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Ban on Triple Talaq

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CERTIFICATE

The Project titled 'Ban on triple talaq : submitted to the Symbiosis Law School, Hyderabad as part of Internal assessment on law of torts is based on my original work carried out under the guidance of dr. sanu rani poul, Assistant Professor at Symbiosis Law School, Hyderabad The research work has not been submitted elsewhere for the award of any degree.
The material borrowed from other sources and incorporated in the thesis has been duly acknowledged.
I understand that I myself could be held responsible and accountable for plagiarism, if any, detected later on.

Signature of the candidate
Date: 03.01.2022.

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Abstract: The Indian parliament has taken one of the most significant decisions in recent history by declaring triple talaq to be illegal. More freedom and progress are typically connected with human rights. It's crucial to note, nevertheless, that providing rights does not always equal liberty. Human rights are founded on a global notion, which is one of the main reasons for its exclusive nature. Women, who are stuck at the crossroads of communal identity and modernity's narrative, are the most visible manifestations of the darker side of human rights. One such universalistic issue is the picture of a terribly victimised Muslim lady in need of protection through the liberal rights rhetoric. The current debate over triple talaq, which is centred on the Sharaya Bano and a slew of other petitions, as well as the Supreme Court's own Suo moto PIL, considers certain aspects of Islamic personal laws that amount to gender discrimination and thus violate the constitution, but ignores intersectionality. This research paper will analyse the fundamental notion of triple talaq as defined in the Muslim marriage and divorce legislation, as well as its route until its unconstitutionality was uncovered. It will be highlighted how tough it is to get permission and a majority in both chambers of parliament (Lok Sabha and Rajya Sabha). The many sorts of divorce and weddings under Muslim law, as well as their important characteristics, will be discussedIs Talaq-e-Biddat Islamic in nature, and does it fall within the protection of Article 25 of the constitution? Is quick talaq a breach of Article 14 of the Indian constitution? Is it possible for the legislature to adopt legislation to protect Muslim women under Article 15(3) and (4) of the constitution? Whether the Muslim Personal Law (Shariat) Application Act, 1937 imparts statutory status on the areas it regulates, or is it still protected by "Personal Law," which does not come under Article 13 of the Indian Constitution's definition of "law"? It will also cover essential laws and changes pertaining to Muslim women's rights, as well as what key legislation has been established and changed to date to safeguard Muslim women from unjust treatment. The ongoing debates in the country between various sectors and political parties, their perspectives on legislative and judicial judgments, as well as the views of Muslim community members and the All India Muslim Persona Law Board (AIMPLB), will be examined. The reasoning for announcing and modifying triple talaq will also be explained.

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The irrefutable case of Muslim women's maintenance (Shah Bano case), as well as its ratio decendi, the binding authority of the reforms made thus far, and the restriction of triple talaq, will be thoroughly examined. The illegal practise of triple talaq, even after it was prohibited, and the responses of law enforcement and the judiciary. Why does the legislation just make immediate talaq illegal, but not other forms of talaq? What were the issues that slowed the bill's passage? The difficulties that Muslim women had as a result of this sort of divorce, as well as how invalid this type of divorce was and how Muslim males mocked their own personal standards. The act's constitutionality will also be discussed. Finally, whether making triple talaq illegal is a benefit or a disadvantage to Muslim women will be investigated.

Keywords: Talaq, muslims, and political parties are some of the keywords used in this article.

I. INTRODUCTION

Simply described, triple talaq is a sort of Muslim divorce in which the husband says "talaq" three times, vocally, in writing, or electronically. Triple talaq is a kind of Islamic divorce practised by Muslims in India, notably those who follow the Hanafi Sunni Islamic schools of thought34. It is also known as talaq-e-2 biddat, rapid divorce1, and talaq-e-mughallazah (irrevocable divorce)2. The controversy has embroiled the Indian government and the Supreme Court of India. This has anything to do with India's dispute about a single civil code (Article 44). Article 44 of the Citizens' Uniform Civil Code states: 44. Citizens' Uniform Civil Code The government should make every effort to guarantee that Indian citizens have access to a uniform civil code. On August 1, 2019, the triple talaq legislation in India was repealed, replacing the February 2019 triple talaq ordinance. The Muslim Women (Protection of Rights on Marriage) Bill, 2019, was adopted on July 26, 2019, after a long period of debate and opposition (the Indian Supreme Court judgement stated below). It makes quick triple talaq (talaq-e-biddah) in any form – verbal, written, or by electronic methods such as email or SMS – illegal and illegitimate, putting the husband in prison for up to three years.

II. RESEARCH QUESTIONS

1) Does the restriction on triple talaq have legal standing??
2) What are the grounds for the heated debate over the triple talaq ban?
3) Are the current provisions enough, and what can be done to improve the situation if they are not?

III. RESEARCH OBJECTIVES

1) To discuss and comprehend the concept of triple talaq, as well as its presence in modern culture.
2) To assess the constitutionality of the triple talaq prohibition, as well as its societal consequences.
3) To propose strategies for resolving the existing impasse.

IV. LITERATURE REVIEW

1) EVALUATING INDIA'S APEX COURT JUDGMENT ON THE INSTANT DIVORCE "TRIPLE TALAQ," by FRANCESCA CESERANI. DO YOU THINK THE JUDGMENT CREATED A REAL MOMENTUM FOR GENDER EQUALITY"[1]

This work examines the practise of "triple talaq," or rapid divorce, as well as the Supreme Court of India's judgement on the subject. Is there a true rising trend in gender equality support as a result of the decision? The following parts will present an outline of India's legal system, starting with its sophisticated legal system, which applies personal laws to many religious groups and societies. The work will then look at how the sentence has progressed, and it will conclude by critically examining the various discrepancies that have surfaced as a result of the Court's deliberations and findings, among other things.

2) "DEMOCRATIC ACCOMMODATIONSMINORITIES IN CONTEMPORARY INDIA," by PETER RONALD DESOUZA, HILAL AHMED, MOHD. SANJEER ALAM.."[2]

The book Democratic Accommodations: The Minority Question in India delves into the tangled storey of minorities' demands, interests, and rights being accommodated within India's democratic system. It is concerned with what India, as one of the world's most ethnically and culturally diverse countries, can provide to other nations, particularly European nations facing ethnocultural and ethno-religious assertion.

[1]FRANCESCA CESERANI, EVALUATING INDIA'S APEX COURT JUDGMENT ON THE INSTANT DIVORCE "TRIPLE TALAQ". DID THE VERDICT BUILD A REAL MOMENTUM FOR GENDER EQUALITY? 15 (GRIN Verlag 2020).
[2]PETER RONALD DESOUZA, HILAL AHMED, MOHD. SANJEER ALAM, DEMOCRATIC ACCOMMODATIONS MINORITIES IN CONTEMPORARY INDIA 101 (Bloomsbury Publishing 2021).

The authors argue that all plural democracies—and all democracies can only be plural in the current historical context, despite regime attempts to make them majoritarian—must devise their own accommodation strategies by developing a policy matrix tailored to the dynamics of their respective societies. The book is organised around four rubrics to understand Indian democracy's distinctive response to diversity: laws, institutions, policies, and political speech (or discourse). The in-depth and nuanced assessment of India's solution to the minority issue in this book will contribute to the global debate on diversity and multiculturalism, as well as assisting policymakers in pluralistic democracies in creating their own unique approaches to dealing with minority demands..

3) "UNTIL TALAQ DO US PART: UNDERSTANDING TALAQ, TRIPLE TALAQ, AND KHULA," by ZIYA US SALAM."[3]

In her book, Till Talaq Do Us Part, Ziya Us Salam, a notable social commentator and associate editor at Frontline, provides a complete overview of the process in Islam. Muslim couples can choose from a variety of divorce options, including triple talaq, talaq administered over three months, khula, and talaq-e-tafweez. The book also looks into the several types of divorce available to Muslim spouses, which are often overlooked due to the focus on talaq.

4) "TRIPLE TALAQ: EXAMINING FAITH," by SALMAN KHURSHID.

In Triple Talaq: Examining Faith, Salman Khurshid, who intervened to give the court with an amicus brief in the "Triple Talaq case," provides a simple but detailed assessment of this complex issue. The author goes into great length regarding why this practise is improper and why it has thrived, as well as the legal history of the matter, what the Quran and Muslim religious authorities have to say about it, and how it compares to practises in other countries. He wraps up with a consideration of the practice's future directions. This book is written for the general reader, as well as providing as a practical guide to this crucial judgement and what it means for Muslims in India.

5) "QUESTIONING THE'MUSLIM WOMAN': IDENTITY AND INSECURITY IN AN URBAN INDIAN LOCALITY," by NIDA KIRMANI.

The marginalisation of Muslims in India has recently sparked a lively public debate in the country. In these debates, Muslim women, on the other hand, are frequently ignored or portrayed as belonging to a homogeneous group with a shared set of interests. The goal of this book, which focuses on the experiences of women living in a predominantly Muslim colony in South Delhi, is to show the complexity of their lives as well as the various levels of insecurity they face. Rather than focusing solely on Islam as a defining feature

V. BACKGROUND

In India, Muslim family problems are governed by the Muslim Personal Law (Shariat) Application Act, 1937. (often called the "Muslim Personal Law"). It was one of the first acts passed after the 1935 Government of India Act, which established provincial autonomy and a sort of federal dyarchy. It replaced the former "Anglo-Mohammedan Law" that applied to Muslims and made it compulsory for all Muslims in India. In traditional Islamic jurisprudence, triple talaq is a sort of divorce that is harshly denounced yet legally permitted. Since the beginning of the twentieth century, Changing socioeconomic circumstances throughout the world have resulted in a rising dissatisfaction with traditional Islamic divorce law, leading varied changes in various countries. In India, unlike other Muslim-majority countries, Muslim couples are not required to register their marriages with civil authorities. Unless the couple chooses to register their union under the Special Marriage Act of 1954, Muslim weddings in India are considered private. The limitations that other countries have placed in place on the husband's unilateral ability to divorce and the prohibition of triple talaq have not been adopted in India due to these historical reasons.

A. The Muslim Women (Protection of Rights on Marriage) BILL, 2009

On June 21, 2019, Minister of Law and Justice Ravi Shankar Prasad introduced the Muslim Women (Protection of Rights on Marriage) Bill, 2019 in the Lok Sabha. It replaces an Ordinance that was passed on February 21, 2019.

1) All talaq declarations, whether written or electronic, are declared unlawful (i.e., unenforceable in court) and prohibited under the bill. Talaq is defined as a Muslim male uttering talaq-e-biddat or any other similar sort of talaq that results in an immediate

[3]ZIYA US SALAM, TILL TALAQ DO US PART: UNDERSTANDING TALAQ, TRIPLE TALAQ AND KHULA 140 (Penguin Random House India Private Limited 2018). .

and irreparable divorce. According to Muslim personal law, a Muslim male speaking the word 'talaq' three times in one sitting to his wife results in an immediate and irreparable divorce.

2) Talaq declaration is now a criminal offence punishable by up to three years in prison and a fine under the statute. (A cognizable offence is one that allows a cop to detain a person without a warrant.) • The accused may be granted bail under the terms of the bill if information regarding the offence is submitted by: I, the married lady (against whom talaq has been pronounced), or (ii) any person connected to her by blood. Bail will be granted only after the lady (against whom talaq was declared) has been heard and the Magistrate has been convinced that there are sufficient grounds for giving bail.
3) The offence may be compounded by the Magistrate if the lady requests it (against whom talaq has been declared). Compounding is a legal procedure in which the two parties agree to settle their legal dispute and put an end to their legal war. The terms and circumstances of the offence's compounding will be determined by the Magistrate.
4) Payment: A Muslim woman who has had talaq declared has the right to request a sustaining payment from her husband for herself and her dependent children. The amount of the allowance will be determined by the Magistrate.
5) Custody: A Muslim woman who has been talaq'ed has the right to seek custody of her minor children. The method of custody will be decided by the Magistrate.

B. *Constitutional Validity of Triple Talaq*

The sinful practise of Triple Talaq may be challenged as being in breach of the Constitution's validity, according to "Articles 14, 15, and 21."

The Allahabad High Court recently ruled that Smt. Sumaila's triple pronouncement divorce from her husband was unconstitutional and in violation of Article 14 of the Indian Constitution, which states: "The Constitution of India states that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India," and equality is one of the magnificent cornerstones of Indian democracy" (1), “The State shall not discriminate against any citizen simply on the basis of religion, race, caste, sex, place of birth, or any combination of these factors," and Article 21, which guarantees, among other things, the right to life and personal liberty."

"AIMPLB answered by saying that, while triple divorce is regarded unjust, it is still a legal way to get a divorce. According to the document, Triple Talaq is described as having a negative nature yet being beneficial in theology or law. This is just one example; other cases, such as Jiauddin Ahmed v. Anwara Begum, have determined Triple Talaq to be unconstitutional in India. ”

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C. *Research Methodology and Sources of Data*

1) To obtain data for this study, I used a doctrinal research technique. To do my research, I used a doctrinal research strategy, acquiring materials from libraries, corporate finance law archives, and other sources. I gathered knowledge and awareness of the topic matter through consulting books, diaries, and articles while putting together my proposal.
2) Information was acquired from secondary sources such as books, papers, websites, and other comparable materials. There were no polls or case studies conducted.

D. *The On-Going Conflict of Opinions*

1) *Opposition To Triple Talaq*

The practise infuriated Muslim women, who launched a public interest lawsuit against it in the Supreme Court, calling it "regressive." Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, according to the petitioners, breached Article 14 of the Constitution (equality before the law). According to Section 2 of the Muslim Personal Law (Shariat) Application Act of 1937

The applicability of personal law to Muslims.— Regardless of any custom or usage to the contrary, in all questions relating to intestate succession, special property of females, including personal property inherited or acquired 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,.

In India's constitution, Article 14 states: 14. Equality before the law Within India's territory, the state shall not deny anyone equality before the law or equal protection under the law. Discrimination on the basis of religion, race, caste, sex, or place of birth is prohibited..

2) Support of Triple Talaq

The All India Muslim Personal Law Board (AIMPLB), a non-profit organisation that monitors the administration of Muslim personal law in India, supports triple talaq. It claims that the government has no legal authority to intervene in religious affairs. In April 2017, the AIMPLB adopted a talaq rule of conduct in response to the controversy surrounding the practise of triple talaq. It further warned that anyone who divorces for grounds other than those allowed by shariat, as well as those who utilise triple talaq arbitrarily and without justification, will be punished will be socially ostracized9. It was also specified that it would be delivered in three parts, each with a one-month gap between them.

3) Solutions/Suggestions

The moment has arrived to take significant moves toward reform and transformation in India's Muslim Personal Law. The following measures must be followed in order to achieve these goals: -

a) *Muslim Personal Rights Codification:* The codification of Islamic law is a necessity that must now be treated seriously by a group of legal specialists, liberal ulema, and professors in the area. The universal denominator must be gender-just legislation. Muslim men's groups must work with Muslim women to effect change.

b) *Role Of The State:* Parliament should take action to create a secular code based on the country's essential values of personal liberty, human rights, and justice, rather than a Hindu or Muslim code. If the Muslim Personal Law (Shariat) Application Act infringes on the constitutionally protected democratic rights of individuals, harsh actions must be taken.

c) *In Support Of The Uniform Civil Code Ideas:* It will contribute to national cohesion by reducing ideological and tradition-based tensions. It will also aid in the eradication of numerous ills, unfair and unreasonable behaviours that exist in communities, as well as promote the country's unity and integrity. In every civilised society, these principles must be followed in all human exchanges.

d) *Gender Just Personal Laws Introduction:* Because most personal laws mirror society's hierarchical conceptions, women are treated as second-class citizens. So we need gender-neutral personal laws. The gender equality code, in turn, must be the same for all communities, resulting in uniformity. Gender fairness must be the foundation of uniformity; blind uniformity might be particularly unfair for women.

e) *Prioritization Of Gender Equality:* The equality of men and women in terms of their fundamental rights must take precedence over conservative religious experts' views. This can be accomplished by emphatically rejecting triple talaq and polygamy. The personal law issue must be addressed in the context of patriarchy, and laws that give women second-class status must be revised.

f) *Supporting All Reform Movements That Are Anti-Patriarchical:* Every citizen should join hands with the government to end gender inequality, which will lead to the nation's general growth and development. We must work to bring traditions out of the dark and into the light, rather than allowing them to lead us into the dark. In numerous domains, including health, education, ec onomic opportunity, based violence, and political engagement, policies on women's empowerment exist at the national, state, an d municipal (Panchayat) levels. At the community level, however, there are major gaps between policy developments and real p ractise. As a result, the state and its law-
making agencies should focus their efforts on closing the gap between ideology and law-making practise.

They should make every effort to repeal those legislation that are incompatible with the constitutional spirit (such as Triple Talaq and polygamy). Minority populations have the freedom to freely exercise and propagate their religion, own property, build houses of worship, and manage educational institutions, according to the Constitution. This constitutional safeguard is based on a liberal democratic framework.

Furthermore, religious rules cannot override the fundamental right to equality in a secular democracy. There's no reason why Muslim women should be subjected to patriarchal religious traditions, especially because Hindu personal laws have evolved to empower Hindu women.

Polygamy and triple talaq fail the constitutionality test in India. Women's rights, which are denied by power structures and societal norms such as Triple Talaq and polygamy, should be upheld throughout nations. Women should not be denied the basic dignity of life that they are entitled to. The establishment of a secular law based on the values of personal liberty, human rights, and justice would not only increase secularism, but also women's empowerment.

4) Earlier Case Relating To Triple Talaq and Maintainance

The Shah Bano case, also known as Mohd. Ahmed Khan v. Shah Bano Begum, was a disputed Indian maintenance case in which the Supreme Court decided in favour of an enraged divorced Muslim woman receiving support. Then, in a scared election year, the Congress administration gave in to Muslim orthodoxy and passed legislation, the most contentious aspect of which was the right to maintenance during the period of iddat following the divorce, transferring the burden of support to her family or the Waqf Board. It was deemed discriminatory since it denied non-Muslim women access to the fundamental necessities of life granted by secular law.

VI. PERSONAL LAWS

The majority of individuals consider that our country lacks basic civil laws. In truth, all civil laws are the same, with the exception of one, namely personal law, which varies according to religion groupings. Marriage, divorce, succession and inheritance, maintenance, child custody, and adoption are all covered under personal law. Personal law is considered as religious by tradition, despite the fact that religion has no bearing on it. By institutionalising discriminatory traits and gender-unequal interpretations of major religious traditions, personal laws have always been exploited to protect conventional male privileges. As a result, all personal rules, whether based on Muslim, Jewish, or Hindu laws, are built via male-centric interpretations of religious scriptures and traditions, significantly discriminating women in familial affairs like as marriage and divorce. They contradict the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women, 1979) egalitarian ideals, as well as the Indian Constitution, which prevents the state from discriminating against women as a class. In the instance of Triple Talaq, the Quran does not authorise this type of divorce, and the Constitution has not ruled it valid. Gender justice, gender fairness, ethical conscience, and the dignity of women are all powerfully enunciated in Islam. However, the court had reserved its power to rule on the subject of triple talaq since it saw it as a matter of basic rights rather than legislation. Their quest isn't about getting married; it's about battling for fundamental decency and criticising terrible inequality. There is no question that all personal rules must be rational and equitable to men and women, and that the good must be embraced while the bad must be rejected. As a result, if and when the standard code is accepted, it will have to be separate from the regulations of all religious organisations. It must be framed by theological agreement and must correspond to modern ideals of freedom, equality, rationality, justice, and humanism for men and women alike.

VII. JUDGEMENT

The two-judge bench of Justice Murtaza Fazal Ali and A. Varadarajan, who first heard the matter on 3 February 1981, recommended Khan's appeal to a larger Bench in view of the court's prior rulings stating that section 125 of the Code applies to Muslims as well. The All India Muslim Personal Law Board and Jamiat Ulema-e-Hind, both Muslim organisations, intervened in the case. Chief Justice Chandrachud, Rangnath Misra, D. A. Desai, O. Chinnappa Reddy, and E. S. Venkataramiah were among the five judges that heard the case. On April 23, 1985, the Supreme Court unanimously dismissed the appeal and affirmed the High Court's decision. "There is no contradiction between the requirements of section 125 and those of the Muslim Personal Law on the matter of a Muslim husband's duty to provide support for a divorced wife who is unable to sustain herself," the Supreme Court declared. It determined that the Quran clearly puts an obligation on the Muslim husband to provide for or maintain the divorced wife after consulting the Quran, which it considered to be the greatest authority.. Shah Bano took her husband to court to ask him to pay her maintenance. The matter has been before the Supreme Court of India for seven years. According to Section 125 of the Code of Criminal Procedure, everyone is equal regardless of caste, creed, or religion. Shah Bano was ordered to get maintenance, which is the equivalent of alimony.

A. Cases Even After There Has Been A Ban On Triple Talaq

1) A triple talaq complaint has been filed at the Savadatti police station, the first in Karnataka since the Muslim Women (Protection of Rights on Marriage) Act 2019, which prohibits triple talaq11 divorce.

2) On August 24, 2019, a man was detained in Muzaffarnagar, Uttar Pradesh, for reportedly divorcing his wife by uttering the word 'talaq' three times, a practise that has been criminalised, according to police..

3) The first case in Maharashtra was filed by Mumbra police, who arrested a Vikhroli resident for allegedly sending his wife a triple talaq message on WhatsApp.

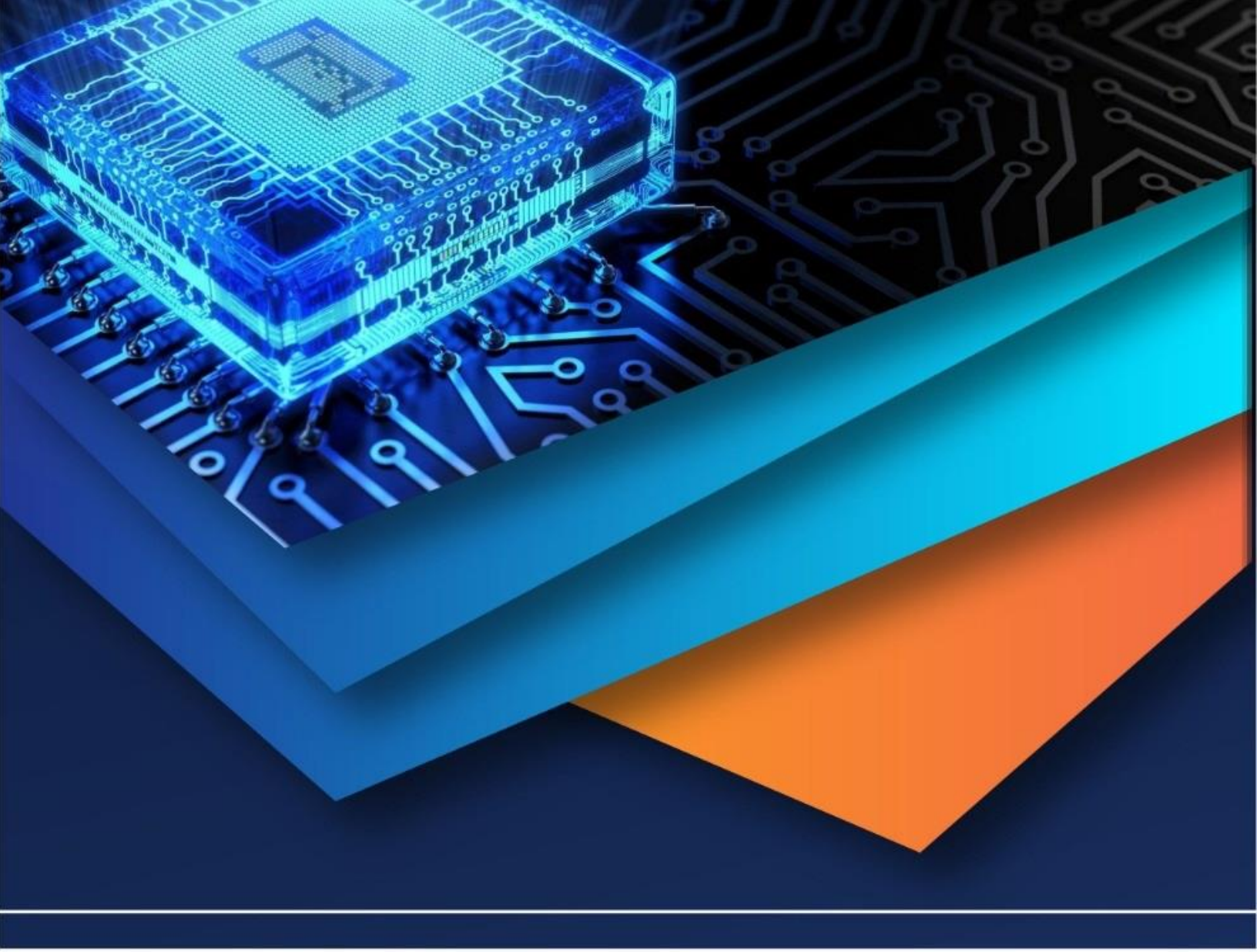
VIII. CONCLUSION

As a result, declaring Triple Talaq unlawful or invalid was a significant move made by both the legislative and the judiciary. For the women who had been victims of its abuse, it was a dream come true. It was used as a toy by those who typed the word "talaq" three times using any means, whether oral, written, or technological, and therefore transformed their customs according to their own preferences without regard for women's rights.

According to Hindu law, "Talaq" or "Divorce" should only be used as a last resort and not for minor marital problems Moreover, recent patterns demonstrate that individuals continue to use it unlawfully even after it has been ruled unconstitutional and invalid. Compared to the court's previous practise of avoiding any discussion of personal laws, this decision was daring and might legitimately be dubbed a watershed event in India's women's movement." 38 The bench's multifaith composition, which attempted to provide a "neutral" and varied perspective on the issue, was also a commendable approach. This isn't to say that the lack of a more gender-balanced bench isn't a problem (and of the Indian Supreme Court in general). The gender component of the judgement, as feminist scholars39 have pointed out, fell short. While Articles 14 and 15 played a part in the various arguments to differing degrees, the decision did not address the intersectionality of gender and religious identity. Despite the fact that the judgement cited a considerable number of Islamic legal academics, feminist legal scholars were not included in the decision's discussions. Even the much-lauded judgement of Justices Nariman and Lalit, as Ratna Kapur40 makes out, was ultimately concerned with the preservation of marriage, not with women's rights, when it found fault with triple talaq on the basis of religion. that "the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. As a result, while the decision was a positive step forward, it did not go as far as it could have if gender equality had been prioritised. Despite extensive discussion of whether triple talaq is "protected" under Article 25, the court did not take a firm stance on the link between gender equality (Articles 14 and 15) and religious liberty (Article 25). It also avoided overruling Narasu Appa Mali expressively. 41 And, while the court only invalidated one type of talaq, the other types - talaq-e-ahsan and talaq-e-hasan - remain in effect, allowing Muslim men to divorce their wives by saying talaq over a period of months. However, these other kinds of talaq do not meet gender equality norms, as Muslim husbands are given the unilateral ability to divorce their spouses, which Muslim females do not have. As a result, the decision is restricted in that it only addresses a narrow component of the law and does not provide a precedent for future interactions with discriminatory personal law provisions in terms of generally applicable criteria. It's also debatable whether the long discussions of Islam and Muslim personal law (particularly in the opinions of Justices Khehar and Nazeer) were really essential. Because of the large number of pages devoted to Islam and Muslim personal law, it appears that the judges also wanted to demonstrate the Muslim community that their concerns are being taken seriously. This, however, has drawbacks: the longer the judgement is and the more internal inconsistencies it includes - and there are quite a number in this judgement - the more it may be (mis)used later by cherry-picking points stated in obiter dictum declarations of this case. This decision was, in general, a step in the right direction. However, this was only the first step; more must be taken. The arguments that the case has provoked on discriminatory features in other legal domains, such as other personal laws42 and Indian rape law43, are a welcome development since they demonstrate that the ball has been re-started.

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