

THE GENDER RIGHTS OF THE MUSLIM WOMEN- IN REFERENCE TO THE UNIFORM CIVIL CODE IN INDIA

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ABSTRACT

This paper is based on the aptness of the Uniform Civil Code in India, in relation to the gender equality matter especially for the Muslim women in India. The article shall discuss on various Case Laws and specifically the Shah Bano Case judgement in detail, along with the Triple Talaq Bill that has been recently proposed. This article will basically deal into all the problems that a Muslim woman deal into, in her life regarding maintenance, divorce, marriage, inheritance, adoption laws etc. and various relevant opinions on the UCC. Therefore, a Uniform Civil Code is the utmost need of the hour for our country for protecting and preserving the rights of a Muslim women which has been most of time overseen by the country. This research paper shall discuss the factors that whether there must be some modifications in the Mohammedan Law or the Uniform Civil Code shall be adopted all over instead, what are the opinions of various learned and distinguished personals on the UCC, and the struggling status of Muslim Women. Men and Women are two sects of the society which balances the equilibrium of the nature. But India is such a country where male plays the ideal role of 'bread-earners' and 'Karta' of the family. Anything against them or anything done to belittle them is taken to be as a crime no matter how unfair they are or how cruel they are against their opposite sex. No matter in the dawn of modernisation and development, India has too changed their way of thinking and liberalised quite a lot the rules regarding men and women. However, changes in the way of thinking also took place but these were not put into action. They were just mere rules, which kept the rate of crimes against women growing fast. Then the administration and the government were compelled to take few actions in order to bring the gap between the men and women to an end. The personal laws for different communities differed from each other. The Hindu women, where had liberalised laws on the other hand the Muslim women had very much

harsh rules for themselves. The personal laws for Muslim women regarding adoption, guardianship, marriage, divorce differs to that of the rules for the Hindu women. Therefore, the UCC could make a code of conduct which would be uniform or same for all the people from different communities. However, a revolution has started already which was maybe very necessary and it is also very much evident throughout the legislative and judicial journey the Muslim women have been through, in these years.

INTRODUCTION TO GENDER JUSTICE AND UNIFORM CIVIL CODE

The Indian democratic society, which is governed by the rule of law, in which it is predicted that all citizens are equal before law and entitled to receive equal protection of law, irrespective of their caste, creed, religion, race and sex etc. But, the pillar of humanity i.e. women are jeopardized in many ways and bound to face problems of varied nature only due to being women. Constitutional and statutory protections and safeguards could not provide fruitful results for their protection in form of a human being. Though, the Indian Judiciary has also done a lot but it is ground reality that there are some limitations on jurisdiction of Judiciary and Judiciary cannot take over the functions of other organs of the State viz. executive and legislative. In this connection, the Uniform Civil Code (UCC), a constitutional mandate, is awaiting the mercy of Indian Legislature to take the form of law to provide equal status to women, who are victims of diversities in personal laws.

In India, it is harsh fact that women, at the first hand, are not women rather they are Hindu, Muslim, Christian, Jew or Parsis. This mentality is the root cause of our backwardness, discrimination and various social evils. It is need of hour to understand the utility of UCC which is an efficient tool to harmonise the diversities of laws in personal matters which will ultimately achieve the objective enshrined in gender justice. In this chapter, an attempt has been made to draw the full picture of UCC, its need and relevance for enactment.¹

Therefore, the UCC could make a code of conduct which would be uniform or same for all the people from different communities. However, this UCC has not been legalised yet in India.

The main issue started from the Shah Bano Case, where a Muslim elderly woman was divorced by her husband who had children and at the verge of dying. She was out of all kinds of earning

livelihood and her existence. However the Supreme Court gave the judgement that she must be entitled to proper and justified compensation.ⁱⁱ Then an Act was passed by the Rajiv Gandhi government to nullify the decision in Shah Bano case. This case caused the Rajiv Gandhi government, with its absolute majority, to pass the Muslim Women (Protection of Rights on Divorce) Act, 1986 which diluted the secular judgement of the Supreme Court.ⁱⁱⁱ

The law applies to the whole of India except Jammu and Kashmir. It is administered by any magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973. As per the Act, a divorced Muslim woman is entitled to reasonable and fair provision and maintenance from her former husband and this should be paid within the period of iddah^{iv}.

According to the Statement of objects and Reasons of this Act, when a Muslim divorced woman is unable to support herself after the iddah period that she must observe after the death of her spouse or after a divorce, during which she may not marry another man, the magistrate is empowered to make an order for the payment of maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim Law. But when a divorced woman has no such relatives, and does not have enough means to pay the maintenance, the magistrate would order the State Waqf Board to pay the maintenance. The 'liability' of husband to pay the maintenance was thus restricted to the period of the iddah only.^v However, High Courts have interpreted "*just and fair provision*" that a woman is entitled to during her iddat period very broadly to include amounts worth lakhs (hundreds of thousands) of rupees. More recently the Supreme Court in *Danial Latifi v. Union of India* read the Act with Art 14 and 15 of the constitution which prevent discrimination on the basis of sex and held that the intention of the framers could not have been to deprive Muslim women of their rights. Further the Supreme Court construed the statutory provision in such a manner that it does not fall foul of *Articles 14 and 15*.^{vi}

The provision in question is Section 3(1) (a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 which states that "*a reasonable and fair provision and maintenance to be made and paid to her within the iddah period by her former husband*". The Court held this provision as means that reasonable and fair provision and maintenance is not limited for the iddah period (as evidenced by the use of word "within" and not "for"). It extends for the entire life of the divorced wife until she remarries.^{vii} In *Shabana Bano v Imran Khan*,^{viii} the Supreme Court held that a Muslim divorced woman who has no means to maintain herself is entitled to

get maintenance from her former husband even after the period of iddah and she can claim the same under *S.125 CrPC*.^{ix}

Divorced women are entitled to maintenance not only for iddat period from their former husband but also to reasonable and fair provisions for future maintenance. ^xS.3 of the Muslim Women (Protection of Rights on Divorce) Act has to be given under the liberal interpretation to help divorced women. *K. Zunaideen v. Ameena Begum* (1998).^{xi}

The Act is declaratory & retrospective in its operation. Even if wife is divorced prior to the commencement of the act husband is liable to provide reasonable & fair provision & maintenance to her as mentioned in *Hyder khan v. Mehrunnisa* (1993) case. Basically, the Act passed by the Rajiv Gandhi Government nullified the historic judgement passed by the Supreme Court in the Shah Bano Case.

Hence the UCC can only solve all these problems and bring these gender injustices to an end, because all women irrespective of any religion should be entitled to equality, respect and all kinds of considerations.^{xii} Hindu women, where has equal rights to maintenance, adoption, divorce, marriage, Muslim women doesn't. Hence these inequalities are still prevalent in the society. The paper, henceforth will discuss some of these issues and how these shall be put to an end.^{xiii}

RELATION BETWEEN UNIFORM CIVIL CODE AND GENDER JUSTICE

The implementation of a uniform civil code and the issue of gender justice are very closely connected to each other in Indian socio legal perspective. Notwithstanding its need and importance, the state's politico-legal standpoint about its implementation attracts in-depth legal inquiry. on the other dimension, the basic issue of ensuring justice and equality to women is getting trapped in many other contemporary issues like religion, secularism, and freedom. However, one cannot flounce the main issue under the disguise and harp on other relatively connected issues day in and day out. Gender issues, in this regard need to be addressed very seriously. This paper is an attempt to co-relate the question of gender justice and equality to the issue of the adoption of uniform civil code throughout the territory of India.

Women empowerment in core areas like social status, gender bias, health, security and empowerment are of urgent necessity. Article 44 expects from the State to secure a Uniform Civil Code for all citizens of India. There is no Uniform Civil Code in India but a Uniform Criminal Code exists. The Criminal law is equally applicable to all citizens irrespective of their religious affiliation. However, in the case of civil law particularly in the matter of personal laws there is no uniformity. The law relating to marriage, divorce, maintenance, guardianship and succession governing the Hindus, Muslims and Christians etc., is different and varies from one religion to other. This is the time to discuss all the personal law of every community with the various judgments of the Supreme Court of India where the apex court has suggested to the Central Government for the enactment of a Uniform Civil Code. A uniform civil code will help the cause of national integration. It is the humble opinion that a Uniform or common civil code is possible only when the governments consider the gender justice as the ultimate goal. There are different laws like the Hindu Marriage Act 1955; the Hindu Succession Act 1956; the Hindu Minority and Guardianship Act 1956, the Hindu Adoption and Maintenance Act 1956; governing the personal matters of Hindus. The Sharia Act 1937, The Dissolution of Muslim Marriage Act 1939 and the Muslim Women (protection of Rights on Divorce) Act 1986 etc., which are based on the tenets of Holy Quran, govern the personal matters of Muslims. Similarly, the Indian Christians are governed by the Indian Christian Marriage Act 1989, the Indian Divorce Act 1969 and the Cochin Christian Succession Act 1921 etc. Parsis are governed by a different set of laws. Thus, it is clear that there is no uniformity in all personal laws as they confer unequal rights depending on the religion and the gender.^{xiv}

Needs of the Muslim Women- UCC or the Sharia Codification

A UCC or change in the Sharia Law- The Co-Founder of the Bharatiya Muslim Mahila Andolan, Noorjehan Safia Riaz, claimed that, Muslim women don't need a UCC, but a change in the codification in the Shariah Law.

What Muslim women need is codification of the Sharia on the basis of Qur'anic texts and the Constitutional values of equality and justice, which has been done in the case of Hindus, Christians, and Parsis, even when there was no UCC. Also, the demand for implementation of UCC always situates the debate in political terms as it has now both the state and the All India

Muslim Personal Law Board (AIMPLB) are exploiting the UCC issue for their own constituencies. Muslim women are the losers because the predictable narrative on UCC always puts the larger and independent issue of Muslim women's gender rights on the back-burner. Hence the BMMA (Bharatiya Muslim Mahila Andolan) states the main benefit of the Muslim Women lies in changing the codification of the Shariah Law in terms of equal treatment for men and women.

Therefore, this has become a grave issue which need proper legal, political and constitutional intervention since decades. Nowadays the problem has intensified in such a way that Muslim women has started giving divorce in messages and calls. Recently two Muslim women from Madhya Pradesh and West Bengal claimed, that they have been given divorce by their husband over WhatsApp message, which has been also approved by the Qazi.^{xv}

As the BMMA and several other civic society members have been saying for years, the Sharia needs to be codified. The Quran also does not sanction triple Talaq as Prophet Muhammad even condemned it. The Quran actually talks of arbitration. Why shouldn't the arbitration as sanctioned by the Quran be part of the codified Muslim personal law? The government needs to bring in a legislation that seeks to codify the Sharia, like it has been done for women of other faiths in India and the Muslim Women (Protection of Rights on Divorce) Act of 1986 brought in after the Shah Bano case. This is the most practical way of ensuring that Muslim women get their gender rights. A draft of the codified Sharia has also been sent to the Prime Minister's office, to the Law Commission, and also to the National Commission for Women with 50,000 signatures has been reported so far.

Ignorance of the Government- Though the government needs to focus on the codification aspect only however the government and AIMPLB are addressing their own constituencies by sticking to the UCC narrative. For AIMPLB, any insistence on imposition of UCC is welcome because it allows them to create a scare among Muslims about the government's intention. It also gives them the license to accuse people like who represents the ideas and the interests of the Muslim women, for furthering the RSS (Rashtriya Swayamsevak Sangha) agenda of implementing UCC when, what actually been demanded is codification. The AIMPLB is against codification and so it frames the debate in the UCC terms to scare the Muslims. To be fair to the government, the questionnaire drafted by the Law Commission is carefully worded

and is absolutely a non-threatening way to gauge public sentiment on UCC and triple Talaq. We are in the process of drafting our responses to the questionnaire.

Thus, the process and the struggle to have a re-codified Muslim Personal Law goes on between the representatives and the Government. ^{xvi}

Why should Muslim Women welcome the Uniform Civil Code? - The BJP has stirred a hornet's nest by reigniting the debate on a uniform civil code (UCC) in India. The government has requested the Law Commission to examine the issue and make relevant recommendations. on the other hand, the practices of triple Talaq, Halala (bar against remarrying a former husband unless you have married another man in between) and polygamy have been challenged before the Supreme Court in *Shayara Bano vs Union of India*, with the demand that they be deemed unconstitutional. The All India Muslim Personal Law Board (AIMPLB) has opposed the implementation of a UCC in an affidavit filed before the Supreme Court. Amidst all the hoopla surrounding the UCC, many Muslim women in India remain unsure on which side they stand. on the one hand, "Muslim personal law ordains certain practices that have proved to be derogatory for the rights of women; on the other hand, the ruling party has not been able to instil confidence in India's Muslim population". However, one thing is clear: gender justice cannot be achieved through personal laws, especially in the case of Muslim women. Muslim personal law, as followed in India, is inherently biased against women and many times leads to their exploitation. Moreover, because of the application of personal law in the matters of marriage, divorce, maintenance, inheritance, adoption and the like, Muslim women are precluded from enjoying the benefits accrued to them through secular law, which their counterparts from other religious communities enjoy. Therefore, it is very much necessary for the UCC to be adopted by the country in order to bring these discriminations to an end. Muslim women need a UCC for various reasons, and certain grounds for which UCC is required are explained below.

- **Maintenance**

The best example to understand the predicament that surrounds the rights of women under Muslim personal law is maintenance. The *Shah Bano* case and its aftermath very aptly illustrated the problem arising due to the lack of a UCC in India. The question before the

court in Shah Bano was whether a Muslim woman is entitled to claim maintenance under section 125 of the Criminal Penal Code^{xvii} (or secular law) from her former husband even after the period of iddat has expired. The husband claimed that he did not need to pay maintenance any longer as Muslim law stipulates that maintenance must only be paid during the period of iddat and not beyond it. The court, taking a secular view, allowed Shah Bano to claim maintenance even after this period.^{xviii}

The Shah Bano judgment was seen as a blow to Muslim personal law and, under pressure from the religious orthodoxy, the government was forced to pass the Muslim Woman (Protection of Rights on Divorce) Act, 1986^{xix}. The Act specifies that a reasonable amount of maintenance is to be paid to a divorced wife within the iddat period by her former husband. The validity of this Act was challenged before the Supreme Court in Danial Latifi. The court, though upholding the validity of the Act, held that the duty of a Muslim man to his divorced wife is not confined to the iddat period and that a reasonable and fair provision extending beyond that must be made by the former husband within the iddat period.

Had the Supreme Court not acted as a saviour in cases where former husbands refused to pay maintenance, thousands of Muslim women would have been divorced and forced to live without any support. It is only due to the decision of the Supreme Court in Danial Latifi that Muslim women are able to enjoy the fruits of Section 125 of the Criminal Penal Code in the same manner that Hindu and Christian women do.

- **Triple Talaq**

The archaic practice of triple Talaq is not only anti-women, it is also anti-Islam. It has already been abrogated in more than 20 countries, including Pakistan and Bangladesh. A triple Talaq divorce is valid even if the husband says “Talaq” three times on the phone, in a letter or even on WhatsApp.^{xx}

The AIMPLB has, time and again, opposed the abolition of triple Talaq in India by arguing that it is based on sharia law. However, the Quran does not mention triple Talaq as a method for divorce. According to the Quran, the correct way to get a divorce is to pronounce it three times on three different occasions, following a three-month waiting period wherein there is

ample opportunity for the couple to reconcile. Another method the Quran prescribes for Talaq is to pronounce it during two successive periods of purity (tuhr), during which the Talaq remains revocable. If the Talaq is not revoked and is pronounced a third time, it becomes irrevocable.^{xxi}

- **Halala**

Halala is the procedure prescribed for remarrying a divorced spouse. It entails the (former) wife marrying another man, consummating the marriage and subsequently getting a divorce using the same elaborate procedure. Only after that is she eligible to marry her first husband again. While Muslim scholars rightly argue that Halala should not be seen as a procedure to legalise the reunion, problems regarding the validity of a marriage arise in case a husband remarries his wife without observing Halala.^{xxii}

This issue came before the Bombay high court when singer Adnan Sami challenged the validity of his marriage. He married his wife in 2001, divorced her in 2004 and then remarried her in 2007. Since Halala was not performed by the parties, the family court held the second marriage to be invalid. The Bombay high court, however, held that a wife is not obliged to perform Halala before remarrying the same husband if she is divorced by khula or Talaq-e-Ahsan (the prescribed mode under the Quran) methods. Halala is mandatory only if the couple divorced using triple Talaq, the court said.^{xxiii}

A UCC is urgently needed to do away with the practice of Halala, which violates the basic rights and dignity of a woman.^{xxiv}

- **Polygamy**

There are various reasons given by Muslim scholars to justify polygamy. The Quran is often cited to show that polygamy is allowed only under certain special circumstances, that it is not a rule but only an exception and that Islam actually limited the number of wives a man can have to four. But the focus of this debate shouldn't be the limits Islam puts on polygamy; it should be whether polygamy as a practice is at all acceptable in the 21st century. If the

wife of a Hindu or a Christian man has the right to bring criminal charges against her husband for bigamy, why should a Muslim wife be deprived of this right?^{xxv}

An oft-cited argument to justify polygamy is that if a woman is ill or unable to bear children, her husband can marry another woman to procreate instead of divorcing her and sending her away. However, given the progress society has made in the field of medical sciences and the number of options available for childless couples, this argument has become increasingly redundant.^{xxvi}

Contrary to popular belief, a UCC will not take away all the personal entitlements of an Indian Muslim; it will only make those entitlements unenforceable in a court of law. Parties will still be free to practice their religion as they like, though the legal enforceability attached to these practices will be extinguished. For example, a divorced Muslim woman can marry anyone after her divorce, and if her second husband also divorces her, she is free to remarry her first husband. The law does not limit a woman's choice – she is free to practice Halala^{xxvii} if that is what she wants. However, if a wife chooses not to do so and still remarries her first husband, he will not be allowed to claim before any court that such the marriage is void because of the non-performance of Halala.^{xxviii}

Various opinions on the UCC in reference to the Gender Justice of MW.

Take of Muslim Personal Law Board on the UCC.- The people of the Board i.e. the Muslim Personal Law Board who claim to represent each and every Muslim of the country and their interests, who actually do not represent even the half of them which is meant by the women population. But they claim to represent the whole Muslim population.

Instead of supporting the UCC, and work for equal and uniform laws for all the women, the Board challenges the UCC and also the ban on the Triple Talaq by the Supreme Court.^{xxix} The grounds which they have stated for their denial with the UCC are as follows-

- **If men can't divorce their wives, they will kill them.**
- **Male is stronger and female is the weaker sex.**
- **Court proceedings scandalize women.**
- **Court divorce hinders remarriage.**

- **Muslim law cannot be edited.**

Therefore, these were the grounds which were stated by the Muslim Personal Law Board because of which they challenged legalising the Uniform Civil Code in India and also protested against the ban on the Triple Talaq put by the Supreme Court because as per them, the Islam had already gone through many changes but those were as per the requirements of the people and their traditions, nothing against them.

Opinion of the Law Commission of India- The Law Commission of India has sought public opinion on the exercise of revision and reform of family laws, in view of Article 44 of the Constitution of India which envisages a Uniform Civil Code for all Indian citizens. The Commission has prepared a questionnaire to solicit public opinion on ways in which family law reforms could be introduced in a manner that “does not compromise the diversity and plurality that constitutes the core of India’s social fabric.” The objective of the exercise, as per the LCI notification, is to address discrimination against vulnerable groups and harmonize various cultural practices. It hence seeks to consider the opinion of all stakeholders and the general public “for ensuring that the norms of no one class, group or community dominate the tone or tenor of family laws.” The Law Commission of India hopes to begin a healthy conversation about the viability of a UCC and to focus on family laws of all religions and the diversity of customary practices, to address social injustice rather than the plurality of laws. Responding to the demands of social change, the Commission will consider the opinions of all stakeholders and the general public for ensuring that the norms of no one class, group of community dominate the tone or tenor of family law reforms.^{xxx}

Other Opinions of Politicians, Writers, Academicians, like (Nitish Kumar, Kavita Menon, and K. Kanan)-

Bihar **Chief Minister Nitish Kumar** has written to the chairman of Law Commission conveying his government’s inability to form an opinion on the Uniform Civil Code. He cited the absence of any specific or concrete information about its contours and the lack of consensus among religious groups on it.

Kumar also emphasised on forming consensus among all the stakeholders before the code was implemented.

Though Article 44 of the Constitution says that the state shall endeavour to provide for its citizens a UCC, but “the makers of the Constitution had thought of a UCC as something which may be feasible in the long run with consensus of all the stakeholders”, Nitish Kumar wrote.^{xxxii}

Again, **Kavita Menon** who is an MD in Dermatologist and also a public speaker, has also spoken about this UCC issue. She vehemently opposes the personal laws which degrades and demeans the existence of Muslim women in the society. She says if the UCC is intended to legalise only the guardianship and inheritance laws, then there is no need of the UCC, rather we can simply modify or amend these laws in the Personal Law. However, she also keeps many strong issues and points which are, Muslim Personal Law which is already modern since 1930s which enshrined individual rights to property, unlike Hindu law, in which the family’s natural condition is assumed to be “joint”. In the decades of the 1930s and 1940s, contrary to later discourses about Muslim law being backward, it was Hindu laws that were considered “backward” and needing to be brought into the modern world of individual property rights.

She also discusses about the Gender issue, where she says that because of the absence of the UCC, it’s only the women who suffers, so it’s remorsefully only the gender injustice issue that is luring right now in the society among the Muslim women.^{xxxiii}

Again **K. Kanan** says, there are several provisions in the Constitution which are transitory, such as the number of years of provision for reservation of seats for representation in the Parliament and the Legislative Assemblies (Article 334), the time frame when Hindi will substitute English as the lingua franca for official purposes (Article 343), and the special status to Jammu and Kashmir (Article 370). The withdrawal of special status to Kashmir in the present atmosphere will be an invitation to anarchy; reserved constituencies are absolutely essential for several more years to assure adequate political space for the Scheduled Castes/Scheduled Tribes; Hindi has still very little currency in the southern States. The Uniform Civil Code, if brought in now, will be perceived as an apology for hegemony of the Hindu laws over the personal laws applicable to Muslims and Christians, and justifiably so. B.R. Ambedkar at the time of initiating the dialogue and finalising the draft of the Constitution, it was the obvious choice, for he saw no merit in the role of religion in its application to personal laws. The truth is that personal laws are what we confront in our personal lives from birth to death, viz. laws of marriage, maintenance, adoption, custody, guardianship of children and

succession. Religion is the first affinity at birth and it is carried through at one's will through the laws that we recognise as personal to him/her. If we withdraw the personal laws by force, we trench upon the most intimate emotion of an individual. The argument often offered is that every other country does not have different personal laws, so why have it? Ask this question instead: we have different personal laws; how does it denigrate our national solidity? Any talk on Uniform Civil Code must come at such a time and in such a way that we have gradually moved towards assimilation of the very best from each of the personal law systems that exist. He therefore, gave a few way outs, through which we can reach the goal of attaining gender injustice free society. Those were like Judicial interpretations should be used a tool, personal laws should be compared and studied and gradual changes must be put forward.^{xxxiii}

VARIOUS JUDICIAL INTERPRETATIONS

"Injustice anywhere is a threat to justice everywhere"- Martin Luther King

The MW (Protection of Rights on Divorce) Act, 1986.-

Few Acts have been so quickly passed as did The Muslim Women (Protection of Rights on Divorce) Act 1986. The Act came under extreme criticism as a majority of non-Muslims perceived it as a clear symbol of political appeasement at the time of elections. The new Act stated that the Muslim husband is liable to pay alimony only during iddat (the span of 3 months after the divorce). It also stated that if a divorced woman has no relatives to take care of her or she has no way to take care of herself, the magistrate has to order the State Waqf Board to provide support to the woman and her children.^{xxxiv}

Section 125, Code of Criminal Procedure.

Maintenance in general implies basic necessities of life which a person requires for the survival. Maintenance is not defined expressly under the Muslim law. Its meaning has to be inferred from the Hindu Law where it has been used in a wider sense. The Hindu Adoption and Maintenance Act, 1956 defines the term as follows *"in all cases, provisions for food, clothing, residence, education and medical attendance and treatment; in the case of an unmarried daughter, also the reasonable expenses of an incident to her marriage."*^{xxxv}

Under the Muslim Law, the term ‘maintenance’ is called as ‘Nafaqa’ and it includes food, clothing and lodging, though in common parlance it is limited to the first. Under Shariat Law, maintenance is payable to wife, children and parents. It is an obligation imposed on the part of the parties to a marriage agreement which creates a familiar relationship between the spouses. The three reasons for which it is obligatory on one person to maintain another are Marriage, Relationship and Property. The highest obligation arises on marriage; the maintenance of the wife and children is a primary obligation. The second class of obligations arises when a certain person has ‘means’ and another is ‘indigent’.^{xxxvi}

Muslim wife’s claim of maintenance is divided in two different branches of law. one under Muslim Personal Law and another under general law of maintenance as is reflected in Code of Criminal Procedure, 1973 which is a secular remedy.

According to the Muslim Personal Law, the husband’s duty to maintain commences when the wife attains puberty and not before; provided always that she is obedient and allows him free access at all lawful times. If a wife deserts her husband, she loses her right to maintenance. In addition to the legal obligation to maintain there may be stipulations in the marriage contract which may render the husband liable to make a special allowance to the wife. Such allowances are called *kharch-e-pandan, guzara, mewa khore*, etc.

If husband refuses to pay maintenance, the wife is entitled to sue him. Her right may be based on the substantive law, or she may sue under the provisions of Code of Criminal procedure which provides for general law of maintenance under Section 125 wherein the term “wife” is widely defined and explained so as to cover the claim of ‘legally wedded wife’ as well as of ‘divorced wife’. So in short Muslim wife’s claim of maintenance arises in following circumstances:

1. out of the status of Husband & Wife (During the subsistence of marriage & out of the legal obligation imposed on the husband.
2. out of pre-nuptial agreement and
3. out of divorce. (After dissolution of marriage)^{xxxvii}

After various judicial decisions, it is very clear in law that a Muslim woman is entitled to maintenance from her husband even beyond the iddat period under Section 125 CRPC. The Muslim husband would be made to pay maintenance to his divorced wife if she is unable to maintain herself even beyond the iddat period. Decisions like *Fuzlunbi v. K. Khader Vali*^{xxxviii} and *Bai Tahira v. Ali Hussain Fidaalli Chothia*^{xxxix}, both of which were cited with approval in the Shah Bano case make it very clear.

Earlier Muslim women applied for maintenance under Section 125 of CrPC, which awarded monthly maintenance to the divorced woman even beyond the iddat period (the three months after divorce). After the Shah Bano verdict, the government brought in the Muslim Women's (Protection of Rights on Divorce) Act 1986, which tried to restrict the rights of maintenance to the iddat period. "From 1985 till now the Supreme Court has come up with progress reinterpretations,"

Like in the Daniel Latifi case in 2001, the court interpreted Section 3 again broadly and held the Muslim women had right to maintenance and fair and just provision and that could be for life.

ANALYSIS OF THE SHAH BANO CASE JUDGEMENT (FACTS/ISSUES/JUDGEMENT)

Facts

Shah Bano, a 62 year old Muslim woman and mother of five from Indore, Madhya Pradesh, was divorced by her husband (petitioner) in 1978. Where in life took an ugly turn when her husband divorced her for dowry. Shah Bano was sent back to her parent's home, who had no means to support herself and her children, Unable to support herself and her five children, she moved to the courts to be granted maintenance from her ex-husband.

She filed a petition for maintenance under Section 125 of the CRPC, according to which the former husband of the divorced woman has to maintain her, if she is destitute and has no means of her own for her survival and he has to maintain her until she remarries or she dies. However, Shah Bano's husband refused to pay her maintenance beyond the period of iddah^{xl} or iddat.

Issues:

- Maintenance beyond the iddat period: What does the Muslim personal law say?
- Is there possible remedy provided under Section 125 CRPC for divorced Muslim women?
- Remedy under the 1986 Act: Is it justified & adequate?

FALLACIES IN THE 1986 ACT: (JUDGEMENT)

Antithetical to Muslim Personal Law: The first and the foremost ground on which the remedy could be rejected as unjustified is that it is antithetical to what the Holy Quran mandates and where the liability to maintain the wife after the expiration of the iddat period is that of the husband, there would be absolutely no justification for putting the burden of the same over the woman's family or for that matter even the State. Also, the mention of such procedure as mandated under the 1986 Act in the text of Quran is suspect. In such a circumstance it would nowhere be valid to accept that, what actually should be the husband's liability is left to his own choice under Section 5 of the 1986 Act, by way of which he is virtually absolved of the liability of maintaining his wife beyond the period of iddat.

Violation of Article 14 was the he second ground of invalidating the statute is one, which was also considered in the 2001 decision of the Supreme Court i.e. it being violation of Article 14 of the Constitution as it discriminates against and deprives Muslim Women from the secular remedy available under Section 125 CRPC. The justification given by the Supreme Court in 2001 against this argument was simply that personal laws are a reasonable basis for classification, hence the 1986 Act cannot be said to violate Article 14. It is submitted that the justification given would be of no rescue to the Act, because even if one concedes to the fact that personal laws are a reasonable basis of classification, what needs to be looked into is that in what circumstances are they considered a reasonable mode of classification.

Therefore, it is evident from the above analysis that the 1986 Act and its interpretations are not only against Muslim Personal law but also against the Right to Equality and the directive for Uniform Civil Code enshrined in the Constitution of India.

Seven years and several judgments later, the Supreme Court ruled in favour of granting Shah Bano alimony.^{xli}

ANALYSIS OF THE TRIPLE TALAQ JUDGEMENT AND THE BILL

- What is the landmark Judgment passed by The Hon'ble Supreme Court in Sayara Bano Vs UOI? (Triple Talaq Case).

The Hon'ble Supreme Court heard the Petition for ban of practice of Triple Talaq through a Constitution bench comprising of 5 Judges from different religions - Justice Kurian Joseph, a catholic, Justice UU Lalit, a Hindu and Justice RF Nariman, a Parsi, Chief Justice Khehar, a Sikh and Justice Abdul Nazeer, a Muslim. on August 22, 2017, this bench declared Triple Talaq or Talaq-e Biddat as unconstitutional by a 3:2 majority. Justices Kurian, Lalit and Nariman delivered the majority judgement while Chief Justice Khehar and Justice Nazeer dissented with the minority.

- Chief Justice Khehar And Justice Abdul Nazeer [Minority Judgment- written By Chief Justice Khehar]

The minority bench observed that:

"We are satisfied, that this is a case which presents a situation where this Court should exercise its discretion to issue appropriate directions under Article 142 of the Constitution. We therefore hereby direct, the Union of India to consider appropriate legislation, particularly with reference to 'Talaq-e-Biddat'. We hope and expect that the contemplated legislation will also take into consideration advances in Muslim 'personal law' – 'Shariat', as have been corrected by legislation the world over, even by theocratic Islamic States. When the British rulers in India provided successors to Muslims by legislation, and when remedial measures have been adopted by the Muslim world, we find no reason, for an independent India, to lag behind".^{xliii}

- While dissenting the majority view the Minority bench observed as following.

"Till such time as legislation in the matter is considered, we are satisfied in injuncting Muslim husbands, from pronouncing 'Talaq-e-Biddat' as a means for severing their matrimonial relationship.

The instant injunction, shall in the first instance, be operative for a period of six months. If the legislative process commences before the expiry of the period of six months, and a positive decision emerges towards redefining 'Talaq-e-Biddat' (three pronouncements of 'Talaq', at one and the same time) – as one, or alternatively, if it is decided that the practice of 'Talaq-e-Biddat' be done away with altogether, the injunction would continue, till legislation is finally enacted. Failing which, the injunction shall cease to operate".

- Justice Kurian Joseph [Part of Majority]

Justice Kurian Joseph has boldly shown his disagreement on the Minority view of CJI by stating that:

"I find it extremely difficult to agree with the learned Chief Justice that the practice of triple Talaq has to be considered integral to the religious denomination in question and that the same is part of their personal law."^{xliii}

Majority view of Justices R.F Nariman and U.U Lalit [Majority- Judgment written by RF Nariman] The bench held that the practice of Triple Talaq is arbitrary in nature by observing the following: "It is clear that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the 393 fundamental right contained under Article 14 of the Constitution of India. In our opinion, therefore, the 1937 Act (Muslim Personal Law Shariat Application Act), insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression "laws in force" in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq Since we have declared Section 2 of the 1937 Act to be void to the extent indicated above on the narrower ground of it being manifestly arbitrary, we do not find the need to go into the ground of discrimination in these cases, as was argued by the learned Attorney General and those supporting him."^{xliv}

Taking into consideration the arguments of various religious groups and aggrieved petitioners, the Hon'ble Supreme Court with the majority ration of 3:2 set aside the practice of Triple Talaq or Talaq-e- Biddat by holding it unconstitutional and arbitrary in nature; the Hon'ble Court further directed the Government of Union of India to consider the views taken by the court in the Judgment and lay down a proper legislature to regulate the practice of divorce in Muslim community.^{xlv}

- *The Muslim Women (Protection of Rights on Marriage) Bill, 2017 (Triple Talaq Bill)*

Taking into consideration the views of the Hon'ble Supreme Court in the Judgment of Sayara Bano Vs. Union of India, the Hon'ble Law Minister Shri Ravi Shankar Prasad took an initiative to present the Triple Talaq Bill before the Lower House, Lok Sabha, which was passed by majority by the Lower house on December 28, 2017. The Statement of objects and Reasons of the Bill notes that the judgment has not worked as a deterrent in bringing down the number of instances of triple Talaq. It explains, "It is, therefore, felt that there is a need for State action to give effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce. In order to prevent the continued harassment being meted out to the hapless married Muslim women due to Talaq-e-Biddat, urgent suitable legislation is necessary to give some relief to them.

The Union Government claims that the legislation would help in ensuring the larger Constitutional goals of gender justice and gender equality of married Muslim women and help sub-serve their fundamental rights of non-discrimination and empowerment.^{xlvi}

- *Highlights of Bill.*

The preamble of the Bill reads as "To protect the rights of the Married Muslim Women and prohibit divorce by pronouncing Talaq by their Husbands and provide for matters connected there with or incidental thereto" The main highlights of the said bill are Sections 3 and 4 which criminalize the practice of Triple Talaq.^{xlvii} Section 3 of the Bill states that "Talaq-e-Biddat" shall be 'void' and 'illegal'. This is followed by consequence of such void action in terms of Section 4 thereof, stating, whoever pronounces Talaq-e-Biddat shall be punished with

imprisonment which may extend to three years and fine. Further Section 7 of the Act makes the offence cognizable and non-bailable offence.^{xlviii}

The said Bill has gained appreciations at the same time the Bill has been heavily criticized by many. The Bill then has been placed before the Upper House i.e. before Hon'ble Rajya Sabha on January 2, 2018, and if the said Bill is passed with Majority the same will be sent for approval to the Hon'ble President of India and if the Hon'ble President assents to the said Bill then the new act will come in force as The Muslim Women (Protection of Rights on Marriage) Act.^{xlix}

Other Case Laws

The Judiciary through its various judgements time and again has always upheld gender justice in cases pertaining to the Uniform Civil Code.

In the case of *Mohammad Ahmed Khan v. Shah Bano Begum* (1985) 2 SCC 556 popularly known as Shah Bano case, the Supreme Court held that "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter." Though this decision was highly criticized by the Muslim Fundamentalists, yet it was considered as a liberal interpretation of law as required by gender justice. Later on, under pressure from Muslim Fundamentalists, the central Government passed the Muslim Women's (Protection of rights on Divorce) Act 1986, which denied right of maintenance to Muslim women under section 125 CrPC. The activist rightly denounced that it "was doubtless a retrograde step. That also showed how women's rights have a low priority even for the secular state of India. Autonomy of a religious establishment was thus made to prevail over women's rights." In the *Daniel Latif v. Union of India*¹ case, also a Five-Judge Bench of the Supreme Court again upheld the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and said that a Muslim divorced woman has the right to maintenance even after the iddat period under the 1986 Act. The Court held a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which clearly extends beyond the iddat period in terms of Section 3(1) (a) of the Act. So basically, it challenged the Act of 1986 Act, in order to perceive the maintenance issue of the Muslim women more easily.

In *Sarala Mudgal (Smt.), President, Kalyani and others v. Union of India and others* AIR 1995 SC 1531^{li} the Apex Court while delivering the judgment directed the Government to

implement the directive of Article 44 and to file affidavit indicating the steps taken in the matter and held that, "Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Article 44, Therefore the Supreme Court requested the Government of India, through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and endeavour to secure for its citizens a uniform civil code throughout the territory of India."^{lii}

The Apex Court pursued the same line in *Lily Thomas etc. v. Union of India and others* AIR 2000 SC 1650 and held that the desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change for the betterment of the nation at large.

The situation regarding the personal laws for Christians in India was different. In their case, the courts seemed to be bolder and took a progressive stand in terms of gender equality. For instance, when the case of *Swapana Ghosh v. Sadananda Ghosh* AIR 1989 Cal. 1 the Calcutta High Court expressed the view that sections 10 and 17 of the Indian Divorce Act, 1869, should be declared unconstitutional but nothing happened till 1995. Again, in yet another case, the Kerala High Court in *Ammini E.J. v. Union of India* AIR 1995 Ker.252 and Bombay High Court in *Pragati Varghese v. Cyril George Varghese* AIR 1997 Bom. 349 have categorically struck down the section 10 of Indian Divorce Act, 1869 as being violative of gender equality.^{liii}

In September 2001, a poor Muslim woman, Julekhabhai, sought changes in the divorce provisions in Muslim law as well as that of polygamy. The Supreme Court asked her to approach the Parliament, who refused to entertain the petition. Julekhabhai had sought equality with Muslim men, requesting court to declare that "dissolution of marriage under Muslim Marriage Act, 1939, can be invoked equally by either spouse". It also requested the court to strike down provisions relating to "Talaq, ila, zihar, lian, khula, etc.", which allowed extra-judicial divorce in Muslim personal law.^{liv}

In a Uniform Civil Code which is the cherished constitutional goal, if we have a single ground of divorce *viz. that* the marriage has broken down irretrievably, the scope of any controversy is ruled out.^{lv} Where factually marriage has broken down irretrievably, no useful purpose will be served in finding out the guilt or innocence of the parties and in such cases law proceeds to cut off the tie.^{lvi}

Analytical discussion on these issues shows that there should be one single ground of divorce, viz. irretrievable breakdown of marriage.^{lvii}

The express introduction of the principle of irretrievable break which has been in place already in England will be much more conducive and functional than merely relying on the implied principle. Besides, the administration of justice on the basis of clearly codified law is superior to the adjudication from case to case. For this, Parliament could reintroduce the Marriage Laws (Amendment) Bill, 1981 (No.23 of 1981), which earlier did not fructify into law for expressly introducing irretrievable break down of marriage as the singular ground for divorce, as the bill was allowed to lapse.^{lviii}

Recently in Ramesh Jangid v. Sunita 2008 (1) HLR 8 (Raj.), the wife wanted her husband to leave his parents and live separately. The Court held that the demand of the wife was unreasonable and as wife was living separately for 13 years and denying physical relationship, so divorce was granted on the aforesaid grounds. The court observed that the differences that have grown up between the parties, the distance which has widened for over a decade cannot be brushed aside lightly. Thus, irreparable break down of marriage is obvious so a divorce in such a case is the only way available to the parties as well as for the court.

As discussed above, the Supreme Court of India for the first time directed the Indian Parliament to frame a Uniform Civil Code in 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945.^{lix} In this case a penurious Muslim woman claimed maintenance from her husband under Section 125 of the Code of Criminal Procedure after her husband pronounced triple Talaq.^{lix} The Apex Court held that the Muslim woman had a right to get maintenance under Section 125 of the Code and also held that Article 44 of the Constitution^{lxi} had remained a dead letter. To undo the above decision, the Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim Woman for maintenance under Section 125 of the Code was enacted by the Indian Parliament. Thereafter, in the case of Sarala Mudgal vs. Union of India AIR 1995 SC 1531, the question which was raised was whether a Hindu husband married under Hindu law can, by embracing Islamic religion, solemnize a second marriage. The Supreme Court held that a Hindu marriage solemnized under Hindu Law can only be dissolved under the Hindu Marriage Act and conversion to Islam and marrying again would not by itself dissolve the Hindu marriage.

Further, it was held that a second marriage solemnized after converting to Islam would be an offence of bigamy under Section 494 of the Indian Penal Code.^{lxiii}

The Supreme Court has always put forth the need for Parliament to frame a common civil code which will help the cause of national integration by removing contradictions based on ideologies. The Directive Principle of enacting a uniform civil code has been urged by the Apex Court repeatedly in a number of decisions as a matter of urgency and top priority to stop the unevenness and often inequalities and immunities that such personal laws have continued to offer over the years. Unfortunately, in a subsequent decision of *Lily Thomas Vs. Union of India* 2000 (6) SCC 224, the Apex Court, dealing with the validity of a second marriage contracted by a Hindu husband after his conversion to Islam, clarified that the court had not issued any directions for the codification of a common civil code and that the judges constituting the different benches had only expressed their views in the facts and the circumstances of those cases. Even the lack of will to do so by the Indian government can be deciphered from the recent stand stated in the Indian press that the Indian government does not intend to bring legislation to ensure a uniform civil code because it does not want to initiate changes in the personal laws of minority communities. However, this ought not to deter the efforts of the Supreme Court of India in issuing mandatory directions to the central government to bring a common civil code applicable to all communities irrespective of their religion and practices in a secular India. Hopefully, the Apex Court may review its findings in some other case and issue mandatory directions to the central government to bring a common civil code applicable to all communities irrespective of their religion.

The Preamble of the Indian Constitution resolves to constitute a Secular Democratic Republic as stated earlier and this means that there is no State religion and that the state shall not discriminate on the ground of religion. Articles 25 and 26 of the Constitution of India guarantee the citizens the freedom of religion and freedom to manage religious affairs. At the same time Article 44 which is not enforceable in a Court of Law states that the state shall endeavour to secure a uniform civil code in India. The ingredients of a Uniform Civil Code is indeed a difficult task to determine since the personal laws of each religion contain separate ingredients, the uniform civil code will need to strike a balance between protection of fundamental rights and religious principles of different communities and most importantly not harm the sentiments of the communities that coexist in our country. Marriage, divorce, succession, inheritance and

maintenance can be matters of a secular nature and law can regulate them. India needs a codified law which will cover all religions in relation to the personal laws of different communities.

Critics of the uniform civil code think that the true principles of Muslim law remain eclipsed by its extensive alleged misreading over the years. It is suggested by Prof. Tahir Mahmood, an eminent scholar in his article that “An Indian Code of Muslim Law based on an eclectic selection of principles from the various schools of Shariat is the ideal solution to all the contemporary problems of Muslim Law.”^{lxiii} It has been reported that the Supreme Court of India dismissed a public interest litigation petition challenging the legality of the customs of polygamy, Talaq and divorce practiced by Muslims under the personal laws. The plea for a direction to the Central Government to make Uniform Marriage Laws for all communities was rejected on the ground that it is for the Parliament to change or amend the law. Thus, the debate is endless and the issue has continued to remain unresolved even till the present day.

SUGGESTIONS AND CONCLUSIONS

After such a deliberate discussion it can be said that the mere three words and the nation breaks into hysterical jubilation and frantic wailing. This uniform civil code has social, political, and religious aspect. The UCC would curve a balance between protection of fundamental rights and religious dogmas of individuals. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias with regards to religious and political considerations. Therefore, in reference to the Gender Rights of the Muslim women, an UCC can be an ultimate saviour. Since the country has a uniform criminal code, at the same time we can have a civil code too which would be uniformly applied across all the religions. The Muslim women hence should be equally subjected to equality in all respects as compared to women from other religions. Because a Uniform Civil Code doesn't violate the secularity of a country, and it doesn't violate equality under Article 14 as well.

Thus to conclude, I would also like to say that citizens belonging to different religions and denominations follow different property and matrimonial laws which is not only affront to the nation's unity, but also makes one wonder whether we are sovereign, secular, republic or a

loose confederation of feudal states, where people live at the whims and fancies of mullahs, bishops and pandits. I strongly support the crusade for the implementation of the UCC and homogenizing the personal laws. I support it, not because of any bias, but because it is the need of the hour. It is the high time that India had a uniform law dealing with marriage, divorce, succession, inheritance, and maintenance leading to a proper unbiased gender-neutral law.

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