# TRIPLE TALAQ ROW: VALIDITY OF JUDICIAL INTERFERENCE IN PERSONAL LAWS

*EESHA SHROTRIYA

## INTRODUCTION

Muslim personal law recognises three types of divorce: the first is 'talaq ahsan', which consists of a single pronouncement of divorce made during a period of menstruation followed by sexual abstinence during iddat.[1] The second type of divorce is 'talaq ahsan', consisting of three pronouncements made during successive tuhrs with no sexual relations taking place during this time.[2] The third form of divorce is 'talaq-ul-biddat'. It consists of three pronouncements made during a single tuhr in one sentence or a single pronouncement made during a single tuhr, clearly indicating an intention to dissolve the marriage irrevocably.[3] This form of divorce can be given in both oral and written forms. In many cases, women are notified of this intention through telephone or any other electronic means of communication.

It is common knowledge that this form of divorce has drawn a great deal of criticism. It has been argued that the unilateral nature of this form of divorce subjects the wife (and the marriage) to the whims and caprices of the husband. She is subjected to constant insecurity.

"*The threat of divorce casts a shadow on marital life.....Whenever he was displeased; he would say 'I shall divorce you.' I was constantly worried; where will I go if he utters those words?*"[4]

It prevents women from reporting marital abuse[5] and consolidates gender inequality within the conjugal family. She is left without financial, social, and emotional support after the divorce.

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* 3rd Year Student, BA LLB (Hons), National Law Institute University, Bhopal.

[1] Dinshah Fardunji Mulla, *Principles of Mahomedan Law* (Eastern Law House 1955) 267.

[2] ibid.

[3] ibid.

[4] Gopika Solanki, *State Law and the Adjudication Process* (Cambridge University Press 2011) 132.

[5] ibid.

This form of divorce also causes legal confusion because it is difficult to prove its validity.[6] It is very difficult to prove the claims of either party, as they might be the only ones present when the divorce was supposedly pronounced.

## ORIGIN AND QURANIC MEANING

It is essential to understand that though originally written in Arabic, Quran has been translated into many languages and interpreted by many jurists. Thus, it logically follows that texts were interpreted with a view to minimize friction with existing cultures and practices. Most of the interpretations reinforce the existing gender roles in the society. The Holy Quran lays down:

"*A divorce is only permissible twice; after that, the parties should either hold together on equitable terms, or separate with kindness...*"[7]

This simply means that the husband can only take back his wife after two pronouncements of divorce. If he divorces her for the third time, the divorce becomes irrevocable and he is not allowed to take her back. He can only do so if the wife marries another man, consummates that marriage, obtains a divorce and then remarries him.

Prof. Tahir Mahmood, an internationally recognized expert on Muslim Law, stated in an interview[8] that there are only two verses in Quran related to triple talaq - the first one allows the husband to divorce only twice, which has been explained above and the other verse relates to arbitration. The latter verse states:

"*If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, God will cause their reconciliation:...*"[9]

This verse provides that if the husband wishes to divorce his wife, he must appoint an arbiter from his side and the wife must do the same. The arbiters must then try to bring about reconciliation over a period of time. Only after this process has been carried out, the husband is entitled to divorce his wife. Thus, this practice ensures that the husband does not arbitrarily divorce his wife.[10]

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[6] ibid.

[7] Abdullah Yusuf Ali (trs), *The Holy Qur'an* II: 229 (Baqara).

[8] Ajaz Ashraf, 'Ban Triple Talaq and Abolish Muslim Personal Law Board' (*Scroll*, 5 May 2015) <http://scroll.in/article/724902/ban-triple-talaq-and-abolish-muslim-personal-law-board-says-former-minorities-commission-chairman> accessed 15 October 2016.

[9] Abdullah (n 7) IV: 35 (Nissa).

[10] Khan Noor Ephroz, *Women and Law: Muslim Personal Law Perspective* (Rawat Publications 2003) 283.

According to Hon'ble Justice (retd.) K. Kannan, triple talaq was an innovation so that "incorrigibly acrimonious couples" can be separated from each other as soon as possible.[11]

However, according to Mahmood, the Maulvis have decided that the first verse is Quranic law and the second one is Quranic morality.[12] However, this distinction has not been provided for in the Quran and the maulvis have done so without any authority.

According to Anees Ahmed, there can be two reasons for misinterpretations of the Quranic verses. One, the courts usually rely on inauthentic translations, because the original sources are in Arabic and Persian and thus, inaccessible. Secondly, personal laws of Muslims have not been interfered with, by the legislators as they fear "agitations and reprisals by conservative Muslims".[13]

## TALAQ-E-BIDDAT AND THE INDIAN JUDICIARY

Being the most controversial form of divorce, triple talaq has been on the judicial radar for a long time. The first known instance comes from a leading case on divorce, in which Justice Costello held that – "*I regret that I have to come to the conclusion that as the law stands at present, any Mohammedan may divorce his wife at his whim and caprice.*"[14]

Justice Batchelor held that, "*It is good in law, though bad in theology*."[15]

It is also pertinent to mention Justice Krishna Iyer's opinion that, "*The view that the Muslim husband enjoys an arbitrary, unilateral power to inflict instant divorce does not accord with Islamic injunctions.....Indeed a deeper study of the subject discloses a surprisingly rational, realistic and modern law of divorce.*"[16]

He further opined that, "*It is a popular fallacy that a Muslim male enjoys, under Quranic law, the unbridled authority to liquidate the marriage. The Holy Quran expressly forbids a man to seek pretexts for divorcing his wife, so long as she remains faithful and obedient to him, if they (namely women) obey you then do not seek a way against them...*"

[11] K Kannan, 'Frames of Reference' (*The Hindu*, 21 October 2016) <http://thehindu.com/opinion/lead/k-kannan-on-triple-talaq-laws-in-india-and-in-several-muslimmajority-countries-frames-of-reference/article9246389.ece> accessed 25 October 2016.

[12] Ashraf (n 8).

[13] Anees Ahmed, 'Reforming Muslim Personal Law' [2001] EPW 36.

[14] *Ahmad Kasim Malla v Khatoon Bibi* 59 ILR Cal 833.

[15] *Sarabai v Rabia Bai* ILR 30 Bom 537.

[16] *A Yusuf Rowther v Sowramma* AIR 1971 Ker 261.

In *Marium v Shamsi Alam*[17], it was held that - "*A divorce pronounced thrice in one breath by a Muslim husband would have no effect in law, if it was given without deliberation and without any intention of effecting an irrevocable divorce, such divorce is a form of talaaq-e-ahsan, and thus is revocable by the husband before the iddat expires*."

In *Ziaudiin Ahmad v Anwar Begum*,[18] Justice Bahrul Islam held that, "*Under Islamic law, a divorce is not valid unless there is a reasonable cause for it, and it has been preceded by an (unsuccessful) attempt at reconciliation by two arbiters representing the husband and the wife, as required by the Quran*."

While in another case[19], he stated that, "*A Muslim husband has effected a divorce must be duly proved. Even if proved, the court shall not recognize it, if it is not a valid divorce under Islamic law*."

The approach of the judiciary on this matter has been progressive and rational. The next important event in this timeline was in 1984, when a woman named Shahnaz Shaikh, who headed Mumbai's first feminist Muslim group, 'Awaaz-e-Niswaan', filed a writ petition in the Supreme Court, challenging the validity of triple talaq. She contended that the arbitrary exercise of this unilateral power is against Articles 14 and 15 of the Indian Constitution. This was an important step, which could have been a milestone in the development of Muslim personal laws regarding divorce. But due to the raging communal tensions in the country in the wake of the Babri Masjid demolition, Shehnaaz Shaikh withdrew her petition as she did not think the time was right to get courts to intervene in the personal laws of an already desolated community.[20]

In the landmark judgment of 2002, *Shamim Ara v. State of UP*[21], the apex court held that unilateral triple divorce is valid only if it is justified and pronounced in front of witnesses. A similar verdict was given in the Dagdu Pathan case[22] wherein, it was held that the mere recitation of oral divorce in front of the witnesses or the talaqnama was not sufficient to prove divorce.

In both the above cases, the court did not abolish the right of Muslim men to give unconditional divorce to their wives. It merely placed some restrictions on these privileges granted to men. Thus, it has accommodated minorities' sensibilities while protecting

[17] *Marium v Shamsi Alam* AIR 1979 All 257.

[18] *Ziaudiin Ahmad v Anwar Begum* AIR 1978 Guahati 145.

[19] *Must Rukia Khatun v Abdul Khalique Laskar* AIR 1982 Gau 224.

[20] Jyoti Punwani, 'Muslim Women: Historic Demand for Change' [2016] EPW 51.

[21] *Shamim Ara v State of UP* AIR SCW 4162.

[22] *Dagdu v Rahimbi Dagdu Pathan* 2003 (1) BomCR 740.

the rights of Muslim women.[23]

It is important to understand that despite these judgments, women continue to get divorced arbitrarily. One of the reasons behind this can be the failure of the lower courts to comply with these judgments. Article 141 of the Indian Constitution states that:

"*The law declared by the Supreme Court shall be binding on all courts within the territory of India*"

The doctrine of legal precedent holds that, following the dictates of the Supreme Court is the duty of the lower courts.[24] But the question which arises in this case is whether all the judgments of the higher courts have the force of law. It is unclear when a precedent is compelling enough to command judicial obedience from judges who resist it.[25]

Despite legal precedents, Family Courts have accepted unilateral divorces without examining the conditions in which the divorce took place.[26] Intricacies of Muslim personal laws are not usually debated in Family Courts because judges and lawyers are unfamiliar with them.[27]

One major hindrance in the way of proper coordination between the lower and higher courts on this matter is the communal outlook of some judges.[28] The comments on Prophet Mohd in the Shah Bano judgment attracted a lot of anger from the Muslim community in the country. Judges therefore, usually avoid commenting on Muslim Personal law in their judgments to avoid any controversy. Meanwhile, many of the women who come to Family Courts are illiterate and unfamiliar with such judgments; on the other hand, most of the women do not even approach courts and those who do, do not receive adequate legal representation.

Thus, although the higher courts have specifically ruled against the practice of triple talaq, the lower courts fail to comply with those rulings in many cases. Therefore, in order to ensure the conformity of lower courts, these laws need to be codified.

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[23] Solanki (n 4) 135.

[24] Evan H Carminker, 'Why Must Inferior Courts Obey Supreme Court Precedents' [1994] 46 SLR 815.

[25] Randall Kelso & Charles D Kelso, 'How the Supreme Court is dealing with precedents in constitutional cases' [1996] 62 Brook L Rev 973.

[26] Solanki (n 4) 135.

[27] *NS v SK* Family Court Records 2002.

[28] Maitreyee Mukhopadyay, *Legally Dispossessed: Gender, Identity and the Process of Law* (Stree 1998).

## THE ON-GOING DEBATE

## TIMELINE OF EVENTS

The issue of the inherent inhumane nature of the practice of triple talaq is once again being discussed aggressively. To understand the current debate and its implications, it is important to trace the genesis of the debate.

In October 2015, the court, while hearing a case[29] related to gender discrimination in the Hindu Succession Act, 2005, directed the filing of a Public Interest Litigation (hereinafter PIL) against the practice of triple talaq and polygamy and the subsequent deprivation of fundamental rights.

In February 2016, a PIL, titled "Muslim Women's Quest for Equality", came up before a bench headed by the Chief Justice. The court accepted the application of the Jamiat-Ulema-e-Hind (hereinafter JeH) seeking to be made a party in the case. The JeH contended that Muslim Personal Law could not be challenged for violating fundamental rights because it was not passed by the legislature and thus did not come within "laws in force" under Article 13 of the Indian Constitution. The All India Muslim Personal Law Board (hereinafter AIMPLB) became a party too.

Meanwhile, in December 2015, a lawyer belonging to the Bharatiya Janata Party (hereinafter BJP) filed a PIL in the Supreme Court asking for the enactment of a Uniform Civil Code (hereinafter UCC). However, Chief Justice T S Thakur refused to entertain the PIL. He stated that the drafting of a Uniform Civil Code is a matter which comes within the purview of the legislature. He also stated that, no Muslim woman had "*questioned triple talaq on the ground that it was discriminatory. If a victim of triple talaq comes to the court and questions the validity of the procedure, we can surely examine the legality of triple talaq and find out whether it violated her fundamental rights.*"[30]

In February 2016, Shayara Bano, who had received triple talaq by speed post after 13 years of marriage, filed a petition asking for striking down the practice of triple talaq, halala and polygamy as they violated the fundamental rights guaranteed by the constitution. One month later, Nisa, a Kerala based women's organisation filed a similar petition. In May 2016, Afreen Rahman, who had received triple talaq by speed post after 17 months of marriage, approached the court with a similar grievance with the

[29] *Prakash v Phulwati* Civil Appeal No 7217 of 2013.

[30] Dhananjay Mahapatra, 'Civil code: SC lobs ball to Parl, Keeps Door Open on Triple Talaq' *The Times of India* (Mumbai, 8 December 2015) <http://epaperbeta.timesofindia.com/Article.aspx?eid=31804&articlexml=Civil-code-SC-lobs-ball-to-Parl-keeps-08122015001046> accessed 20 October 2016.

help of Bharatiya Muslim Mahila Andolan (hereinafter BMMA). The BMMA obtained 50,000 signatures on the petition.

In June, an advocate associated with Rashtriya Swayamsevak Sangh (hereinafter RSS) – affiliated Rashtrawadi Muslim Mahila Sangh asked for the codification of Muslim Personal Laws. In August, Ishrat Jahan from Kolkata also filed a similar petition.

Several other organisations like the Bebaak collective and the All India Muslim Women Personal Law Board have joined this fight. The centre, too, filed an affidavit, opposing the practice of triple talaq on the grounds that it is violative of fundamental rights and is not an integral part of the religion.

## ARE PERSONAL LAWS OUTSIDE THE SCOPE OF ARTICLE 13?

One major argument of the orthodox Muslim community is that the Supreme Court cannot interfere with their personal laws because they are of divine origin. They cannot be challenged as being violative of fundamental rights under Article 13 of the Indian Constitution. Article 13 states that:

"*(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void*

*(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void*

*(3) In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution....*"

It has been argued that Muslim Personal Laws do not come within the definition of "laws in force" according to Article 13 as they have not been enacted by the legislature.

The AIMPLB in its affidavit claimed, "*The Supreme Court cannot rewrite personal laws in the name of social reform. The validity of the rights in one religion can't be questioned by a court. As per the Quran, divorce is essentially undesirable, but permissible*"[31]

[31] The Hindu, 'AIMPLB Affidavit Reignites Debate on Women's Rights' *The Hindu* (New Delhi, 22 September 2016) <https://thehindu.com/news/national/AIMPLB-affidavit-reignites-debate-on-womens-rights/article14621976.ece> accessed 22 October 2016.

The contention of AIMPLB and others, that personal laws are not "state-made" laws is erroneous. According to Tahir Mahmood,[32] the uncodified Muslim law is in force in India not as part of the Muslim religion [as Muslim religious leaders presume] but because of its recognition by state legislation, mainly the Muslim Personal Law (Shariat) Application Act 1937[33]. According to Section 2 of the act:[34]

"*Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance... the rule of decision in cases where the parties are Muslims shall be the Muslim Personal law (Shariat).*"

In addition to this, several other personal laws of Muslims have been recognised in statutes enacted by the legislature. Section 129 of the Transfer of Property Act protects the Muslim law of gift. The section states that:

"*Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law.*"[35]

Similarly, Section 2 of the Dowry Prohibition Act, 1961[36], defines dowry as:

*"In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly —*

*(a) By one party to a marriage to the other party to the marriage; or*

*(b) By the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,*

*At or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."*

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[32] Tahir Mahmood, 'There is no Immunity for Muslim Personal Law from the Jurisdiction of Supreme Court' (*Scroll*, 30 March 2016) <http://scroll.in/article/805825/opinion-there-is-no-immunity-for-muslim-personal-law-from-the-jurisdiction-of-supreme-court> accessed 25 October 2016.

[33] ibid.

[34] The Muslim Personal Law (Shariat) Application Act 1937, s 2.

[35] Transfer of Property Act 1882, s 129.

[36] Dowry Prohibition Act 1961, s 2.

Thus, it expressly protects the practice of giving Mahr or dower under the Muslim Personal Law.

Thus, it is clear that some of the provisions of the personal law are expressly protected by the legislative enactments mentioned above. In addition to these, the Muslim Personal Law (Shariat) Application Act provides the authority to courts to decide issues on Muslim Personal Law, even though the personal laws are not codified in any legislative statute. According to Mahmood, there is no difference between the two types of authority.[37]

Apart from these legislations, the constitution too grants power to the central and state governments to legislate on the issues related to personal laws. Entry 5 of the Concurrent list in Schedule VII of the Indian Constitution includes:

*"Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law."*

## IS ABOLITION OF TRIPLE TALAQ AGAINST FREEDOM OF RELIGION?

Another argument given against abolition of triple talaq is the freedom of religion granted by the constitution. The chief of Jamaat-e-Islami Hind stated that laws on divorce and polygamy are *"an intrinsic part of their religion and are hence obliged to follow the Sharia in those matters"*. However, the central government's affidavit stated that, *"validity of triple talaq and polygamy should be seen in light of gender justice"* and that triple talaq, polygamy and nikaah halal *"were not integral to the practices of Islam or essential religious practices."*[38] It is a fact that the freedom of religion conferred by the constitution is not an absolute one and is subject to public order, morality and health. The state has the power to make laws for *"regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice" and for "providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."*[39] It is clear from the provisions of the article that freedom of religion guaranteed in the Indian Constitution can be curbed by the judiciary in appropriate circumstances.

[37] Ashraf (n 8).

[38] Utkarsh Anand, 'Triple Talaq not Integral Part of the Religion: Centre in Supreme Court' *The Indian Express* (New Delhi, 13 October 2016) <http://indianexpress.com/article/india/india-news-india/triple-talaq-not-integral-to-religion-centre-in-supreme-court-3071125/> accessed 22 October 2016.

[39] The Constitution of India, art 25.

India, being a country with a rich cultural and religious diversity, is subject to conflicts between religion and law. Dr. BR Ambedkar stated in the Constituent Assembly Debate[40] on 2nd December, 1948, that:

*"The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession should be governed by religion."*

The Indian judiciary has laid emphasis on the fact that the principles of equality and justice would prevail over religious laws in a number of its decisions. In *Ram Prasad Seth v State of UP*[41], a law which prohibited bigamy for those in public employment was challenged. The court held that bigamy "*cannot be regarded as an integral part of a Hindu religion*". It stated that even an adopted son can perform the funeral rites of his father, thus it isnot essential to have a bigamous marriage in order to beget a son.

In another case[42], it was held that sacrificing cows is not an integral part of the religion of Islam. The court, in a case[43], held that 'tandava' dance is not an integral part of the Anand Margi Sect; therefore, police can prevent such a procession. One of the important cases related to essential religious practices is *Nikhil Soni v Union of India*[44], in which the Rajasthan High Court held that the practice of Santhara, which includes systemic fasting unto death, is illegal because it amounts to '*attempt to suicide*'.

The Bombay High Court recently allowed the entry of women into Haji Ali Dargah's inner sanctum. The court examined whether the prohibition of entry of women in the inner sanctum of a shrine is an integral part of Islam or not. It held that an essential religious practice must *"constitute the very essence of that religion, and should be such, that if permitted, it will change its fundamental character"*[45]. The Haji Ali Dargah Trust failed to prove the same before the court.

[40] Constitutional Assembly Deb December 1948.

[41] *Ram Prasad Seth v State of UP* AIR 1957 All 411.

[42] *Mohd Hanif Qureshi v State of Bihar* AIR 1958 SC 731.

[43] *Acharya Jagadishwara Avadhuta v Commissioner of Police* AIR 1984 SC 51.

[44] DB Civil Writ Petition No 7414/2006.

[45] *Dr Noorjehan Safia Niaz v State of Maharashtra* [2015] PIL No 106 of 2014.

These decisions of various courts are an evidence of the fact that the judiciary has always placed the principles of equality and non-discrimination on a higher pedestal than the rules and traditions of a particular religion. However, the essential religious practice test has been criticised on several grounds, one of them is the lack of legitimacy of the courts to decide whether a certain practice is essential to a religion or not. Gary Jacobsohn has noted that it has become 'an internal level of reform' by holding that certain regressive practices do not constitute 'essential' parts of a religion, the Court not only denies them constitutional protection, but also recharacterises the religion in a more progressive light.[46] Thus, the validity of this test is yet to be determined by a lucid Supreme Court judgment.

It is upon the judiciary to decide whether it wants to go down this road or not, because even if it doesn't, there are many other arguments in favour of the abolition of the practice of triple talaq.

## POSITION OF OTHER COUNTRIES

It has been consistently contended by women's organisations that triple talaq's redundancy is proved by the fact that 22 Muslim countries have done away with this practice. The Hanbali scholar, Ibn Taimiyah, stated that three pronouncements of the word 'talaq' in one sitting would be counted as one. Therefore, this divorce would be revocable. This view has been adopted by many countries. Egypt was the first one to do so. Later, countries like Sudan, Syria, UAE, Qatar, Iraq, Jordan, Indonesia, Tunisia,etc. followed suit.[47] In Pakistan, Section 7 of the Muslim Family Law Ordinance, 1961 has impliedly abolished triple talaq.

According to Prof Tahir Mahmood, India is unable to change the Muslim Personal Laws because of the 'minority syndrome'. In an interview[48], he explains this by giving the example of Bangladesh, where Hindus are in a minority (12%). There has been no change in the Hindu laws of the country since its independence. On the other hand, Muslim laws in the country have undergone a number of changes and the practice of triple talaq has also been abolished. The same argument can be given in the case of India, where Muslims are in a minority (14.2%).[49] However, this argument fails when

[46] Gary Jeffrey Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context* (Princeton University Press 2005).

[47] Ajaz Ashraf, 'If Pakistan and 21 Other Countries have Abolished Triple Talaq, Why Can't India?' (*Scroll*, 18 April 2016) <http://scroll.in/article/806299/if-pakistan-and-21-other-counties-have-abolished-triple-talaq-why-shouldnt-india> accessed 23 October 2016.

[48] Ashraf (n 8).

[49] Census of India 2011.

we look at the case of Sri Lanka, where the Muslim population is a little less than 10%.[50] Sri Lanka's Marriage and Divorce (Muslim) Act, 1951 requires that a husband who wishes to divorce his wife should give notice of his intention to the qazi who will then attempt reconciliation between the parties. Thus, it abides by the Quranic law of arbitration before divorce.

## THE EMERGING CONSENSUS

It has been argued by certain religious extremists that abolishing the practice of triple talaq is an attempt at eroding the religious identity of the Muslim community. However, there are numerous examples which show that Muslims themselves have been opposing this unjust practice for a long time. After the Babri Masjid demolitions, standard nikahnamas (marriage contracts) were drawn which prescribed the Quranic method of divorce (which included arbitration) and also punishments for the men who violated it. However, the AIMPLB never supported this. It drew up its own nikahnama in 2005, which did not prescribe any punishments in case of violations.[51]

Bhartiya Muslim Mahila Andolan conducted a survey of 5000 Muslim women across 10 states in 2015 which showed that 92% of the women wanted a ban on oral/unilateral divorce. Similarly, 92% of the women wanted the practice of polygamy to be abolished.[52]

The biggest hurdle faced by Muslim women as far as triple talaq is concerned, is the absence of a concrete law which expressly declares the practice as unconstitutional. All they have today is a pile of judgments. There is an emerging consensus that Muslim Personal Laws should be codified. This would be helpful in eradicating the confusion caused by numerous interpretations of the Holy Quran by different jurists.

The government, even before independence, neglected the demands of the minority communities. Under the British rule, these matters were not touched upon as they were considered to be 'sensitive' issues. Not much has changed even after 69 years of independence. The government's approach towards personal laws is still tainted with the fear of stirring up controversies. Even though the codification of Hindu personal laws began as early as 1955 with the Hindu Marriage Act, none of the aspects of the

[50] Ashraf (n 47).

[51] Jyoti Punwani (n 20).

[52] Dr Noorjehan Safia Niaz and Zakia Soman, 'Seeking Justice within Family: A National Study on Muslim Women's Views on Reforms in Muslim Personal Law' (*Bhartiya Muslim Mahila Andolan,* March 2015) <https://bmmaindia.com/2015/08/10/bmma-publication-seeking-justice-within-family-a-national-study-on-muslim-womens-views-on-reforms-in-muslim-personal-law/> accessed on 24 October 2016.

Muslim personal laws have been codified yet. This can, once again, be attributed to the 'minority syndrome'.

## CONCLUSION

Triple talaq, in its present form, is an inhumane and appalling practice, which needs to be done away with. It would not be wrong to conclude that there is a budding consensus among all the communities that this practice should be brought to an end. A large chunk of the Muslim community has demanded for codification of the Muslim personal laws. The codification of these laws can prove to be a successful step towards erasing the deeply embedded gender bias in society. There have been demands for a Uniform Civil Code by certain groups. However, in the present scenario, these demands seem to be motivated by political desires. The most appropriate step would be codification of Muslim personal laws by experts who are well acquainted with all the sources-primary and secondary, of these laws. This would help in removing all the confusion caused by different interpretations of the same sources. Muslim personal laws need lucidity and specificity, which can be brought by codification.