

Contemporary Scenario on Maintenance and Divorce Laws in India

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1. Introduction

The need of uniform civil code in India can be better understood and explain as something which has become the sine qua non for the civil society but since it is most misunderstood amongst the masses, thus it becomes the most tabooed topic for the parliamentarians when it comes to legislation. Though it is now more than half a century has been passed but the dream that constitution makers saw, that is to bring all the people of India under same shade of secular civil laws is yet to be fulfilled. It is heartening to know that our constitution framers were successful in placing uniform civil code in the constitution without making its applicability 'on a voluntary basis' but it is equally saddening to observe that still today we are very far away from having it. This fading hope of getting same civil laws for everyone one day was again lit up in the year 1985 with the landmark case of Ahmed Khan vs. Shah Banu Begum & Ors. Where the honorable Supreme Court has historically provided maintenance to a Muslim divorced woman, ignoring the religious dogma's on the ground of equality and other human rights. This case brought a major shift in the longtime continuing battle of protection of women's rights. Sadly the then government had given up to the pressure from the religious orthodoxy by bringing an enactment with the aim to dilute the effect of the Supreme Court Judgment and to maintain the status quo. After more than 33 years later, Supreme Court again breaks the ice by clearly declaring triple talaq as unconstitutional. This reinforces the dim hopes of Uniform civil code. Among all the other domains of uniform civil code, the uniform civil code on maintenance and divorce has become the grave need of the time. This paper is all about why a basic obligatory women's right as mentioned above in a democratic county can no longer be handcuffed and silenced by the pseudo religious impediments.

1.1 Uniform Civil Code And Civilized Society

From the very beginning of 19th century the world is evolving from the theological State to more democratic and secular State. More and more countries are adopting a system of public administration where a clear and distinct line is drawn between law and religion. In addition to this, with the wake of individuals' rights, the States are more inclined towards the secular principles, that is where the State has no official religion and it treats all the religion alike. Countries like United States of America, Britain, France, Canada, India and many others are examples to it.

Religion is personal to a man, whereas, law is for the society as a whole. If we look profoundly, then even the term 'religion' in English is not synonyms with the term 'Dharma' in Sanskrit. Thus to say that law exclusively springs from religion is a locker-room humor. The notion of religion has always been conceptual. However, the notion of State is the utmost truth.

Depending upon the type of society and form of government adopted, its duty varies. The Laws are impersonal and objective rules, which the State applies to all its citizens without exception.¹ But the religion is based on personal experience of great teachers; its appeal is personal, immediate and intuitive and the inner core of the belief is exclusively personal.² Thus there is a clear cut difference between the rule of law and the rule of conscience, here the former can be enforced by the State but the later is entirely a person's own affairs. In a civilized society likes ours having the same civil laws is an indispensable condition. In addition to this there is no necessary connection between religion and personal law in a civilized society. The directive principles of state policy and fundamental rights constitute the vision of a future Indian Society.³ India has adopted 'welfare concept' of State after the independence thus she is more focused on promoting the social- economic well being of its people rather than mere maintenance of law and order, and protection of life and liberty of its people.

1.1.1 What Is a Civil Society?

A civil society means a societal organization (informal or formal) which is autonomous from the state and the market.⁴ Its autonomy from the State is protected by civil liberties guaranteed either by the constitution or by the concept of rule of law.⁵ By the virtue of the constitution, in our country civil society does not have mere liberties but it has rights which it is duty of the State to protect and promote.⁶ It is the constitutional mandate to promote the welfare of the people by securing and protecting a new social order based on justice-social, economical and political.⁷ And liberty can never be severed from equality and fraternity.

In our country, the concept of secularism and uniform civil code is deeply rooted in the history of struggle for independence. The intentions behind the demand of implementation of article 44 of the Constitution is to create the same set of civil rules which will be applicable to all citizens of the country, irrespective of the religion, race, caste, creed, like the criminal code. The main discord behind the implementation of uniform civil code is the reasoning that the personal law flows from the religion directly. Thus it becomes extremely important to remind each one of us that this controversy has

¹ M.S. Rainaparkhi, Uniform Civil Code-An Ignored Constitutional Imperative (Atlantic Publishers And Distributors, New Delhi, 1st ED 1997)

² *ibid*

³ The constitution of India, 1950

⁴ S.P. Sathe and Sathya Narayan (eds.), Liberty, Equality And Justice: Struggles For A New Social Order 30-31 (EBC Publishing (p) Limited, Lucknow, 2003).

⁵ *ibid*

⁶ *ibid*

⁷ Article 38, Constitution of India, 1950.

been fully exterminated by the founding fathers of our constitution. While discussing the draft Article 35, after full debate, the Constituent Assembly rejected the contention that the personal law flows from the religion directly. The Constituent Assembly has reiterated its conclusion that like all other laws personal laws are also secular.⁸ Further it was concluded that the legislature has full powers to enact common civil code for all the citizens of India.⁹ But sadly due to political vote banks, even after more than 60 years of independence, the legislature has still continued to turn a blind eye to this very crucial reasoning's and has from time to time given plethora of excuses to behind its ignorance towards the legitimate legislative expectation of uniform civil code. Dr. Bhim Rao Ambedkar, an Indian jurist and social reformer has always stated that social democracy is beyond political democracy. He has always put emphasis on resolving the contradiction between the political equality and the social and economical inequality.¹⁰

In the present scenario it has become the sine quo non to have a uniform civil code owing to two main factors. Firstly, the very constitutional mandate to have common laws for all citizens rather than discriminated rules based on religious practices.¹¹ Secondly, it is the gender justice. It is a common observation that rights of women are usually limited under religious laws.¹² Further the State's recognition to personal laws has also legitimated discriminatory treatment of women in the name of religion.¹³ The judiciary has also from time to time directed the legislature to frame the uniform civil code in order to dispense justice to all. The uniform civil code is nothing but have secularism as its key principles. However, it is the matter of the equality and the human rights of the Indian women that warrant the implementation of uniform civil code.

1.2 Uniform Civil Code And Religious Sect Differences

India is a very vast country and pluralistic country with a variety of religions, cultures, languages and many ethnic groups, and is divided into many sects and sub sects. The constitution of India guarantees all its citizens the freedom of conscience and the equally protects its people right to profess, practice and propagate religion.¹⁴ Nevertheless it imposes on every citizen the duty to promote harmony and the spirit of brotherhood amongst all the people of India transcending religious, linguistic and regional diversities.¹⁵ To bring uniformity among people of the country, the uniform civil code has always been in the demand since the independence of the country. Even during the struggles of the independence, a common law binding all the citizens of the country was regarded as one of the essential feature of the newly independent India. However, owing to the various religious sect differences and the noviceness of the newly formed

country, the framers of the constitution put the uniform civil code as one of the directive principles of the State policy in the hope of future implementation when the time is right. But sadly, even after so many years of the independence the UCC has been continued to be viewed as the most debated and much needed yet very controversial policy matter of the State.

For a pluralistic society like India, national integration and unity is something of prime importance. Article 44 of the constitution cast an obligation on the State to "Endeavour to secure for the citizens a uniform civil code throughout the territory of India"¹⁶. This is in the consonance with the objectives enshrined in the preamble of the constitution of the India. However, due to lack of legislative intent and pseudo religious impediments this objective is yet to be achieved. The supreme court of India has from time to time has urged the necessity of a common code for all the people of the country. In the famous case of Sarla Mudgal and Others V. Union of India and Others¹⁷ the honorable Supreme Court has observed that "*the legislation, not religion being the authority under which personal laws were permitted to operate and is continuing to operate and is continuing to operate the same can be superseded by introducing the uniform civil code.*"¹⁸ In view of this matter, no community can oppose the introduction of uniform civil code for all the citizens in the territory of India.¹⁹ Further Supreme Court in the landmark case of Mohd. Ahmed Khan V. Shah Bano Begum²⁰ has held that "*a common civil code will help in the cause of national integration by removing disparate loyalties to law which have conflicting ideologies.*" However, even after the 30 years of this celebrated judgment the government has yet to make ucc a reality. The governments have come and gone but neither of them has even put the slightest efforts to make ucc a law of the land. The reasons for the same are too obvious to be mentioned.

On ucc the strongest resentment and unwillingness has always been shown by the Muslim community²¹ which views it as an attack to their religion. This can be traced back to gross misconceptions and deeply rooted fear of imposition of Hindu law, which has constantly been induced by the pseudo religious stakeholders and many fundamentalist towards the uniform civil code. However, the astounding thing is its opposition from the educated people coming from the other communities. Yet the reasoning behind the opposition has always been physiological rather than logical. Whenever a question of change in personal law erupts, the religious group always opposes the progressive measures raising the false cries of 'religion in danger'.²² Be it at the time of codifications of Hindu laws in the 1950s or the ruling of Supreme Court in Shahbano Case in mid-eighties. The issue of ucc has been communalized to the point that it is no longer debated on merits.²³ In this fiasco, the legislature seems to opt for the

⁸ Constituent Assembly Debates (proceedings), Vol. V11, Tuesday Nov. 23, 1948.

⁹ ibid

¹⁰ Constituent Assembly Debates (proceedings), Vol. 11, 4 on 26th November 1949, p. 979.

¹¹ Article 44, Constitution Of India, 1950

¹² Shyamal banerjee, "why India needs a uniform civil code", live mint, 4 July 2016, 1:45 AM IST.

¹³ Chandra Mallampalli, "how Christians personal laws have grappled with equality", the times of India, Sept. 24, 2017, 08:16 IST.

¹⁴ Article 25, constitution of India, 1950.

¹⁵ Article 51-A (e).

¹⁶ Constitution of India, 1950.

¹⁷ AIR 1995 SC 1531.

¹⁸ Dr. Anjani Kant, Law Relating To Uniform And Children 122(Central Law Publications, Allahabad, 3rdED, 2012).

¹⁹ Supra note 17.

²⁰ AIR 1985 SC 945 (954).

²¹ Principle minority community in India.

²² Supra note 1 at p.27.

²³ Supra note 1 at p. 28.

safest route that is to wait for the right time to come. Even after many breakthroughs bestowed by the Supreme Court to the legislature, the later easily surrenders to the religious impediments.

A blind eye can still be turned to the ucc as far as it concerns the national unity and integration. But whenever, it comes to equality and human rights of women then the situation demands prompt action. Rights of women are more or less limited under the personal laws and they are also subjected to the discrimination.²⁴ It is a very sorry state of affairs that Hindu, Muslim, Christian, Parsi and Jew women cannot be treated alike when it comes to matters relating to marriage, divorce, maintenance, adoption etc.²⁵ there are many situations when they are discriminated but they cannot be treated alike because of the fact that they belong to different religious communities. This is indeed the gross violation of the principles of constitution and the fundamental rights guaranteed to them. India is a secular country and even the right to practice, profess and propagate religion is subjected to reasonable restrictions and it doesn't affect the State from making any law or the operation of any law.²⁶ Further the personal laws that exist today have largely been drawn from customs that were favorable to the native patriarchy.²⁷ Personal laws are regressive and disempowered women; on this ground the demand of ucc is raised.²⁸ The Supreme Court has in the case of *John Vallamattom v. Union of India*²⁹ ruled that "*common civil code will help in bringing national integration by removing contradictions based on ideologies.*"

Throughout the history, gender inequality was part and parcel of the male-dominated Indian society. Thus a woman has to always go through with many prejudices and complications. After the independence, India has adopted a system of governance based on the principles of equality, fraternity, justice and secularism. These are the principles that are deeply embodied in the preamble of the constitution and are fundamental for the purposes of administration. The constitution not only guarantees equality to women, it even empowers the State to adopt measures of positive discrimination in favor of women.³⁰ Further more in a secular country like ours, law has nothing to do with the religion. Even during the British era, applications of personal laws are only permitted under the authority of law and not under the authority of religion.³¹ Bringing social change or reforming the religion laws has never been a cakewalk. For it a strong will power is needed. The then government had to go through a violent public backlash when polygamy was being abolished from the Hindu personal law. Reforming personal law may not be a tenable idea unless it is driven by women cause.³²

²⁴ Supra note 12.

²⁵ Supra note 18 at p. 120.

²⁶ Article 25, constitution of India, 1950.

²⁷ Editorial, "personal laws vs. gender justice: will a uniform civil code solve the problem" *Economic and Political Weekly*, 1 Nov. 2018.

²⁸ Ibid.

²⁹ AIR 2003 SC, 2902.

³⁰ J.K. Chopra, a compendium of essays 6(unique publishers, Delhi, 2011.)

³¹ Supra note 18 at p. 121,122.

³² Supra note 27.

The major opposition to the framing of ucc is coming from the Muslim community; they are objecting even the slightest reform in their personal law in the name of immutability of the law as ordained by the prophet.³³ However, even in the theocratic States with Islam as its religion the personal law is being amended and codified. Therefore such reasoning is absurd as long as it concerns ucc which is in the larger interest of the society. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society.³⁴ All in all, Article 44 pursues to unclutter religion from social relations and personal laws. Matters like maintenance, divorce are truly secular matters therefore it cannot be put in the litmus test of Articles 25, 26, 27. Marriage has nothing to do with religion, it is purely a social convention born out of social necessity.³⁵ The Bombay high court has in the case of the *State of Bombay v. NarasuAppa*³⁶ has observed that "*what the state protects is religious faith and belief. If religious practices run counter to the public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the state as a whole.*"³⁷ Moreover in a pluralistic society it is bound to have some religious or sectional differences but urgent and issues of national interest must be put forth and tackled effectively.

Currently, the issue of uniformity in the law of maintenance and divorce has become the need of the nation. It should be the same and equally applicable to all the men and women of the country irrespective of their religion and gender. Still today, a large number of women are dependent on their husband and father for the financial stability. With the awareness of girl's education and government sincere efforts towards women empowerment, the situation of women has become better in the society. But still, they are treated as Paraya Dhan, whose real world is with his husband and the husband's home is her real home. In our society, marriage is not merely a ritual or social custom; it is a guarantee of the security for women and the beginning of their new life. After the marriage, the parents somehow become the duty free and all the liability and accountability are shifted towards the husband. This is more or less the reality of the Indian society and still after many years of the independence there is no as such any big change in this way of social life. This is the case with the person of every religion, caste or creed. Therefore, it is not exaggeration to say that marriage and its aftermath hold the life of a common Indian woman. Thus issues of maintenance and divorce needs to be seen thoroughly. And a uniformity among becomes the sine quo non.

Thus the lines hold true that "*if we do not go forward and act upon directive principles, we shall most certainly move backwards.*"³⁸

1.3 *Shahbano Case: A Turning Point In The History Of UCC*

The rights even human rights of Indian Women are directly linked with the personal laws, coming from social institutions like marriage, family, adoption. Therefore, it is the personal law

³³ Supra note 18 at p. 126.

³⁴ Ibid.

³⁵ Supra note 1 at p. 27.

³⁶ AIR 1952 Bom. 84.

³⁷ Ibid..

³⁸ Supra note 35.

that defines the boundary and circumference of the rights of the Indian women in respect to the matters concerning social institution. Since ages, the sources of social and political rights of women are the personal laws, heavily guarded by the patriarchy and the social structure.

In the present case, that the respondent was the lawfully wedded wife of the petitioner. Both were married under the Muslim laws and were parents of 5 children. However, the later was disowned and divorced by the husband. At the time the respondent was 62 years old. The respondent filed for the suit of the maintenance under section 125 of the CrPC, 1973. However, the husband claimed that he was under no obligation to provide maintenance as the period of iddat was over.

Thus, the point to determine in this was-

- I. *Whether a Divorce Muslim Women is entitled to get maintenance from her husband after the iddat period under the sections 125, 127 of Criminal Procedure Code, 1973.*

The honorable Court held that a divorced Muslim woman as long as she has not married, is a 'wife' for the purpose of section 125 of CrPC, 1973. Thus, granting Muslim women is entitled to receive maintenance even after the iddat period. *The court further ruled that statutory right available to her (Muslim women) under the above mentioned section is unaffected by the provisions of the personal laws*³⁹. The court further observed that "A common Civil Code will help in the cause of national integration by removing disparate loyalties to the laws which have conflicting ideologies."⁴⁰ It further remarked that it is the State which is under the obligation and with the duty of securing a uniform civil code for all the citizens of the country. The court further observed that gap between the personal laws of the country cannot take the place of uniform or common civil code and remarked that "justice to all is a far more satisfactory way of dispensing justice that justice from case to case."⁴¹ The court also refuted the contention raised by the 'All India Muslim Law Board' and held that 'Mahr' is not the amount payable by the husband to the wife on or after Divorce. Thus, it does not fall within the meaning of section 12(3)(b) of the Criminal Procedure Code, 1973. Further the strongly refuted and held it is most unreasonable to force an indigent woman to go after looking for her people in her relations including her nephews and cousins in order to herself supported. The honorable court while interpreting the provision of Section 125 of the Criminal Procedure Code, 1973, held that under the clause (b) of the Explanation to section 125(1), the term 'wife' also includes a divorced woman who has not married. The court also said that Section 125 is all in all a secular provision and was enacted in order to provide a quick and summary remedy to a certain class of persons who are unable to maintain themselves. The court has also mentioned the case of *Bai Tahira V. Ali Hussain Fida Ali Chothia*⁴² Where the Supreme Court has held that irrespective of the amount settled as Mahr, a reasonable amount is always due to a Muslim wife for her maintenance. The court further observed

that payment of Mahr money, as a customary discharge, is within ambit of Section 127(3) (b) but until the Mahr is discharged the divorced woman continues to be entitled to maintenance under Section 125 of the Criminal Procedure Code, 1973.⁴³

Further the court referred to Holly Quran and deduced that there is an obligation on Muslims Husbands to maintain their wife.

It was also observed by the honorable court that "a large number of middle-aged women who are being divorced without any rhyme or reason should not be thrown on the streets without a roof over their heads and without having any means of sustaining themselves and their children."⁴⁴ Thus it was laid down that if there were any a conflict in the provisions of Criminal Procedure Code, 1973, which is a secular law, and the rights and obligations of the individual then it is the former that shall prevail. Thus Cr.P.C , 1973 has an overriding impact over the personal laws.

Supreme Court has in this case considered Humanitarian grounds to provide justice to an old Muslim divorced woman and it again showed that where there is right, there is definitely a remedy. Though this judgment had caused a quite a stir when it was pronounced and the then government was forced to come up with a legislation to narrow down the impact of this judgment but nonetheless it is one of the most celebrated judgment in the history of the India.

1.4 The Muslim Women (Protection Of Right On Divorce) Act, 1986

1.4.1 Introduction

Because of the huge cry and violence made after the judgment of shah Bano case, the government was forced to bring a legislation to mitigate the impact of the impugned judgment. It was being claimed by a section of the Muslim community, who were vehemently opposing the above judgment, that *the verdict is against the Shariat laws and further alleged that the grant of maintenance to a divorced wife beyond the period of Iddat is un-Islamic.*

1.4.2 Salient features of the Act

The Muslim Women (Protection of Rights and Divorce) Act, 1986, came into force on 19th may 1986. It was brought with an objective to protect the rights of Muslim women who have been divorced or have obtained the decree of divorce from their husbands. And to provide for any matters connected therewith or incidental thereto.⁴⁵

This Act is very short and contains only 7 provisions. Some of the salient features are enlisted below-

- i) It provides definition to the 'divorced women' and the 'iddat period'.
- ii) It restricts the claim of maintenance for the iddat period only.
- iii) It provides for Mahr and other properties of the divorced women to be given to her soon after the divorce.

³⁹Mohd. Ahmed Khan v. Shah Bano Begum And Ors , Available at :<https://indiankanoon.org/doc/823221/> (last visited 27 April, 2019)

⁴⁰ ibid

⁴¹ ibid

⁴² AIR 1979 SC 362.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵The Muslim Women (Protection of Rights on Divorce) Act, 1986, Act No. 25 of 1986.

- iv) It prescribes that in case of the infant children of the divorced Muslim women, a just and fair maintenance to be given for the period of two years from the date of birth of the children.⁴⁶
- v) It also provides that if the both the parties agrees, and then by way of declaration through affidavit, the parties may opt the procedure prescribed under section 125 of the criminal procedure code, 1973 for the maintenance.

The Act has nullified the Supreme Court order to permit maintenance beyond the Iddat period. But it raises a very important question that should a wife be the winds after her unilateral divorce and she is left to beg for her living to her near and far relatives? Should she be left at the mercy of the waqf boards and ulemas?⁴⁷

1.5 Danial Latifi Case

In the case of *Danial Latifi and Another v. Union of India*⁴⁸ several petitions were filed before the honorable court to declare the Muslim women (Protection of Rights and Divorce) Act, 1986 as unconstitutional as it was merely brought to overcome the judgment given in the case of *Mohd. Ahmed Khan v. Shah Bano Begum and Ors*⁴⁹. However, the court held the above Act to be constitutional.

1.6 Issue Of Triple Talaq

It has been long demand of the women's right wings to strike down the practice of triple talaq, as it is very erroneous and against the right of equality of women. It put the Muslim women on the mercy of their husbands as the later can anytime give them irrevocable divorce by uttering talaq three times, further leaving no room for the reconciliation and judicial interference. If the victim of triple talaq wants to reconcile with their husbands' they have to go through with the outrageous practice of 'Halala'.

1.6.1 The Shayara Bano Case 2018

*Shayara Bano and others v. Union of India and others*⁵⁰, In The much awaited ruling the Supreme Court of India has declared the practice of Talaq-e-biddat as unconstitutional and arbitrary. Thereby ending the age's long agony and fulfilling the very demand of ending the practice of Triple Talaq in the interest of women's right and gender justice. The facts of the case were, Shayara Bano, a Muslim woman was married in accordance with the Muslim personal laws. She was married for a period of 15 years, later in the year 2016 her husband divorced her by pronouncing talaq three times, that is through the method of *talaq-e-biddat* for divorce. *Talaq-e-biddat* is an Islamic practice of Divorce which permits men to arbitrarily and unilaterally grant divorce and it has instant effect and is regarded as an irrevocable divorce. Thereafter, a writ petition was filed by the Shayara Bano, before the honorable court to declare that the 'talaq-e- biddat' pronounced by her husband on 10.10.2015 be declared as *void ab initio*. And it is also

sought to further declare that Section 2 of the Muslim Personal Law Application Act, 1937 as unconstitutional.

Thus, the issue lay before the honorable court were-

- i) Whether the practice of 'talaq-e- biddat' is violative of Articles 14, 15 and 21 of the constitution?
- ii) Whether the practice of 'talaq-e- biddat' is an integral part of the Muslim religion?

The honorable Supreme Court by a majority of 3:2 held that the practice of *Triple Talaq* unconstitutional as it violates the Articles 14 and 15 of the constitution. Further the Supreme Court concluded that the practice of *Triple Talaq* is not an essential religious practice however, the minority bench regarded this practice to be an essential religious practice of the Muslims. The court in the ruled that the freedom to practice, profess and propagate the religion under Article 25 of the Constitution is not an absolute right but it came with an exception that is the provisions of the constitution. Therefore, an arbitrary which is even not an essential religious practice cannot take shelter under the ambit of Article 25. The court further laid down that "what is bad in theology cannot be good in law", therefore the practice of triple talaq which is regarded as sinful in the Holy Quran cannot be justified by the centaury old practice of the 'talaq-e- biddat' . The court further relied on the judgment of *Shamim Ara v. State of Uttar Pradesh*⁵¹ where it has been held by the honorable court that "*the practice of Triple Talaq by the Muslims is against both the theology and law and therefore, just because it is followed by a large number of people it cannot be validated.*" The court further observed that the concept of Triple Talaq had long been become a tool by which marital-tie can any time be broken on the whims of the Muslim Husband without leaving any room for the any possible attempt of the reconciliation. Therefore, the said practice is clear cut violation of the doctrine of equality which is a basic principle of the Constitution. Thus, the said practice is arbitrary and unconstitutional.

The court further explained as to what can be considered as the essential religious practice. It said that Essential religious are those which are very fundamental to the profession and propagation of the religion and if it is taken away then it would causes a substantial change/ damage in the religion. The court further held that only essential religious practices are protected under Article 25 of the Constitution. The court further observed that if a thing/ practice is not prohibited in a religion and is continued since long time, but these doesn't necessarily make that a practice a essential religious practice. The court also declared the practice of 'talaq-e- biddat' as a gender discriminatory. The court emphasized that the practice of triple talaq has not only to do with equality but its abolition is necessary to maintain and provide a chance for countless women to live a matrimonial life with dignity. The court further ruled out that The State is constitutionally bound and is committed to respect the promise of dignity and equality before law as enshrined in the Constitution and it cannot shirk back from its constitutional responsibility by remaining mute spectator of the malady suffered by Muslim women, in the name of religion and their inexorable quest for justice broke all the covenants of the

⁴⁶ Ibid.

⁴⁷ Supra Note 1 at p. 80.

⁴⁸ 2001) 7 SCC 740.

⁴⁹ AIR 1985 SC.

⁵⁰ (2017) 9 SCC 1.

⁵¹ (2002) 7 SCC 518.

divine law they professed to denigrate the believer and the faithful.⁵²

1.7 The Muslim (Women Protection Of Rights On Divorce) Ordinance, 2019

⁵³The Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 came into force on January 12, 2019. It substitutes the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 promulgated on September 19, 2018.

The salient features of this ordinance were enlisted below-

- i) It declared the practice of Talaq-e-biddat as void and illegal (under section 3).
- ii) It prescribes imprisonment up to three years for whosoever practices the triple talaq (section 4).
- iii) The first class judicial magistrate is empowered to deal with the cases of the maintenance under this Act. (Section 5).
- iv) It declares the said offence as cognizable and non-bailable (section 7).
- v) The Muslim women are empowered to seek custody of their minor children.

1.8 The Legitimate Expectation

We are all very familiar with the important to directive principles that are enshrined in part 1V of the constitution. These principles are not the policies of any political party but are the mandates issued by the Constitution to the State.⁵⁴ Thus it is the duty of the State to follow these principles and directions. Many governments have come and gone but the mandate of Article 44 was from being fulfilled. In spite of supreme court various timely directions to fulfill the very goal of a uniform civil code for all the citizens of the country. In the Shah Bano case⁵⁵, the honorable court has lamented on inertia on the part of the government in making a way for the UCC.⁵⁶ In this very case the court has put humanitarian grounds to justify the right of women's and has casted aside the pseudo religious customs and norms. But the government has in spite of taking a further Step surprisingly had opted for taking two steps back. Thus letting go easily the hard fight of women's over the religious impediments and securing the maintenance beyond the iddat period. But this doesn't loosen the spirit of the hardcore reformers and again after more than 20 years of the historic judgment; in the case of Shayara Bano and others v. Union of India and others⁵⁷ once again it is the human right that won over the religious deteriorated custom and the practice of Triple Talaq was declared as unconstitutional. This all is only a light glimpse of morning light; the sun is yet to shine brightly. The demand to ucc has risen over the past years, and more and more people especially women are demanding for UCC. Sooner or later this very demand has to be fulfilled. The time may not be ripe of bringing UCC completely but it is also true that the laws relating to

maintenance and divorce needs urgent disposal. Not, everything can be left on the Supreme Court.

1.9 Conclusion

When it comes to the suffering and plight of the women and other weaker sections of the society because of outrageous provisions or customs or continuance of anything arbitrary in the name of or under the ambit of religion, then it is the humanitarian rights of an individual that shall prevail. Our country is a secular and a democratic country, though right to practice, profess and propagate religion is a very essential part of the constitution but it always subjected to the public order, morality and the policy of the State. The Supreme Court has in the *Shah Bano Begum Case*⁵⁸ has rightly said that "justice to all is a far more satisfactory way of dispensing justice that justice from case to case." This phrase beautifully goes with the current concern of women's rights and their condition in the country. Thus, justifying the demand of Uniform Civil Code in the country. The nation, is still waiting eagerly to be tied with the one knot of the UCC.

⁵²SC Declares Triple Talaq Unconstitutional, Available at: <https://www.livelaw.in/breaking-sc-declares-triple-talaq-unconstitutional-by-32-majority/> (last visited on 28 April 2018).

⁵³ PRS legislative research, available at: <https://www.prsindia.org/billtrack/muslim-women-protection-rights-marriage-ordinance-2019> (last visited on 1 May 2019).

⁵⁴ Supra note 1 at p. 90.

⁵⁵ AIR 1985 SC 949.

⁵⁶ Supra note 1 at p. 93.

⁵⁷ (2002) 7 SCC 518.

⁵⁸ AIR 1985 SC 949.