IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

SUO MOTU WRIT PETITION (CIVIL) NO. 2 OF 2015

IN THE MATTER OF:-

In Re: Muslim Women's Quest for Equality … Petitioner

Versus

Jamiat Ulama-i-Hind &Ors. …Respondents

AND IN THE MATTER OF:-

WRIT PETITION (CIVIL) NO. 118 OF 2016

Shayara Bano … Petitioner

Versus

Union of India & Ors. … Respondents

NOTE ON ARGUMENTS SUBMITTED BY MR. V. GIRI, SR. ADVOCATE ON BEHALF OF RESPONDENT NO. 7 JAMIAT -ULAMA-I-HIND

1. The principle challenge raised in the Writ Petitions is to the validity of Section 2 of the Shariat Act, 1937 (Hereinafter referred to as the Shariat Act). In so far as it relates to *Talaq-i-Biddat* (otherwise referred to as the triple *talaq*) the challenge has been mounted on the ground that the provision relating to triple *talaq* is unconstitutional and unenforceable as it violates Article 14 and 15 of the Constitution of India. It is also contended that *Talaq-i-Biddat* is not a form of *talaq*, acknowledged and accepted by the Shariat and therefore it is un-Islamic. In fact, the second contention is urged by some of the intervenors supporting the Petitioners as a principle one. This Respondent seeks to deal with the contention regarding the invalidity of the statute as the principal one.

2. Section 2 and 3 of The Muslim Personal Law (Shariat) Application Act, 1937 are extracted hereunder for ready reference:

   2.Application of Personal law to Muslims.—Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession,

special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).

3.Power to make a declaration.—
(1) Any person who satisfies the prescribed authority—
(a) that he is a Muslim; and
(b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872 (9 of 1872); and
(c) that he is a resident of [4] [the territories to which this Act extends], may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of [5] [the provisions of this section], and thereafter the provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein adoption, wills and legacies were also specified.
(2) Where the prescribed authority refuses to accept a declaration under sub- section (1), the person desiring to make the same may appeal to such officer as the State Government may, by general or special order, appoint in this behalf, and such office may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

3. The non-obstante clause in Section 2 comprehends any custom or usage which might be inconsistent with the Shariat. In all such cases and generally, where the parties are Muslims, it is enjoined by Section 2 that the applicable law is that of the Shariat.

4. It is submitted that the Shariat which is the Muslim personal law, was the law applicable to Muslims prior to the enactment of the Shariat Act as well (There could have been exceptional cases of customs or usages which were being applied in certain classes of Muslims in certain parts of the country, on certain aspects but Shariat as a law was applicable to Muslims generally in British India as also in certain other States). A reading of the statement of objects and reasons of the Shariat Act would show that Muslims of British India had persistently urged that customary law should not take the place of Muslim personal law. The statement also shows that this Respondent Jamiat-ul-Ulema-i-Hind had supported the demand and invited the attention of all concerned to the

urgent necessity of introducing a measure to the said effect. It was noted that "Muslim Personal Law (Shariat)" exists in the form of a veritable code and is too well known to admit of any doubt or to entail any great labour in the shape of research, which is the chief feature of Customary Law.

5. It is submitted that the Muslim personal law as a body of law was only perpetuated by the Shariat Act. The Shariat has not been subsumed by the statute nor has the Shariat Act codified the Muslim personal law. The Shariat Act has only statutorily declared that the Muslim personal law as a set of rules would govern the Muslims in India and that it is the Muslim personal law that would have overriding effect over any usage or custom to the contrary. The legislature which enacted the Shariat Act has neither modified nor amended even in a small measure the Muslim personal law applicable to the Muslims in India, nor has the legislature while enacting the Shariat Act sought to subsume the Muslim personal law.

6. The character of Muslim personal law did not undergo a change by reason of the enactment of the Shariat Act, nor has the Muslim personal law metamorphized into a statute. The rights and duties of Muslims in India continue to be governed by Muslim personal law. The Shariat Act has not substituted it nor has it provided for a different set of rights and obligations.

7. It is submitted that a challenge to the validity of Section 2 of the Shariat Act (in so far as it pertains to the system of *talaq* is concerned) is rather an exercise in futility, for more reasons than one. Firstly, Section 2 of the Act does not by itself bring about any law providing for rights and obligations to be asserted and discharged by the Muslims as a community. It only reaffirms and statutorily perpetuates Muslim personal law. Therefore, the rights and obligations of the persons who are subjected to Muslim personal law will continue to be the same.

8. Secondly, the Muslim personal law namely the Shariat has neither transformed or metaphorphosised itself into a statute. Thus, assuming Section2 of the Act in a limited way is otherwise interfered with (or for the sake of argument is withdrawn) the Muslim personal law would govern the parties namely the Muslims in India. Thus, a striking down of Section 2 of the Shariat Act in whole or part does not interfere with the body of rules that continue to govern the Muslims in India, namely the Shariat. It is trite that the Constitutional Court will not undertake an exercise which may not serve any fruitful purpose.

9. Thirdly, the parameters of challenge that are applicable to a statute as such would be different to the parameters that are applicable when a personal law is under challenge. Assuming that any provision in a personal law can be challenged, any such challenge would have to pass muster under Article 25 and 26 of the Constitution of India.

10. It is submitted that the right under Article 25(1) to freely profess practice and propagate religion is a universal right that is guaranteed to every citizen to act in affirmation of his own faith. This is the core of the secular nature of the Indian Constitution. In practicing such right, the same would be subject to public order, morality and health and to the other provision of Part III of the Constitution.

11. It is submitted that the subjugation of any right to the other rights of the Constitution under Part III would mean the exercise of right is only subject to State action sourced to Part III of the Constitution. It is only a State action that will have to implicitly confirm to Article 14, 15 or any other provision of Part III of the Constitution, Therefore, a facial subjugation of the right under Article 25(1) to the other provisions of the Constitution would be inapplicable in the case of a personal law that is not sourced to any Statute, as in the case of Muslim personal law. The fact that the Shariat Act affirms the applicability of the Muslim personal law and perpetuates it by virtue of Section 2 thereof would not give the Muslim personal law a Statutory flavor so as to make it a State action, subservient to Part III of the Constitution. The state has only recognized the existence of the Muslim personal law.

12. The Sunnis are a religious denomination within the meaning of Article 26 of the constitution. Thus, subject to public policy, morality and health (and significantly not made subject to any other provision) the Sunni Muslims have the right inter alia to manage their own affairs in matters relating to religion, It cannot be gainsaid that marriage and divorce are matters of religion and therefore Sunnis as a religious denomination are entitled to manage their own affairs in matters of marriage and divorce, which is a Shariat in matters of Muslim Law. Thus, provisions relating to marriage and divorce as contained in Muslim law are entitled to be protected as a denominational right under Article 26 of the Constitution.

13. It is submitted that, hitherto this Hon'ble Court has not struck down in whole or in part any provision contained in any personal law, which has not got incorporated into a Statute. Thus, even if the principle laid down in *State of Bombay v. Narasu Appa Mali*[1] that personal law will not come within the definition of 'law' under Art 13 of the Constitution is not

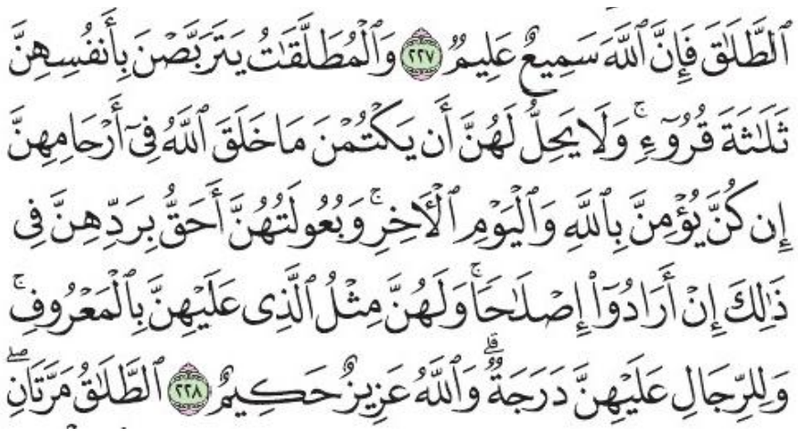
[1] AIR 1952 Bom 84

drawn sustenance from, the distinction between a personal law per se and a personal law as contained in a statute will have to be borne in mind. A full bench of the Kerala High Court has in *Mary Sonia Zachariah v. Union of India*[2], distinguished *Narasu Appa Mali* in the following words:

> "39. Another contention of the learned Central Government Pleader was that the impugned provisions in S.10 are codified forms of personal laws of Christians in India founded on the teachings of Christ and his disciples. Such personal laws may not come within the purview of Art.13 of the Constitution of India and as such cannot be declared as ultra vires the Constitution. Learned counsel has in this connection relied upon the decision in *The State of Bombay v. Narasu Appa Mali (AIR 1952 Bom. 84)* where it has been held that personal laws are not covered by Art 13 of the Constitution of India. We do not find any merit in the above contention as we are in this case directly concerned with a particular provision in an enactment passed by the legislature unlike in the case which came up for consideration in *Narasu Appa Mali's case*. So long as the infringed provisions are part of an Act, it must pass the test of constitutionality even if the provision is based upon religious principles. We would accordingly repel the said contention also."

The second question is whether *Talaq-i-Biddat* is sanctioned under the Quran.

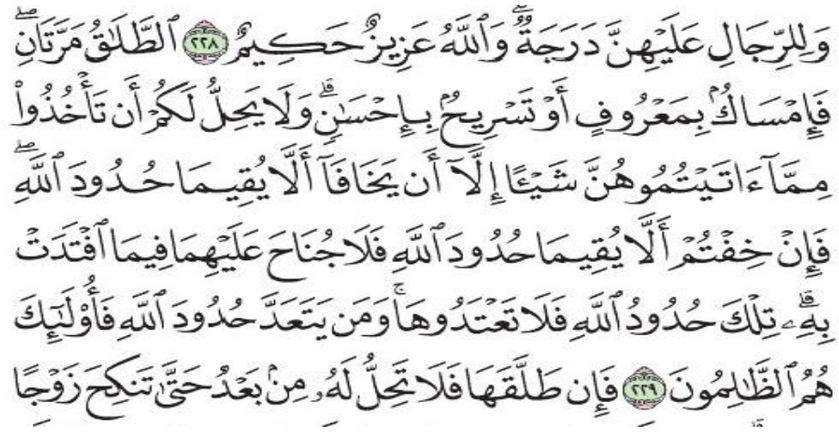
14. The law relating to marriage & divorce is an integral part of Islam. This is evident from the following verses in the Holy Quran:


الطَّلَاقُ مَرَّتَانِ ۖ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ ۗ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ ۖ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ ۗ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا ۚ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ ﴿٢٢٩﴾ فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ ۗ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ ۗ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ ﴿٢٣٠﴾ وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ ۚ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِتَعْتَدُوا ۚ وَمَنْ يَفْعَلْ ذَٰلِكَ فَقَدْ ظَلَمَ نَفْسَهُ ۚ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوًا ۚ وَاذْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ يَعِظُكُمْ بِهِ ۚ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿٢٣١﴾ وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ۗ ذَٰلِكَ يُوعَظُ بِهِ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۗ ذَٰلِكُمْ أَزْكَىٰ لَكُمْ وَأَطْهَرُ ۚ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ ﴿٢٣٢﴾ وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ ۖ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ ۚ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ ۚ وَعَلَى الْوَارِثِ مِثْلُ ذَٰلِكَ ۗ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا ۗ وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ ۗ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ﴿٢٣٣﴾ وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا ۖ فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ فِي أَنْفُسِهِنَّ بِالْمَعْرُوفِ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ ﴿٢٣٤﴾ وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ ۚ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَٰكِنْ لَا تُوَاعِدُوهُنَّ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا ۚ وَلَا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّىٰ يَبْلُغَ الْكِتَابُ أَجَلَهُ ۚ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ ۚ وَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ حَلِيمٌ ﴿٢٣٥﴾ لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً ۚ وَمَتِّعُوهُنَّ عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ مَتَاعًا بِالْمَعْرُوفِ ۖ حَقًّا عَلَى الْمُحْسِنِينَ ﴿٢٣٦﴾ وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ ۚ وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَىٰ ۚ وَلَا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ ۚ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ﴿٢٣٧﴾ حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوُسْطَىٰ وَقُومُوا لِلَّهِ قَانِتِينَ ﴿٢٣٨﴾

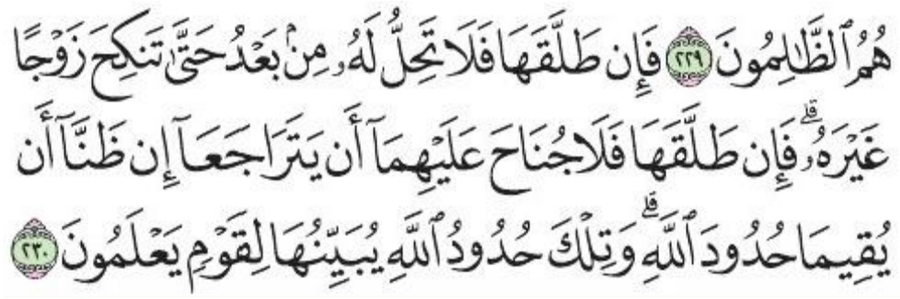
Divorced women shall keep themselves waiting for three periods, and it is not permissible for them to conceal what Allah has created in their wombs, if they believe in Allah and in the Last Day. Their husbands are best entitled to take them back in the meantime, if they want a

[2] 1995 (1) KLT 644

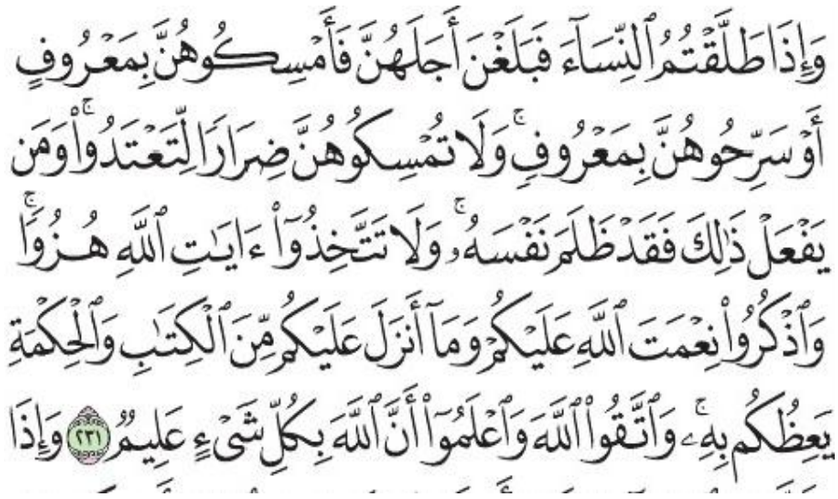
settlement. Women have rights similar to what they owe in recognized manner though for men there is a step above them. Allah is Mighty, Wise... (**Holy Quran Surah Al – Baqra Chapter 2, Verse 2:228**)



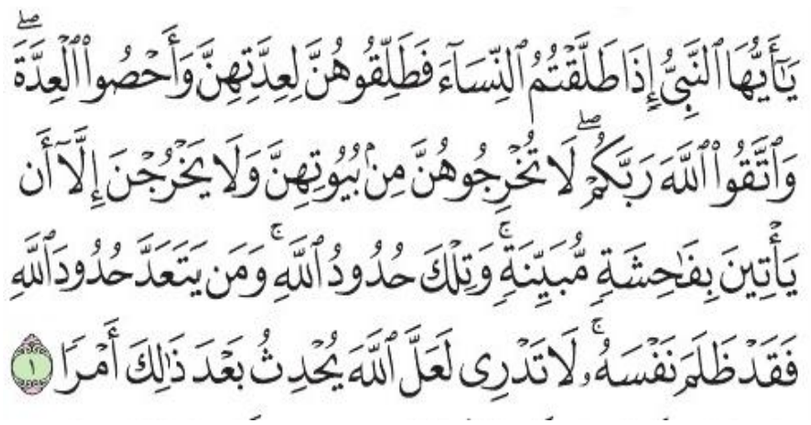
Divorce is twice; then either to retain in all fairness, or to release nicely. It is not lawful for you to take back anything from what you have given them, unless both apprehend that they would not be able to maintain the limits set by Allah. Now, if you apprehend that they would not maintain the limits set by Allah, then, there is no sin on them in what she gives up to secure her release. These are the limits set by Allah. Therefore, do not exceed them. Whosoever exceeds the limits set by Allah, then, those are the transgressor (**Holy Quran Surah Al – Baqra Chapter 2, Verse 229**).



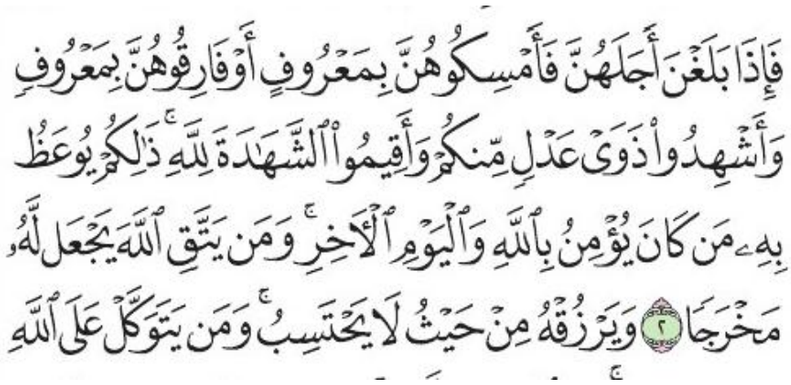
And if he has divorced her [for the third time], then she is not lawful to him thereafter until she has married another husband other than him. Then, if the other husband divorces her [or dies], there is no sin on both of them that they reunite, and provided that they feel that they can keep the limits ordained by Allah. These are the limits of Allah, which he makes plain for the people who have knowledge. (**Holy Quran Surah Al – Baqra Chapter 2, Verse 230**)


وَإِذَا طَلَّقْتُمُ ٱلنِّسَآءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ
أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ ۚ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا۟ ۚ وَمَن
يَفْعَلْ ذَٰلِكَ فَقَدْ ظَلَمَ نَفْسَهُۥ ۚ وَلَا تَتَّخِذُوٓا۟ ءَايَٰتِ ٱللَّهِ هُزُوًا ۚ
وَٱذْكُرُوا۟ نِعْمَتَ ٱللَّهِ عَلَيْكُمْ وَمَآ أَنزَلَ عَلَيْكُم مِّنَ ٱلْكِتَٰبِ وَٱلْحِكْمَةِ
يَعِظُكُم بِهِۦ ۚ وَٱتَّقُوا۟ ٱللَّهَ وَٱعْلَمُوٓا۟ أَنَّ ٱللَّهَ بِكُلِّ شَىْءٍ عَلِيمٌ ﴿٢٣١﴾ وَإِذَا

When you have divorced women, and they have approached (the end of) their waiting periods, then, either retain them with fairness or release them with fairness. Do not retain them with wrongful intent, resulting in cruelty on your part, and whoever does this, actually wrongs himself. Do not take the verses of Allah in jest, and remember the grace of Allah on you and what He has revealed to you of the Book and the wisdom, giving you good counsel thereby, and fear Allah, and be sure that Allah is the One who knows everything.. (**Holy Quran Surah Al – Baqra Chapter 2, Verse 231**)


يَٰٓأَيُّهَا ٱلنَّبِىُّ إِذَا طَلَّقْتُمُ ٱلنِّسَآءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا۟ ٱلْعِدَّةَ ۖ
وَٱتَّقُوا۟ ٱللَّهَ رَبَّكُمْ ۖ لَا تُخْرِجُوهُنَّ مِنۢ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّآ أَن
يَأْتِينَ بِفَٰحِشَةٍ مُّبَيِّنَةٍ ۚ وَتِلْكَ حُدُودُ ٱللَّهِ ۚ وَمَن يَتَعَدَّ حُدُودَ ٱللَّهِ
فَقَدْ ظَلَمَ نَفْسَهُۥ ۚ لَا تَدْرِى لَعَلَّ ٱللَّهَ يُحْدِثُ بَعْدَ ذَٰلِكَ أَمْرًا ﴿١﴾

O prophet, when you people divorce women, divorce them at a time when the period of Iddah may start. And count the period of Iddah, and fear Allah, your Lord. Do not expel them from their houses, nor should they go out, unless they come up with a clearly shameless act. These are the limits prescribed by Allah. And whoever exceeds the limits prescribed by Allah wrongs his own self. You do not know (what will happen in future); it may be that Allah brings about a new situation thereafter.(**Holy Quran Surah At- Talaq Chapter 65 verse 1**).


فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ
وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِّنكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَٰلِكُمْ يُوعَظُ
بِهِ مَن كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَن يَتَّقِ اللَّهَ يَجْعَل لَّهُ
مَخْرَجًا ۝٢ وَيَرْزُقْهُ مِنْ حَيْثُ لَا يَحْتَسِبُ وَمَن يَتَوَكَّلْ عَلَى اللَّهِ

So, when they (the divorced women) have (almost) reached their term, then either retain them with fairness, or part with them with fairness. And make two just men from among you witnesses (of your either decision). And (O witnesses,) keep your testimony upright for the sake of Allah. That is what anyone who believes in Allah and the Last Day is exhorted to do. Whoever fears Allah, He brings forth a way out for him. (**Holy Quran Surah At Talaq Chapter 65 verse 2**).

15. It is submitted that the two verses in chapter 2, namely verse 229 and 230 dealing with *talaq* will have to read one after the other. It is further submitted that a reading of 2.230 will show that it clearly provides for a *talaq* in the form described as *Talaq-i-Biddat* as provided for in subsequent interpretations. It is because of this explicit clause in 2.230 that the Hanafi schools and other schools are unable to accept the position that a *talaq* pronounced thrice in succession in one session or pronounced thrice in one *tuhr* be treated as one. There is an irrevocability that flows out of the pronouncement of the third *talaq* and if the *talaq* provided for and contemplated by 2.230 is not a *Triple Talaq* as understood then it would not have contained a provision for an intervening marriage to enable the spouses to marry again. It is only in the case of *Triple Talaq* that an intervening marriage becomes necessary as per verse 2.230.

16. Attached herewith is a chart showing different forms of Talaq and the characteristics of each (**ANNEXURE A1**). Also annexed are the different translations of the aforementioned verses of the Holy Quran from (**ANNEXURE A2**): '*The Meanings of the Noble Quran*' By Mufti Muhammad Taqi Usmani, '*The Holy Quran*' by Abdullah Yusuf Ali & '*The Hedaya*' by Sheikh Burhanuddin Abi Al Hasan Ali Marghinani (Translated by Charles Hamilton)

17. Thus, it is fallacious for the petitioners and the supporting intervenors to say or suggest that *Talaq-i-Biddat* does not have the sanction of the Quran. The said form of talaq has explicit mention in the Quran itself (2.230). The only addition that has come about by way of interpretation by scholars is a nomenclature *Talaq-i-Biddat*. The quintessence of the said form of *talaq* is a pronouncement of *talaq* thrice either in one

session or during the period of one *tuhr*. This form of *talaq* provided for in the Quran is an integral part of the religion and is consequently an integral part of the Muslim personal law. The Hanafi schools and other Sunni schools have over the years accepted and practiced the same. It is therefore a part of the Muslim personal law and therefore has the protection of Article 25 and 26 of the Constitution of India.

WHETHER AN ATTEMPT AT RECONCILIATION WITH INTERVENTION OF AN ARBITRATOR IS A NECESSARY PRE-CONDITION FOR A VALID TALAQ.

18. It is submitted that this view has gained acceptance in the judgments of the High Courts across the country. It is submitted that this comes from an erroneous reading of Verse 35; Chapter 4. The same reads as follows:

(**PLEASE INSERT VERSE 35; CHAPTER 4 HERE**)

The aforesaid verse is one of general application whenever there is a discord amongst the husband and wife. Apart from the sanctity that it flows from the Holy Quran it obviously is a salutary principle of universal application.

It is submitted that Chapter 4 does not deal with divorce or dissolution of marriage, thus Verse 35; Chapter 4 cannot be invoked specifically in the context of a divorce so as to contend that the absence of an attempted reconciliation, would render the dissolution invalid. There is absolutely no reason bringing Chapter 4; Verse 35 and making it a part of Chapter 2 or Chapter 65 of the Holy Quran.

It is submitted that it is footnote no. 303 (Page 99 of the Holy Quran as translated by Maulana Muhammad Ali) that has generated this point of view. As submitted above the said point of view is completely misconceived. It is further submitted that Maulana Muhammad Ali evidentially is a '*Ahmedia Qadiani*'.

It is submitted that the challenge made by the Petitioners is liable to be rejected by this Hon'ble Court.

DRAFTED BY: MR. V. GIRI, SENIOR ADVOCATE

FILED BY: MR. SHAKIL AHMED SYED

DATED: 16.05.2017

FILED ON BEHALF OF RESPONDENT NO. 7.