

## ARTICLE 25 & ARTICLE 44 OF THE CONSTITUTION OF INDIA: A STUDY WITH SPECIAL REFERENCE TO ‘TRIPAL TALAQ’

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**ABSTRACT-** This topic focused on Muslim Personal Law. If a person utters the word Talaq thrice over a phone or face to face, the wedding gets called cancelled. One wonders whether it's feasible? Does this give justice to Muslim women? To argue that Article 25, which confers right to religion goes against a standard civil code is small incorrect. it's invalid and a spurious conflation. the proper to worship or to practice religion ought to not be confused with individual rights concerning inheritance, marriage or One important example to point out how vulnerable women are often is that the recent debate over triple Talaq. The Times of India report says "over 50,000 Muslim women and men have signed a petition seeking a ban on triple talaq. The petition, spearheaded by the Bharatiya Muslim Mahila Andolan (BMMA),<sup>i</sup> has sought intervention of the National Commission for Women's to finish this practice. The report quotes a recent BMMA study which found that 92 per cent Muslim women supported an end to the present practice where unilateral Talaq is being frequently given over phone, text message and even email with women mostly at the receiving end. The holy Quran accepted four marriages because the social scenario during that point was completely different than today. The defining feature of a functioning democracy is its adherence to the idea and practice of the elemental principles of equity, justice and inclusion for all with none distinction whatsoever. This inclusion means children, young, men, women, old people etc., inconsiderately of race, class, religion or sexual orientation. This Article tries to gauge the whole dialogue round the UCC, the arguments on its necessity and therefore the various doubts on its nature, so on ascertain the extent to which the question of girls gets addressed. it's of the utmost importance to scrutinize how the judicial and political intelligentsia has been trying to deal with the topic of Equality and Gender justice through the discourse UCC.

KEY WORDS : Uniform civil code, Tripal Talak, Equality, Gender justice, Talaq-ul-Biddat, Shariat, [Nikah halala](#), Judicial, Personal laws, Muslim women

### 1. INTRODUCTION

In India, Divorce in Muslims is regulated by their personal Muslim laws and consistent with that Nikah are often dissolved either by the death of husband or wife i.e. the act of god or by divorce i.e. the act of parties. the massive population of Muslims in India belongs to Sunni community and in Sunnis, a Muslim husband has an prerogative to offer divorce to his wife just by pronouncing talaq for 3 times either in one sentence or in three sentences by saying "I divorce you, I divorce you, and that i divorce you". Triple Talaq becomes neither recognized nor sanctioned via The Holy book Quran and therefore the Holy Prophet. Triple-Talaq is additionally called as Talaq-ul-Biddat which provides a right to a Muslim husband to offer divorce to his wife at any time which become valid and irrevocable immediately. This not only violates Muslim wives rights but this also makes them inferior within the eyes of society additionally to inside the eyes of fellows. Similarly to the present , the foremost thrilling reality about this is often that its miles getting used by the husband but outcomes are faced by wife.

Article25(1): Subject to public order, morality and health and to the opposite provisions of this Part, all persons are equally entitled to freedom of conscience and therefore the right freely to profess, practice and propagate religion.<sup>ii</sup>

## 2. UNIFORM CIVIL CODE (UCC):

Article 44 of the Constitution of India. The state shall endeavour to secure for the citizens a consistent civil code throughout the territory of India.<sup>iii</sup>

Uniform civil code is that the proposal to exchange the private laws supported the scriptures and customs of every major religious community in India with a standard set governing every citizen. These laws are distinguished from law and canopy marriage, divorce, inheritance, adoption and maintenance. Article 44 of the Directive Principles in India sets its implementation as duty of the State.<sup>iv</sup>

## 3. WHAT IS 'TRIPLE TALAQ'?

The Muslim husband may initiate the divorce process by pronouncing the word talaq. This practice consists of the husband saying the phrase "I divorce you" to his wife, 3 times. This practice has been taken a breakthrough in India in today's tech-age. Now there are reports of girls being divorced over Whatsapp, Facebook or Skype. The archaic practice of triple talaq isn't only anti-women, it's also anti-Islam. It's already been abrogated in additional than 20 countries, including Pakistan and Bangladesh

## 4. TYPES OF TALAQ:

- **Talaq-e -Ahsan:**

In Single Talaq-e-Hassan There must be 3 successive pronouncements of talaq.

- **Talaq-e-tafweez:**

An agreement made between the parties to marriage whereby it is provided that the wife should at liberty to divorce her in specified contingencies is valid.

- **Tripal Talaq (Instant Talaq):**

By saying "I divorce three" trice at an same instant.<sup>v</sup>

## 5. JUDICIAL APPROACH:

First time demand for Uniform Civil Code was raised by India's first Prime Minister Jawahar Lal Nehru but he did not implicate the supply stating that Muslim society isn't ready for the change. then in 1985, Supreme Court went on to mention within the Judgment of Shah Bano case that "A Common Civil Code will help the explanation for national integration by removing disparate loyalties to law which have conflicting ideologies. However, in 1986 Government went against the advice and passed Muslim Women's (Protection of Rights on Divorce) in 1986 which nullified the Supreme Court judgment. it had been alleged that this was done to guard the vote banks. Even after this, Supreme Court kept on laying emphasis on the necessity for Uniform Civil Code in its several key decisions like Danial Latifi, Iqbal Bano and Shah Bano that ladies couldn't be bereft of the advantages arising out of Section 125 of Cr. P.C

- In the Shah Bano case in 1985, the SC granted Shah Bano, a 62-year old woman the proper to alimony from her husband.<sup>vi</sup>

- But in 1986, the govt passed the Muslim Women (Protection of Rights on Divorce) Act which diluted the positive impact created by the Shah Bano case.

- In 2001, within the Danial Latifi & Anr versus Union of India case, the SC upheld the validity of the Shah Bano judgement.

- In August 2017, a five-judge bench of the SC declared the triple talaq as unconstitutional during a majority 3:2 judgement. This was the culmination of a petition filed by Shayara Bano, whose husband of 15 years had divorced her through a letter where he pronounced talaq 3 times, to declare the divorce as void. One important example to point out how vulnerable women are often is that the recent debate over triple Talaq. the days of India report says "over 50,000 Muslim women and men have signed a petition seeking a ban on triple talaq.

The petition, Bharatiya Muslim Mahila Andolan (BMMA), has sought intervention of the National Commission for Women's to finish this practice. The report quotes a

recent BMMA study which found that 92 per cent Muslim women supported an end to the present practice where unilateral Talaq is being frequently given over phone, text message and even email with women mostly at the receiving end. The holy Quran accepted four marriages because the social scenario during that point was completely different than today.

#### Opposition

The practice faced opposition from Muslim women, a number of whom filed a public interest litigation within the Supreme Court against the practice, terming it "regressive". The petitioners asked for section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, to be scrapped, describing it as being against Article 14 of the Constitution (equality before the law). On 13 May 2017, during the hearings before its final decision, the Supreme Court described instant triple talaq because the "worst sort of marriage dissolution". It noted that the custom is banned within the Muslim-majority countries of Saudi Arabia, Morocco, Afghanistan and Pakistan. On 8 December 2016, the Allahabad supreme court observed during a ruling that the practice of instant triple talaq was unconstitutional and violated the rights of Muslim women. In March 2017, over 1 million Indian Muslims, a majority of whom were women, signed a petition to finish instant triple talaq. The petition was started by the Muslim Rashtriya Manch, an Islamic organisation affiliated to the proper wing Hindu nationalist organisation Rashtriya Swayamsevak Sangh. The petitioners against instant Triple talaq have given evidence showing how Instant Triple talaq is just an innovation that doesn't have much to try to do with Quranic beliefs. This is often supported by the interpretation of Quranic text by many Islamic scholars, historical evidence and legal precedent.

On 10 May 2017, senior cleric Maulana Syed Shahabuddin Salafi Firdausi denounced triple talaq and nikah halala, calling them un-Islamic practices and instruments to oppress women. The practice was also opposed by Hindu nationalists and Muslim liberals. "Absence of consensus in Court makes it harder to forge consensus within communities. Glad that Court put aside a 'sinful' practice," Congress leader Kapil Sibal tweeted.

Support Triple talaq has been supported by the All India Muslim Personal Law Board (AIMPLB),<sup>vii</sup> a non-governmental body that supervises the appliance of Muslim personal law. It propagates that the State doesn't have the proper to intervene in religious matters. The AIMPLB's lawyer Mr Kapil Sibal had said that though instant talaq are often thought of as a sin by some, but that "setting the validity of customs and practices of a community may be a slippery slope". Kapil Sibal cited Article 371A to state that even the Constitution does shall protect matters of practice, tradition and customs of communities.

The All India Muslim Personal Law Board (AIMPLB) defends the practice. In April 2017, citing a report prepared by Muslim Mahila Research Kendra in co-ordination with Shariah Committee for ladies, AIMPLB has claimed that Muslims have a lower rate of divorce compared to other religious communities, countering the argument that Muslims have the very best number of divorce within the country thanks to the practice of triple talaq. It also claimed that it had received forms from 35 million Muslim women across the country, supporting shariat and triple talaq.

AIMPLB issued a code of conduct in April 2017 regarding talaq in response to the controversy over the practice of triple talaq. It also warned that those that divorce for reasons not prescribed under shariat are going to be socially boycotted additionally to calling for boycott of these who use triple talaq recklessly and without

justification. additionally, it also stated that it should be delivered in three sittings with a niche of a minimum of one month each.

The case was called Shayara Bano v. Union of India & Others. The bench that heard the controversial Triple talaq case in 2017 was made from multifaith members. The five judges from five different communities are judge JS Khehar, a Sikh, Justices Kurian Joseph a Christian, RF Nariman a Parsi, UU Lalit a Hindu and Abdul Nazeer a Muslim.

The Supreme Court has got to examine whether Triple talaq has the protection of the constitution—if this practice is safeguarded by Article 25(1) within the constitution that guarantees all the elemental right to “profess, practice and propagate religion”. The Court wants to determine whether or not Triple talaq is an important feature of Islamic belief and practice.

In a 397-page ruling, though two judges upheld validity of Instant triple talaq (talaq-e-biddat), the three other judges held that it had been unconstitutional, thus barring the practice by 3–2 majority. One judge argued that instant triple talaq violated shariah. The bench asked the central government to promulgate legislation within six months to control marriage and divorce within the Muslim community. The court said that until the govt formulates a law regarding instant triple talaq, there would be an injunction against husbands pronouncing Instant triple talaq on their wives.

According to The Economist, "Constitutional experts said [the judges] legal reasoning fell in need of upholding personal rights over religious laws", whilst noting "The judgment didn't ban other sorts of Muslim divorce that favour men, only the moment kind."

## 6. LEGISLATION

### **The Muslim Women (Protection of Rights on Marriage) Bill, 2017<sup>viii</sup>**

Main article: The Muslim Women (Protection of Rights on Marriage) Bill, 2017 Bharatiya Janata Party formulated a bill and introduced it within the Parliament after 100 cases of instant triple talaq within the country since the Supreme Court judgement in August 2017. On 28 December 2017, the Lok Sabha passed The Muslim Women (Protection of Rights on Marriage) Bill, 2017. The bill makes instant triple talaq (talaq-e-biddah) in any form — spoken, in writing or by electronic means like email, SMS and WhatsApp illegal and void, with up to 3 years in jail for the husband. MPs from RJD, AIMIM, BJD, AIADMK and AIML opposed the bill, calling it arbitrary in nature and a faulty proposal, while Congress supported the Bill tabled within the Lok Sabha by law minister Shankar Prasad. 19 amendments were moved within the Lok Sabha but all were rejected.

The Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 On the grounds that practice of instant triple talaq was continuing unabated despite the SC striking it, the govt issued an ordinance to form the practice illegal and void.

### **The provisions of the ordinance are as follows<sup>-ix</sup>**

- Instant triple talaq remains cognizable with a maximum of three years imprisonment and a fine.
- Only complaint with the police by the wife or her blood relation are going to be recognized.
- The offence is non-bailable i.e. only a Magistrate and not the police can grant bail. Bail are often granted only after hearing the wife.
- Custody of the minor children from the wedding will attend mother.
- Maintenance allowance to the wife is set by the magistrate.

The ordinance was cleared by the President on 19th September 2018.

The Muslim Women (Protection of Rights on Marriage) Bill, 2018

Main article: The Muslim Women (Protection of Rights on Marriage) Bill, 2018

As the triple talaq ordinance of 2018 was to expire on 22nd January 2019, the govt introduced fresh bill within the lok sabha on 17th December 2018 to exchange the ordinance.

**The provisions of the bill are as follows:<sup>x</sup>**

- All declaration of instant triple talaq, including in written or electronic form, to be void (i.e. not enforceable in law) and illegal.
- Instant triple talaq remains cognizable offence with a maximum of three years imprisonment and a fine. The fine amount is set by the magistrate.
- The offence is going to be cognizable as long as information concerning the offence is given by the wife or her blood relation.
- The offence is non-bailable. But there's a provision that the Magistrate may grant bail to the accused. The bail could also be granted only after hearing the wife and if the Magistrate is satisfied with reasonable grounds for granting bail.
- The wife is entitled to subsistence allowance. the quantity is set by the magistrate.
- The wife is entitled to hunt custody of her minor children from the wedding. the way of custody is going to be determined by the Magistrate.
- The offence could also be compounded (i.e. stop legal proceedings and settle the dispute) by the Magistrate upon the request of the lady (against whom talaq has been declared).

The bill was gone by Lok Sabha on 27th December 2018. However, the bill remained stuck within the Rajya Sabha thanks to the opposition's demand to send it to a get committee.

The Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 bill As the triple talaq ordinance of 2018 was to expire on 22nd January 2019 and also because the triple talaq bill of 2018 couldn't be passed within the parliament session, the govt has repromulgated the ordinance on 10th January 2019. On 12th January 2019, the president of the India Ram Nath Kovind approved the ordinance of 2019.

**7. OBSERVATION:**

There are many questions that are raised within the implementation of Uniform Civil Code one such question is that how a practice like triple talak which isn't even mentioned within the Quran are often the rationale of violating the proper to follow any religion? In Muslim law talaq-al-bidat is considered to be an impure sort of talak, Quran doesn't mention any such sort of talak and hadis doesn't consider talaq-al-bidat valid. In fact, the practice of triple takal in various countries like Egypt, Jordan, Sudan, Indonesia, Tunisia, Syria, and Iraq is abolished and therefore the practice of keeping quite one wife is completely prohibited in various countries like Turkey, Pakistan, and Bangladesh etc.

**8. CONCLUSION:**

Men and ladies should have an equivalent right, as we are made equal. Religions practices, laws got to change consistent with the time. Our society should understand the importance of girl's equality. We are suppressing half India's population from taking a lively part within the progress of the country. This has got to be stopped and alter must usher in the society.

The implementation of UCC might cause communal dispute, it might be far better if some reforms are brought slowly and gradually by certain amendments in personal laws making them suitable for contemporary times, the most focus should get on removing the social differences raising thanks to religion and providing them with proper information about what the essential idea behind Implementing the UCC which can not hinder the religious rights of the people rather are going to be focused on providing them with various benefits which they face thanks to different personal

laws within the country. Uniform civil code should be implemented but slowly starting with certain reforms.

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<sup>i</sup> <https://timesofindia.indiatimes.com/india/50000-muslims-sign-petition-against-triple-talaq/articleshow/52528057.cms>

<sup>ii</sup> Dr. Paras Diwan: Family Law; Published Alhabad Law Agency.

<sup>iii</sup> Dr. Paras Diwan: Family Law; Published Alhabad Law Agency .

<sup>iv</sup> Gaura V Shukla, “Uniform Cilil Code”, Google, 2016

<sup>v</sup> H.jhabvala,principles of Muhammadan Law,1991

<sup>vi</sup> [Mohd. Ahmed Khan vs. Shah Bano Begum](#) AIR 1985 SC 945

<sup>vii</sup> Tripal Talaq in India, [https://en.wikipedia.org/wiki/Triple\\_talaq\\_in\\_India](https://en.wikipedia.org/wiki/Triple_talaq_in_India).

<sup>viii</sup> The Muslim Women (protection of right on Marriage)Bill, 2017

<sup>ix</sup> “Triple talaq passed.what are the provisions”Indian Express Website,19sep 2018.Retrieved 30 Dec. 2018.

<sup>x</sup> ["The Muslim Women \(Protection Of Rights On Marriage\) Bill, 2018"](#) (PDF). *Lok Sabha India Website*. Retrieved 30 December 201