration of conjugal relationship, if the husband is sent to jail due to pronouncement of instant triple talaq for 3 years.



- The majority of Muslim males (i.e. 74%) have responded positively.
- The majority of Muslims have responded that imprisonment for instant triple talaq will harm the marital relationship because this step will exacerbate the couple's differences. Hence, instead of attempting reconciliation, the state is creating divisions between the couple through imprisonment.

IX. CRITICAL ANALYSIS OF THE ACT

The legislature needs to amend some flaws. This Act fails to properly address the matrimonial rights of Muslim women, which is the basic purpose of

this Act. The Act does not adequately address the rights of Muslim women. This gap leads to further problems in the lives of Muslim society. Thus, we urgently need to bridge this gap by making suitable amendments to the legislation to protect the matrimonial rights of Muslim females. Triple Talaq is derogatory and sinful, as it causes Muslim women to suffer physical and mental abuse due to this evil. Nikah Halala is closely associated with *talaq-e-biddat*. Although the enactment of “The Muslim Women (Protection of Rights on Marriage) Act (2019)” renders triple talaq void and illegal, this law remains silent about the rights of women who have already fallen victim to this dreadful practice. This Act penalises husbands for indulging in it and provides subsistence allowances for women, but it fails to clarify from whom a woman can claim maintenance for herself and their children if her husband is in prison.

X. CONCLUSION

The legislators fail to appropriately reflect the opinions of the Muslim community because they place a high value on the use of the word "*talaq*" in accordance with their religious beliefs. Thus, in accordance with their religious beliefs, if someone utters the word "*talaq*," they should, at minimum, regard it as "*one talaq*" and treat it as though it were said in accordance with the Quranic procedure. Furthermore, no provision exists to resolve the disputes over *talaq* issues mentioned in the Holy Quran. According to the Holy Quran, competent parties must make sufficient attempts at reconciliation to bring ease and normalcy between the couple during the cooling period mentioned in *Talaq-ul-Sunnat*. This provision aims to benefit a couple and their children because a successful attempt will preserve a matrimonial home. Authorities should impose severe penalties for uttering triple talaq instead of criminalising it.

The practise of triple talaq is strongly linked to Nikah Halala. The current Act needs to include a clause that prohibits the use of Nikah Halala, and society must discourage this behaviour. Since maintenance allowance is a small amount needed for survival in the modern world with children, proper maintenance must support the Muslim woman beyond just maintenance allowance.

Furthermore, this Act should have extraterritorial jurisdiction over criminals who use various electronic means to declare triple *talaq* on their wives while residing in foreign countries. Authorities must impose heavy penalties for uttering triple talaq instead of criminalising it. Criminalising the husband would also lead to unwanted separation between the couple against the wife's wishes. The Government should strengthen women's negotiating capacities by providing them with economic and socio-legal support rather than criminalising the pronouncement of *talaq*. It is crucial to launch campaigns that educate Muslim women about their rights to marriage and maintenance. The Act must evolve in accordance with Hazrat Mohammad's teachings for the Mohammedan community to accept it and make it effective; otherwise, it will merely exist on paper with no practical effects.

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- [1] Proclamation of instant triple talaq via SMS, WhatsApp, or any other electronic means of communication.
- [2] Sajad Ahmad Dar, ‘Understanding Divorce as per Islamic Law’ in Obaidullah Fahad and Muhammad Salahuddin Umari (eds), *Empowerment of Women Under the Prophet of Islam* (Aligarh: Mishkaat Printers & Publishers 2015) 257.
- [3] On every occasion where Prophet/Messenger Mohammed appears, words “Peace Be Upon Him” shall be assumed.
- [4] Dr. Mufti Samiya Tabasum, *Status of Muslim Women in India*, (New Delhi: Regal Publications 2013) 58.
- [5] *ibid*.
- [6] Qur’an, Surah Al-Baqarah (The Cow) 2:187, [Abdullah Yusuf Ali (tr.), ‘The Holy Quran’ (Delhi: Idara Impex 2021).
- [7] Dr. Mufti Samiya Tabasum, *Status of Muslim Women in India* (New Delhi: Regal Publications 2013) 58.
- [8] Qur’an, Surah Ar-Rum (The Roman Empire) 30:21, [Abdullah Yusuf Ali (tr.), ‘The Holy Quran’ (Delhi: Idara Impex 2021).
- [9] Affection and mercy.
- [10] Blessing.
- [11] Tranquility.
- [12] Act of worship.
- [13] A social transaction.

- [14] Dr. Lubna Naaz, 'Maududi on the Rationale of Divorce in Islam' in Obaidullah Fahad and Muhammad Salahuddin Umari (eds), Empowerment of Women Under the Prophet of Islam (Aligarh: Mishkaat Printers & Publishers 2015) 169.
- [15] *ibid.*
- [16] Mohammad Teisir Bin Shah Goolfee, 'Triple Divorce under the Prophet of Islam' in Obaidullah Fahad and Muhammad Salahuddin Umari (eds), Empowerment of Women Under the Prophet of Islam (Aligarh: Mishkaat Printers & Publishers 2015) 175.
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- [18] Dr. Lubna Naaz, 'Maududi on the Rationale of Divorce in Islam' in Obaidullah Fahad and Muhammad Salahuddin Umari (eds), Empowerment of Women Under the Prophet of Islam (Aligarh: Mishkaat Printers & Publishers 2015) 169.
- [19] Divorce which is initiated by the wife.
- [20] Dr. Lubna Naaz, 'Maududi on the Rationale of Divorce in Islam' in Obaidullah Fahad and Muhammad Salahuddin Umari (eds), Empowerment of Women Under the Prophet of Islam (Aligarh: Mishkaat Printers & Publishers 2015) 169.
- [21] Period of purity.
- [22] The way of Prophet Mohammed.
- [23] Sharia is a body of religious law that forms a part of the Islamic tradition.
- [24] Period of ignorance.
- [25] Syed Khalid Rashid, Muslim Law (Lucknow : Eastern Book Company 2017) 109.
- [26] Aqil Ahmad, Mohammedan Law (Iqbal Ali Khan (edn), Allahabad: Central Law Agency 2021) 174.
- [27] Mufti Samiya Tabasum, Status of Muslim Women in India (New Delhi: Regal Publications 2013) 138.
- [28] Irrevocable divorce.
- [29] Shakeel A. Samdani, 'Triple Divorce: Fiction and Facts' (1997) (12) Aligarh Law Journal 231.
- [30] Mohammad Teisir Bin Shah Goolfee, 'Triple Divorce under the Prophet of Islam' in Obaidullah Fahad and Muhammad Salahuddin Umari (eds), Empowerment of Women Under the Prophet of Islam (Aligarh: Mishkaat Printers & Publishers 2015) 179.
- [31] Ashgar Ali Engineer, The Rights of Women in Islam (New Delhi: Sterling Publishers Private Limited 1992) 160.
- [32] Tahir Mahmood, Muslim Law in India and Abroad (New Delhi: Universal Law Publishing, 2016) 146.
- [33] Shayara Bano v Union of India (2017) AIR SC 4609 (India).
- [34] Act No. 20 of 2019.
- [35] Shayara Bano v Union of India and others (2017) AIR SC 4609(India).
- [36] Mohd. Ahmed Khan v Shah Bano Begum and Ors (1985) AIR SC 945 (India).
- [37] P.K. Das, Abolition of Triple Talaq (New Delhi: Maxwell Law Publishing Company 2018) 4.
- [38] Shayara Bano v Union of India and others (2017) AIR SC 4609(India).
- [39] *Id* at 4613.
- [40] Act No. 26 of 1937.
- [41] P.K. Das, Abolition of Triple Talaq (New Delhi: Maxwell Law Publishing Company 2018) 40.
- [42] *ibid.*
- [43] P.K. Das, Abolition of Triple Talaq (New Delhi: Maxwell Law Publishing Company 2018) 27.
- [44] The day commemorates the adoption of the law prohibiting triple talaq, which took effect on August 1, 2019.
- [45] P.K. Das, Abolition of Triple Talaq (New Delhi: Maxwell Law Publishing Company 2018) 6.