

## Moot Court Problem I

Indus is a secular country with cultural, religious and linguistic diversities. Different communities like Hindus, Muslims and Christians freely live and practice their respective religions. There is no intervention of the State in the religious matters. The Constitution of Indus provides for the right to Freedom of Religion as a Fundamental Right. Indus, being a secular country, every religion has a personal law governing the matters like Marriage, Divorce, Succession etc.

In a landmark judgement<sup>1</sup> in August 2017 the Supreme Court had set aside *Talaq-e-bidaat* or Triple *Talaq*, a type of unilateral, instantaneous and irrevocable divorce by Muslim husband as unconstitutional. To give effect to that judgment, the Cabinet Committee chaired by the Prime Minister has decided to introduce the Bill “*The Muslim Women (Protection of Rights on Divorce) Bill, 2018*” in the House of People.

The draft Bill in its statement of objects and reason states “In spite of Supreme Court setting aside *Talaq—e- biddat*, and the assurance of All Indus Muslim Personal Law Board, there have been reports of divorce by way of *Talaq-e-biddat*, hence there is a need for the State action to give legal effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce”. It was further stated that urgent suitable legislation was necessary to give some relief to... the hapless married Muslim women who suffer from harassment due to *Talaq-e-biddat* and this is essential to prevent this form of divorce, wherein the wife does not have any say in severing the marital relationship.

Minister of Law and Justice claims that this 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 help empowerment of women.

However, due to paucity of time, Parliament could not take up the Bill for consideration in the Monsoon Session (18<sup>th</sup> July 2018 -10<sup>th</sup> August 2018) of Parliament. Therefore, President has promulgated an Ordinance on 12 September, 2019. The Ordinance makes all declarations of *talaq*, including in written or electronic form, to be void (i.e. not enforceable in law) and illegal. It defines *talaq* as *talaq-e-biddat* or any other similar form of *talaq* pronounced by a Muslim man resulting in instant and irrevocable divorce. The Ordinance also declares the pronouncement of such *Talaq* an offence, punishable with imprisonment which may extend up to 3 years. *Talaq-e-biddat* refers to the practice under Muslim personal laws where pronouncement of the word ‘*talaq*’ thrice in one sitting by a Muslim man to his wife results in an instant and

---

<sup>1</sup> *Shayara Bano v Union of India and others*, (2017) 9 SCC 1.

## Moot Court Problem I

irrevocable divorce. Even such triple *Talaq* by Phone or What's App were earlier held to be valid.

When Parliament reassembled for the Winter Session (11<sup>th</sup> December 2018-8<sup>th</sup> January 2019), the Bill was introduced in Lower House of Parliament on 27<sup>th</sup> December 2018. It was passed in the said house by overwhelming majority. However, same was not introduced in the Council of States in the winter session. Again, President re-promulgated the Ordinance on 12<sup>th</sup> January 2019.

During Budget Session (31<sup>st</sup> January- 13<sup>th</sup> February 2019), Government failed to introduce the Bill passed by House of the People in the Council of States, because majority of members of the Council of States issued public statements opposing the Bill. On 2<sup>nd</sup> April 2019, President has re-promulgated an Ordinance

Mrs. Veena, a renowned advocate and a former Central Minister has Challenged the Government action of Ordinance by filing a writ petition before the Supreme Court of Indus on the ground that such re-promulgation would amount to a fraud on the Constitution as opined by the Supreme Court in its earlier decision.<sup>2</sup>

### **ISSUES**

- Whether circumstance exist which rendered it necessary for the President to take immediate action by promulgating this Ordinance?
- Whether the obligation to place an ordinance before the Legislature in terms of Article 123 is mandatory and whether non-placement of Ordinance before the Parliament and/or re-promulgation of the same Ordinance again, as the case may be, would itself constitute a fraud on the Constitution?
- Whether the President can promulgate an Ordinance on any matter, when Parliament was not willing to approve the same in the form of a Law. If so, what is the sanctity of Parliamentary Democracy adopted by the Constitution?
- Whether such Ordinance can be subjected to Judicial Review, on the ground that the manner in which the Ordinance was promulgated is violative of the basic structure of the Constitution i.e. Parliamentary Democracy?

---

<sup>2</sup> *Krishna Kumar Singh v State of Bihar, 2017 (2) SCJ 136.*