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## TRIPLE TALAQ AND THE NEED FOR A UNIFORM CIVIL CODE

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### **I. INTRODUCTION: THE CONCEPT OF TRIPLE TALAQ AND UNIFORM CIVIL CODE**

On numerous occasions common society and the hapless casualties of Triple *talaq* in India have endeavored to raise a voice against the repulsive practice. Triple *talaq* empowers a man to simply articulate the dreaded words thrice and singularly separate his better half. According to an old fatwa, Triple *talaq* is viewed as a wrongdoing yet no discipline is given to men who make utilization of this system to break the holiness of marriage. Incidentally various countries have precluded this strategy including the Muslim countries of Saudi Arabia, Indonesia and essentially closer to home, the neighboring nations of Pakistan and Bangladesh yet then the practice is as yet seen as genuine and is being mishandled in our country. The issue originates from the way that Muslim law in India is not systematized, which implies it is liable to the elucidation of the Clergy. The overcome battle set up by Islamic women against the barbaric practice of triple *talaq* has brought into picture the need of a uniform civil code in India.

As I understand, the term Uniform Civil Code (UCC) envisages administration the same set of secular rules to govern people belonging to different regions and holding different religious beliefs. The term is used to denote a set of rules and regulations that govern all personal matters like; adoption, marriage, maintenance, divorce and inheritance- including matters related to property and personal status of citizens. Article 44<sup>1</sup> of the Indian Constitution, 1950 enshrines this principle as a Directive Principle of State Policy.<sup>2</sup> As things instantly remain in India, distinctive groups have diverse laws representing distinctive parts of their day by day lives, i.e. the laws overseeing inheritance and divorce among Muslims would be unique in relation to those of Christians and Hindus.

The Uniform Civil Code (UCC) is seen as the sign of a dynamic nation; it shows that the nation has moved past the customary divisions in light of religion, sex, position and place of birth. It is seen as a flag to support truly fundamental social advancement in India alongside budgetary improvement, which in my opinion is yet to be carved out in one of the greatest democracies of the world.

<sup>1</sup>The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India.

<sup>2</sup>Srishti Khindaria, 'The Need For Uniform Civil Code in India' (*ipleaders blog*, 3 July 2016) <<https://blog.ipleaders.in/need-uniform-civil-code-india>> accessed 3 April 2017.

Further, India needs a uniform civil code for two main reasons. First, a secular republic needs a uniform law for all citizens and not differentiated rules that are based on religious practices. Though this was a key issue debated during the writing of the Constitution,<sup>3</sup> we have failed to achieve this common law practice till now except in state of Goa. The other reason why India need uniform civil code is gender justice. One can very easily find the rights of women being limited under religious law, be it Hindu or Muslim. The practice of triple *talaq* is a classic example of this practice.<sup>4</sup>

Really, Uniform Civil Code does not constrain the opportunity of individuals to follow their religion; it implies each individual ought to be dealt with similarly. The greater part of the individual laws have a natural inclination against the privileges of ladies, for example, Unilateral Oral Talaq in Muslim Law, restricted property privileges of women in Christian Law or compensation of matrimonial rights issue under Hindu Personal Law. This bias does not operate only against women, but also men.<sup>5</sup>

Another imperative preferred standpoint of executing the Uniform Civil Code, which I understand is that it will bring an end to grimy vote bank politics, which is depended upon by a majority of the political class to meet their closures. This is because if all of the India has the same set of laws governing it, then the politicians will have nothing to offer to the community on religious grounds in exchange for votes.<sup>6</sup> The Constitution as part of its Directive Principles of State Policy also calls upon the state to endeavor to bring in a uniform civil code.<sup>7</sup> The same was observed in the case of *Nazeer Oyoor Nazeerv. Shemeema*,<sup>8</sup> the Kerala High Court observed that State intervention, by way of legislation, is required to regulate triple is required in India. Justice A. Muhammed Mustaq, while disposing a batch a petitions relating to Muslim divorce law, suggested a number of reforms to be introduced in Muslim personal law.<sup>9</sup> He further suggested the possibility of having a common code at least for the marriage law in India.

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## II. TRIPLE TALAQ: DOES IT REALLY EXIST?

As understood already, Triple talaq is the type of divorce which is considered from the religious perspective a *Biddat*. It is purported in light of the fact that it doesn't charge the sanction of *Shariah* as well of the Muslim Jurists and is viewed as undesirable advancement. *Talaq al-Biddat* is highly condemned, disapproved and even declared sinful but nevertheless it is considered legally effective, even though irregular.<sup>10</sup> The practice of *Talaq-al-Biddat* is traceable even in the time of the Holy Prophet (PBUH), though he highly disliked and condemned it, declaring it to be sinful even though its prevalence is tolerated and same is considered legally effective in practice.<sup>11</sup>

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<sup>3</sup> 'Why India needs a uniform civil code' *Livemint* (03 July 2016) <<http://www.livemint.com/Opinion/YJFZY1zt2IN3lkO1ljLjfO/Why-India-needs-a-uniform-civil-code.html>> accessed 2 April 2017.

<sup>4</sup> *ibid.*

<sup>5</sup> *Supra* note 2.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> Ajay Kumar, *Triple Talaq: Uniform Civil Code doesn't cost you the right to govern yourself*, **FIRSTPOST** (Oct. 14, /2016) <http://www.firstpost.com/india/triple-talaq-uniform-civil-code-doesnt-cost-you-the-right-to-govern-yourself-according-to-religion-3051756.html>.

<sup>8</sup> *Nazeer Oyoor Nazeer v. Shemeema*, WP(C).No. 37436 of 2003 (F).

<sup>9</sup> *Breaking; Legislation To Regulate Triple Talaq Required: Kerala HC*, **THE INDIAN EXPRESS** (Dec. 16, 2016), <http://www.livemint.com/legislation-regulate-triple-talaq-required-kerala-hc/>.

<sup>10</sup> 2 **SYED AMEER ALI, MUHAMMEDAN LAW**, 435 (4<sup>th</sup> ed. 1986).

<sup>11</sup> **DR. ZEENAT SHAUKAT ALI, MARRIAGE AND DIVORCE IN ISLAM: AN APPRAISAL**, 200, (3d ed. 1987).

Moreover, it assumed many other forms in second century and came to be recognised as an effective divorce.<sup>12</sup>

The most predominant technique for practicing *Talaq al-Biddat* under the Sunni law now-a days is to pronounce three irrevocable *Talaq* at the same time in the same period of *Tuhr* and is normally called "Triple Talaq". As its name recommends, it is an irregular or heretical type of divorce and is not affirmed by the *Holy Quran* and *Sunnah* and is viewed as a development inside the overlap of Islam. Hidayatullah defines it as a divorce where husband repudiates his wife by three divorces in one sentence or where he repeats the sentence separately thrice within *tuhr*. Thus he may pronounce, I divorce you, I divorce you, I divorce you or he may say, I divorce you thrice.<sup>13</sup>

In this form of Talaq after pronouncement, if parties wish to reunite, they cannot do so till the wife undergoes *Halala* i.e. wife goes through another marriage which is consummated and subsequently dissolved. This condemned form is considered heretical because of its irrevocability. It is considered good in law, though bad in theology and is most commonly practiced in India<sup>14</sup> and has been a customary form of divorce in pre-Islamic Arabia.<sup>15</sup>

It is quite pertinent to know here that triple divorce was practiced during the *Jahilliyah* (time of ignorance) before the advent of Islam. The usual practice then was to pronounce *talaq* two times and withhold third pronouncement making the wife's live in constant fear of the third utterance.<sup>16</sup>

However, Triple Talaq was not permitted during *Prophet's* (PBUH) lifetime, during the first *Caliph Abu Bakar's* reign and also for more than two years during the second *Caliph Hazrat Umar's* time. Later during *Hazrat Umar's* reign when the Arabs conquered Syria, Egypt, Persia etc. they found women there much more beautiful than their own women and hence were got enticed to marry them and these women asked for triple *talaq* to their existing wives, unknown of the invalidation of the same. Being cheated by their men these women made complaint to the *Caliph* who , validated and enforced triple *talaq* to meet an emergency situation and not to enforce it permanently and to contravene express provisions of *Holy Quran* and saying of *Holy Prophet* (PBUH). But later Jurists declared this form of divorce valid and gave religious sanction to it.<sup>17</sup>

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### III. STATUS OF PERSONAL LAWS UNDER THE INDIAN CONSTITUTION

Article 13 is a key provision in the protection of fundamental rights, as it makes all laws, before the existence of the constitution as well as new laws formulated by the Legislature, void insofar as they violate any of the Fundamental rights guaranteed under Part III of the Constitution.<sup>18</sup> This provision makes the Courts the guardian and protectors of the Fundamental rights.<sup>19</sup> Any law that falls within the purview of Article 13(3)(a), can be held unconstitutional on the ground of violation of any provision in Part III of the Constitution.

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<sup>12</sup> 3 K.N. AHMAD, *THE MUSLIM LAW OF DIVORCE*, 67 (1984).

<sup>13</sup> The Hedaya, Translated by Charles Hamilton, 73 (1985).

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> A. A. Engineer, *Islam and Women*, Indian Express, August 1935 at 5.

<sup>17</sup> S. K. RASHID, *MUSLIM LAW*, 22, (3d ed. 1996).

<sup>18</sup> State of West Bengal v. Committee for protection of Democratic Rights, West Bengal, AIR 2010 SC 1476, 1490.

<sup>19</sup> Brij Mohan Lal v. Union of India, (2012) 6 SCC 502, 569.

As has been long interpreted, Article 13 states that law “includes any ordinance, order by-law, rule, regulation, notification, custom or usage having in the territory of India the force of law” It further states that ‘law in force’ “includes laws passed made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such laws or any part therefore may not be then in operation either at all or in particular area” I would like to quote a significant judgment of the Bombay High court, *i.e* in *State of Bombay v. Narasu Appa Mali*,<sup>20</sup> where the Court held that Personal Laws did not come within the ambit of law in Article 13(3)(a). This was later affirmed in *Madhu Kishwar and Ors. V. State of Bihar*<sup>21</sup> and *Krishna Singh v. Mathura Ahir*,<sup>22</sup> Later in *Maharishi Avdhesh v. Union of India*,<sup>23</sup> a challenge on the Muslim Women (Protection of Women on Divorce) Act, 1986 had been denied stating that even codified personal law cannot be tested on the touchstone of fundamental rights. In *Ahmedabad Women’s Action Group v. Union of India*<sup>24</sup> as well, the court held that it cannot interfere with personal laws as they are a matter of state policy.

#### A. JUDICIAL RECOGNITION OF TRIPLE TALQ

To the degree judiciary in India is concerned it has as of not long ago, despite few exclusion, endure the practice of triple *talaq*. Also, I would state that in British India and additionally in Independent Indian each one of the courts are announcing triple proclamation of *talaq* (divorce) in a sitting as legal and viable, which is great in law however awful in philosophy. The triple *talaq* is perceived and approved by the Indian Judiciary.

The Bombay High Court in *Sara Bai v. Rabia Bai*<sup>25</sup> recognized triple divorce on irrevocable footing. In that case, one *Haji Adam Siddiqui* with two witnesses approached *Qazi* and before him he pronounced *talaq* in absence of his wife. *Qazi* prepared *Talaqnama*, which was duly signed by all concerned, and step was taken to hand over her *Iddat* allowance with the communication of *talaq*. But she managed to make the same. *Haji Adam* died very soon. His divorced wife filed a suit assuming herself wife of *Haji Adam* for maintenance and residence, but the Bombay High Court refused to accept her contention and held above referred *talaq* on irrevocable footing. It was held that *talaq* being absolute it was effective as soon as words were written even without wife's receiving the writing.

Also, the Allahabad High Court in *Ameer Uddin v. Khatoon Bibi*<sup>26</sup> held that if husband pronounced divorce by using three separate sentences at once occasion, same fall in the category of the *Talaq-ul-Biddat* and becomes irrevocable.

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#### IV. HOW VALID IS TRIPLE TALAQ: A CONSTITUTIONAL VIEW

Islamic law lays on the four-fold pillars of the *fiqh*,<sup>27</sup> to be specific: the *Quran (kitab)*, the *Sunnah (Hadiths)*,<sup>28</sup> the *Ijma*<sup>29</sup> and *Qiyas*.<sup>30</sup> A "principle" to be a "law" must have a place in the previously

<sup>20</sup>State of Bombay v. NarasuAppa Mali, AIR 1952 Bom 84.

<sup>21</sup> AIR 1996 SC 1864.

<sup>22</sup> (1981) 3 SCC 689.

<sup>23</sup> 1994Supp (1) SCC 713.

<sup>24</sup> (1997) 3 SCC 573.

<sup>25</sup>Sara Bai v. RabiaBai, ILR (1905) 30 Bombay 537.

<sup>26</sup> AIR 1917, Allahabad 34.



mentioned sources. On the off chance that the arrangement of an issue is given in the *Quran* then it is the last resort is to *Shariah*. If there is no such work in the *Quran*, we take a gander at the customs of the *Prophet* archived as *hadiths* by his mates. If the issue has no arrangement in both of the two then last resort taken is to *Ijma*.<sup>31</sup> Further, there is no *Quranic* foundation to institute those three divorces on a juncture would amount to an irreversible divorce; in fact the Prophet (PBUH) despised divorce<sup>32</sup> and described marriage<sup>33</sup> as his *Sunnat*.

As it stands, divorce given for two times is revocable<sup>34</sup> but it is not so when made for a third time.<sup>35</sup> As stated by *Prophet* and narrated by Aisha Once a Muslim woman has been divorced by her husband thrice, she cannot remarry him unless and until she is married to another man (which is compulsorily consummated)<sup>36</sup> and divorces her so as to free her. It is only after this, she can marry her former husband.<sup>37</sup>

### A. TRIPLE-TALAQ AND PART III OF THE INDIAN CONSTITUTION: THE NEED FOR AN IMMEDIATE UNIFORM CIVIL CODE

The Muslim Personal Law (Shariat) Application Act, 1937 is the principal legislation that deals with application of the *Shariah*, which is the sacred legal framework representing Muslims in the country. Section 2 of the 1937 Act further states that the *Shariah* applies to *talaq* (a form of divorce) too. According to religious texts it implies "divorce", yet in law it means the absolute control, which the spouse has of divorcing his wife at all, time.<sup>38</sup> Among the different modes of *talaq*, *Talaq-ul-Biddat* (Triple *Talaq*) is invalid and unconstitutional as it is repugnant to natural justice and various basic rights cherished under Part III of the Indian Constitution.

Equality as enshrined in Article 14 is the essence of democracy and a basic feature of the Constitution and it has been expanded to include concepts of non-arbitrariness and principle of natural justice.<sup>39</sup> Also, it is a necessary corollary of Rule of Law<sup>40</sup> and its underlying object is to secure everyone equality of status and of opportunity.<sup>41</sup> Every State action must be informed by reason and if the act is uninformed in reason then it is per se arbitrary.<sup>42</sup> The husband in a case of giving triple *talaq* has unequivocal ideal to divorce the wife while the wife can't do likewise. The wife can separate just if the husband himself has appointed such a privilege to her. Giving of triple *talaq* is obviously subjective, as it doesn't perceive equity of status of Muslim women with that of men. In addition I also believe that triple *talaq* is irrational as it is not

<sup>27</sup>MULLA, PRINCIPLES OF MAHOMEDAN LAW, 22 (19<sup>th</sup> ed., year).

<sup>28</sup> Meaning the percepts, actions and sayings of the Prophet Mahomed, not written down during his lifetime, but preserved by tradition and handed down by generations.

<sup>29</sup> Meaning the concurrence of opinion of the companions of Mahomed and his disciples.

<sup>30</sup> Being analogical deductions derived from comparisons of the first three sources.

<sup>31</sup>FURQAN AHMED, TRIPLE TALAQ, AN ANALYTICAL STUDY WITH EMPHASIS ON SOCIO-LEGAL ASPECT, 41 (3d. 1994).

<sup>32</sup>*Abu Dawud* 9: 2173.

<sup>33</sup>Tahir Mahmood, *Muslim Law of India* (3rd edn, Lexis Nexis-Butterworths 2002) 48.

<sup>34</sup>[*Surah al-Baqarah* 2:229].

<sup>35</sup>[*Surah al-Baqarah* 2:230].

<sup>36</sup>*Sahih-Bukhari* 63:186.

<sup>37</sup>*Abu Dawud*12: 2302; See also *Sahih-Bukhari* 63: 187.

<sup>38</sup>J. Schacht, *Encyclopedia of Islam* (5th edn, Brill publications 1998) 636; See *Surah al Baqarah*.2:231; *Surah al-Baqarah* 2:236; *Surah al-Ahzaab* 33:49; *Surah al-Talaaq* 65:1.

<sup>39</sup>M. Nagaraj v. Union of India, (2006) 8 SCC 212.

<sup>40</sup>Ashutosh Gupta v.. State of Rajasthan, (2002) 4 SCC 34.

<sup>41</sup>Natural Resources Allocations, In Re Special Reference No. 1 of 2012, (2012) 10 SCC 1.

<sup>42</sup>Bannari Amman Sugars Ltd. v. CTO, (2005) 1 SCC 625.

preceded by any type of reconciliation before affecting separation.

Further, the wife is not allowed to speak to her case before the arbiters during reconciliation as there is none (the wife additionally doesn't have a privilege to fall back on the legal procedure of courts). This is additionally a low infringement of standard of normal equity. An arrangement not illegal at the initiation of the Constitution can be rendered unlawful by later advancements, considering such as gender equality.<sup>43</sup> Thus triple *talaq* which is promotes gender inequality is liable to be struck down as unconstitutional.

I also feel momentous to state here Article 21 of the Constitution that lays down that “no person shall be deprived of his right to life and personal liberty except according to the procedure established by law”.<sup>44</sup>

The Due process mentioned above has two forms (a) Substantive due process, wherein the law should be just and reasonable and not subjective or oppressive.<sup>45</sup> (b) Procedural due process, wherein the aggrieved is given a fair right of hearing. This personal liberty of a person cannot be taken away by a law which is arbitrary, unfair or unreasonable. There must be some semblance of reasonableness when a law is trying to restrict someone's right to personal liberty.<sup>46</sup> The All India Muslim Personal Law Board which regulates the application of *Shariah* to Indian Muslims tries to enforce the practice of triple *talaq* and *halala* under the ambit of Section 2 of the 1937 Act. As I've expressed in the above paragraphs, the act of triple *talaq* is subjective and irrational. It is abusive in nature as it tries to confine the privileges of Muslim women subject to such separation. The abused women in such a case don't have response to any legal procedures. As the practice is not preceded by reconciliation, the wives likewise don't get any possibility of a reasonable hearing before the *Qazis* or the judges.

The practice of *halala* takes place once the wife is irrevocably divorced by her husband and they can remarry each other only when the wife marries another man (also should consummate such marriage) and her new husband divorces her irrevocable.<sup>47</sup> This was the case in *Nagma Bibi v. State of Orissa*. A survey by Bharatiya Muslim Mahila Andolan (BMMA), of around 5000 Muslim women across India, unearthed that over 90% desired a completion to triple *talaq* and *halala*. Of the 525 divorced females surveyed, 78% had been given triple *talaq*; 76% of these women had to consummate a second marriage so that they could go back to their former husbands.<sup>48</sup> No women can be compelled to marry another man and consummate that marriage in case she wants to remarry her former husband after *talaq*. This condition is humiliating and against the dignity of women as protected under Article 21.<sup>49</sup>

Additionally, I must affirm that the Constitution of India u/A. 25 confers Right to freedom of conscience and free profession, practice and propagation of religion. The protection under Articles 25 and 26 extend guarantee to rituals, observances, ceremonies, modes of worship etc. that are integral to the belief.<sup>50</sup> However, in order for such practices to define their faith, it is necessary that such practices be regarded by

<sup>43</sup>John Vallamattom v. Union of India, (2003) 6 SCC 611.

<sup>44</sup>Article 21, Constitution of India (1950).

<sup>45</sup>Delhi Airtech Services Pvt. Ltd. v. State of U.P.(2011) 9 SCC 354.

<sup>46</sup>Maneka Gandhi v. Union of India (1978) 1 SCC 248.

<sup>47</sup>[*Sahih-Bukhari* 63:186]; [*Abu Dawud* 12: 2302].

<sup>48</sup>Zakia S and Noorjehan S Niaz, *No More Talaq Talaq Talaq*(7th edn, BMMA 2015) 24-25.

<sup>49</sup>Francis Coralie v. Administrator, Union Territory of Delhi (1981) 1 SCC 608.

<sup>50</sup>N. Adithyan v. Travancore Devaswom Board (2002) 8 SCC 106.

the said religion as an essential and integral part.<sup>51</sup> The Courts have the power to decide as to what practices design an essential and integral part of a religion.<sup>52</sup>

I must cite forward in this reference, a landmark case of *Abdul Jalil v. State of Uttar Pradesh*<sup>53</sup> the Supreme Court after considering the *Quran* and numerous *Sunnahs* reached the conclusion that right not to disturb an interred corpse is not absolute. Likewise the Apex Court in several other cases has delved into the scriptures of various religions to ascertain the rank of a practice as to whether it is essential and integral part.<sup>54</sup> Triple *talaq* has no legality either under the *Holy Quran* or the *Hadiths*. In addition a Muslim man is neither professing (practicing Islam) nor proliferating his religion by giving triple *talaq*. In this way triple *talaq* can be delegated an unnecessary and extraneous part of Islam. Article 25(2) additionally engages the State to regulate secular affairs surrounding religion and to legislate and enact measures pertaining to social welfare and reform.

Any such reform thus brought in the form of a uniform civil code shall come under Article 25(2) and thus would not violate religious freedom guaranteed under Article 25.<sup>55</sup> The State can regulate or restrict a practice if it is of the view that in the notice of communal good and reform, it is necessary to do so.<sup>56</sup> The Constitution of India thus entails the State to endeavor to assure for the citizens of India a uniform civil code throughout India.<sup>57</sup> The drafters of our Constitutional envisaged that bringing in the uniform civil code would promote national integrity.<sup>58</sup> It is a matter of obligation that belief be separated from law that would lead to realization of one of the principle aspects of Indian Constitution i.e. Secularism. The Apex Court has by itself stated in numerous cases that a uniform civil code will aid in protection of the oppressed and promotion of national unity and integrity by removing the contradictions based on ideologies.<sup>59</sup> The personal law system in India ties distinction between groups on basis of religion and between members of such groups on the basis of gender.

The Apex Court regarding the right of a husband to singularly divorce his wife (triple *talaq*) has laid down that a divorce of such nature, if contested by wife, will not be valid if (i) it was not assumed for a reasonable cause and (ii) there was no attempt for reconciliation among the parties.<sup>60</sup> Considering the certainties that triple *talaq* is un-Islamic, refuted by intensely respected Islamic scholars, that such a drill has been nullified in many Muslim-greater part countries and that it explicitly damages engagements of the Indian Constitution, the deed of triple *talaq* needs to be articulated as unlawful.

## B. SCHOLARLY VIEWS

<sup>51</sup>M P Jain, *Indian Constitutional Law* (7th edn, Lexis Nexis 2014) 1248.

<sup>52</sup>H. H. Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami v. State of Tamil Nadu AIR 1972 SC 1586, 1593.

<sup>53</sup>(1984) 2 SCC 138.

<sup>54</sup>State of Rajasthan v. Sajjanlal (1974) 1 SCC 500; ERJ Swami v. State of Tamil Nadu AIR 197 SC 1586; Mohd. Hanif Quareshi v. State of Bihar AIR 1958 SC 731.

<sup>55</sup>VII Constituent Assembly Debates (1948) 547.

<sup>56</sup>Srinivasa Aiyar v. Saraswathi Ammal AIR 1952 Mad. 193 at 196.

<sup>57</sup>Constitution of India (1950) art 44.

<sup>58</sup>VII Constituent Assembly Debates (1948) 547.

<sup>59</sup>Ms. Jorden Diengdeh v. S S Chopra (1985) 3 SCC 62; Mohd. Ahmed Khan v. Shah Bano Begum (1985) 2 SCC 556; Sarla Mudgal v. Union of India (1995) 3 SCC 635; AWAG v. Union of India (1997) 3 SCC 573; Lily Thomas v. Union of India (2000) 6 SCC 224; John Vallamattom v. Union of India (2003) 6 SCC 611.

<sup>60</sup>Shamim Ara v State of Uttar Pradesh (2002) 7 SCC 518.

Laying down some relevant scholars, I would first cite *Ibn Abbas*, who in *Sahih-Muslim* stated, “Three divorces were treated as one during the lifetime of *Prophet Muhammad* (PBUH), *Caliph Abu Bakr* and *Caliph Umar’s* reign”.<sup>61</sup> Also, *Imam Abu Hanifa*, *Imam Malik* and *Imam Hanbal* considered three divorces in a single sitting to be *bidaat* (innovated or sinful) and not permissible.<sup>62</sup> The same has been dealt in with extensively by *Ibn Taymiyyah*, a great proponent of the *Hanbali School and Sunni Islam*.<sup>63</sup>

In addition the *ijma* i.e. the concurrence of conclusion of the colleagues of *Prophet Mohammed* and his supporters is that triple *talaq* issued at a sitting will be considered as *Talaq-i-raji* (revocable separation). Companions of the *Prophet* (PBUH) like *Abdullah bin Masud*, *Abdal-Rahman bin Awf* and *Zubayr bin al-Awam* purported the same view.<sup>64</sup>

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## V. CONCLUSION: IS IT TOO MUCH TO ASK FOR A UNIFORM CIVIL CODE?

I must conclude that the status of women in society is neither a new issue nor is it a fully settled issue. The position in Islam on this issue has been among the subjects presented to the Western Readers with the least objectivity. As already stated, there is boundless singling out and typecasting about Muslim women that happens in our society. Islamic females live with a sense of distress and diffidence from communal ferocity. I strongly feel that it is not only the access to education and health mechanisms, public transport and public services as well as identity and security issues, Indian Muslim women face hardships in marriage and family stemming from the rampant misbeliefs of Quranic doctrines concerning marriage and divorce. Not only the husbands fail to honour their obligations of paying maintenance to their wives and children but the nonpayment of *mehr* has been common. In addition, the *Sachar Committee* in its report mentions that since January 2007, in the course of their work, the committee has come across thousands of cases of oral *talaq* rendering women impoverished with nowhere to go, alongside their children as their spouses decided to singularly say *talaq talaq talaq*. In most instances the spouse's mentality as well as action is accomplished by a typical sensical understanding about their "right" to utter *talaq* and part forever with the wife as "given by Islam".

What I also feel has supplemented the situation for Muslim women worst are the different fatwa's by religious seminaries maintaining discretionary divorces as legitimate and in this way including to the tragedies by giving religious endorse to the un-islamic demonstration of triple *talaq* in one go, to those women who are separated singularly. What is surprising is the ease with which men split-up with their wives, some by a mere whatsapp text or a sms and others by a simple statement through relatives or the local *Jamaat*. In maximum cases, the women is informed of being divorced while she is outside her household; she is thus not able to go back to her husband's home to regain her things, as a result deserting her destitute. The situation is further heightened on the off chance that she has no maternal kinfolk to help her.

Yet, I would state that even more challenging is the fact that Muslim fundamentalists cannot just ignore the atrocities such as triple *talaq* and muteness will only give prolongation to the Uniform Civil Code as a demand for gender justice. It is to be realised that Muslim women have been deprived of their Quranic rights for way too long and that this prejudice needs to be put at halt. A process of legal and social reform thus, needs to be initiated involving the whole community and the elected representatives. Indian

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<sup>61</sup> [*Sahih-Muslim* 9: 3492].

<sup>62</sup> A. M. SERAJUDDIN, *SHARI'A LAW AND SOCIETY: TRADITION AND CHANGE IN THE INDIAN SUB-CONTINENT*, 148 (3d ed. 1999).

<sup>63</sup> 3 SHEIKH-UL-ISLAM IBN TAYMIYYAH, *FATWA IBN TAYMIYYAH* 22 (1428).

<sup>64</sup> 6 AL-SHAUKANI, *NAYL AL-AWTAR*, 25-27.

democracy allows for regulation of family matters based on each one's religious texts, is what I staunchly support. The Christian and the petrifications have taken resort to these provisions of the Constitution and enacted their personal laws consequently. It is the Muslim belief signified in the self-proclaimed private law body that is resilient to any amendment within the settled charter of their special laws accordingly.

However, I must also mention that *Sharia*-based laws, in any case, are by all account not the only ones impeding women's self-rule in India. Women in different religious gatherings all through the nation — including Hinduism, Christianity, Catholicism, Judaism, Buddhism, Jainism and Zoroastrianism — additionally ponder second rate treatment under their individual conviction frameworks. In this manner, the contradicting voices from the Muslim people group saying the proposed Uniform Civil Code (UCC) zeroes in on their religion alone are basically not focusing on the bigger picture. The very certainty that somebody from inside the Muslim people group drafted the proposed Uniform Civil Code discredits any claim of separation from different religions or conviction frameworks. In fact, a large faction of Muslims in India does not consider the AIMPLB their representative.<sup>65</sup> Indeed, I believe that the Uniform Civil Code would be a major boon to women and the oppressed — including gays, for example — everywhere in the country as it would not just to a great extent free Muslim women from the treacheries that keep them a mere token, yet would likewise realize general rights to instruction and the right to speak freely, while restricting hate speech, overcoming the veil of "individual laws" to let the cruel practice of triple *talaq* fonder in the nation and among the Muslim people group. An immediate measure thus, in the skeleton of a Uniform Civil Code is vital closely so that such a degrading stance of the Muslim women could be enriched, paving yet another step towards a more civil society in the country.

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<sup>65</sup>Deeda Abedi, *A Uniform Civil Code Will Free Women from the Chains of Inequality*, **THE HUFFINGTON POST** (Mar. 19, 2017), <http://www.huffingtonpost.in/deeba-abedi/a-uniform-civil-code-will-free-women-from-the-chains-of-inequali>.