

THE TRIPLE TALAQ TYRANNY

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INTRODUCTION

Saira Banu is in her mid-30s. A sociology postgraduate and mother of two, she is just one of the many victims of the tyranny of triple talaq. Her story is gut-wrenching. Saira Banu endured physical and mental agony for over 10 years. Bad marriage, an abusive husband, forced abortions and then, last year, her husband sent a letter to her parents' home where she was staying for almost a year. Inscribed on that piece of paper were three words: "Talaq, Talaq, Talaq". The practice of triple talaq is certainly not without its fair share of controversies. However, the troubling aspect is that the so-called triple talaq, or instant divorce, has been banned in more than 20 Muslim countries, including our neighbours; Pakistan and Bangladesh, making it a cause for serious concern.

We are a nation which proudly profess to be the world's largest democracy, guaranteeing the protection of equal rights to all our citizens while boldly holding the flag aloft of being a secular nation. However, underneath all the rosy claims, lies the cruel underbelly of discriminatory and tyrannical personal laws which tear apart the foundation of equality upon which our great nation was built. The most heinous form of tyranny to which Muslim women have been subjected to since time immemorial is the outrageous practice of triple talaq or more commonly known as "instant divorce

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IS TRIPLE TALAQ IN CONFORMITY WITH ISLAMIC LAW?

Muslim law rests on the four-fold pillars of the *fiqh*, namely⁴: the *Quran* (*kitab*), the *Sunnah* (*Hadiths*)⁵, the *Ijma*⁶ and *Qiyas*⁷. A ‘principle’ to become ‘law’ must find a place in the above mentioned sources. If the solution of a problem is given in the *Quran* then it is the final ruling of *Shari’ah*. If there is no clear exposition in the *Quran*, we look at the traditions of the Prophet documented in the form of *hadiths* by his companions. If the problem has no solution in either of the two then only resort taken to *Ijma*.⁸ There is no *Quranic* basis to establish that three divorces on a single occasion will amount to an irrevocable divorce; in fact the Prophet (PBUH) despised divorce⁹ and described marriage¹⁰ as his *Sunnat*. The *Quran* lays down only two kinds of divorces i.e. Talaq-Ahsan and Talaq-Hasan the same being in conformity with the dictates of Prophet (PBUH). The above two forms are considered to be the most proper forms of pronouncing the divorce. The third form i.e. Talaq-ul-Bidat, is considered to be the most sinful, innovated form of divorce as it is against the letter and spirit of *Quran*¹¹ and was disallowed by the Prophet (PBUH) himself.¹²

According to the *Quran*, a person is not supposed to divorce his wife when she is menstruating.¹³ When a muslim divorces his wife, he has to divorce them for the period of their iddah¹⁴ and wait for three courses (menstruation).¹⁵ The prescribed time period of iddah is about three months and in case of pregnant women, the iddah period is till delivery.¹⁶ During this period, the husband can take them back if they wish to (reconciliation).¹⁷ Divorce given

⁴ MULLA, *Principles of Mahomedan Law*, Lexis Nexis-Butterworths (19th edn, 15th reprint, New Delhi), Section 33 at p. 22

⁵ 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.

⁶ Meaning the concurrence of opinion of the companions of Mahomed and his disciples.

⁷ Being analogical deductions derived from comparisons of the first three sources

⁸ Furqan Ahmed, *Triple Talaq: An Analytical Study with Emphasis on Socio-Legal Aspect* (Regency Publication, New Delhi, 1994) at p. 41

⁹ [Abu Dawud 9: 2173] - Narrated by Abdullah ibn Umar “Allah’s Messenger (PBUH) said: Divorce is most detestable in the sight of God; abstain from it”;

¹⁰ Tahir Mahmood, *Muslim Law of India* (LexisNexis-Butterworths, New Delhi, 3rd ed., 2002) at p. 48.

¹¹ Alamgir Muhammad Serajuddin, *Shari’ah Law and Society: Tradition and Change in the Indian Sub-continent* (Dhaka: Asiatic Society, Bangladesh, 1999) at p. 201.

¹² Asghar Ali Engineer, *Islam, women and gender justice* (Gyan Publishing House, 1st ed., 2001) at p. 134-135.

¹³ [Surah al-Baqarah 2:222]; See also [Sahih-Bukhari 68:1]

¹⁴ [Surah at-Talaq 65:1]

¹⁵ [Surah al-Baqarah 2:228]

¹⁶ [Surah at-Talaq 65:4]

¹⁷ [Surah al-Baqarah 2:228]

for two times is revocable¹⁸ but it is not so when made for a third time.¹⁹ As stated by Prophet (PBUH) 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 (and such marriage must be consummated compulsorily)²⁰ and divorces her so as to free her. It is only after this, she can marry her former husband.”²¹

Though Shias and Sunnis have different views regarding triple talaq²² certain important things like the rules of purity of the woman (from menstruation), status of her virginity, waiting periods as specified in *Quran* etc. must be strictly adhered to, to validate any divorce. The slightest deviation nullifies the divorce.²³ It is provided in the *Holy Quran*, there must be efforts towards reconciliation between the parties to divorce.²⁴ The Supreme Court in **Shamim Ara v. State of U.P. and Anr**²⁵ has upheld this view of *Quran* stating that there must be valid reasons for divorcing someone and there must be an attempt to reconcile. This view has further been upheld by many High Courts²⁶ including the Kerala HC in **Kunimohammed v. Ayishakutty**.²⁷

TRIPLE-TALAQ IS NOT RECOGNIZED BY EMINENT SCHOLARS OF ISLAM.

Ibn Abbas has stated in Sahih-Muslim that “three divorces were treated as one during the lifetime of Prophet Muhammad (PBUH), Caliph Abu Bakr and Caliph Umar’s reign.”²⁸ Imam Abu Hanifa, Imam Malik and Imam Hanbal considered three divorces in a single sitting to be bidat (innovated or sinful) and not permissible.²⁹ It is very pertinent to note that three persons

¹⁸ [Surah al-Baqarah 2:229]

¹⁹ [Surah al-Baqarah 2:230]

²⁰ [Sahih-Bukhari 63:186]

²¹ [Abu Dawud 12: 2302]; See also [Sahih-Bukhari 63: 187].

²² Asaf A. A. Fyzee, *Outlines of Muhammadan Law* (Oxford University Press, New Delhi, 5th ed., 2008), p. 180.

²³ Adele K. Ferdows, *The Status and Rights of Women in Ithna Ashari Shi’I Islam*, (Women and the Family in Iran – Leiden EJ Brill – 1985 – pg. 29).

²⁴ [Surah An-nisa 4:34, 35] as cited by Faizur Rahman, “Instant Divorce is alien to Islam’s spirit”, *Indian Express*, Kochi ed., June 17th, 2008; *An Enlightenment Commentary into the Light of the Holy Quran* (The Scientific and Religious Center, Iran, 2nd edn., 1995)

²⁵ (2002) 7 SCC 513; cites with approval: *Sri Jiauddin Ahmed v. Mrs. Anwara Begum* (1981) 1 GLR 358; *Rukia Khatun v. Abdul Khaliq Laskar* (1981) 1 Gau. L.R. 375;

²⁶ *Riaz Fatma v. Mohammed Sharif I* (2007) DMC 26; 135 (2006) DLT 205; *Ummer Farooque v. Naseema* 2005 (4) KLT 565; *Nur Ali (Md) v. Thambal Sana Bibi* 2007 (1) GLT 508

²⁷ 2010 (2) KHC 63

²⁸ [Sahih-Muslim 9: 3492]

²⁹ *Supra* note 11 at p. 148.

belonging to the most important Islamic schools of jurisprudence have themselves considered that triple talaq is not permissible. The same has been dealt in with extensively by Ibn Taymiyyah, a great proponent of the Hanbali School and Sunni Islam.³⁰ The ijma or the concurrence of opinion of the companions of Mohammed (PBUH) and his disciples is that triple talaq issued at a single sitting will be considered as *Talaq-i-raj'i* (revocable divorce). Companions of the Prophet (PBUH) like Abdullah bin Mas'ud, Abdal-Rahmanbin Awf and Zubayr bin al-Awam have the same view.³¹

Muhammad ibn Maqatil, who is a prominent Hanafi jurist of the third generation, also maintains that it would amount to *raj'i*.³² Ahl-e-Hadith and Hanafi jurists like Hajjaj bin Artat and Muhammad Ibn Muqatil also consider that no divorce will be effected by pronouncing talaq thrice in a sitting.³³ Hafiz ibn Hajar in his *Fath al-Bari*, Sheikh Shaltut (Sheikh al-Azhar) in his *Fatwa* and Alim Allama Rashid Rida in his *Tafsir al-Manar* (Vol. 9, p. 683) have considered that triple talaq has no validity and are of the view that three pronouncements of talaq will in fact mean only one.³⁴ According to the great jurist Maulana Umar Ahmad Usmani (who has also discussed in great length regarding the views of the above mentioned scholars of Islam) concludes that a person can only give one talaq at a time, as per the teachings of *Quran* and the *Sunnah*.³⁵

It is a matter of fact that the concept of triple *talaq* never existed during the period of Prophet Muhammad (PBUH), Caliph Abu Bakr and Caliph Umar.³⁶ According to history, it was introduced in the second half of Caliph Umar's reign, who enforced it as a temporary measure. It was the Ommeyyad Kings who introduced this kind of *talaq*.³⁷ The same became a general practice (customary law) to pronounce divorce three times in a single sitting thus replacing the revocable one with an irrevocable divorce.³⁸ Shah Waliyullah, who is a noted Islamic scholar,

³⁰ Fatwa Ibn Taymiyyah (Cairo, n.d.), Vol. 3, p. 22.

³¹ Al-Shaukani, *Nayl al-Awtar* (Egypt, n.d.), Vol. 6, pp. 25-57.

³² *Ighathat al-Lahfan* (Egypt, 1961), Vol. 1, p. 308.

³³ *Supra* note 28 at p. 149.

³⁴ *Ibid.*

³⁵ Maulana Umar Ahmad Usmani, *Fiqh al-Quran*, op. cit., Vol. 2, p. 209.

³⁶ [Sahih-Muslim 9: 3492]

³⁷ Qureshi M. A., *Muslim Law of Marriage, Divorce and Maintenance* (Deep & Deep, New Delhi, 1995), at p. 219.

³⁸ Zeenat Shaukat Ali, *Marriage and Divorce in Islam* (Jaico Publications, Mumbai, 1987), at p. 200.

has opined that it is unfair to apply Arab customary law to non-Arabs (Indians).³⁹ Many Islamic countries have brought in large reforms in their personal laws so as to invalidate/repudiate what is known as “triple talaq” issued in one session.

These changes were brought in as a consequence of consideration of teachings of various Islamic scholars and jurists over a very long period of time.⁴⁰ Most of these countries were highly influenced by the position of Ibn Taymiyyah.⁴¹ Egypt⁴², Sudan⁴³, Syria⁴⁴, Tunisia.⁴⁵ Similar provisions exist in Malaysian state of Sarawak.⁴⁶ In Sri Lanka, a husband intending to divorce his wife must give notice of the same to the Qazi. Upon such notice he shall attempt at reconciling the parties along with the family members, elders and other influential people of the area. If nothing seems to be fruitful even after 30 days, then the husband can pronounce talaq and divorce the wife in the presence of the Qazi and two eligible witnesses.⁴⁷ The 1961 Muslim Family Law Ordinance of Pakistan⁴⁸ makes divorce given a third time irrevocable. Other countries to follow suit are Morocco,⁴⁹ Iraq,⁵⁰ Jordan,⁵¹ Afghanistan,⁵² Libya,⁵³ Kuwait,⁵⁴ Yemen,⁵⁵ United Arab Emirates,⁵⁶ Qatar⁵⁷ and Bahrain.⁵⁸ All these Muslim majority countries by reforming divorce laws have not eroded or encroached upon the religious and cultural rights of Muslims. It can thus be deduced from the above instances that reformation of

³⁹ *Supra* note 28 at p. 12.

⁴⁰ Muhammad Munir, Triple Talaq in One Session: An Analysis of the Opinions of Classical, Medieval, and Modern Muslim Jurists, under Islamic law 27 Arab L. Q. 29–49 (2013)

⁴¹ Munir M., Reforms: Triple Talaq in the personal laws of Muslim states and the Pakistani legal system: Continuity versus change, International Review of Law 2013:2, at p. 2.

⁴² Article 3 of Law No. 25 of 1929, as amended by Law No. 100 of 1985 Concerning Certain Provisions on Personal Status in Egypt.

⁴³ Article 3, Shariah Circular No. 41/1935 of Sudan.

⁴⁴ Article 92 of Law No. 34 of the Law of Personal Status of Syria of 1953.

⁴⁵ Article 30 of the Tunisian Code of Personal Status of 1956.

⁴⁶ Sections 43 and 45(1–4) of Ordinan 43 Tahun 2001, Ordinan Undang-Undang Keluarga Islam, 2001, Negeri, Sarawak.

⁴⁷ Section 27 of Marriage and Divorce (Muslim) Act, 1951 as amended till 2006.

⁴⁸ Section 7 of the Muslim Family Law Ordinance of 1961.

⁴⁹ Article 51 Book Two of the Mudawwana of 1957 and 1958 of Morocco.

⁵⁰ Article 37(2) of Law No. 188 of 1959: The Law of Personal Status of Iraq.

⁵¹ Article 90 of Law No. 61 of 1976: The Law of Personal Status of Jordan.

⁵² Sections 145 and 146 of the Civil Law of 4 January 1977 of Afghanistan.

⁵³ Section 33(d) of Law No. 10 of 1984, Concerning the Specific Provisions on Marriage and Divorce and their Consequences.

⁵⁴ Section 109 of Law no. 51 of 1984 regarding “al-Ahwal al-Shakhsiyah”

⁵⁵ Article 64 of the Republican Decree Law No. 20 of 1992: Concerning Personal Status of Yemen.

⁵⁶ Section 103(1) of Qanun al-Ahwal al-Shakhsiya (Personal Law) of UAE No. 28 of 2005,

⁵⁷ Section 108 of the Qanun al-Usrah (Family Law) of Qatar, No. 22 of 2006,

⁵⁸ Section 88(C) of Law No. 19 of 2009 regarding Qanun Ahkam al-Usrah.

Muslim personal laws in India would not be violative of religious freedom guaranteed to the Muslims.

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 Constitution⁵⁹. This provision makes the Courts the guardian and protectors of the Fundamental rights.⁶⁰ Article 13 has only one ground of unconstitutionality, namely the violation of any provision in Part III of the Constitution. It however requires the particular law to fall within the definition given in article 13(3) (a).

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” In **State of Bombay v. Narasu Appa Mali**⁶¹, 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**⁶² and **Krishna Singh v. Mathura Ahir**⁶³, where the court upheld the same and further urged them to enforce the law from recognized and authoritative sources of Hindu Law. Later in **Maharishi Avdhesh v. Union of India**⁶⁴, 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**⁶⁵ as well, the court held that it cannot interfere with personal laws as they are a matter of state policy.

⁵⁹ State of West Bengal v. Committee for protection of Democratic Rights, West Bengal, AIR 2010 SC 1476 (1490).

⁶⁰ Brij Mohan Lal v. Union of India, (2012) 6 SCC 502 (569).

⁶¹ State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.

⁶² Madhu Kishwar and Ors. v. State of Bihar, AIR 1996 SC 1864

⁶³ Krishna Singh v. Mathura Ahir, (1981) 3 SCC 689

⁶⁴ Maharishi Avdhesh v. Union of India, 1994 Supp (1) SCC 713

⁶⁵ Ahmedabad Women’s Action Group v. Union of India, (1997) 3 SCC 573

Courts in India have generally steered clear of adjudicating on matters relating to Personal Laws. However, the reasoning given in the above mentioned cases have been fallacious. Justice Chagla and Gajendragadkar J. in the **Narasu appa Malli** case laid emphasis on omission of the term personal law in Art. 13 and restricted the interpretation of the phrase 'custom or usage' in Art. 13. They also held that the inclusion of Art. 17, Art. 25(2) and Art. 44 by the constitution makers was done with the view that that different personal laws were to prevail subject to modification by the State for the purpose of social reforms. According to the learned judges, if Hindu personal law became void by reason of Art. 13 then it was unnecessary to specifically provide for Art. 17 or Art. 25(2). This reasoning adapted by the learned judges was fallacious. Firstly, the definition of the term law in Art. 13(3) is an inclusive definition and hence the omission or restrictive interpretation of 'custom or usages' cannot be sustained. The more relevant test for law under Article 13(3) is whether the norms in question are capable of being enforced by the State. In addition, Articles 17 and 25 (2) are illustrative of abundant caution and express thinking made by the Constitution makers for reforming the social evils in society. There is no support to the idea that the State cannot interfere in the field of personal law through any provision of Part III of the Constitution.

A full bench of the Kerala High Court has held that even if personal laws do not come within the purview of Article 13, if an infringed provision is part of that Act, it must test of constitutionality even if the provision is based on religious principles.⁶⁶ Eminent jurists and legal scholars such as D.D. Basu,⁶⁷ H.M. Seervai⁶⁸ and Mohammad Ghause⁶⁹, are also of the opinion that all personal laws including their non-statutory parts are subject to Article 13(1). Further, Muslim Personal Law is in force in India not as part of Muslim religion but because of it is recognised by a State legislation, mainly the Muslim Personal Law (Shariat) Application Act 1937. It derives its authority as it is recognised under a statutory legislation which would be subjected to the test under article 13(1) of the Constitution.

⁶⁶ Amini EJ V. Union of India, AIR 1995 Ker 252.

⁶⁷ H.M Seervai, *Commentary on the Constitution of India*, Vol. I, p. 155 (1965).

⁶⁸ D.D.Basu, *Constitutional Law of India*, 254-255 (Wadhwa and Company, Nagpur, 2007).

⁶⁹ *Supra* note 8 at 57-58 (1972).

TRIPLE-TALAQ AND PART III OF THE INDIAN CONSTITUTION

The Muslim Personal Law (Shariat) Application Act of 1937 is the foremost legislation that deals with application of the Shari'ah, which is the religious legal system governing Muslims in India. As per Section 2 of the Act of 1937, Shari'ah applies to *talaq* (a form of divorce) as well. As per religious texts it means 'divorce' but in law it signifies the absolute power which the husband possesses of divorcing his wife at all time.⁷⁰ Among the different modes of *talaq*, *Talaq-ul-Biddat* (Triple *Talaq*) is the most disapproved, detestable and draconian forms of divorce. This form of *talaq* is invalid and unconstitutional as it is repugnant to natural justice and various fundamental rights enshrined under Part III of the Constitution of India.

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.⁷¹ It is a necessary corollary of Rule of Law⁷² and its underlying object is to secure everyone equality of status and of opportunity.⁷³ If any law is arbitrary or irrational it would fall foul of Article 14. Every State action must be informed by reason and if the act is uninformed in reason then it is per se arbitrary.⁷⁴ The husband in a case of giving triple *talaq* has unequivocal right to divorce the wife while the wife cannot do the same. The wife can divorce only if such a right has been delegated to her by the husband himself. Giving of triple *talaq* is *manifestly arbitrary* as it does not recognize equality of status of Muslim women with that of men. Moreover it is unreasonable as triple *talaq* is not preceded by any forms of reconciliation before effecting divorce.

The wife is not given a chance to represent her case before the arbiters during reconciliation as there is none (the wife also doesn't have a right to resort to the judicial process of courts). This is also an unjust violation of principle of natural justice. A provision not unconstitutional at the commencement of the Constitution can be rendered unconstitutional by later developments and

⁷⁰ J. Schacht, Encyclopedia of Islam (Brill publications, Volume III, 1998) pp. 636-640; See also [Surah al-Baqarah 2:231]; [Surah al-Baqarah 2:236]; [Surah al-Ahzaab 33:49]; [Surah al-Talaaq 65:1].

⁷¹ M. Nagaraj v. Union of India, (2006) 8 SCC 212.

⁷² Ashutosh Gupta v. State of Rajasthan, (2002) 4 SCC 34.

⁷³ Natural Resources Allocations, In Re Special Reference No. 1 of 2012, (2012) 10 SCC 1.

⁷⁴ Bannari Amman Sugars Ltd. v. CTO, (2005) 1 SCC 625.

thinking, such as gender equality.⁷⁵ Thus triple *talaq* which is promotes gender inequality is liable to be struck down as unconstitutional. Article 21 lays down that “no person shall be deprived of his right to life and personal liberty except according to the procedure established by law.”⁷⁶ The Due process mentioned above has two forms (a) Substantive due process, wherein the law must be just and fair and not arbitrary or oppressive.⁷⁷ (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.⁷⁸ The All India Muslim Personal Law Board which regulates the application of Sharia’ah to Indian Muslims, tries to enforce the practice of triple *talaq* and *halala* under the ambit of Section 2 of the Muslim Personal Law (Shariat) Application Act of 1937. As stated in the above paragraphs, the practice of triple *talaq* is arbitrary and irrational. It is oppressive in nature as it tries to limit the rights of Muslim women subject to such discrimination. The aggrieved women in such a case do not have recourse to any judicial proceedings. As the practice is not preceded by any forms of reconciliation, the women also do not get any chance of a fair hearing before the Qazis or the arbiters.

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.⁷⁹ 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, found that over 90% wanted an end to triple *talaq* and *halala*. Of the 525 divorced women 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.⁸⁰ No lady can be compelled to marry another man and consummate that marriage in

⁷⁵ John Vallamattom v. Union of India, (2003) 6 SCC 611.

⁷⁶ Article 21 of the Constitution of India.

⁷⁷ Delhi Airtech Services Pvt. Ltd. v. State of U.P., (2011) 9 SCC 354.

⁷⁸ Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

⁷⁹ Sahih-Bukhari 63:186]; [Abu Dawud 12: 2302].

⁸⁰ Zakia Soman and Noorjehan Safia Niaz, No More Talaq Talaq Talaq (BMMA, Mumbai, 2015), pp. 24-25.

case she wants to remarry her former husband after *talaq*. This condition is humiliating and against the dignity of women as protected under Article 21.⁸¹

The Constitution of India under Article 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. which are integral to the religion.⁸² But for such practices to be considered as a part of the religion, it is necessary that such practices be regarded by the said religion as an *essential* and *integral* part.⁸³ The Court has the power to decide as to what practices constitute an *essential* and *integral* part of a religion.⁸⁴ In **Abdul Jalil v. State of Uttar Pradesh**⁸⁵ the Supreme Court after considering the *Quran* and various *Sunnahs* came to the conclusion that right not to disturb an interred corpse is not absolute. Likewise the Supreme Court in several other cases has delved into the scriptures of various religions to ascertain the status of a practice as to whether it is *essential* and *integral* part.⁸⁶ Triple *talaq* has no validity either under the *Holy Quran* or the *Hadiths*. Moreover a Muslim man is neither professing (practicing Islam) nor propagating his religion by giving triple *talaq* (which has no religious motivation).

Thus triple *talaq* can be classified as a *non-essential* and *non-integral* part of Islam. Article 25(2) further empowers the State to regulate secular affairs surrounding religion and to legislate and enact measures pertaining to social welfare and reform. Any such reform brought in the form of a uniform civil code would fall under Article 25(2) and would not violate religious freedom guaranteed under Article 25.⁸⁷ The State can regulate or restrict a practice if it is of the view that in the interest of social welfare and reform, it is necessary to do so.⁸⁸ The Constitution of India requires the State to strive to secure for the citizens of India a uniform civil code throughout India.⁸⁹ The drafters of our Constitutional envisaged that bringing in the

⁸¹ Francis Coralie v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.

⁸² N. Adithyan v. Travancore Devaswom Board, (2002) 8 SCC 106.

⁸³ M P Jain, Indian Constitutional Law (LexisNexis, New Delhi, 2014), 7th ed., at p. 1248.

⁸⁴ H. H. Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami v. State of Tamil Nadu, AIR 1972 SC 1586, at 1593.

⁸⁵ (1984) 2 SCC 138.

⁸⁶ State of Rajasthan v. Sajjanlal, (1974) 1 SCC 500; E.R.J. Swami v. State of Tamil Nadu, AIR 1972 SC 1586; Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731.

⁸⁷ VII Constituent Assembly Debates, 547 (1948).

⁸⁸ Srinivasa Aiyar v. Saraswathi Ammal, AIR 1952 Mad. 193 at 196.

⁸⁹ Article 44 of the Constitution of India.

uniform civil code would promote national integrity.⁹⁰ It is a matter of necessity that religion be separated from law. This would lead to realization of one of the principle aspects of Indian Constitution i.e. Secularism. The Supreme Court itself has stated in numerous cases that a uniform civil code will help in protection of the oppressed and promotion of national unity and integrity by removing the contradictions based on ideologies.⁹¹ The personal law system in India draws distinction between groups on the basis of religion and between members of such groups on the basis of gender.

The Supreme Court regarding the right of a husband to unequivocally divorce his wife (triple *talaq*) has laid down that such a divorce, if contested by wife, will not be valid if (i) it was not given for a reasonable cause and (ii) there was no attempt for reconciliation between the parties.⁹² Considering the facts that triple *talaq* is un-Islamic, negated by highly regarded Islamic scholars, that such a practice has been invalidated in many Muslim-majority nations and that it blatantly violates provisions of Constitution of India, the practice of triple *talaq* must be pronounced as unconstitutional.

CONCLUSION

Considering the facts that triple *talaq* is un-Islamic, negated by highly regarded Islamic scholars, that such a practice has been invalidated in many Muslim-majority nations and that it blatantly violates provisions of Constitution of India, the practice of triple *talaq* must be pronounced as unconstitutional. The rights of more than 170 million Muslim women of India are at stake. Triple *talaq* is an inhuman practice that violates rights and dignity of women. The Constitution of India under Article 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. which are integral to the religion.⁹³ But for such practices to be considered as a part of the religion, it is necessary that

⁹⁰ VII CAD 540-2.

⁹¹ 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.

⁹² Shamim Ara v. State of Uttar Pradesh, (2002) 7 SCC 518.

⁹³ N. Adithyan v. Travancore Devaswom Board, (2002) 8 SCC 106.

such practices be regarded by the said religion as an *essential* and *integral* part.⁹⁴ Suffice it to say, “triple talaq” at the same instance is not an essential practice of Islam and hence must be done away with as much haste as possible.

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⁹⁴ M P Jain, *Indian Constitutional Law* (LexisNexis, New Delhi, 2014), 7th ed., at p. 1248.