

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) BILL, 2018 Bill No. 181 of 2018

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A BILL to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Muslim Women (Protection of Rights on Marriage) 5 Act, 2018.

(2) It shall extend to the whole of India, except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 19th September, 2018.

2. In this Act, unless the context otherwise requires,—

(a) “electronic form” shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000;

(b) “Magistrate” means a Judicial Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973, in the area where the married Muslim woman resides; and

(c) “talaq” means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

CHAPTER II

DECLARATION OF TALAQ TO BE VOID AND ILLEGAL

3. Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

4. Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

CHAPTER III

PROTECTION OF RIGHTS OF MARRIED MUSLIM WOMEN

5. Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.

6. Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of talaq by her husband, in such manner as may be determined by the Magistrate.

7. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(a) an offence punishable under this Act shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom talaq is pronounced or any person related to her by blood or marriage;

(b) an offence punishable under this Act shall be compoundable, at the instance of the married Muslim woman upon whom talaq is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;

(c) no person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom talaq is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

8. (1) The Muslim Women (Protection of Rights on Marriage) Ordinance, 2018, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

1. The Supreme Court in the matter of Shayara Bano Vs. Union of India and others 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 Rajya Sabha.

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 Rajya Sabha 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.