VALIDITY OF ABROGATION OF TRIPLE TALAQ - AN ANALYSIS FROM RONALD DWORKIN'S JURISPRUDENCE

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ABSTRACT

Every existing structure in this world has some entity which presides over the rest of its constituents. In India, judiciary holds the same position where the judgments pronounced by it are binding on its citizens. The judgment of the Shayara Bano case evidently reflected that judges hold revoking power which may nullify any law or custom if the same is beyond the ambit of just, fair and reasonable. This clearly lays down that judges in fact carry a huge power in bringing something into existence as indeed some entity should judiciously do. Dworkin's law of interpretation holds a clear distinction on how to use "law" in order to find the thin line which will comply with morality while bringing out the generality of the law which may be made applicable on all other similar cases. In order to find the one right answer, we have to be more specific, judges have to judiciously use law to eliminate the loopholes present in the preceding laws and judgments. This essay investigates how Dworkin's legal jurisprudence has been made applicable on the judgment of the Shayara Bano v. Union of India and how the abrogation of Triple Talaq was valid.

I. INTRODUCTION

The case of *Shayara Bano v. Union of India*[1] [***Shayara Bano* case**] is indeed a landmark case which abrogated the principle of Triple Talaq. The judgment was 3:2 in majority decision wherein Justice Joseph reasoned that since the adoption and practise of Triple Talaq has not been done within the basic tenets of Holy Quran, there was no necessity to follow such a rule. Judgment rendered by Justice Nariman and Justice Lalit held Triple Talaq to be unconstitutional and violative of Article 14 read with Article 13 (1). They stated that the practise although sanctioned under Muslim Personal Law (Shariat) Application Act, 1937 [**Shariat Law**] as a form of personal law was violative of Article 14 because any action which is arbitrary, must necessarily involve negation of equality and Triple Talaq practise reflected the same. Primarily, two contentions arose from this case, firstly, whether Talaq-e-Biddat is Islamic in nature and secondly, whether it came within the purview of protection under Article 25.

Article 25 of the Indian Constitution protects a citizen's choice of practicing religion and the state cannot take away a person's entitlement to religious practice unless it is hit by public order, morality or health.[2] Supreme Court in the case of *Durgah Committee Ajmer v. Syed Hussain Ali and Ors*[3], held that "*sometimes there are practices, even secular ones, usually considered as part of the religion, that might actually be superstitions and not essential to the religion, and hence excluded from the protection of the Constitution*". This

[1] Shayara Bano v. Union of India, (2017) 9 SCC 1 (India).
[2] INDIAN CONST. art. 25.
[3] Durgah Committee Ajmer v. Syed Hussain Ali and Ors, (1961) SC 1402 (India).

conveys that if a practice itself is arbitrary, unjust and not a cardinal religious practice, then the same can be hit by the exception as per Article 25.

Justice Nariman and Justice Lalit submitted that, 'Talaq-e-Biddat' has all along been irregular, patriarchal and even sinful. It was pointed out, that it is accepted by all schools – even of Sunni Muslims, that 'Talaq-e-Biddat' is "*bad in theology but good in law*".[4] Under the Article 32 of Indian Constitution, the judges discharged their constitutional responsibility of protector, enforcer, and guardian of citizens' rights under Articles 14, 15 and 21 of the Indian Constitution[5]. Finally owing to the fact that 'Talaq-e-Biddat' undermines fundamental rights and constitutional morality, the same was abrogated. Prima facie, the Triple Talaq practice led to overnight abandonment of the wife by the husband without any recourse. On contemplating this issue thoroughly, we find ourselves asking, "What is the fault? What do we want to abrogate – the utterance of 'Talaq talaq talaq' or the aftermath of the utterance?"

II. INTERPRETATION OF RIGHT ANSWER THESIS WITH RESPECT TO TRIPLE TALAQ

Before answering the matter of Triple Talaq, we need to understand Ronald Dworkin's jurisprudential inclination. In his book 'Taking rights seriously', Dworkin attempts to launch a general attack on positivism and specifically on H.L.A Hart's version of it.[6] According to him, positivism is a model of and for a system of rules, and its central notion of a single fundamental test for law forces us to miss the important roles of these standards that are not rules.[7] Dworkin strategically coins the term 'Hard Cases' to explain the difficulty legal positivism has in solving certain cases in the legal framework.[8]

In case of practise of Triple Talaq, the Shariat Law made the followers bound to the rules without providing an opportunity to understand the standards for bringing that law and rules into existence. Cases like *Shayara Bano* can be placed under the category of hard cases where, there are neither precedents nor prior set rules (as required by legal positivists) which can assist in adjudicating the novel case perfectly. Even if a judge finds the same, the statute and/or case law rule carries the possibility of being vague, ambiguous resulting in a need to interpret the law, in order for it to be applicable to novel cases.

[4] Shayara Bano, *supra* note 1, ¶ 38.
[5] *Id.*
[6] RONALD M. DWORKIN, TAKING RIGHTS SERIOUSLY 22 (Massachusetts: Harvard University Press, 1977).
[7] *Id.*
[8] Si Jin Oh, *Ronald Dworkin in the Liberal Jurisprudence Tradition: Focusing on Objectivity*, 2 Kor. U. L. Rev. 109 (2007).

Occasionally, the cases raise issues that are so novel that they cannot be decided even by stretching or reinterpreting existing rules.[9] Thus, positivist judges are compelled to cross the limit of their discretional powers and make new laws, thereby involuntarily acting as 'deputy legislators'.[10] *Per se* new laws and rules are not made but prevalent laws are put in the most 'right manner' to interpret the issue at hand. In the judgement of *Shayara Bano*, the judges similarly acted as deputy legislators and revoked the practise of Triple Talaq rule altogether. Soon after, India introduced The Muslim Women (Protection of Rights on Marriage) Act, 2019[11] to criminalize Triple Talaq, if practised further.

Dworkin holds the view that for every case in law there is only one correct decision which will resolve the issue in the most ideal manner. Dworkin's main contention is this: a proposition of law may be asserted as true if it is more consistent with the legal theory that justifies its prior application than is its contrary.[12] For every hard case among the various propositions which could encapsulate the legal decision, one proposition is true, the others are false[13] and this proposition was later called as 'The Right Answer Thesis'. It is already evident that Dworkin is not a supporter of positivism but it is also noteworthy to know that he believes that law does not run out in hard cases.[14] In other words, he believes that there is a possibility of different recourse of law in hard case.

His criticism of rule-based models of adjudication made him introduce a principle based model.[15] If, after exhausting all application of laws and when there is no other provision of further addition of rules, principles underlying rules can be looked at. Any theory regarding the applicability of principles and policies will depend on proper understanding of our legal institutions and rights and the same depends on political institution. Dworkin believes in a liberal community that is ideally shaped by judges as they convert imperfect political values in best interpreted form.[16] The bedrock of Dworkin's idealized liberal community is the equality principle. In such communities, each citizen is accorded "*equal concern and respect*."[17] Every human being has their own moral right which gives birth to moral responsibility.

[9] Si Jin Oh, *supra* note 9, at 109.
[10] *Id.*
[11] The Muslim Women (Protection of Rights on Marriage) Act, 2017, Acts of Parliament, 2017 (India).
[12] Norman E. Bowie, *TAKING RIGHTS SERIOUSLY. By Ronald Dworkin. Massachusetts: Harvard University Press.* (1977).
[13] *Id.*
[14] Si Jin Oh, *supra* note 9, at 109.
[15] *Id.*
[16] Richard Nordahl, *The Place of Community in Dworkin's Jurisprudence*, 12 WINDSOR Y.B. ACCESS JUST. 265 (1992).
[17] *Id.*

Legal positivism is that school of jurisprudence whose advocates believe that the only legitimate sources of law are written rules, regulations and principles that have been expressly enacted, adopted, or recognized by a governmental entity or political institution including administrative, executive, legislative, and judicial bodies.[18] However, law requires amendments with the change of time and evolution of society as the society and its needs are dynamic. Triple Talaq was indeed an age old custom prevalent in the society; however knowing its nature and the high degree of vice it carried, it is only appropriate that the custom had to be abrogated.

Customs which are immoral in nature and detrimental to the society should get removed since it becomes a direct violation of basic human rights. Triple Talaq provided an upper hand specifically to the Muslim men to oppress their wives, violating their fundamental rights, without any recourse under the pretence of custom. Muslim women were differentiated from the class of women since they were the only ones who received divorce in the most unconventional manner unlike others. As we already discussed that Dworkin had equality at heart in his every jurisprudential theory, Triple Talaq was violative of equality and also deviant to the fundamental rights provided under Indian Constitution.

Earlier in the cases of Triple Talaq, contrary to what the Constitution visualised, the divorce demeaned Muslim women. With the *Shayara Bano* case, the rights of the Muslim women were restored and the purpose for which Constitution came into effect was achieved. Dworkin's theory, an antithesis of Hart's legal positivism, provides grounds to abrogate the custom of Triple Talaq.

In the judgement of Triple Talaq, although theories of legal positivism were followed, the same was done in a haphazard manner. As per the requirement of positivists, two criteria are necessary: firstly, that all law must be written and secondly, judicial discretion must be reduced.[19] Judges examined the origin of the rule, that is, Shariat Law as per the first criteria but failed to comply with the second one. They judges ruling in favour of abrogation were aware of the fact that Section 2 of Shariat Law allowed the practice of Triple Talaq; nevertheless, Justice Nariman and Justice Lalit, held the Triple Talaq outside the confines of Article 25 and nature of the practise to be manifestly arbitrary.

Instead of legal positivism, Dworkin's constructive interpretation theory was applied. Constructive interpretation is to understand something by putting it in its 'best possible light' or, in other words,

[18] *Legal Positivism*, Law Library - American Law and Legal Information, https://law.jrank.org/pages/8154/Legal-Positivism.html.
[19] Si Jin Oh, *supra* note 9, at 110.

to consider it against the best possible example of what it is or aims to be.[20] Putting something in their best light can result into providing meaning.[21] However, practices like Triple Talaq can never result into anything meaningful because the objective, that is, divorce uttering the word 'Talaq' three times, does not change the purpose it serves. Triple Talaq cannot be read in best light because if through any means the same is done, then the purpose of Constitution and the rights that it bestows on its citizens will be defeated. Dworkin also puts forward a similar view; for instance, when we describe the injustices in society in order to persuade others of the need for reform, we attempt to show the injustice in its best possible light.[22] The loophole in verifying the validity of law gives Dworkin's theory an edge over the positivism school of jurisprudence.

As per Dworkin, in hard cases, it is not clear that whether if either 'common sense' or 'realism' supports the objection that there can be no right answer, but only a range of acceptable answers.[23] But he himself sternly believes that a genuinely hard case can have simply one right answer and other wrong answers.[24] However practically, it can be deduced that it is almost impossible to bring every person into consensus regarding an issue. If the issue revolves around religion or politics, then the probability of reaching a consensus reduces dramatically – there would be a section of minority who encapsulate conservative and orthodox thoughts. Triple Talaq fits perfectly as an example in the above case.

To consolidate Right Answer Thesis, Dworkin presented two levels of dimensions to arrive at the conclusion for Right Answer Thesis in hard cases – (i) the dimension of 'fit'; and (ii) the dimension of 'political morality'.[25] The dimension of fit supposes that there is always one theory that fits better to the case than the other. Contrary to immature legal systems with less settled rules, in a modem and complex system, Dworkin argues that the probability of a tie is very small.[26] However, since the probability of ties is anticipated, Dworkin develops another dimension, which is political morality. Accordingly, even if two theories or justifications provide an equivalently compatible fit, one may be able to provide a better justification if it is superior as a matter of political or moral theory.

Here, looking into the contemporary situation, the only viable and just answer holds out to be abrogation of Triple Talaq as it is deterrent to the integrity and status of women. Muslim women

[20] RONALD M. DWORKIN, LAW'S EMPIRE 52 (Massachusetts: Harvard University Press, 1986).
[21] *Id.*
[22] Simon Honeyball, *Dworkin, Best Light Arguments and Constructive Interpretation*, 35 B. L. J. 53 (2003).
[23] RONALD M. DWORKIN, *supra* note 6, at 290.
[24] *Id.*
[25] Si Jin Oh, *supra* note 9, at 117.
[26] *Id.*

were categorized differently and oppressed by orthodox mentality. Any other answer beside abrogation would have resulted in legal rules and law trumping over basic human rights which would have demolished the Right Answer Thesis.

Right Answer Thesis was backed with four fundamental ideas which essentially became its foundation: *First,* in hard cases, moral arguments are indeed legal arguments. *Second,* in a situation of legal dispute or controversy, certainly one party carries in his favour a pre-existing right to decision. *Third,* sentences which express both legal and moral judgements are cognitive in nature. In simpler words it means, sentences as such in its core only assert the facts instead of expressing the speaker's objective of stating so. *Lastly,* the principle of bivalence.[27] Bivalence assists in interpreting a moral or legal sentence by understanding its underlying *right answer* present in it. Since both moral and legal sentence carries a varied number of interpretations with it, only a particular interpretaion has to be adopted which brings out the positivite factor of righteousness with respect to its counterparts. Judges being the interpreter here through the means of discretion incline towards a stronger right answer over the other alternatives.

As per the judgment of *Shayara Bano* case, Triple Talaq is now struck down owing to the fact that it contained traits of arbitrariness, violation of fundamental rights and was unconstitutional in nature. But does this pronouncement of judgement borne the potential to be rightfully called as 'the right answer'? For this particular case, yes. Right Answer Thesis demands that the answer which is right will, by default, make the rest of the alternatives to be the wrong answer. The practise of Triple Talaq, its principle, policy and its very nature was immoral. The continuation of the practise or any amendment to the practise would not have altered its nature. Furthermore, its inhumanely oppressive quality was immensely integrated into the practice making it violative of human rights altogether. This theory containing morality factor attempts to find the fine line which will safeguard the rights of women and the community in large while establishing the concern that rights should prevail over rules.

Rules in general are bought into existence to protect the individual's interest and rights and if the same are hampered due to any law, then the objective of bringing the law into effect is diminished. Surely the definition of right answer is dynamic. The right answer of today might not be the right answer of tomorrow but it is to be observed that the right answer is always thought of with respect to society's traditional and contemporary needs. Here the abrogation of Triple Talaq came out to

[27] Joshua R. Geller, *Truth, Objectivity, and Dworkin's Right Answer Thesis*, UCL JURIS. REV. 83 (1999).

be the right answer as it acknowledged the contemporary situation and needs while outweighing the vices that it carried in the past.

III. COMPLIANCE OF TRIPLE TALAQ JUDGEMENT WITH DWORKIN'S THEORY OF LAW AS INTEGRITY

Dworkin was concerned with questions of 'what is law' and 'what are legal rights' since he found the definitions provided by Platonists, realists and positivists to be not true. According to him, they all were searching for the criteria for the use of the word 'law' and 'rights'.[28] Since we all do not have a shared criteria for our use of legal words; the meaning of the words is to be found in the role they play in our lives, which will be different for different people.[29] However, the answers to the questions about law and rights can be found only when we interpret these concepts constructively.[30] This signifies that, we need to search for a medium which would promote what the law believes to be serving in the best light possible.

Dworkin strictly believed that since people of a state are in fraternal association of a community, it is the purpose of the law to uphold the obligations which are due to these people. Law can serve the community best when the past, present and the future are taken into consideration. Law is indeed a part of the political and moral life of the community and should take into account as to how the community acquired its value evolving from its tradition.[31] This reasoning portrayed as a foundation as to how law should work for a community; which later then led Dworkin to formulate the theory of 'Law as Integrity'.

It states that there are different ways of giving meaning to our practice of law, depending on what we think is the point of that practice. If the purpose of law is to express the concern of the community for each of its members, then the best way of serving that purpose is to see law as a living, evolving tradition.[32] On the same line of thought, we can see that, when we believe community as a person with principles we thereby become a constituent of fraternal association as well. We perceive others as equal to us who bears equal rights and respect for the well beings of others. Being a fraternal association allows a moral justification for the state's monopoly of force; the obligations incurred by membership of such a group must be upheld by the state.[33]

[28] Anne Padley, *Law's Empire*, 1 RATIO JURIS 181 (1988).
[29] *Id.*
[30] Si Jin Oh, *supra* note 9, at 181.
[31] *Id.*
[32] Si Jin Oh, *supra* note 9, at 182.
[33] Si Jin Oh, *supra* note 9, at 184.

Dworkin believes that integrity contributes to the efficiency of law. If people accept that they are governed not only by explicit rules laid down in past decisions but by whatever other standards flow from the principles these decisions assume, then the set of recognized public standards can expand and contract organically, as people become more sophisticated in sensing and exploring what these principles require in new circumstances, without the need for detailed legislation or adjudication on each possible point of conflict.[34]

Judges being the most judicious beings are given the responsibility to interpret the law in a manner that will satisfy the morality, rights of constituents of the community while resolving conflicts. Decisions given by the judges should interpret the existence of law and legal rights in such a manner which will be most acceptable account of the community's traditional and present values, and thereby best furthers the purpose of law, is the correct one.[35]

On matters of rights, judges are the appropriate authoritative decision-makers. Questions of rights are to be decided on the basis of principle in accordance with the law.[36] According to this theory, the meaning of the law is not given by the words of the relevant documents nor revealed in the so-called original intent of the drafters; the meaning is always a matter of interpretation and thus often the subject of controversy.[37]

Analysing the practice of Triple Talaq under Muslim law with respect to Dworkin's Law of Integrity, we can observe how it did not abide by the theory. As per the Preamble of Indian Constitution,[38] fraternity is an ideal but in reality there is disparity among Muslim women and others. While Muslim women too belong to the same fraternal association of community but they are differentiated from Muslim men as it was only the men who carried power to divorce via Triple Talaq. The essence of fraternal association of community was lost when the cardinal 'equality' right was not available to Muslim women; in the sense, Triple Talaq was only performed on Muslim women while the other women of the community were not under this unethical procedure of divorce.

Law as Integrity takes into consideration the duty to express the concern of the society and it is the State who bears a moral obligation to cater to the needs of the community. Throughout ages of tradition, Muslim women were oppressed by its members of community with no available

[34] RONALD M. DWORKIN, *supra* note 20, at 188.
[35] Si Jin Oh, *supra* note 9, at 117.
[36] Richard Nordahl, *supra* note 16, at 272.
[37] *Id.*
[38] INDIAN CONST. Preamble.

methods of recourse. The purpose of law that Triple Talaq carried can never be read in best possible light because the flow of standard of law coming from its tradition was never in accordance to fundamental rights as provided by the Indian Constitution which is the lifeline of every community member. The judges of the *Shayara Bano* case interpreted the Triple Talaq law with morality and constitutionality by its side in order to improve the Muslim women's equality status. Before the judgement was propounded, Muslim women could be thought of members of another novel community which was exempted from the Constitutional remedies.

The Preamble, Articles 14, 15, 21, 51A which promote equality, dignity and status, non-discrimination and prevention of any derogatory practises against women, are some provisions which generally brings everyone to equal footing, was absent from these lives of Muslim women. Abandonment of a Muslim wife became regular news to society. An instance like, 'Women divorced over a telephonic call' was ordinary to the ears. Police report put forward the details in this case stated: A Muslim women who was already under in-laws pressurization to meet the dowry demand was thrown out of the house after she gave birth to two girl child twins. Enraged about such occurrence the in-laws abetted the husband to divorce her. Following this, the husband uttered "Talaq Talaq Talaq" over the phone's loudspeaker and in a span of overnight the divorced woman had no shelter for her new born babies and herself.[39] Cases like these are evidence of immorality and unethical laws where Muslim men violate the fundamental rights of Muslim women.

Abrogation of the practice of Triple Talaq put an end to the age-old immoral practice of Triple Talaq. The practice of Triple Talaq is morally wrong as it makes the position of women vulnerable and hence, it nowhere fits the legal materials and showcases the very purposes of the constitution in bad light. Therefore, according to Dworkin's theory of law as integrity, this practice should no longer be allowed to be carried out and that is what the judges in this case exactly did. Law as integrity considers law as a rational phenomenon and not a set of individually separate decision. Judges are required to justify in entirety to the law in question that is considered to have its own inherent life.

From the *Shayara Bano* case, we can observe that under Article 25(1) of the Constitution, the citizens are allowed to profess and propagate one's religion which thus makes it morally correct; to let the followers of Muslim religion do so too. But the very instant when Muslim women are

[39] Web desk, *Case against Saudi-based husband for triple talaq over phone, his father held*, THE WEEK (Apr. 23, 2020), https://www.theweek.in/news/india/2019/08/05/Case-against-Saudi-based-husband-for-triple-talaq-over-phone-his-father-held.html.

deprived of their basic rights or when their dignity is undermined, the essence of Constitution is also violated. It is obvious in these circumstances that the better fit of the law would be to protect the fundamental rights and dignity of women, as it safeguards the interest of the community instead of those who were responsible of violating others' fundamental rights. This appropriate interpretation by the judges was adopted in this case after which women became entitled to their due rights.

IV. INDIA'S CONTEMPORARY SITUATION WITH MUSLIM DIVORCES

With the practice of Triple Talaq getting rectified in many Islamic states, India too has started making amendments, resulting into the government effectively passing Muslim Women (Protection of Rights on Marriage) Act 2019 **[the Act].** The preamble of Act says that "*This Act to protect the rights of married Muslim and prohibits divorce by pronouncing talaq by their husbands and to provide for matters connected therewith or incidental thereto*".[40] Though on face this Act looks promising but under the veil this Act bears disparities.

Here, Muslim men are treated in a discriminatory manner in comparison to men belonging to other religions as they solely are put in the realm of criminalizing activity. Viewing from Right Answer Thesis perspective, this Act can be one of the acceptable answers but definitely not the right answer as the Act leaves scope for loopholes. *Firstly*, Dworkin's ideology of rights over rules is defeated as men become unable to practice their own defence via rights. *Secondly*, protecting women from the aftermath of utterance of Talaq does not bring any good to the victims of the marriage as they still remain in a vulnerable position. The society still views and responds to the woman as the guilty one. Society thinks that it is woman's fault that she could not keep the family together.

Constitutional morality needs to act in such situations to revive the status and dignity of divorced women by assisting in de-stigmatizing the mind-set of the society. Time and again when conflict between traditional and contemporary human rights arose, constitutional morality provided the community with the right answer; for instance, Section 377 of Indian Penal Code was struck down to decriminalise homosexuality.[41] The judiciary and legislature both with the assistance of Constitutional morality can bring provisions stringent enough to provide divorced women with

[40] The Muslim Women (Protection of Rights on Marriage) Act, No. 20 of 2019.
[41] Navtej Singh Johar and Others v. Union of India, (2018) 10 SCC 1 (India).

mandatory maintenance and alimony. Lastly, the fraternal association in the community is obliterated, as the term 'divorce' becomes unequal to all the equal members of community.

Dworkin states that, when interpreting law, it should be seen in its best moral light.[42] Now this moral idea does not necessarily have to be the 'best' but rather put in such particular way which allows it to be comprehended in a better manner than others.[43] Hence, undoubtedly morality by default exists and runs indispensable everywhere. We citizens of India are in fraternity with each other provides us the right to live life in our own terms provided that other people are not affected. Citizens have been favoured by providing the freedom of choice, therefore for fundamental freedoms like freedom of religious commitment, freedom of expression, access to the widest available literature and other forms of art, freedom of personal, social and intimate association, and also freedom of non-expression in the form of freedom from surveillance, there has to be certain protection.

V. CONCLUSION

Rights are indispensable to one's life. A society or community can excel when the collective interest are reserved and fuelled with procedures to rectify the wrongs. The error in the custom of 'Triple Talaq' was not in uttering the words three times but the aftermath of the utterance. The custom contributed negative value to the word 'Talaq'. Every individual is entitled to freedom of speech till the time it is not inimical and hostile against others. The utterance was an immediate withdrawal of status of Muslim women which left them withered from society and as well as from their fundamental rights.

Judges being at the pinnacle amongst all other constituents of community have the power of discretion but as per Dworkin's dimension of 'fit', that discretionary power is restrictive in nature as we could only find number of limited answers for a proper fit. Additionally, when Right Answer thesis is considered, it is believed that only one right answer exists. So the question remains unanswered, does the judges have the ability of discretion at all if they are only bound to find one right answer? If India, the largest democratic country, cannot establish the notion of communal benefit then equality is lost. Judges make law in response to evidence and arguments of the same character as would move the superior institution if it were acting on its own.[44] But if the case at

[42] Simon Honeyball, *supra* note 22, at 53.
[43] *Id.*
[44] Ronald Dworkin, *Hard Cases*, 88 H.L Rev. 1058 (1975).

hand is a hard case, when no settled rule dictates a decision either way, then the decision could be generated by either policy or principle.[45]

Analysing The Muslim Women (Protection of Rights on Marriage) Act, 2019 from the lenses of Dworkin's Right Answer Thesis, the Act is not entirely right. The Act and its purpose is right till the extent it declares utterance of 'talaq' by Muslim men as void and illegal. It was indeed a necessity and a pressing issue to eliminate the function of Triple Talaq altogether and the Act by doing so maintains the sanctity of its existence. The juncture where it misses out to be the right answer is when the Act exhibits traits of inequality towards the Muslim men. It is now only the Muslim men who will face imprisonment of upto 3 years with fine while men of other religions do not face the same; as per Hindu Marriage Act, the husbands face merely an imprisonment of up to one year.

Additionally, under this Act, the offence is cognizable and the Muslim men have no available means of recourse whatsoever. With the husband in the jail, and the in-laws being hostile to the wife for putting the husband behind bars, the wife becomes vulnerable and burdened with the responsibility to live for herself. The Act does not provide for any remedial provisions with respect to rights in divorce to the victimised wife. If the Act had pondered upon such inaccuracies and amended accordingly, then this Act could have almost achieved the 'the right answer'.

[45] *Id.* at 1060.