

**DME**

# Law@DME

November 2016

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Delhi Metropolitan Education remains committed to its goal of reducing its carbon footprint. As per our environment policy, we will be making the switch to our e-edition of Law@DME from the December Edition. We are sending an electronic version of the newsletter to you this month as well. If you do not receive it or would like to update your email address on our record, or if you would prefer to continue receiving the print versions, please let us know at law.newsletter@dme.ac.in.

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## LETTER FROM THE EDITORIAL BOARD



It is our pleasure to welcome you to the November edition of Law@DME. The spirit of Diwali injected altruism and a yearning for knowledge in the members of faculty as well as the students of Delhi Metropolitan Education, and nothing reflects this more than the events we organised in the month of October. In addition to reporting on these events, this edition features humorous commentary on legal updates from around world, records of students' recent achievements, and articles by a faculty member and students on the theme of the month, 'Triple Talaq'.

Now that Diwali is gone, leaving behind it a toxic haze, it has become necessary to direct our attention to the pressing issue of protecting the environment. The upcoming theme of the month for the December Edition is 'Humans vs Nature', and focuses on the pandemic of environmental degradation, spurred by the necessary evil of economic development and the rather unnecessary one of wilful human negligence.

Students are encouraged to continue to send us submissions on the theme of the month, along with their achievements or even general feedback on the newsletter. We can be reached at law.newsletter@dme.ac.in and would love to hear from you.

## UPCOMING EVENTS

*Inter-College Delhi Metropolitan Education Model United Nations – 5-6 November 2016*

*National Law Conference on 'Environmental Jurisprudence in India' – 12 November 2016*

## Law Students Gain Realistic Insight into the Legal System

-- Vallabha Gulati, BA LLB, Second Year

It is a widely acknowledged truth that the theory of law differs vastly from its actual practice. When it comes to ensuring their clients have the greatest advantage, lawyers use every trick up their sleeves – debating the meaning of every word, questioning the placement of every comma, and exploiting as many loopholes as possible. The judges, meanwhile, struggle in a system that favours innumerable delays in the dispensation of justice. Tasked with giving every person the 'right to be heard', even with an ever rising backlog of cases behind them, the judges often find themselves trapped between the proverbial rock and a hard place.

On 24 October 2016, our School of Law conducted a visit to the District and Sessions Court, Gautam Budh Nagar in the Greater Noida district of Uttar Pradesh. This excursion was headed by the Convener of the Legal Aid Committee, Mr MZ Alam, and Assistant Professor (Law) Mr Kush Kalra. They guided a team of 30 students, all members of the Legal Aid Committee. Students were divided into groups comprising of six. These groups were then assigned to different courtrooms to observe the proceedings.

The purpose of the visit was to help students understand the vital role of the court in dispensing justice, the role of a prosecutor, the way a case proceeds in a court, and the relationship between the prosecutor and the police. It also helped students understand and evaluate the resources available and the distribution of power between the judges, the prosecution and the defence council. It provided students with the opportunity to understand the actual need of coordination in the four

pillars of the criminal justice system. The visit included an in-depth study of the day to day functioning of the criminal courts, dealing with numerous cases and involving different questions of law.

This visit imparted practical legal knowledge to the students and showered them with a learning experience which will be of great use to them in the future. The students were enlightened and gained invaluable knowledge as they were acquainted with the realistic road of the legal profession. We aim to promote and conduct more such visits.



Students pose before the District and Sessions Court, Gautam Budh Nagar (top) and observe court proceedings (bottom)

## Client Counselling Competition: Taking Professionalism a Cut Above

– Ashi Gupta, BBA LLB, Second Year

Delhi Metropolitan Education orchestrated an Intra-College Client Counselling Competition in its precincts on 15 October 2016. There was a plethora of teams from the Second, Third and Fourth years, endeavouring to own a spot in the semifinals and finals concomitantly. The students were prepared with professionally arranged props and answers to every hypothetical question their clients could have raised. The criteria of judgement were the establishment of a working atmosphere, outlining of the problem, identification of the client's goals and expectations, problem analysis, legal analysis, alternative course of action, fee negotiation, teamwork, effective conclusion, and post interview reflection. Those who managed to tick all the boxes with the greatest skill were elevated to the semifinals and then the finals.



The participants counsel their client before the judges



DME awards certificates and trophies to winners

The final round came about in the Nelson Mandela Auditorium. To commence the session, Maa Saraswati Sharde was rendered in the auditorium while the lamp-lighting ceremony was performed by the Director General of DME, Hon'ble Mr Justice Bhanwar Singh, Principle Academics, Prof. (Dr) Vikram Dutt, and Mr MZ Alam, who also adjudicated the final round of the competition. The teams selected for the final round were all set to manifest their A-games.

The finals started with the judges scrutinising the abilities of the Fourth, Third and Second years respectively, while the students of the First year acted as clients. The finals were marked by a

prodigious amount of professionalism, be it in the props, the clients' welcome, or the participants' counselling capabilities. The counsels crossed all the stumbling blocks thrown wittingly by the clients, ranging from a sudden avalanche of questions and emotions to attending a call in between, with unflagging zeal. They had many stopgaps up their sleeves as and when needed.

The competition was followed by stirring speeches by luminaries which ameliorated the morale of all students present. Hon'ble Mr Justice Bhanwar Singh's address revolved around the importance of time management, use of Parliamentary language, alternative dispute resolution and the tricky question of 'compensation' in client counselling competitions. Prof. (Dr) Vikram Dutt spoke of the gravity of a sound personality of a lawyer and the need to mould oneself as per different situations, and fascinated the audience and the participants by comparing a lawyer to a detective. The Convener of the ADR and Client Counselling Society of DME, Ms Ashima Virmani, delivered a vote of thanks at the end, congratulating the participants and thanking the volunteers working tirelessly behind the scenes.

Following the presentation of the speeches, the moment arrived for the declaration of the results, along with the distribution of prizes and certificates. The session was concluded with a rendition of the National Anthem.

### WINNERS OF THE CLIENT COUNSELLING COMPETITION

Second Year	Ayush Goel, Kuber Mahajan
Third Year	Trupti Panigrahi, Abhishek Kumar
Fourth Year	Ankit Kaushik, Ria Kathuria

## Guest Lecture on Drug Abuse Spreads Awareness

– Ahad Ahmed Khan, BA LLB, Second Year

On 4 October 2016, a guest lecture on drug abuse was held for the benefit of our students. Ms Astha Singh, a prominent social and animal rights activist was invited along with some members of her team at the NGO, 'Honour'.

The lecture revolved around the statistics of drug abuse, popular drugs taken advantage of along with their effects on health, and scenes from various documentaries with the intention of creating awareness. Additionally, it critically appraised India's laws and policies on the issue. It also featured an interview of Mrinal Verma, a former drug addict who now runs a rehabilitation centre. The session was poignant and informative, and helped educate the students sensitively on the issue.



Ms Astha Singh addresses the students



## Talaq-ul-Biddat and the Discord between Muslim Personal Law and Women's Dignity

-- Mohd Zulqarnain Alam, Assistant Professor (Law), DME

As humans continue to evolve, so do their institutions and beliefs. But when progress comes to war with tradition, it becomes difficult to assuage the sentiments of both sides. Talaq-ul-Biddat, or, as it is more commonly known, Triple Talaq, is the latest in a long line of controversies that arise when the human rights of two different groups clash. In this case, the women rights groups allege that the process of pronouncing talaq thrice, in quick succession, demeans them and strips them of their dignity, treating them as mere chattel. Meanwhile the All India Muslim Personal Law Board does its utmost to defend a tradition rooted in antiquity and the teachings of the Caliphs.

I intend to press the case of harmonious construction, one where Islamic personal law will serve to strengthen women's rights rather than undermine them. In order to do so, it becomes necessary to delve into the history of the husband's power to pronounce divorce under Islamic law.

From the time of Prophet Mohammed, divorce, while frowned upon by society, was nonetheless presented as a remedy to extremely unhappy couples whose incompatibilities were irreconcilable. The Holy Prophet reportedly said that divorce, while most despised by God, was a permitted act. The Holy Quran declares that, before any couple is to divorce, they have to first briefly sever physical relations, in the hope that this temporary separation might spark love between them again. They next have to appoint arbitrators to help them resolve their marital issues (Quran 4:35). Only then, if all else fails, can the husband pronounce the Talaq-ul-Sunnat. This is the 'correct' form of divorce, and can be pronounced in two ways – Ahsan and Hassan. The first requires the husband to pronounce Talaq on a single occasion during the period of 'tuhr' (when the wife is not menstruating). The divorce is revocable for the following three months of Iddat, when the wife maintains her purity. The second process requires the husband to pronounce Talaq in three successive tuhrs, and only on the final pronouncement will the divorce be irrevocable.

Prophet Mohammed was followed by religious successors, different Caliphs whose job was to act as Stewards of Islam. During the reign of the Caliph Hazrat Umar, several distressed women brought to him the plea that their husbands were misusing the long, drawn out process of divorce. The men would pronounce Talaq one month and then revoke it the next, trivialising the notion of marriage and causing their wives mental anguish. Hazrat Umar then propagated the concept of the Talaq-ul-Biddat, in order to put an end to this emotional cruelty. He declared that if a husband were to pronounce Talaq thrice, it would be irrevocable and final, but also declared that the man pronouncing Talaq in such a way would be punished.

As with other traditions, the Talaq-ul-Biddat, meant to be relied upon in rare cases and, even then, with a price attached, has now become normalised. Added to this is the agony felt by women as they remain at the mercy of their husbands who might, at any time, pronounce divorce.

My proposal, therefore, is to bring back the original penalties attached with the Talaq-ul-Biddat. After all, child marriage is not absolutely prohibited under the personal laws of the Hindus. It is perfectly valid under the Hindu Marriage Act 1955, but attracts a penalty under section 18 of the Act. Even the Prohibition of Child Marriages Act 2006 only makes it voidable, not void. Penalising the triple talaq without completely delegitimising it will go a long way towards helping the women's rights cause without denigrating Islamic law.

Regardless, the object of nikah and talaq is to give happiness to both the parties. As in the case of nikah, an individual takes his or her decision with due care and attention. Both spouses want to live together and both decide to wed simultaneously (Ijab-o-

Qubool). Why, then, should the woman become the victim of a unilateral talaq, merely from the triple pronouncement of talaq by her husband? There must not be any discrimination in this regard. Islam must protect rights, and not violate them.

## Triple Talaq: a Needless Evil

-- Radhika Kumar, BBA LLB, Second Year

-- Pulkit Advani, BA LLB, Third Year

Talaq is an Arabic word which implies 'taking off any tie or restriction'. In law, it means the disintegration of marriage. In Hanafi Law, no unique frame or expression is important to purport talaq, yet the Ithna Ashari law demands strict adherence to procedure: it must be orally articulated in Arabic dialect, in proximity to, and after becoming aware of, two male witness who ought to be straightforward and prudent Muslims. The pressing issue of divorce today surrounds Talaq-ul-Biddat, more commonly known as 'triple talaq'. It is a process of pronouncing 'I divorce thee', in some form or the other, thrice within the period of the same tuhr (menstrual cycle), instead of waiting for the customary three tuhrs. This form of talaq has been denounced as being 'incorrect' and 'sinful' and is even outlawed in 22 Muslim nations in the world, including Pakistan and Iran.

In the 2002 judgment of *Shamim Ara v State of UP*, the Supreme Court stressed that under Islamic law there indeed is a proper procedure of talaq, and, unless the husband proves that he has followed that procedure, his claim of having divorced the wife in the past cannot be accepted. This ruling was affirmed in *Iqbal Bano v State of UP*, five years later. However, the real turning point came with the revolutionary judgment pronounced by the High Court of Delhi in *Masroor Ahmad v State* in 2008, where Justice BD Ahmed ruled that in the peculiar circumstances of India, a triple talaq in every case should be deemed to be a single revocable pronouncement of talaq only.

Unfortunately Muslim men in India remain wilfully ignorant of the genuine Islamic law on separation and trust Talaq-ul-Biddat to be a valid Islamic method for separating from their spouses.

Recently, the concept grasped the nation's attention due to Shayara Bano, a Muslim woman who filed a petition in the Apex Court. She has asked the Court to declare the practices of Talaq-ul-Biddat, Nikah Halala (bar against remarriage with divorced husband without an intervening marriage with another man), and polygamy under Muslim personal laws as illegal, unconstitutional, and in violation of Articles 14, 15, 21, and 25 of the Constitution. A division bench of the Supreme Court has put the ball of triple talaq back in the court of the Central government, to deal with the vexatious problem ruining the lives of Muslim women. In fact a survey in 2015 by the Bharatiya Muslim Mahila Andolan (BMMA), conducted with 5000 Muslim women across 10 states, presented an overwhelming support for ending the discriminatory practices. It found that over 90% women wanted an end to polygamy and triple talaq. 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. The Muslim community of India has itself been clamouring for reform and ban of oppressive practices that have no basis in Islam or the Holy Quran. The Muslim Personal Law Board, however, keeps insisting on the validity of triple talaq in India. Why should the All India Personal Law Board be allowed to parade these inhuman and illegal practices in the 21st century?

This is, at heart, a fight between women desiring change and religious heads opposing it. It is hoped that a day dawns when the Muslim women of this country, trapped in this web of politics and religion, can turn around on hearing the dreaded triple pronouncement of talaq and say, 'Sorry, sir, I'm still your wife. The highest court has said so!'

## Student Achievements



- Surya Saxena, Garvit Johri and Ashutosh Dang, BA LLB Fourth year, received the Special Appreciation Award for the National Seminar on Surrogacy, held by the UFYLC Rajasthan University.
- Aayush Goel, Kuber Mahajan and Akash Jain, BBA LLB Second year, were the quarter finalists in the Prof. VS Mani International Moot Competition.
- The teams of Ria Kathuria and Ankit Kaushik, BA LLB Fourth year, and of Priya Gupta and Shravan Chandrashekhar, BA LLB Fourth year and BBA LLB Third year respectively, reached the semi finals in the National Client Consultation Competition conducted by the NorthCap University.
- Avni Sharma, BA LLB Second year, represented India in 'Youth ki Awaaz', powered by UNICEF, in the dialogue, 'The Invisibles'.

## CAMPUS SNAPSHOTS

- On 3 October 2016, we organised our annual Blood Donation Camp to support the National Thalassemia Welfare Society. Students and members of faculty from all streams participated and were, together, able to contribute 83 units of blood.
- On 28 October 2016, under our Community Connect Project, a group of 25 students visited the Om Foundation, an NGO, for the purpose of making Diwali special for orphans and disadvantaged children. Contributions were made in the form of stationery, medicines, clothes and sports and music equipment. Additionally, they held fun activities such as 'Best out of Waste' to create a fun atmosphere for everyone.
- On 28 October 2016, our FLY initiative marked the occasion of Diwali with gifts, cake and refreshments, in the beautifully decorated Nelson Mandela Auditorium. The festivities also included celebrations of the birthdays of the DME family, including those of the Chairperson, Mrs Kiran Sahni, and the Vice Chairman, Mr Aman Sahni.



## LEGAL HUMOUR

### Moved by the 'Spirit' of Equity, Court Declares House to be Legally Haunted

The rule of law normally has no truck with spirits and otherworldly creatures. Yet, when extraordinary circumstances brought a distressed buyer before the appellate court of New York, USA, the court was moved to legally declare a house haunted. The case of *Stambovsky v Ackley*, now more famously known as the Ghostbusters ruling, was delivered fifteen years ago. Given its spooky subject matter, it makes for the ideal legal precedent to revisit in the month of Halloween.

It all started when an unsuspecting couple learned that the house they had recently made the down payment on was one of the highlights on local ghost tours. Apparently, its previous owners, the Ackleys, had garnered heavy media exposure by claiming it was haunted. The eight benevolent poltergeists that allegedly occupied it involved themselves in every aspect of the Ackleys' daily lives, from waking them up in the mornings by shaking their beds violently to approving new wallpapers. When the home was eventually put on sale, however, the homeowners omitted this information. Alarmed, the buyers wanted a full refund.

The trial court employed the notion of *caveat emptor* to suggest that, even if the house were haunted, the onus fell upon the buyers to inform themselves of this fact before the purchase. The appellate court, however, took pity and reversed the decision. Stating that the plaintiffs did not have a 'ghost' of a chance to ascertain a haunting, and after making several other puns, the court declared that they were entitled to rescind their contract.

Present homeowners who are strapped for cash and noticing signs of a haunting need not despair, however. The Stambovskys may have backed out, but the Ackleys soon found buyers willing to pay 50% more than the property value, solely due to the ghosts attached.