Many social practices that reflect social inequalities hide behind the cover of religion. Personal laws, under British administrators were drawn from diverse sources. It reflected the gender prejudices of its times since the interpreters of “religion” have been mostly men. The process of reforming regressive practices also began during the British rule. Reformers ended practices like Sati and child marriage. Conservative sections in the society opposed these reforms and insisted that these be preserved in the name of “defense” of religion. There is a rising people’s movement within the community to get rid of triple talaq. The Bharatiya Muslim Mahila Andolan (BMMA), a group at the forefront of this campaign for equality, surveyed almost 5,000 women. The results were categorical; 78% of those polled had been divorces via triple talaq, and more than 90% wanted the practice banned. There has also been a conspicuous silence among lawmakers around the most abused practice of ‘Nikkah Halala’, which requires a woman to marry and have sex with another man before she can remarry a man who has divorced her thrice. The idea is not to essentialise Islam or any other faith –but to remove the orthodoxy of all religions and cultures which are tilted against women, girls and often children.

TRIPLE TALAQ AND ITS EFFECTS ON MUSLIM MARRIAGES

Some 50,000 Muslim women and men have signed a petition asking that the practice of talak-i-bidai (triple talaq) whereby the husband can dissolve the marriage by pronouncing talaq three times, in the presence of at least two persons, and not necessarily in the presence of the wife must be banned, along with polygamy as these practices goes against the sanctity of marriage. It was further supported by NISA (a women organization in Kozhikode) seeking to declare sections in the Muslim personal law dealing with the practice of triple talaq, polygamy, nikah halala (bar against remarriage with divorced husband without an intervening marriage with another man) and inequality in intestate succession(a person who has died without having made a will) as unconstitutional.

The petition also argued that practice of Muslim men being permitted to have up to four wives was unfair. It also stated that the succession rules in Muslim personal laws grossly violated the right to equality as it specified that if a Muslim man died leaving behind only a daughter, she has to share the property with father’s brothers and sisters while such is not the case when the deceased is survived by an only son.

Bharatiya Muslim Mahila Andolan (BMMA), a Muslim women’s advocacy group, also launched a campaign against triple talaq, which the organization said had no sanction in the Quran. A survey done by BMMA shows around 92% Muslim women are against to this abominable practice

These practices should go not only because they go against the Quran or many Islamic countries have done away with them but they must go because they violate democratic rights guaranteed by the Constitution. The triple talaq was rendered legally invalid by the Shamim Ara vs State of UP judgment of 2002 and subsequent orders from various High Courts. But this has not stopped the practice; many Muslim women are unaware of the judgments or have had to accept such pronouncements owing to pressure from conservative sections. Many women have undergone severe trauma after being thrown out of their homes. In practice, the rights of Muslim women are being subverted in the name of rights guaranteed to minorities by the Constitution. The issue is not whether a religious community has the right to live by its holy laws but whether any community has the right to live by rules that subvert the rights guaranteed to every citizen in the Constitution. Hence the move is a positive sign because Muslim men and women have stepped into an area that was until now the preserve of only activists.

Among Muslims, it seems the triple talaq provision has pushed up the share of female divorcees to 5 per 100 compared to 2-3 per thousand for Hindus, Sikhs and Jains according to freshly released Census 2011 data. A complex web of religious and social factors is responsible for these trends, which are similar to those discovered in the previous Census. Although divorce is
legally allowed for Hindus, it may still carry social stigma. This could be the reason why the separation rate for Hindus (unlike Muslims) was 5.5 per thousand married people, while the divorce rate was pegged at just 1.8 per thousand.

**PERSONAL LAWS**

Most people believe that we do not have common civil laws in this country. The reality is, all civil laws are common, except one law, namely the personal law which varies with the religious groups. The personal law relates to marriage, divorce, succession and inheritance, maintenance, custody of children and adoption. By tradition, the personal law is treated as religious, though religion has nothing to do with it. Personal laws have always been manipulated to preserve traditional male privileges by institutionalizing discriminatory characteristics and gender-unequal interpretations of major religious traditions. Thus, all personal laws, whether based on Muslim, Jewish, or Hindu laws, constructed through male-centric readings of sacred texts and traditions, which heavily discriminate women in familial matters such as marriage and divorce. They are inconsistent with the egalitarian principles in CEDAW (Convention on Elimination of All forms of Discrimination Against Women, 1979) and also the Indian Constitution, which prohibits the State from discriminating against women as a class.

In case of Triple Talaq issue, neither does the Quran sanction this form of divorce nor was it legally held permissible by the Constitution. Such a practice violates the fundamental principles of gender justice, gender equity, good conscience and the dignity of women strongly enunciated in Islam.

But on the issue of triple talaq the court had reserved its right to pronounce on the matter because it viewed the issue as one concerning fundamental rights and not one of legislation. Their fight is not about the desire to remain married; the protest is against gross inequality- the fight is for basic dignity. There is no doubt that all personal laws have to be just and equitable to both men and women and, hence, the good from all personal laws has to be accepted and the bad to be discarded. Hence the uniform code, if and when enacted, will have to be a different one from the personal laws of all religious communities. It will have to be framed by consensus among all the religious groups and will have to conform to the norms of modern values of freedom, equality, rationality, justice and humanism, for both men and women.

**THE SHAH BANO CASE**

In 1985, Shah Bano sociology postgraduate and a mother of two appealed that triple talaq should be declared unconstitutional when her husband ended their 15-year-old marriage by sending her a letter with the word talaq written on it thrice. Under pressure from the Muslim Personal Law Board and with one eye on vote-bank politics, Rajiv Gandhi government surrendered to the religious leaders and enacted a law that did not allow Shah Bano to receive the alimony (monthly maintenance) from the husband who had divorced her. In the Shah Bano verdict, three decades ago, no major party stood up for the rights of these women nor had they challenged the right of qazis or religious leaders to certify divorces. She has argued that divorce is a civil-rights issue and only courts should have jurisdiction to adjudicate them.

**CRITICISMS FROM OTHER COUNTRIES**

Needless to say talaq-i-bidat has devastated the lives of many women and children. Deprived of any opportunity for settlement, this mode of divorce has been subject to criticism in several Muslim countries and have brought about reform through codification. Countries like Turkey, Tunisia, Syria, Egypt, Morocco, Iran, Iraq, Malaysia, Indonesia and Pakistan have either reformed the law completely or brought about legally stringent preventive measures in this area. If Muslim countries can bring about reform in family laws India must follow suit. In the words of Justice Hidayatullah: “If the lead is coming from Muslim countries, it is hoped that in the course of time the same measures will be applied in India also.”
The All India Muslim Personal Law Board (AIMPLB) defended ‘Triple Talaq’ by arguing that the Supreme Court had no jurisdiction to decide the validity of triple talaq. AIMPLB asserted that Sharia grants right of divorce to husbands through triple talaq as they have greater power of decision making compared to wives. AIMPLB’s argument that a Muslim man can delegate his power of pronouncing talaq to his wife is laughable – this can hardly be expected to happen in real life if the wife wants a divorce but husband doesn’t.

AIMPLB’s case for polygamy is equally bizarre. It has actually stated that the practice of a Muslim man being allowed to have up to four wives stems from concern and sympathy for women. It has argued that in a situation where women outnumber men, banning polygamy will force women into leading a spinster’s life. Where women outnumber men and polygamy is not permitted, women will be forced into leading spinster’s life. In sum, polygamy is not for gratifying men’s lust, it is a social need. The formulation is absurd since the sex ratio for the Indian Muslim community stands at 951 females per 1,000 males. If AIMPLB is to be logically consistent, it should actually advocate allowing Muslim women to have more than one husband.

AIMPLB also claims that the custom of triple talaq is a way out to avoid long-running court proceedings and that, in the absence of triple talaq, a husband may resort to murdering or burning alive his wife because of the time-consuming legal proceedings that might otherwise be involved. It further claims that “Indian society is patriarchal", and that "personal laws of all communities are aligned with the patriarchal notion”.

Citing Domestic Violence Act which gives protection to a woman in live-in relationship even with a married man, the board said, “This clearly shows that promiscuous relationship by a married man with another woman is no longer considered immoral within the legal culture that has developed in India. It is rather strange that a law that recognizes live-in relationships without marriage worthy of protection should frown upon a relationship which is formalized by the sanctity of marriage as immoral.”

However, in a nutshell, AIMPLB arguments are completely out of sync with modern democratic values as it has become outdated to treat women as lesser humans. Triple talaq is contrary to the Constitutional ethos. Regardless of whether triple talaq has the sanction of Islamic theology or not, this practice is heavily stacked against Muslim women. Reports have come to light that men have sought talaq in this manner on the phone; this is degrading to a woman’s dignity and honour.

**SOLUTIONS/SUGGESTIONS:**

The time has come for major steps to be taken to bring about reform and change in the Muslim Personal Law in India. In order to accomplish these following steps must be taken:-

- **CODIFICATION OF THE MUSLIM PERSONAL LAW:** The process of codification of Muslim Law is an imperative and now must be seriously undertaken by a group of legal experts, liberal ulema and scholars in the field. Gender-just laws must be the common denominator. Alongside Muslim women, Muslim men’s organizations must push for change.

- **ROLE OF THE STATE:** Parliament should step in with measures not for a Hindu code or a Muslim Code but a secular code, drawn from basic principles of personal freedom, human rights and justice in the country. Strict measures must be taken against if the Muslim Personal Law (Shariat) Application Act violates democratic rights guaranteed to the individuals by the Constitution.

- **ENCOURAGING THE IDEA OF A UNIFORM CIVIL CODE:** It will help the cause of national integration by removing the contradictions based on ideologies and traditions. It will also help in eradicating many evils, unjust and irrational practices prevalent across the communities, and will also strengthen the unity and integrity of the country. These norms have to be observed in all human transactions in any civilized society.

- **INTRODUCTION OF GENDER JUST PERSONAL LAWS:** Since most personal laws reflect the hierarchical notions of society and thereby accord secondary status to women. So what we
need are gender just personal laws. The gender just code in turn has to be the same for all the communities and hence, it will be uniform. Gender justice has to be the basis of uniformity; blind uniformity may turn out to be most unjust for women.

- **PRIORITISATION OF GENDER EQUALITY:** Priority must be given to the equality between men and women in terms of their fundamental rights over conservative interpretations of religious scholars. This can be done by saying a big no to triple talaq and polygamy. The personal law question needs to be understood in the context of patriarchy and laws that accord secondary status to women need to be reformed.

- **SUPPORTING ALL REFORM MOVEMENTS THAT CHALLENGE PATRIARCHY:** Every citizen should join hands with the government to eradicate the injustice against women which will lead to the overall growth and development of entire nation. We have to try to lead traditions out of darkness into light and not allow them to lead us into darkness.

Policies on women’s empowerment exist at the national, state, and local (Panchayats) levels in many sectors, including health, education, economic opportunities, gender-based violence, and political participation. However, there are significant **gaps between policy advancements and actual practice** at the community level. So the main effort of the state and all the law-making bodies should be to fill this gap between ideology and practice of law making. They should try to abandon all those laws (like Triple Talaq, polygamy etc.) which are against constitutional ethos. The Constitution guarantees minority communities the right to freely practice and propagate their religion, own property and establish places of worship and run educational institutions. This constitutional protection draws strength from a framework of liberal democracy. Moreover, in a secular democracy religious laws cannot trump the constitutional right to equality. Given that Hindu personal laws have evolved to empower Hindu women, there’s no reason why Muslim women have to suffer from patriarchal religious practices. Triple talaq and polygamy fail the test of Indian constitutionality.

Thus, the rights of women should be respected across nations which are denied through power structures and social customs like Triple Talaq and polygamy. The women should not be deprived of their basic dignity of life which they deserve. Introduction of a secular code drawn from the principles of personal freedom, human rights and justice will not only strengthen secularism but will reinforce women empowerment.

**MODEL QUESTION**

1. There has been a debate going on for a secular Uniform civil code by dissolving all personal laws which would reinforce the idea of secularism and women empowerment in our country. Why and how do you think that this step would strengthen the unity and integrity of the country?