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Judicial Response to Safeguarding Muslim Women through the Abolition of Talaq-ul-Biddat in India

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ABSTRACT

Judiciary has played significant role in protecting Muslim women against the evil of Talaq -Ul- Biddat. But this has not always been the case. Prior to independence, colonial courts in India including the Privy Council contributed minimally to the cause and did not recognize of maintenance. However gradually after independence various High Courts and the Supreme Court declared the practice of Talaq-Ul-Biddat as unconstitutional and bad in law on various grounds like its absence from Holy Quran, not supported by Sunnat of Holy Prophet Muhammad etc. The present paper analyses the advocacy and activism of Indian judiciary in protecting Muslim women in abolishing the practice of Talaq-Ul-Biddat, going beyond and upholding right of maintenance.

I. INTRODUCTION

Triple Talaq, also known as Talaq-ul-Biddat, is a form of divorce historically practiced in Islam, where a Muslim man could unilaterally and irrevocably dissolve his marriage by pronouncing the word "talaq" (meaning divorce in Arabic) three times. This pronouncement could be made in various forms, including oral declarations, written communication, or, more recently, through electronic mediums such as telephone, SMS, email, or social media platforms. Under this practice, the husband was not required to provide any justification for the divorce, nor was it necessary for the wife to be present at the time of the pronouncement. Following the pronouncement, a waiting period known as "iddat" was observed, during which the wife's potential pregnancy was determined, after which the divorce would become final and irrevocable.[3] Talaq-Ul-Biddat gave unilateral and unbridled power to Muslim husband to give divorce to wife by just pronouncing divorce thrice. Constitutionality and Validity of controversial practice of Triple Talaq by Talaq-Ul-Biddat has been challenged before various courts in India before and after independence. The judiciary time and again held that Talaq-Ul-

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[3] Mulla Principles of Mahamedan Law', Lexis Nexis, 22nd Edition 2017

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Biddat is unconstitutional since it is violative of fundamental rights of Muslim women. Shayra Bono's case[4] is one of such landmark cases in which the Supreme Court has held that Talaq-Ul-Biddat is violative of fundamental Right to Equality and Right to Life of Muslim women. The Muslim Women (Protection of Rights on Marriage) Act, 2019 criminalized the practice of triple talaq in India. The law makes triple talaq a non-bailable offense punishable with up to three years in prison. However, judiciary has played a crucial role in shaping the jurisprudence surrounding Triple Talaq protecting rights of Muslim women.

II. UNCONSTITUTIONALITY OF TALAQ-UL-BIDDAT

Talaq-Ul-Biddat was held to be against the injunctions of Holy Quran and Sunnat of Prophet. Prophet Muhammad shown his extreme anger and dislike for Talaq-Ul-Biddat. So Talaq-Ul-Biddat as such is not a part of Muslim law of which the Quran and Sunnat are main source. Apart from it Talaq-Ul-Biddat was held to be unconstitutional in many cases. In *Bai Tahira* v. *Ali Hussain Fissalli Chothia and Another*[5] Krishnaiyer V. R. J invoked the provisions of Constitution of India for the protection of Muslim women. As Stated by him Welfare laws must be so read as to be effective delivery systems of the salutary objects sought to be served by the Legislature and when the beneficiaries are the weaker sections, like destitute women, this spirit of Article 15(3)[6] of the Constitution must be recognized.

In *Rahmat Ullah And Khatoon Nissa* v. *State of U.P. And Others*[7] H.N. Tilhari J. discussed the Talaq-Ul-Biddat and its validity in depth. In this case Amicus Curie appointed by the High Court of Uttar Pradesh stated that even though Talaq-Ul-Biddat is not supported by Quran or any other source of Muslim law still its practice is protected under Articles 25 and 26 of the Constitution as fundamental right to religion. But H.N. Tilhari J. after referring plights and miseries of Muslim women divorced by Talaq-Ul-Biddat held that Since Talaq-Ul-Biddat is not the part of religion of Islam it is not Right to Religion guaranteed under Articles 25 and 26 of the Constitution. Further Tilhari J. Stated that no right including Right to Religion is absolute. But it is subject to other provisions of Part III of the constitution and laws made by State. Article 25 which guarantees Right to Religion opens with the words "Subject to Public Order, Morality and Health…." Right to Religion is subject to public order, morality and health. Giving unbridled power to husband to give Talaq at any time according to whim for any trifle reason

[4] Shayra Bano v. Union of India (AIR 2017 SC 4609)
[5] Supra note 23
[6] Article 15 (3): - Nothing in this Article (Article 15 which deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) shall prevent the state from making any special provision for women and children.
[7] II (1994) DMC 64

or for no reason leaving the wife in vagrancy cannot be in the interest of public order, morality and health. So the practice of Talaq-Ul-Biddat is not protected under Article 25 and other provisions relating to Right to Religion. Rules of Shariat which are part of uncodified Muslim law are applicable according to Article 372[8] of Constitution of India. The practice of Talaq-Ul-Biddat is part of Shariat law vide Section 2 of The Muslim Personal Law (Shariat) Application Act, 1937. Tilhari J. declared Section 2 of the Act, 1937 void to the extent to which it allows Talaq-Ul-Biddat. Finaly Tilhari J. declared the Talaq-Ul-Biddat as violative of Articles 14[9], 15[10], 21[11],23[12]and Article 51 A.[13] But unfortunately when this case went in appeal in the Supreme Court[14], Supreme Court held that the constitutionality of Talaq-Ul-Biddat was not in issue directly in the case before Allahabad High Court and the opinion expressed by Tilhari J. was declared to be obiter dictum and not ratio decidendi and so not binding as law.

Finally in recent case *Shayra Bano* v. *Union of India*[15] the Supreme Court of India declared the practice of Talaq-Ul-Biddat as violative of fundamental right to equality and right to life of Muslim women. This decision was give by 3:2 majority. Surprisingly Jagdish Kehar Singh C.J.I. and S. Abdul Nazir J. gave dissenting judgment in which they held that Talaq-Ul-Biddat was in practice since very long time and existed in other Muslim countries it is a part of customary Muslim law and protected as a right to religion under Articles 25 and 26 of Indian Constitution. They held that Section 2 of The Muslim Personal Law (Shariat) Application Act,

[8] Article 372 of Constitution provides that subject to provisions of the Constitution all laws in force in territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

[9] Article 14 of the Constitution provides that the State shall not deny to any person equality before law and equal protection of laws within the territory of India. Muslim husband has unbridled power to give Talaq to the wife but wife does not have such power. As compared to matrimonial laws of other religion Muslim law does not provide equal power regarding divorce, maintenance or any other matrimonial matters to Muslim woman. All the evil consequences and vagrancies creating hardship for Muslim woman are due to religious law applicable to her. Therefor Tilhari J. correctly declared Talaq-Ul-Biddat as violative of Article 14 of the constitution.

[10] Article 15 of the Constitution provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Muslim woman is discriminated by Muslim law relating to divorce on the ground of her religion and sex and so Talaq-Ul-Biddat becomes violative of Article 15 too as held by Tilhari J.

[11] Article 21 of the Constitution guarantees most cherished fundamental right i.e. Right to Life. Evil effects of Talaq-Ul-Biddat are responsible for vagrancies of Muslim divorcee woman and her children and so Talaq-Ul-Biddat is violative of Right to Life of Muslim woman. Recently in *Shayra Bano*. v *Union of India* (AIR 2017 SC 4609) also Supreme Court held Talaq-Ul-Biddat as violative of Right to Life guaranteed under Article 21 of Constitution of India.

[12] Article 23 provides Right Against Exploitation as fundamental right. Tilhari J. held that Tala-Ul-Biddat is against the doctrines and principles enshrined in Article 23 also.

[13]Article 51 A of Constitution of India prescribes Fundamental Duties of citizens of India. Article 51 A(e) provides that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of woman and Article 51 A(h) provides that it shall be the duty of every citizen of India to develop the scientific temper, humanism and the spirit of inquiry and reform. The practice of Talaq-Ul-Biddat is certainly derogatory to the dignity of Muslim woman. If citizen of India who is Muslim want to develop the scientific temper, humanism and spirit of inquiry and reform then it will be his duty to renounce the practice of Talaq-Ul-Biddat which is sinful.

[14] Khatoon Nisa v. State of U.P. And Ors ((2002) 6 SCALE 165)

[15] Supra note 2

1937 which includes the practice of Talaq-Ul-Biddat as valid. Majority judgment was given by Rohinton F. Nariman and Uday U. Lalit JJ. concurrently in which they were disagreed with the opinion expressed by Jagdish Kehar Singh C.J.I. and S. Abdul Nazir J. and held that Talaq-Ul-Biddat is against the injunctions of Quran and Holy Prophet Muhammad expressed hid extreme anger and dislike for the same, so it is not part of Muslim law and it is a biddat which means a new invention. They held that Talaq-Ul-Biddat was later on developed as a custom as a loophole or an excuse to strict rules imposed by Prophet. Further they held that Talaq-Ul-Biddat which is not part of Islam and Muslim law is violative of fundamental rights of Muslim women as it results in plights and miseries for Muslim women. Joseph Kurian J. delivered separate judgment supporting to Rohinton F. Nariman and Uday U. Lalit JJ. in which he stated that the Supreme Court in Shamim Ara's case[16] has already declared Talaq-Ul-Biddat as invalid so in view of the judgment of Supreme Court in Shamim Ara's case Joseph Kurian J. declared Talaq-Ul-Biddat as invalid and unconstitutional. In this case the Supreme Court expressed need for separate law for abolition of Talaq-Ul-Biddat in India.

Indian parliament enacted The Muslim Woman (Protection of Rights on Marriage) Act, 2019 which criminalized and penalized Triple Talaq by Talaq-Ul-Biddat. New law created social and political turmoil in India which reflected in agitation by certain faction of Muslim community against the law. All India Muslim Personal Law Board has filed a writ petition challenging the constitutionality of the law criminalizing and penalizing Triple Talaq by Talaq-Ul-Biddat, which is pending.

III. TALAQ-UL-BIDDAT HELD TO BE AGAINST INJUNCTIONS OF QURAN

The decisions in cases of Bai Tahera and Shaha Bano played the catalytic role in safeguarding the Muslim women's marital rights. After these two decisions Indian judiciary gradually started to derecognize the Talaq-Ul-Biddat as part of Muslim law based on Quran and Sunnat.

In *Fazlunbi* v. *K. Khader Vali And Anr*[17] case before in Supreme Court in which Krishnaiyer J. gave judgment by following the judgment in Bai Tahera's case. It was held by Krishnaiyer J. that a Muslim husband simply by giving Talaq and paying the amount of Mehr and a certain amount as maintenance for the period of Iddat cannot extricate himself from the responsibility to maintain the wife. In *Jiauddin Ahmad* v. *Anwara Begum*[18] the Kerala High Court by relying upon various verses[19] of Quran held that Triple Talaq is against the injunctions of Quran as well

16 Supra note 34
17 AIR 1980 SC 1730
18 (1981) 1 Gau.L.R.358.
19 The court relied upon the verse no. 35 and 128 to 130 of Surah IV viz. Surah An-Nissa and verse no. 229 to 232

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as the preaching of Prophet Muhammad. The Prophet has condemned the Talaq and Stated that among the most detestable things in Islam is Talaq. Talaq is permissible but it must be for proper reason and proper procedure including the arbitration and conciliation of spouses must be followed. The High Court quoted opinion of various Muslim scholars and jurists expressed in their writings in which they stated that Talaq is permissible but it is not an absolute and unbridled right of Muslim husband. The court reiterated that before the advent of Prophet Muhammad, the condition of women in the world particularly in Arabia, was very miserable. For all practical purposes women were the properties or chattel, as it were, of men. A man could marry any number of wives and could divorce any of them at any time at his whims or caprice. Islam realised that for peace and happiness of a family and for protection and beneficial upbringing of children, divorce was undesirable. The Holy Quran put strong restrictions on the divorce of women by their husbands. Though marriage under the Muslim Law is only a civil contract, yet the rights and responsibilities consequent upon it are of such importance to the welfare of humanity, that a high degree of sanctity is attached to it.

Again in *Must. Rukia Khatun* v. *Abdul Khalique Laskar*[20] the Gauhati High Court has stated that Talaq is the most detestable thing before the Almighty God of all permitted things. If `talaq' is given without any reason it is stupidity and ingratitude to God. Though husband has the power to divorce the wife, he can exercise that power only if the wife by her indocility or her bad character or her bad character leads the married life unhappy. But in the absence of any such reasons no Muslim can justify a divorce either in the eyes of religion or in the eyes of law. If he abandons his wife or put her away from simple caprice, he draws, upon himself the divine anger, for `the curse of God', said the Prophet, `rests on him who repudiates his wife capriciously. Krishnaiyer V. R. J. in *A.Yousuf Rawther* vs. *Sowramma*[21] has held that the view that the Muslim husband enjoys an arbitrary, unilateral power to inflict instant divorce does not accord with Islamic injunctions and a deeper study of the subject disclosed a surprisingly rational, realistic and modern law of divorce. After referring Surah IV of Holy Quran, Krishna Aiyer J further Stated that "It is a popular fallacy that a Muslim male enjoys, under the Quranic law, unbridled authority to liquidate the marriage. The whole Quran expressly forbids a man to seek pretexts for divorcing his wife, so long as she remains faithful and obedient to him, `if they (namely, women) obey you, then do not seek a way against them. Similar view was taken by Sidick J. in *Saleem Basha* v. *Mrs. Mumtaz Begam.*[22] He held that as prescribed in Holy Quran the

of Surah Al-Baqrah.
[20] (1981)1 Gau. L.R. 375
[21] Supra Note 159.
[22] 1999(1) ALD Cri. 182

reconciliation of husband and wife must be attempted by the conciliators or arbiters each one appointed by husband and wife respectively. When all attempts of reconciliation and settlement of differences are failed then as a last resort the Talaq will take place. The same view was taken by the Karnataka High Court in *Zulekha Begum Alias Rahmathunnisa Begum v. Abdul Rahim.*[23]

In landmark case of *Shamim Ara* v. *Union of India*[24] where in the proceedings for maintenance by wife the defence of husband was that he had divorced her by Talaq-Ul-Biddat, the Supreme Court stated that none of the Holy books or scriptures mentions the Talaq-Ul-Biddat as a type of divorce. The whole Quran expressly forbids a man to seek pretexts for divorcing his wife so long as faithful and obedient to him. Such Talaq is against the instructions of Holy Quran. Talaq may be oral or in writing; but it must be for reasonable cause and preceded by attempts at reconciliation between the husband and wife by arbiters one from each family of husband and wife and if the attempt fails then Talaq may be effected. Since husband Respondent failed to prove these requirements in his case Supreme Court held that no valid Talaq was taken place. Supreme Court expressed the strong dislike to the view that Talaq-Ul-Biddat though bad in theology good in law. The judgment of Supreme Court in Shamim ara's case had been followed later in many cases. Thus in *Dagadu s/o Chotu Pathan* v. *Rahimbi Dgadu Pathan*[25] the Bombay High Court held that the husband must prove the fact of Talaq given by him. According to Muslim law which is provided in Surah Al-Baqra and Surah An-Nissa of Holy Quran a Muslim husband can give Talaq only for a reasonable cause and it must be preceded by predivorce conference. The Bombay High Court emphasized on the opinion expressed by Gauhati High Court in *Jiauddin Ahmad* v. *Anwara Begum*[26] that "The modern trend of thinking is to put restrictions on the caprice and whim of the husband to give Talaq to his wife at any time without giving any reason whatsoever." The judgment of Bombay High Court was relied upon in various recent cases[27] and it was held that the husband must establish the factum of Talaq by appropriate proof and the Talaq must be given for a reasonable cause.

Thereafter in *M. Shaul Hameed* v. *A Salima and Union of India*[28], *Mohd. Idris* v. *Nigar Sultana and Another*[29], *Zamrud Begum* v. *K. Md. Hanif and Another*[30] and *Kayymparamb*

[23] (2000)2 Kar.L.J. 70
[24] (2002)7 S.C.C. 578
[25] 2002(2) Mh.L.J. 602
[26] Supra note 28
[27]Khannubi v. Salim (2003 (2) Mh.L.J. 940), Wahidkhan Majidkhan v. Badreshmin Wahidkhan(2004(1) Bom.CR(Cri.) 263), Shamim Baig v. Najmunnisa Begum, (2007(1)Bom.CR.(Cri.)150), Dilshad Begum v. Ahmadkhan Harifkhan Pathan (2007(1)Bom.CR.(Cri.)700), Ashiya begum v. Sk. Khayyam (2015(3) Mh.L.J (Cri. 464), Shakil Ahmad Jalaluddin Shaikh v. Vhida Shakil Shaikh (2016 (3) Bom. CR 540),
[28] AIR 2003 Mad 162
[29] II (2003) DMC 397
[30] 2003 (3) ALD 220

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Ummer Farooque v. *Peredath Naseema*[31] relying upon judgments in Shamim Ara's case and Rukia Kahtoon's case in *Dilshad Begam Ahmadkhan Pathan* v. *Ahmadkhan Hanifkhan Pathan*[32] it was held that mere pronouncement of Talaq by husband even in presence of wife is not sufficient to effect a valid divorce under Mohammedan law. Again the legality of Talaq-Ul-Biddat in Muslim law was denied in *Manzoor Ahmad Khan* v. *Mst. Saja And Three Others*[33] , *Shameem Baig* v. *Najmunnisa Begum And Others*[34], *Iqbal Bano* v. *State of U.P. And Another*[35], *Firdaus Bano* v. *Mohammad Ashraf*[36] *and Kunhimohammed* v. *Ayeshakutty*[37]. In a very strange case before Delhi High Court *Masroor Ahmed* v. *State (N.C.T. Delhi)*[38] it was alleged by the wife that husband divorced her by Talaq-Ul-Biddat and again married her. Later when dispute arose she accused her husband that he had committed rape since he had intercourse with her after Talaq. But Delhi High Court held that in view of judgment in Shamim Ara's case the Talaq uttered by husband was invalid and not effective. Aurangabad Bench of Bombay High Court by following decision of Bombay High Court in *Dagadu s/o Chotu Pathan* v. *Rahimbi Dgadu Pathan*[39] held in *Ashiyabegum And Others* v. *Khayyum And Others*[40] held that the reasons for the Talaq must be communicated to the wife with fulfilment of all other preconditions of a valid Talaq. Regarding the issue as to whether a Muslim divorce woman can file petition under section 125 of Code of Criminal Procedure, 1973 the Supreme Court in *Shabana Bano* v. *Imran Khan*[41] has made it clear that even a divorced Muslim woman can claim maintenance from her ex-husband even after the period of Iddat or till she remarries and that judgment has been followed in many cases later.

In *Nazeer* v. *Shemeema*[42]A. Muhammed Mushtaque J. of Kerala High Court in his judgment after narrating the plights and miseries of Muslim women divorced by Talaq-Ul-Biddat referred various verses of Quran and Hadith[43] and Stated that the practice of Talaq-Ul-Biddat was not supported by the Holy Quran but it was come to be allowed during the period of Caleph Umar by an executive order to alleviate the grievances of women and not as a right conferred on Muslim husband. This executive action cannot be treated as general law of divorce for Muslim

[31] (2005) SCC Online Ker.471
[32] 2007(109) Bom L R 197
[33](2004)1 J&K CK 0011
[34] 2007(1) Bom.CR (Cri) 150
[35](2007)6 SCC 785
[36] 2008 (2) MPHT 111 CG
[37] 2010(2) KLT 71
[38] 2008(103) DRJ 137
[39] Supra note 180
[40]2015 ALLMR(CRI)1868
[41](2010) 1 SCC 666
[42]2017(1) KLT 300
[43] Hadith is a compilation of principles evolved by Sunnat

community.

IV. TALAQ-UL-BIDDAT AND WIFE'S RIGHT OF MAINTENANCE

In many cases the issue that whether a Muslim women who had been divorced by husband by Talaq-Ul-Biddat has right to claim maintenance form husband was decided by the judiciary in India. Section 488 of previous Code of Criminal Procedure, 1898[44] and Section 125 of current Code of Criminal Procedure, 1973[45] provide the provisions for maintenance of woman. In 1986 after the decision of Supreme Court in Shaha Bano's case[46] Parliament of India passed the Muslim Women (Protection of Rights on Divorce) Act, 1986. All of these provisions were interpreted and applied by our judiciary in deciding the issue of maintenance in cases of divorce by Talaq-Ul-Biddat.

In *Wahad Baksh Shaikh* v. *Hadisa Bibi*[47] where an application was filed by wife for maintenance under Section 488 of previous Code of Criminal Procedure, 1898 the issue before the Calcutta High Court was that up to what date and during what period a Muslim woman who was divorced by Talaq-Ul-Biddat has right to claim maintenance. Relying upon *Ahmad Kasim Molla* v. *Khatun Bibi* [48] the Calcutta High Court held that she was entitled to a maintenance allowance up to the date of Talaqnama having been produced before the court that is when the fact of Talaq came to be known to her. In *Chandbi Mujawar* v. *Bandesha Mujawar*[49] the Bombay High Court relying upon the judgment of Allahabad High Court in *Asmat Ullah* v. *Mt. Khatoon Nisa*[50] held that a Muslim woman who has been divorced by the husband by Talaq-Ul-Biddat is entitled to maintenance for three lunar months that is only during the period of Iddat.[51] Same decision

[44] Section 488 (1) Cr.P.C.1898:- If any person having sufficient refuses to maintain his wife or his legitimate or illegitimate child 'unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

[45]Section 125 (1) of Cr.P.C.1973:- If any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, or his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct.

[46] AIR 1985 SC 945.

[47] 1960 Cr.L.J. 578.

[48] AIR 1933 Cal 27

[49] AIR 1961 Bom 121

[50] AIR 1939 All 592

[51] The period of iddat is the period of waiting for the divorced woman during which she is expected to remain in seclusion. She cannot marry before completion of iddat period. Under Shiite Personal Status Law, 2009 the period of iddat for woman who is not pregnant is for three tuhr (when woman is pure and not subjected to menstruation) periods. When woman is unable to have menstruation due to old age the iddat period is for three lunar months.

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was given in *Chunnoo Khan* v. *State*[52], *Manoli Pathayi* v. *Moideen*[53], *Sattar Shaikh* v. *Mst. Sahdunnissa*[54] and *Mohammad Ali* v. *Faridunnissa Begum and Another*[55].

After commencement of Code of Criminal Procedure, 1973 also many cases regarding the right to maintenance of Muslim women divorced by their husbands were decided by the Indian judiciary. But gradually the attitude of judiciary had been changed and it started to decline the legality and constitutionality of Talaq-Ul-Biddat.

In *Umar Hayat Khan* v. *Mahaboobunnissa*[56] when wife filed a complaint claiming maintenance from husband under Section 125 of Code of Criminal Procedure, 1973 husband contended that since he has given Talaq to her and provided the maintenance for period of Iddat as provided in Muslim law he was under no obligation to provide maintenance to her after completion of period of Iddat. But Karnataka High Court rejected his contentions and held that Section 125 is not conflicting with Muslim law but it extends the benefits provided to Muslim wife by Muslim law; a statute can confer rights and benefits on persons even though those rights and benefits happen to be more than what those persons are entitled to, under their personal law.

In another landmark case before Supreme Court in *Bai Tahira* v. *Ali Hussain Fissalli Chothia and Another*[57] it was held by Krishnaiyer V. R. J. that by the special statute, Code of Criminal Procedure, 1973 a new statutory right to claim maintenance has been conferred upon Muslim women which may be exercised by her irrespective of personal law. Even though all the claims of wife have been settled by certain arrangement and a consent decree before commencement of the Code, 1973 she can claim the maintenance from her former husband.

Chandrachud J. of the Supreme Court will be remembered in the legal history of India for his notable contribution for safeguarding the rights of Muslim women. In *Mohd. Ahmed Khan* v. *Shah Bano Begum And Others*[58] Chandrachud J. of Supreme Court held that even after the expiry of Iddat period a Muslim man is under legal obligation to maintain the woman to whom he has given Talaq. In this case he ordered an advocate husband to pay maintenance to former wife to whom he abandoned at her age of sixty two years and later divorced by Talaq-Ul-Biddat. This decision created a sensational waive in Muslim community in India and so the then

When woman is pregnant iddat period extends up to end of pregnancy. In case of death of husband and in case of divorce when husband is lost or absent the period of iddat is four months and ten days

52 (1967) All.W.R. (H.C.217) Criminal Reference No. 213 of 1965, Allahabad High Court

53 (1968) M.L.J.Cr. 660(Ker)

54 1969 A.L.J. 415.

55 AIR 1970 A.P. 298.

56 (1975)M.L.J. Cr.570

57 AIR 1979 SC 362

58 AIR 1985 SC 945

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government passed the Muslim Women (Protection of Rights on Divorce) Act[59] in 1986 and nullified the effect of judgment given by Supreme Court in Shaha Bano's case. The Act, 1986 determined rather restricted the right of Muslim women to claim maintenance after divorce from former husband till the date of expiry of Iddat period. It may be submitted that in Shah Bano' s case as well as Bai Tahera's case the Supreme Court safeguarded the rights of Muslim woman by extending her right to maintenance even after the expiry of period of Iddat but unfortunately the government in order to secure the vote bank nullified the effect of such judgments by passing a law which restricted right to maintenance of Muslim divorced woman till Iddat period only. Moreover the Muslim Women (Protection of Rights on Divorce) Act, 1986 was held to be valid by the Supreme Court in *Danial Latifi* v. *Union of India.*[60] But in this case the court stated that under Section 3(1)(a) of the Act, 1986 the Muslim divorcee woman can claim maintenance form her husband even after the expiry of period of Iddat.

V. RECENT DEVELOPMENT AFTER SHAYARA BANO

The judgment of Shayra Bano was followed by Indian judiciary afterwards in all cases relating to Talaq-Ul-Biddat. It appears from the judgment of Rajasthan High Court in *Firdaus Bano* v. *Abdul Majeed*[61] that if wife accepts the Triple Talaq given by husband then it will operate as a valid divorce. Such cases are very rare. The High Court of Jammu and Kashmir in *Javaid Ahmad Wani alias Waza* v. *Nigeena Akhter*[62] followed the judgment of Supreme Court in Shayara Bano's case as well as Shamim Ara's case and held that Talaq-Ul-Biddat is arbitrary as the marital tie can be broken in an erratic, impulsive, freakish and a mercurial manner, has been held to be violative of Article 14 of the Constitution and, as such, void. For the Triple Talaq given before the date of judgment in Shayara Bano's case the issue that whether the judgment of Shayara Bano would have retrospective effect or not was arisen before High Court of Madhya Pradesh in *Kahkashan Anjum* v. *Union of India And Others*.[63] But High Court of Madhya Pradesh held that in Shayara Bano's case the Triple Talaq had been declared as violative of right to equality under Article 14 of the Constitution and so the issue regarding retrospectively of that judgment would not arise and held that the judgment of Shayara Bano's case would have application to present case and so the Triple Talaq given by husband would be unconstitutional. It is to be noted that generally unless specifically declared a judgment has prospective operation but, for the protection of Muslim woman the Madhya Pradesh High Court

[59] Act No. 25 o 1986
[60] AIR 2001 SC 33
61 2018 Raj HC 329
62 LAWS (J & K) -2018-8-40
[63] W.P. No.7894/2016 decided by M.P. High Court on 9th August 2018

has rightly applied the judgment of Shayra Bano with retrospective operation. In *Muzaffar Ahmad Thoker* v. *Shaheena Akhter And Another*[64] again the High Court of Jammu and Kashmir relied upon the judgement in cases of Shayra Bano and Shamim Ara and held that Talaq-Ul-Biddat which is devoid of essential conditions prescribed in Holy Quran regarding reasonableness of cause and attempt of reconciliation of spouses is violative to Article 14 of the Constitution.

It is very important to note that even during the pandemic of COVID-19 the High Courts and the Supreme Court strived for protection of Muslim women. Delhi High Court in *Nadeem Khan* v. *Union of India*[65] dismissed the petition of husband against whom a complaint was filed under Section 4 of the Muslim Woman (Protection of Rights on Marriage) Act, 2019 for uttering Triple Talaq to his wife that, since Triple Talaq by Talaq-Ul-Biddat has been declared to be void and has no legal effect on the marriage, by the Supreme Court of India there is no justification in criminalizing the same. Delhi High Court stated that a Legislation is presumed to be valid, unless it is declared to be invalid, or unconstitutional by a Competent Court, and is struck down. Prima facie it appears to us that the object of Section 4 of the Act, 2019 is to discourage the age old and traditional practice of pronouncement of Talaq by a Muslim husband upon his wife by resort to Talaq-Ul-Biddat that is Triple Talaq; the purpose of Section 4 is to provide a deterrent against such practice. Merely because Triple Talaq has been declared to be void and illegal, it does not mean that the legislature could not have made the continuation of such practice an offence. Similarly, in *Showkat Hussain* v. *Nazia Jeelani*[66] Triple Talaq given in 2014 was held to be null and void by applying the judgement in Shayra Bano's case retrospectively.

Again During the period of lockdown due to pandemic of COVID-19, the Madurai bench of Madras High Court in *Ahmad Hussain* v. *Shahin Parveen*[67] dismissed the husband's petition against the order of payment of amount of maintenance by rejecting the contention that he has divorced the wife by Triple Talaq. It was held that as prescribed by the Supreme Court in Shamim Ara's case the requirements of valid Talaq according to Muslim law were not proved by the husband. In *Rais Ahmad And 5 Others* v. *State of Uttar Pradesh And Another*[68] Uttar Pradesh High Court refused to interfere in the matter and allowed to complete the investigation of the offence of Triple Talaq under Sections 3 and 4 of the Muslim Woman (Protection of

[64] (2018) J&K -Case No. OWP--62/2016 –6th March 2018
[65] 2020 SCC ONLINE DEL 1336
[66] 2021 SCC ONLINE J&K 704
[67] CRL OP(MD).8387/2019; decided on 21/03/2022
[68] 2023 AHC 111168

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Rights on Marriage) Act, 2019 against husband. The court stated that "the offence of Triple Talaq has been created under Muslim Women (Protection of Rights on Marriage) Act, 2019 which is a new law enacted by the Parliament to supress the mischief of Triple Talaq. The practice of Triple Talaq was considered as oppressive and so to supress the same the Legislature has made a new statute and so to interfere and scuttle a prosecution under the statute would be bog down to statute recently made to supress the mischief of Triple Talaq. The pronouncement of Triple Talaq being regarded as utterly undesirable and something to be abolished by the legislature, the Statute has to be enforced with all its rigours. A prevalent practice in society takes a lot of time to eradicate, and if the legislative endeavour is not encouraged, the likelihood of the practice surviving and the legislation remaining a dead letter, is imminent"

High Court of Andhra Pradesh in *Shaik Jareena* v. *Shaik Daryavali*[69]rejecting the contentions of the husband that the judgment of the Supreme Court in Shayara Bano's case which was given in 2017, will have no retrospective operation since he gave Talaq to the wife in 2016, held that the law laid down in Shayra Bano's case is binding on all the courts within the territory of India by referring Article 141 of the Constitution. In a very recent case Recently in Gujrat a 45 years old Class I Government officer was sentenced to one year jail and fine of Rs. 5000/- for an offence of Triple Talaq by the Court of Additional Senior Civil Judge Palanpur. He was married to the complainant wife in 2012 and they had a daughter. Later he wanted to marry his coworker and when the matter exposed he uttered Triple Talaq to wife. An F.I.R. was lodged under the relevant provisions of Indian Penal Code, 1860 and Section 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019. After considering the arguments and evidence on record the Court convicted the accused and sentenced him. This is perhaps the first conviction for Triple Talaq.

VI. CONCLUSION

The role of Indian High Courts and Supreme Court is important in protection of Muslim women from the evil of Triple Talaq by Talaq-Ul-Biddat. In fact it is the judgement and directions of the Supreme Court which paved new way for codification of law abolishing and punishing the Triple Talaq.

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[69] 2023 APHC 363

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