

### SYNOPSIS & LIST OF DATES

The present Petitioner seeks to challenge The Muslim Women (Protection of Rights on Marriage) Act, 2019 [Act No. 20 of 2019] as being ultra vires Articles 14, 15, 19, 20, 21, 25 and 26 of the Constitution of India.

Talaq-E-Biddat, was the erstwhile, rare practice among Sunni Muslims of the Hanafi Sect, whereby the husband would divorce his wife by the utterance of the word '*Talaq*' thrice, in one go. This Hon'ble Court in *Shayara Bano v. Union of India, (2017) 9 SCC 1* in terms of para 395 has set it aside, by a majority of 3:2, the practice of *Talaq-E-Biddat* popularly referred to as Triple Talaq. Thus, such act, even if uttered by the husband, became *non-est and meaningless*. At best, the pronouncement, can be categorised under one of the provisions of the Domestic Violence Act as the marriage would still subsist.

In terms of Act No. 20 of 2019, a class of citizen, i.e. Hanafi Muslim men have been made the subject of hostile discrimination for the purposes of legislative classification and a meaningless action has been made into a strict liability offence, which is non-bailable and punishable by upto three years imprisonment and fine. Moreover, Act No. 20 of 2019 is manifestly arbitrary as it, on the one hand declares pronouncement of Talaq-E-Biddat to be void but thereafter makes it a criminal offence and also decides the custody of minor children by default. Thus, Act No. 20 of 2019 is ultra vires Article 14.

Further, Act No. 20 of 2019 invades the privacy of a citizen. It further allows the pronouncement of Talaq-e-Biddat to be reported by anybody related to the wife by blood or marriage without the consent of the wife or husband. It brings into the public sphere intimate details of the marriage and as such is violative of the right to dignity and privacy as guaranteed by Article 21.

**LIST OF DATES**

- 16.10.2015 This Hon'ble Court pronounced its judgment in *Prakash v. Phulavati, (2016) 2 SCC 36*, in terms whereof directions were given in terms of Part II of the said judgment whereby a PIL was registered to look in the issue of '*There is no safeguard against arbitrary divorce and second marriage by her husband during currency of the first marriage, resulting in denial of dignity and security to her.*'
- 30.10.2015 Suo Moto Writ Petition (Civil) No. 2/2015 titled '*In Re: Muslim Womens Quest For Equality Vs. JamiatUlma-I-Hind*' was registered by this Hon'ble Court in terms of the judgment and Order passed in *Prakash v. Phulavati, (2016) 2 SCC 36*
- 28.03.2016 The Petitioner herein was allowed to be added as Party-Respondent in Suo Moto Writ Petition (Civil) No. 2/2015.
- 29.06.2016 Suo Moto Writ Petition (Civil) No. 2/2015 was listed and heard before this Hon'ble Court and interalia, the following directions were given - '*We accordingly allow all the applications for impleadment and direct that all the applicants shall stand added as party respondents to the SuoMotu Writ Petition (C) No.2 of 2015 and with connected matters*'
- 12.05.2017 ShayaraBano Vs. Union Of India And Ors. being Writ Petition (Civil) No. 118/2015 was filed before this Hon'ble Court in terms whereof the practice of Talaq-e-Biddat was challenged. The Petitioner herein was arrayed as Respondent No. 8 therein.

- 22.08.2017 This Hon'ble Court in a decision rendered by a Constitution Bench of five Hon'ble Judges, declared that the practice of Talaq-e-Biddat was ultra vires the Constitution of India. ShayaraBano Vs. Union of India and Ors. being Writ Petition (Civil) No. 118/2015 was the lead matter.
- 28.12.2017 The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was introduced in Lok Sabha by the Minister of Law and Justice. The said Bill was passed by the Lok Sabha on the same day.
- 19.09.2018 *The Muslim Women (Protection of Rights on Marriage) Ordinance, 2018* was promulgated. The said ordinance was later withdrawn. The said date is also the date on which The Muslim Women (Protection of Rights on Marriage) Act, 2019 would be deemed to have come into force.
- 17.12.2018 *The Muslim Women (Protection of Rights on Marriage) Bill, 2018* was introduced in Lok Sabha by the Minister of Law and Justice. It replaced the Ordinance promulgated on 19.09.2018.
- 27.12.2018 *The Muslim Women (Protection of Rights on Marriage) Bill, 2018* was passed by the Lok Sabha but lapsed thereafter.
- 12.01.2019 *The Muslim Women (Protection of Rights on Marriage) Ordinance, 2019* was promulgated.

- 21.02.2019      The Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019 was promulgated.
- 21.06.2019      *The Muslim Women (Protection of Rights on Marriage) Bill, 2019* was introduced in Lok Sabha by the Minister of Law and Justice. It replaced the February Ordinance.
- 25.06.2019      *The Muslim Women (Protection of Rights on Marriage) Bill, 2019* was passed by the Lok Sabha.
- 30.06.2019      *The Muslim Women (Protection of Rights on Marriage) Bill, 2019* was passed by the Rajya Sabha.
- 31.06.2019      The Muslim Women (Protection of Rights on Marriage) Act, 2019 received the assent of the Hon'ble President of India and was published in the Gazette of India.
- 21.10.2019      Hence, the present petition.

**IN THE SUPREME COURT OF INDIA  
[CIVIL ORIGINAL JURISDICTION]  
(PUBLIC INTEREST LITIGATION)**

**WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019**

**IN THE MATTER OF:**

1. **ALL INDIA MUSLIM PERSONAL LAW BOARD**  
Through the General Secretary  
76 A/1, Main Market, Okhla Village,  
Jamia Nagar, New Delhi, Delhi 110025      ...      Petitioner No.1
  
2. **KAMAL FARUQUI**  
Member of the Executive Committee  
All India Muslim Personal Law Board  
A-80, Nizamuddin East, New Delhi      ...      Petitioner No.2

**-VERSUS-**

1. **UNION OF INDIA**  
Through the Secretary,  
Ministry of Law and Justice,  
Government of India  
ShastriBhawan, New Delhi 110001      ...      Contesting  
Respondent

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

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

The humble petition of the  
above named Petitioners:

**MOST RESPECTFULLY SHOWETH:**

1. By way of the present Writ Petition under Article 32 of the Constitution of India, the Petitioners herein seek indulgence of this Hon'ble Court for declaring the Muslim Women (Protection of Rights on Marriage) Act, 2019 (hereinafter referred to as the "Impugned Act") unconstitutional as the same is violative of Articles 14, 15, 20, 21, 25 and 26 of the Constitution of India and has been enacted, criminalizing mere pronouncement of *triple talaq*, which had already been declared unconstitutional and void by this Hon'ble Court *vide* its judgment dated August 22, 2017 rendered in *Shayara Bano vs Union of India & Ors. (2017) 9 SCC 1* (hereinafter referred to as "Shayara Bano Case").
2. That the details of the Petitioners are as follows:
  - 2.1. The Petitioner No.1 is a Society registered under the Societies Registration Act, bearing Registration No. S - 54919 of 2006. The Petitioner No.1 comprises of religious scholars called as (*Ulemas*) belonging to different schools of Muslim Law prevailing in India, social / political activists, social scientists and Muslim intellectuals. The Petitioner No.1 is actively engaged in protecting the principles of Muslim Personal Law of different schools of Muslim law prevailing in India and have actively participated / intervened in the Court proceedings in the Hon'ble Supreme Court and other Hon'ble High Courts of India as and when occasion arose. The Petitioner No.1 has also launched the movement of *Islah-e-Ma'shara* (Socio-religious reforms throughout the country to do away with unhealthy customs and rituals prevailing in Muslim community). The main task of Petitioner No.1 is to safeguard the fundamental rights of freedom of conscience guaranteed under Articles 25

and 26 of the Constitution of India as well as the religious cultural identity of the Muslim community guaranteed under Articles 29 and 30 of the Constitution of India. The aims and objectives of the Petitioner No. 1 are extracted hereunder:

- (a) To take effective steps to protect the Muslim Personal Law in India and for the retention, and implementation of the Shariat Act;
- (b) To promote awareness among Muslims about the laws and teachings of, and rights conferred and duties cast by *Shariah* in the sphere of their family and social life, and to publish and disseminate literature for that purpose;
- (c) To publish and popularize the personal laws of Muslims as laid down by *Shariah* and to prepare a comprehensive framework for their implementation on and observance by the Muslims;
- (d) To set up an 'Action Committee' as and when needed, for safeguarding the Muslim Personal Law through which organised countrywide campaign is taken up in order to implement decisions of the Board.
- (e) To constantly keep watch, through a committee of *Ulama* and legists, over the state or Central legislations and Bills; or Rules framed and circulars issued by the government and semi government bodies, to see if these, in any manner, affect the Muslim Personal Law;
- (f) To promote good-will, fraternity, and the feeling of mutual cooperation among all sects and schools of thought among Muslims, and to generate the spirit of unity and co-ordination among them for the common goal of safeguarding the Muslim Personal Law;

- (g) To scrutinize the 'Mohammedan Law' as now in force in India, in the light of *Shariah* and to arrange for an analytical study of the different schools of Islamic jurisprudence while keeping in view the new issues and to search for their proper solution based on the Quran and *Sunnah*, sticking to *the* principles of *Shariah* under the guidance of those well-versed in *Shariah* and Islamic jurisprudence;
- (h) To set up delegations and study teams; organize conferences, seminars, symposia, public meetings and undertake tours and to publish and disseminate suitable literature, as and when needed, to bring out newspapers, periodicals, and newsletters and to perform all other acts as may be necessary, for achieving the aims and objectives of the Board in general.

A true copy of the Registration Certificate of Petitioner No. 1 dated 26.02.2006 is annexed herewith and marked as **ANNEXURE P-1** (Please see pages.....to.....).

- 2.2. The Women's Wing of the AIMPLB comprises of social workers, religious personalities, heads of jamaats and organizations, women's rights activists, educated intellectual class working for upliftment of women socially and educationally. There are 26 members out of general body of 251 members from states of New Delhi, U.P., Maharashtra, Andhra Pradesh, Telangana, Karnataka, West Bengal, Kerala, Tamil Nadu & Rajasthan. They are active members organizing seminars, workshops and public meetings on women's rights in Muslim Personal Law, marital disputes (reasons and causes), importance on pre and post marital counseling, social evils of dowry, domestic violence, etc.



- 2.3. That the Petitioner No. 1 herein has been given PAN No. AABTA8286D and regularly files its Tax Returns. The income of Petitioner No. 1 for FY 2018-2019.
- 2.4. A True copy of the PAN No. AABTA8286D of Petitioner No. 1 is annexed herewith and marked as **ANNEXURE P-2** (Please see pages.....to.....).
- 2.5. A True copy of the Income Tax Return of Petitioner No. 1 for FY 2018-2019 is annexed herewith and marked as **ANNEXURE P-3** (Please see pages.....to.....).
- 2.6. That Petitioner No.2 is a member of Executive Committee of the Petitioner No.1 and is the citizen of India.
- 2.7. That the requisite details of the Petitioner No. 2 are as under:
- i. Personal Identification Proof (Aadhaar and PAN- ID cards) have been enclosed;
  - ii. PAN Number:- AAAPF2839C;
  - iii. UID (Aadhaar Number):- 5941 2136 3273.

A true copy of the PAN No.AAAPF2839Cof Petitioner No. 2is annexed herewith and marked as **ANNEXURE P-4** (Please see pages.....to.....).

A copy of the UID (Aadhar Card) No.5941 2136 3273 of Petitioner No. 2is annexed herewith and marked as **ANNEXURE P-5** (Please see pages.....to.....).

A True copy of the Income Tax Return of Petitioner No. 2 for FY 2018-2019 is annexed herewith and marked as **ANNEXURE P-6** (Please see pages.....to.....).

- (i) That the Petitioners have no personal interests, individual gain, private motive or oblique reasons in filing this petition. They are not filing this petition for

their personal gain of any other individual, institution or body. There is no motive other than public interest.

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

(iii) There is no requirement to move the Central Government or any other public authority for relief sought in this Writ Petition. No representation was given to the Central Govt, and as such no reply thereto was received nor was any action taken thereon. There is no other remedy available except approaching this Hon'ble Court except by way of the instant petition under the Article 32.

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

(I) The constitutional validity of Talaq Biddat i.e. Triple Talaq (three pronouncement made in one sitting or in one sentence at the behest of Muslim husband) came to be challenged pursuant to Suo Moto Action of this Hon'ble Court before the Hon'ble Supreme Court, in which subsequently many other parties joined. The said was decided by 5 judges of this Hon'ble Court and is reported in *Shayara Bano Case* whereby, the constitution bench of this Hon'ble Court by majority of 3:2 set aside the practice of instant triple Talaq and hence it can no longer dissolve marriage. The majority judgment delivered by this Hon'ble Court, clarified by the Order of the Court reads as under:

*“In view of the different opinions recorded, by a majority of 3:2 the practice of ‘talaq-e-biddat’ – triple talaq is set aside”.*

(II) The Petitioner No. 1 herein was a party in the said proceedings and had submitted that Triple Talaq was protected under Article 25 and 26 of the Constitution of India and formed part of the personal laws of the Hanafi Muslims under Shariah. However, after the judgment of the Hon’ble Supreme Court in the *Shayara Bano Case*, the parties have been abiding by the same.

4. After pronouncement of judgment by this Hon’ble Court in *Shayara Bano Case* (supra), the following events occurred;

a) On or about 15<sup>th</sup> December 2017, the Government of India introduced *The Muslim Women (Protection of Rights on Marriage) Bill, 2017*. The bill was passed by Lok Sabha on 28<sup>th</sup> December 2017 and was pending before the Rajya Sabha. The statement of objects and reasons of the said bill is produced hereunder:

*“The Supreme Court in Shayara Bano Case and other connected matters, on 22nd August, 2017, in a majority judgement of 3:2, set aside the practice of talaq-e-biddat (three pronouncements of talaq, at one and the same time) practiced by certain Muslim husbands to divorce their wives. This judgement gave a boost to liberate Indian Muslim women from the age-old practice of capricious and whimsical method of divorce, by some Muslim men, leaving no room for reconciliation”.*

2. *The petitioner in the above said case had challenged, inter alia, talaq-e-biddat on the ground that the said practice is discriminatory and against*

*dignity of women. The judgement vindicated the position taken by the Government that talaq-e-biddat is against constitutional morality, dignity of women and the principles of gender equality, as also against gender equity guaranteed under the Constitution. The All India Muslim Personal Law Board (AIMPLB), which was the 7th respondent in the above case, in their affidavit, inter alia, contended that it was not for the judiciary to decide matters of religious practices such as talaq-e-biddat, but for the legislature to make any law on the same. They had also submitted in the Supreme Court that they would issue advisories to the members of the community against this practice.*

3. *In spite of the Supreme Court setting aside talaq-e-biddat, and the assurance of AIMPLB, there have been reports of divorce by way of talaq-e-biddat from different parts of the country. It is seen that setting aside talaq-e-biddat by the Supreme Court has not worked as any deterrent in bringing down the number of divorces by this practice among certain Muslims. It is, therefore, felt that there is a need for State action to give effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce.*

4. *In order to prevent the continued harassment being meted out to the hapless married Muslim women due to talaq-e-biddat, urgent suitable legislation is necessary to give some relief to them. The Bill proposes to declare pronouncement of talaq-e-biddat by Muslim husbands void and illegal in view of the Supreme Court verdict. Further, the illegal act of pronouncing talaq-e-biddat shall be a punishable offence. This is essential to prevent this form of divorce, wherein the wife does not have any say in severing the marital relationship. It is also proposed to provide for matters such as subsistence allowance from the husband for the livelihood and daily supporting needs of the wife, in the event of husband pronouncing talaq-e-biddat, and, also*

*of the dependent children. The wife would also be entitled to custody of minor children.*

*5. The legislation would help in ensuring the larger Constitutional goals of gender justice and gender equality of married Muslim women and help subserve their fundamental rights of non-discrimination and empowerment.*

*6. The Bill seeks to achieve the above objects.”*

- b) During the pendency of Bill of 2017, on or about 19<sup>th</sup> September 2018, the Government of India promulgated ordinance being *The Muslim Women (Protection of Rights on Marriage) Ordinance, 2018*;
- c) On or about 10<sup>th</sup> December 2018, the Government of India introduced *The Muslim Women (Protection of Rights on Marriage) Bill, 2018*. The Bill was introduced in Lok Sabha on 17<sup>th</sup> December 2018 but could not be taken up for consideration in Rajya Sabha. The statement of objects and reasons of the said Bill is extracted hereunder:

*“ The Supreme Court in Shayara Bano Case and other connected matters, on 22nd August, 2017, in a majority judgment of 3:2, set aside the practice of talaq-e-biddat (three pronouncements of talaq, at one and the same time) practiced by certain Muslim husbands to divorce their wives. This judgment gave a boost to liberate Indian Muslim women from the age-old practice of capricious and whimsical method of divorce, by some Muslim men, leaving no room for reconciliation.*

- 2. *The petitioner in the above said case challenged, inter alia, talaq-e-biddat on the ground that the*

*said practice is discriminatory and against dignity of women. The judgment vindicated the position taken by the Government that talaq-e-biddat is against constitutional morality, dignity of women and the principles of gender equality, as also against gender equity guaranteed under the Constitution. The All India Muslim Personal Law Board (AIMPLB), which was the 7th respondent in the above case, in their affidavit, inter alia, contended that it was not for the judiciary to decide matters of religious practices such as talaq-e-biddat, but for the legislature to make any law on the same. They had also submitted in the Supreme Court that they would issue advisories to the members of the community against this practice.*

3. *In spite of the Supreme Court setting aside talaq-e-biddat, and the assurance of AIMPLB, there have been reports of divorce by way of talaq-e-biddat from different parts of the country. It is seen that setting aside talaq-e-biddat by the Supreme Court has not worked as any deterrent in bringing down the number of divorces by this practice among certain Muslims. It is, therefore, felt that there is a need for State action to give effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce.*
4. *In order to prevent the continued harassment being meted out to the hapless married Muslim women due to talaq-e-biddat, urgent suitable legislation was necessary to give some relief to them. Therefore, to protect the rights of married Muslim women who are being divorced by triple talaq, a Bill, namely, the Muslim Women (Protection of Rights on Marriage) Bill, 2017, was introduced in, and passed by, the Lok Sabha*

on the 28th December, 2017 and is pending in RajyaSabha.

5. *The aforesaid Bill proposed to declare the practice of triple talaq as void and illegal and made it an offence punishable with imprisonment up to three years and fine, and triable by a Judicial Magistrate of the first class. It was also proposed to provide subsistence allowance to married Muslim women and dependent children and also for the custody of minor children. The Bill further provided to make the offence cognizable and non-bailable.*
6. *Apprehensions have been raised in and outside Parliament regarding the provisions of the pending Bill which enables any person to give information to an officer in-charge of a police station to take cognizance of the offence and making the offence non-bailable.*
7. *In order to address the above concerns, it has been decided to make the offence cognizable, if the information relating to the commission of an offence is given to an officer in-charge of a police station by the married Muslim women upon whom talaq is pronounced or any person related to her by blood or marriage. It is also decided to make the offence non-bailable and compoundable at the instance of the married Muslim woman with the permission of the Magistrate, on such terms and conditions as he may determine.*
8. *As the Bill is pending for consideration in RajyaSabha and the practice of divorce by triple talaq (i.e., talaq-e-biddat) was continuing, there was an urgent need to take immediate action to prevent such practice by making stringent provisions in the law. Since both Houses of Parliament were not in session and*



*circumstances exist which render it necessary for the President to take immediate action in the matter, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018, with aforesaid changes was promulgated on the 19th September, 2018.*

9. *Accordingly, to replace the said Ordinance, the Muslim Women (Protection of Rights on Marriage) Bill, 2018 is being introduced in Parliament.*
  10. *The legislation would help in ensuring the larger Constitutional goals of gender justice and gender equality of married Muslim women and help subserve their fundamental rights of non-discrimination and empowerment.*
  11. *The Bill seeks to achieve the above objectives.”*
- d) During the pendency of the Bill of 2018, on or about 12<sup>th</sup> January 2019, the Government of India promulgated ordinance being *The Muslim Women (Protection of Rights on Marriage) Ordinance, 2019.*
- e) Again on or about 21<sup>st</sup> February 2019, the Government of India promulgated ordinance being *The Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019*
- f) On or about 25<sup>th</sup> May 2019, Lok Sabha was dissolved and *The Muslim Women (Protection of Rights on Marriage) Bill, 2017* and *The Muslim Women (Protection of Rights on Marriage) Bill, 2018* pending in Rajya Sabha lapsed.
- g) To replace Second Ordinance of 2019, the Government of India introduced *The Muslim Women (Protection of*



Rights on Marriage) Bill, 2019 dated 14.06.2019 in parliament which was passed by Lok Sabha on 25.07.2019 and by Rajya Sabha on 30.07.2019. The statement of Objects and reasons of the said Bill is extracted hereunder:

- “ *The Supreme Court in Shayara Bano Case and others and other connected matters, on the 22nd August, 2017, in a majority judgment of 3:2, set aside the practice of talaq-e-biddat (three pronouncements of talaq, at one and the same time) practiced by certain Muslim husbands to divorce their wives. This judgment gave a boost to liberate Indian Muslim women from the age-old practice of capricious and whimsical method of divorce, by some Muslim men, leaving no room for reconciliation.*
2. *The petitioner in the above said case challenged, inter alia, talaq-e-biddat on the ground that the said practice is discriminatory and against dignity of women. The judgment vindicated the position taken by the Government that talaq-e-biddat is against constitutional morality, dignity of women and the principles of gender equality, as also against gender equity guaranteed under the Constitution. The All India Muslim Personal Law Board (AIMPLB), which was the 7th respondent in the above case, in their affidavit, inter alia, contended that it was not for the judiciary to decide matters of religious practices such as talaq-e-biddat, but for the legislature to make any law on the same. They had also submitted in the Supreme Court that they would issue advisories to the members of the community against this practice.*
  3. *In spite of the Supreme Court setting aside talaq-e-biddat, and the assurance of AIMPLB, there*

*have been reports of divorce by way of talaq-e-biddat from different parts of the country. It is seen that setting aside talaq-e-biddat by the Supreme Court has not worked as any deterrent in bringing down the number of divorces by this practice among certain Muslims. It is, therefore, felt that there is a need for State action to give effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce. Therefore, to protect the rights of married Muslim women who are being divorced by triple talaq, a Bill, namely, the Muslim Women (Protection of Rights on Marriage) Bill, 2017, was introduced in, and passed by, the Lok Sabha on the 28th December, 2017 and was pending in Rajya Sabha.*

- 4. The aforesaid Bill proposed to declare the practice of triple talaq as void and illegal and made it an offence punishable with imprisonment up to three years and fine, and triable by a Judicial Magistrate of the first class. It was also proposed to provide subsistence allowance to married Muslim women and dependent children and also for the custody of minor children. The Bill further provided to make the offence cognizable and non-bailable. However, apprehensions have been raised in and outside Parliament regarding the provisions of the pending Bill which enables any person to give information to an officer in charge of a police station to take cognizance of the offence and making the offence non-bailable.*
- 5. In order to address the above concerns, it has been decided to make the offence cognizable, if the information relating to the commission of an offence is given to an officer in charge of a police station by the married Muslim women upon*

*whom talaq is pronounced or any person related to her by blood or marriage. It was also decided to make the offence non-bailable and compoundable at the instance of the married Muslim woman with the permission of the Magistrate, on such terms and conditions as he may determine.*

6. *As the Bill was pending for consideration in Rajya Sabha and the practice of divorce by tripletalaq (i.e., talaq-e-biddat) was continuing, there was an urgent need to take immediate action to prevent such practice by making stringent provisions in the law. Since both Houses of Parliament were not in session and circumstances existed which render it necessary for the President to take immediate action in the matter, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 (Ord. 7 of 2018), with aforesaid changes was promulgated on the 19th September, 2018.*
7. *In order to replace the said Ordinance, the Muslim Women (Protection of Rights on Marriage) Bill, 2018 was introduced in Lok Sabha on the 17th December, 2018 and was passed by that House on the 27th December, 2018. However, the Bill could not be taken up for consideration in Rajya Sabha and both Houses were adjourned. As both Houses of Parliament were not in session and the practice of divorce by triple talaq (i.e. talaq-e-biddat) was continuing, to give continued effect to the provisions of the aforesaid Ordinance, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 (Ord. 1 of 2019) was promulgated on the 12th January, 2019.*
8. *Subsequently, to replace the Muslim Women (Protection of Rights on Marriage) Ordinance,*

*2019, necessary official amendments to the Muslim Women (Protection of Rights on Marriage) Bill, 2018 were moved in Rajya Sabha. However, the Bill could not be taken up for consideration in Rajya Sabha and both Houses were adjourned. Since both Houses of Parliament were not in session, to give continued effect to the provisions of the aforesaid Ordinance, the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019 (Ord. 4 of 2019) was promulgated on the 21st February, 2019. Thereafter, the Sixteenth Lok Sabha was dissolved on the 25th May, 2019 and the Muslim Women (Protection of Rights on Marriage) Bill, 2017 and the Muslim Women (Protection of Rights on Marriage) Bill, 2018 pending in Rajya Sabha lapsed.*

9. *Accordingly, to replace the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019, the Muslim Women (Protection of Rights on Marriage) Bill, 2019 is being introduced in Parliament.*
10. *The legislation would help in ensuring the larger Constitutional goals of gender justice and gender equality of married Muslim women and help subserve their fundamental rights of non-discrimination and empowerment.*
11. *The Bill seeks to replace the aforesaid Ordinance.”*

- h) On 31<sup>st</sup> July 2019, the Impugned Act got assent of the President and published in the Gazette. A true copy of the Gazette of India dated 31.07.2019 is annexed herewith and marked as **ANNEXURE P-7**(Please see pages.....to.....).

5. The Petitioners challenge the constitutional validity of the Impugned Act on the ground that it is manifestly arbitrary and offends Articles 14, 15, 20 and 21 of the Constitution and makes unwarranted/wrongful interference in the Muslim Personal Law as applicable to Hanafi Muslims and thereby breach articles 25 and 26 of the Constitution.
6. Before delineating the challenge to the provisions of the Impugned Act, it is necessary to state salient principles of the law of marriage and divorce as applicable to Hanafi Muslims.
  - (i) Marriage according to the Hanafi Muslim Law is an agreement between man and woman based on the Shariah principles, as a result of which mutual sexual relationship between the couple becomes legitimate, giving rise to mutual rights and obligations. The purposes of marriage are perpetuation of human race and attainment of chastity, continence, mutual love, affection and peace. Marriage is compliance with injunction of Allah's Book and His Prophet's (S.A.W) Sunnat. In the eyes of the Shariah, the marriage is not just civil contract it is also religious importance. In other words, marriage is sacrament- cum-civil contract. Such contract is known as 'Nikah'.
  - (ii) Marriage is thus blessing, and when this relationship is established, it is meant to subsist and lasting. However, such matrimonial bond that has come into existence between man and woman is in the eyes of Shariah not indissoluble. In the event of there being temperamental incompatibility between the parties or because of

mutual difference of nature; Allah's limits cannot be maintained and when it is felt that keeping the marriage intact in such situation or to compel parties by legal restrictions to continue in the marital bond may be more harmful to parties to marriage and society, Shariah permits termination of marriage. Shariah therefore regards marital bond as dissoluble, but also at the same time warns the parties that the dissolution of marriage is the most hated legal action in the eyes of Allah. In other words, the Shariah permits dissolution of marriage, but does not encourage it. There are different modes of dissolution of marriage prescribed under Shariah Law. This Hon'ble Court considered and decided in the Shayara Bano Case only the practice of pronouncing triple Talaq in one sitting known as Talaq-e-Biddat and this Hon'ble Court had, as stated earlier, set aside the practice of pronouncing Triple Talaq in one sitting known as Talaq-e-Biddat. The aims and objects of the Bill for enacting the Impugned Act also refers to intention of the legislators to penalize the continuance of practice of pronouncing Triple Talaq in one sitting even after such practice being set aside by the judgment of this Hon'ble Court in Shayara Bano Case. There has never been any discussion about constitutional validity of any other forms of divorce in the judgment of Shayara Bano Case.

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

**GROUNDS****RE: SECTION 2 OF THE IMPUGNED ACT**

- A. The object of Impugned Act is to create pronouncing Talaq e Biddat which is set aside in Shayara Bano Case criminal offence. The Impugned Act is a criminal statute having adverse impact on the life and personal liberty of those on whom penal consequences are to be visited. It is the elementary principle of law that any act or omission which is dealt with penal consequences should be defined with accuracy and precision. A Muslim husband whose act or omission may be visited with penal consequences must have fair notice of ingredients of act or omission that is declared criminal so that such person can organize his affairs in such a way to avoid any conflict with law.
- B. The statement of objects and reasons of the Impugned Act clearly states that despite the judgment of the Supreme Court in Shayara Bano Case has by majority view set aside the practice of Talaq e Biddat, that is three utterances of Talaq in one sitting practiced by a Muslim husband, the said practice continued. Therefore, the Impugned Act is enacted to implement the decision of Supreme Court in Shayara Bano Case. It is thus clear that the main object of the Act is merely to punish the practice of Talaq e Biddat i.e. pronouncement of three utterances of Talaq in one sitting by a Muslim husband. Since the Impugned Act is enacted with avowed purpose of prohibiting Talaq e Biddat which has been clearly defined and mentioned in Shayara Bano Case, the additional words in section 2 (c) of the Act “or any other similar form of Talaq having the effect of instantaneous and irrevocable divorce

pronounced by Muslim husband” are superfluous, vague and therefore that part of section 2 (c) is void being uncertain, vague and thus manifestly arbitrary.

**RE: SECTION 3 OF THE IMPUGNED ACT**

- C. Section 3 of the Impugned Act declares 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. This section refers to Talaq-e-Biddat as which is held unconstitutional in Shayara Bano Case by the Hon'ble Supreme Court. Section 3 is irrational and suffers from internal contradiction. Since Talaq e Biddat i.e. pronouncement of triple Talaq in one sitting has already been declared to be unconstitutional and its practice set aside, such utterance has no legal/civil consequence. Consequently, despite such utterances, marriage survives. Therefore, it was totally redundant and irrational to declare statutorily the practice of Talaq e Biddat as void. Secondly, section 3 of the Impugned Act also suffers from internal contradiction because if any act which is declared void has no existence in the eyes of law and it is redundant and contradictory to declare non-existent act illegal. The section therefore, suffers from manifest arbitrariness as it makes provision of law which is totally unnecessary.

**RE: SECTION 4 OF THE IMPUGNED ACT**

- D. By Section 4 of the impugned Act, it is provided that any Muslim husband who pronounces Talaq referred to in section 2 (c) shall be punished for imprisonment of terms which may extend upto 3 years and shall be liable to fine. The main object



of the impugned Act is to penalize the act of pronouncing Talaq which has the effect of instantaneous and irrevocable divorce upon wife by Muslim husband. The ostensible purpose of the Act is as evidenced by the preamble is to *“to protect the rights of married Muslim woman and to prohibit divorce by pronouncing Talaq by the husband”*. As submitted earlier, utterance of triple Talaq in one sitting is inconsequential as the marital bond and the marriage between the parties survives. Still the Act provides that if a Muslim husband has indulged into such conduct is liable to be prosecuted on information relating to the offence is given by *“the woman upon whom Talaq is pronounced or any person related to her by blood or marriage”*. Thus the Impugned Act brings the marriage on the brinks of break down between the couple instead of saving the same. Thus, the Impugned Act defeats the preambulatory objects for which it is enacted. In the event of such prosecution of Muslim husband becoming successful and the husband is jailed or fined, it is impossible for such estranged couple to lead happy conjugal life. The estranged Muslim wife who does not wish to live with her husband who has pronounced Triple Talaq in one sitting is under legal constraints to seek matrimonial remedies available to her as per the law of the land. Such situation does not “protect rights of Muslim woman” at all. Therefore, section 4 of the Impugned Act is manifestly arbitrary and is void. Section 4 offends the provisions of Articles 14, 15 and 21 of the Constitution of India on the ground of its arbitrariness and also discriminatory treatment and for prescribing unfair procedure. The said provision is enacted capriciously and irrationally and without adequate determining factors. It is also an example of

excessive and disproportionate legislative activities which means the legislature acted with manifest arbitrariness.

E. The action of pronouncement of Talaq is converted into criminal offence by Section 4 of the Impugned Act which prescribes penalty for the term which may extend to three years and also liability of fine. Such declaration offends the principle of criminal jurisprudence. Jeremy Bentham, the English jurist has considered punishment to be irrational and serving no useful purpose on the following grounds:

1. When punishment is groundless
2. When punishment is inefficacious;
3. When the punishment is unprofitable or too expensive;
4. When punishment is needless.

(Chapter IV of “The Rationale of Punishment” by Jeremy Bentham)

F. The object of enacting the impugned Act as can be deciphered from the preamble is to discontinue the practice of Talaq e Biddat (i.e. three utterances of Talaq in one sitting) and makes the pronouncement of Talaq e Biddat – the practice set aside by Shayara Bano Case – ineffective and having no civil consequences at all because after the judgment of Supreme Court in Shayara Bano Case, even after pronouncement of Talaq e Biddat, the marriage survives and the marital bond between husband and wife remains intact. The title and preamble of the Impugned Act clearly states that it is enacted with a view “*to protect the rights of married Muslim women and to prohibit divorce by pronouncing Talaq by their husband ....*” is far from protecting the rights of Muslim women and saving her marriage the Impugned Act further aggravates situation by making the act of utterance of Triple Talaq a crime and brings more disharmony between the

couple and making any reconciliation impossible. If a Muslim husband is prosecuted for his wrongful act of pronouncing Talaq-e Biddat not at the behest of the wife but even at the behest of by any person related to wife by blood or marriage as provided in section 7 (a) of the impugned Act. The very fact of prosecution not at the instance of wife but even at the instance of any person related to wife by blood or marriage make reconciliation between husband and wife impossible. The term “*any person related to her by blood or marriage*” is wide enough to bring within it large number of relatives that may be related to wife by blood or marriage and the prosecution may be launched by any such person. Therefore, the impugned act does not serve the purpose of protecting the marriage but can be used as instrument to destroy the marriage between husband and wife and therefore, it defeats the very object for which the impugned Act is enacted.

**RE : SECTION 5 OF THE IMPUGNED ACT**

- G. After the verdict of the Hon'ble Supreme Court in Shayara Bano case, the woman on whom Talaq-e-Biddat is pronounced, continues to retain the status of wife and as such, she has bundle of rights available under the Muslim Personal Law as well as the secular laws like Criminal Procedural Code and Protection of Women from Domestic Violence Act of 2005 (for short “DV Act”). Under Section 125 of the Criminal Procedure Code, she has the right of maintenance and children from husband. Similarly, she also has the right for matrimonial home and maintenance under the DV Act. Additionally, a wife has protection of right of maintenance and residence under Muslim Personal Law. These rights are far superior to the right of “subsistence allowance” under section

5 of the Impugned Act. Ignoring rights of Muslim woman under provisions of law mentioned above and conferring of “subsistence allowance” is arbitrary. It is redundant to provide further provisions in the form of Section 5 of the Impugned Act that a married woman upon whom the triple Talaq in one sitting is pronounced, shall be entitled to receive from her husband some amount of subsistence allowance for her and her children as may be determined by the Magistrate. As per the dictum laid down by Jeremy Bentham it is groundless and furnishes a further instance of manifest arbitrariness on the part of the legislature to enact such law. The rights of maintenance provided to Muslim wife are more substantial under diverse laws mentioned above than the right of mere subsistence allowance provided under section 5 of the Impugned Act. The provision does not advance preamble object of the Impugned Act.

- H. For that Section 5 entitles a married Muslim woman, on whom *talaq* has been pronounced, to receive subsistence allowance, as may be determined by the Magistrate, for her and her children. It does not consider as to how such a provision will be implemented, particularly if such man belongs to an economically weaker section of society. He would be unable to provide even subsistence allowance, as he will be unable to undertake any work/job while being imprisoned. Moreover, the Impugned Act fails to consider as to who shall be liable to maintain the wife in case the husband is behind bars and/or is incapable in providing subsistence allowance to the wife and for maintenance of children.
- I. For that Muslim Personal Law as applied in India comprises of subjects largely but not exhaustively enumerated in section 2

of the Shariat Act 1937. Historically, criminal law and penal provisions never applied on the basis of religion of the offender or victim.

- J. Historically any delinquent conduct within matrimony was first described as “matrimonial offence” but with advent of time such conduct ceased to be described as “matrimonial offence” but came to be described as “matrimonial wrongs”. In India also section 497 of IPC made a sexual intercourse with a married woman an offence of adultery but it has ceased to be offence after this Hon’ble Court judgment pronounced in *Joseph Shine v. Union of India* (2019) 3 SCC 39. *It is for the first time that wrongful/or meaningless conduct or act within the matrimony is treated as crime.* By and large personal laws apply to different communities on the basis of religion. No part of the personal laws of any community is converted into crime. Indian Penal Code applies throughout India and in certain cases has even extra territorial application to all persons without distinction of cast, creed, religion or sex. Utterance of Talaq-e-Biddat as submitted earlier, has no civil consequences but has now criminal consequences. Under section 3 of the DV Act “Domestic Violence” is defined in inclusive terms as under:

- “3. *Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—*
- (a) *harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*

- (b) *harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or*
- (c) *has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or*
- (d) *otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.—For the purposes of this section,—*
  - (i) *“physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;*
  - (ii) *“sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;*
  - (iii) *“verbal and emotional abuse” includes—*
    - (a) *insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and*
    - (b) *repeated threats to cause physical pain to any person in whom the aggrieved person is interested.*
  - (iv) *“economic abuse” includes—*
    - (a) *deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;*

- (b) *disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and*
- (c) *prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”*

The utterance of Talaq e Biddat thus may amount verbal/emotional abuse of wife in as much as she would legitimately feel humiliated and unwanted in the marriage. Therefore, under the DV Act on such conduct on the part of husband amounts to verbal/emotional abuse for which the aggrieved woman has remedy under the DV Act. It is emphasised that under DV Act which also applies to Muslims, such conduct is not treated as crime and the aggrieved can seek remedies provided under DV Act by following procedure under provision of DV Act. It is emphasised that by enacting the impugned Act there is hostile discrimination against a Muslim husband in as much as for the act of mental cruelty, a non-Muslim husband has not to face any criminal

trial/consequences while a Muslim husband is made to face criminal trial/consequences.

**RE: SECTION 7 OF THE IMPUGNED ACT**

- K. Under Section 7, it is unfair and arbitrary and therefore offends Article 21 of the Constitution of India. Section 7(a) of the Impugned Act provides that the offence punishable under the Act shall be cognizable and the same can be initiated by the married women upon whom Talaq is pronounced "*or any other person related to her by blood or marriage*". The initiation of the criminal proceedings at the instance of any person related to wife by blood or marriage keep the doors wide open for the misuse and abuse of the provisions of the Impugned Act. The phrase "*related to her by blood or marriage*" bring within its net large number of persons who may out of vengeance or other personnel grievances, try to destroy marriage between husband and wife. If the complaint is lodged by any of such relatives and the wife objects to initiation of such provisions she is helpless in the matter. Such initiation of the proceedings by relatives may have all the potentialities of destroying the marriage between husband and wife. This is a thoughtless provision of law and therefore it is unfair and arbitrary and therefore it offends Articles 14 and 21 of the Constitution.

**RE: SECTION 7(a) OF THE IMPUGNED ACT**

- L. Section 7(a) of the Impugned Act also suffers from manifest arbitrariness for the reason that in the event of Talaq-e-Biddat pronounced by a Muslim husband, the husband and



wife have shown their willingness to reconcile and make up their differences and continue in conjugal relationship with happiness, yet under section 7(a) such Muslim husband can be prosecuted if information relating to the pronouncement of Triple Talaq is given by any person related to such wife by blood or marriage. Such prosecution may also lead to complete breakdown of such marriage. Therefore, the Impugned Act far from saving the marriage completely destroys the same at the instance of any person related to the wife by blood or marriage. The Impugned Act therefore, does not further the object of saving the marriage or protecting the rights of Muslim woman and therefore, it is manifestly arbitrary and void.

- M. The provision to declare such utterances as crime and further to prescribe the punishment for the same totally defeats the object of the Impugned Act. If upon the triple utterances of Talaq in one sitting is ineffective then the party should be allowed to reconcile and live happily in conjugal relationship. The provision for the imprisonment of the persons who utters such words is to defeat the purpose to continue the marriage. If a Muslim husband, who has uttered these words and is subsequently sent to jail for whatever term upto the period of three years and subjected to fine, it is against human psychology to believe that after suffering such penalty, any person would lead happy conjugal life. Jeremy Bentham has stated in his thesis on the Rational of Punishment at Page 24 as follows:

*“If the evil of the punishment exceeds the evil of the offence, the punishment will be unprofitable, the legislator will have produced more suffering than he has prevented.”*

This is manifest arbitrariness.

- N. It is relevant to bear in mind the uses of penal law. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. What is to be borne in mind is that the penal law governs the strongest force that permits official agencies to bring to bear on individual. Its importance as an instrument of safety is matched only by its power to destroy. Nowhere in the entire legal field is more at stake for the community or for the individual. This is the warning stated by Glenville Williams in the book of 'Textbook of Criminal Law'. By converting a human conduct of utterance of word Talaq three times in one sitting, Section 4 of the Impugned Act has all the potentialities to destroy the marriage that in law continues even after such utterances. The Impugned Act has potentiality to destroy the institution of marriage that exists between the parties rather than save it. It is therefore, manifestly arbitrary.
- O. For that Section 4 of the impugned Act stipulates that pronouncement of *talaq* by a Muslim husband upon his wife shall be *void* and illegal. Furthermore, Section 4 of the Impugned Act stipulates that such husband, who pronounces *talaq*, as referred to under Section 3, shall be punished with imprisonment upto 3 years and shall also be liable to pay fine. It is submitted that this is an ill-conceived provision which imposes excessive and disproportionate punishment to an act of mere pronouncement of *talaq* completely disregarding the fact that the pronouncement is of no consequence after the *Shayara Bano Case*. Moreover, it is evident from the fact that

lesser punishment is prescribed for many offences which are far graver. Some such offences are Rioting (Section 147 of IPC – punishment of imprisonment upto 2 years or fine or both), Bribery (Section 171E of IPC– punishment of imprisonment of upto 1 year or fine or both), Adulteration of food or drink intended for sale (Section 272 of IPC– punishment of imprisonment of upto 6 months or fine of Rs. 1000 or both), Punishment for causing death by negligence (Section 304 A– punishment of imprisonment of upto 2 years or fine or both), Rash driving or riding on a public way (Section 279– punishment of imprisonment of upto 6 months or fine of Rs. 1000 or both) etc.

- P. For that it is a settled law that a statutory provision can be struck down on the ground of manifest arbitrariness, when the provision is capricious, irrational and/or without adequate determining principle, as also if it is excessive or disproportionate. In fact, crime and punishment are two sides of the same coin and the punishment must fit the crime. The notion of '*just deserts*' which requires that a sentence being imposed must be proportionate to the offender's culpability is applicable to criminal jurisprudence. (*Mohd. Arif @ Ashfaq v. The Registrar, Supreme Court of India, (2014) 9 SCC 737*) In view of the foregoing, it is submitted that the making pronouncement of instantaneous *talaq* a cognizable and a non-bailable offence, being punishable with an imprisonment of upto 3 years, is not only excessive but disproportionate.
- Q. For that there are several more grave offences which are not punishable with such a stringent punishment and are bailable, in fact desertion of a wife by the Husband is not even an

offence, this clearly shows that the provisions *qua* criminality of the pronouncement of instantaneous *talaq* are disproportionate and excessive.

- R. For that it is relevant to note that 'desertion' which plagues all the communities in the Indian Society is not a crime at all. In such circumstances to enact an Act to declare *talaq* as *void* and impose criminal consequences on such pronouncement is excessive and disproportionate. Furthermore, the fact that 'desertion' has not been criminalized yet, only furthers the assertion of the Petitioners that the Impugned Act is violative of Article 14 of the Constitution of India.

**RE: SECTION 7 (b) OF THE IMPUGNED ACT**

- S. Section 7(b) of the Impugned Act provides unfair provision relating to the composition of the offence punishable under the Act. A husband and wife are not free agent to even enter into compromise after the proceedings are initiated to settle the matter amicably amongst them. Any settlement that may be arrived at between husband and wife can only be with the permission of the Magistrate and the Magistrate has further discretion to put such terms as he may think. This is direct intrusion in the private life of a husband and wife by an outside agency and is therefore arbitrary and offending Article 21 of the Constitution as it provides an unfair provision affecting the life and liberty of both the husband and wife. This provision also infringes fundamental right to privacy as upheld by nine judges bench of this Hon'ble Court in K.S. Puttaswamy and another v. Union of India (2017) 10 SCC 1.

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

**RE: SECTION 7 (c) OF THE IMPUGNED ACT**

U. For that it is settled law that a Court, while exercising powers for grant of bail, is not bound to issue notice to the Complainant/Victim or hear them. However, Section 7(c) of the Impugned Act stipulates that no bail shall be granted without hearing the Muslim woman upon whom *talaq* is pronounced. It is submitted that this is a clear departure from the settled principles of Criminal Law. Furthermore, there may be cases where the Muslim woman is unable to appear before the Learned Magistrate, in such cases the detained husband will suffer for no fault, even if reasonable grounds for bail exist.

**RE : SECTION 6 OF IMPUGNED ACT**

V. For that Section 6 of the Impugned Act provides that notwithstanding anything, in the event of pronouncement of talaq, the wife shall be entitled to the custody of her minor children. It is submitted that such a wide, all-encompassing provision, which leaves no scope whatsoever, for the custody of the children to be given to the husband or the grandparents or any other agnate or cognate relative, is arbitrary as it does not provide for any exceptional circumstances. Conferment of right of custody of minor children without taking into consideration issue of welfare and interest of minor is arbitrary and therefore unconstitutional. It is relevant to note that there might arise circumstances when it is in the interest of the minor children that they be given in the custody of someone other than their mother, for instance, when the mother is of unsound mind or when the mother is not willing to look after the children or when the children are unwilling to reside with the mother. However, Section 6 of the Impugned Act does not even envisage the existence of any such exceptional circumstances and provides an all-encompassing, overarching provision in favour of the wife, without taking into consideration the best interests of the children.

**RE: RETROSPECTIVE EFFECT OF THE IMPUGNED ACT**

W. For that the Impugned Act has been given retrospective effect from September 19, 2018 vide section 1 (iii) and it is settled law that criminal liability cannot be introduced with retrospective effect. The Impugned Act violates Article 20 (1) of the Constitution.

**RE: SEVERABILITY OF CORE PROVISION OF THE  
IMPUGNED ACT:**

- X. By reason of premises stated above, section 4 is manifestly arbitrary and therefore unconstitutional. Section 4 is core provision of the Impugned Act and it cannot be separated from other provisions of Impugned Act. Therefore, for that reason alone the Impugned Act is unconstitutional.
7. The Petitioners have not filed any other Petition either before this Hon'ble Court or before any High Court seeking the same and/or similar directions as prayed for in the present Writ Petition.
8. The Petitioners have not approached any other Court for the reliefs claimed in this Petition. It is further submitted that no representation has been filed with any authority since constitutional validity of an Act is under challenge and the reliefs claimed herein can only be granted by this Hon'ble Court.
9. In the aforesaid premises and in the interests of justice, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:-

**PRAYER**

- (a) Declare that the Muslim Women (Protection of Rights on Marriage) Act, 2019 unconstitutional being violative of Articles 14, 15, 19, 20, 21, 25 and 26 of the Constitution of India; and/or

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

**AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN DUTYBOUND, SHALL EVER PRAY.**

**FILED BY:-**

DRAWN ON 19.10.2019  
FILED ON : 21.10.2019

DRAWN BY:  
M. R .Shamshad  
Momin Musaddique Ahmed  
Aditya Samaddar  
Advocates

**M. R. SHAMSHAD  
ADVOCATE FOR THE PETITIONERS**

SETTLED BY:  
YUSUF HATIM MUCHHALA,  
Senior Advocate



IN THE SUPREME COURT OF INDIA  
(CIVIL ORIGINAL JURISDICTION)  
PUBLIC INTEREST LITIGATION  
WRIT PETITION (CIVIL) NO. .... OF 2019  
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

All India Muslim Personal Law Board &Anr. . . . Petitioners

VERSUS

Union of India . . . . Respondent

A F F I D A V I T

I, Kamal Faruqui S/o Nafees Ahmed Faruqui, aged about 67 years, residing at A-80, Nizamuddine East, New Delhi, do hereby solemnly affirm and state as hereunder:-

- 1 That I am Petitioner No 2 in person in the present petition. Hence in the above capacities I am competent to swear the present affidavit. I am well conversant with the facts of the case.
- 2 That the contents of pages B to E of Synopsis with List of Dates, paras 1 to 9 at pages 1 to 36 of the accompanying Writ Petition as well as the accompanying Interlocutory Application(s) have been read and understood by me and having understood the same I have to say that the same are true and correct to my personal knowledge being based on record.
- 3 That the Petitioner do not have any personal interest or personal gain or private motive or any other oblique reason in filing the accompanying petition in public interest.
- 4 That no similar petition seeking similar relief has been filed by the Petitioners before this Hon'ble Court or any other Court.
- 5 That the Annexures P-1 to P-7 attached to this Petition are true to my personal knowledge and belief.

**DEPONENT**

**VERIFICATION**

Verified at New Delhi on this 21st<sup>th</sup> day of October, 2019 that the contents of the above paras of the above affidavit are true and correct to my knowledge and belief based on records. No part of it is false and nothing material has been concealed there from.

**DEPONENT**