

Uniform Civil Code Welcome

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Even after the Supreme Court judgment on the Triple Talaq case, the inequality and discrimination against Muslim women are unlikely to disappear. The judgment had dealt with only one form of divorce, talaq-i-biddat, which is only one of the forms of divorce obtainable through talaq. After the Supreme Court judgment on triple talaq, the debate on personal laws and the need for a Uniform Civil Code (UCC) have again occupied the centre-stage.

Under Islamic law, a husband may divorce his wife by merely pronouncing the word talaq. No reason needs to be stated, and the pronouncement alone is sufficient. Apart from talaq, the other modes of divorce are ila, and zihar which differ from talaq only in form. A wife does not have the right to divorce her husband - she can do so only when the husband has delegated such a right to her or under a mutual agreement, as in khula or mubarat. The Dissolution of Muslim Marriages Act 1939 gave the Muslim women the right to seek and get divorce legally on certain specified grounds – like husband's inability to perform his marital obligations, imprisonment, adultery, impotency, cruelty toward wife etc. It is not known how many Muslim women have actually benefited from the provisions of this Act, but arguably, very few from the lower strata of Muslim society, over which the Mullahs exercise a vicelike grip, would be aware of the Act.

Under Muslim law, a husband can divorce his wife through talaq, ila, and zihar. Talaq literally means setting free, apparently from the bondage of marriage, but actually it pushes a woman into an existence of lifelong misery without justice. It was strange that in a modernising India, this abhorrent practice that gave absolute arbitrary power to a Muslim husband to divorce his wife literally at his whim was not only practiced, but enjoyed the unstinted support of the Mullahs. It came in two forms: talaq-i-biddat and talaq-i-sunnat, which again came in two forms: talaq-i-ahasan and talaq-i-hasan. The ahasan talaq consists of a single pronouncement of talaq made during tuhr (period of purity between two menstruations), followed by abstinence during the iddat period of 3 months, before the expiry of which the divorce can be revoked. In hasan talaq, the husband is required to pronounce talaq three times during three successive tuhrs. After the last pronouncement, talaq, becomes final and marriage is dissolved irrevocably.

Besides talaq, a Muslim husband can repudiate his marriage by two other modes, ila and zihar. In ila, the husband takes an oath not to have sexual intercourse with his wife and abstains from sexual intercourse for four months, at the expiry of which, the marriage dissolves irrevocably. In zihar, the husband treats his wife like a woman with whom marriage is prohibited, like mother or sister and does not cohabit with her for a period of four months when the marriage stands dissolved.

The divorce by wife under Muslim law can be obtained either through talaq-i-tafweez, or legally through the Dissolution of Muslim Marriages Act 1939. In talaq-i-tafweez, the husband can delegate this power

(of pronouncing divorce) to his wife or any other person with or without conditions. This form of delegated divorce may be stipulated in prenuptial agreements.

The last form of divorce under Muslim law is by mutual agreement, it takes three forms: khula, mubarat and lian. In both khula and mubarat, the wife has to part with her rights to husband's property. Here again the woman is at the receiving end, she has to seek freedom from by paying compensation to the husband out of her property, usually the mahr that was paid by the groom at the time of marriage. In mubarat, either party may propose to give up all mutual rights and obligations, while in lian, if the husband levels charges of adultery against his wife without witness under oath to Allah, and the wife counters these allegations as false, also under similar oaths, then the marriage is dissolved by mutual consent.

Thus it is seen that except in case of divorce through mutual consent, the Muslim personal law gives arbitrary power to men and discriminates against women. It is argued that once the Muslim Personal Law is codified like the Hindu personal law, much of this arbitrariness would disappear, and for this the Bharatiya Muslim Mahila Andolan, a party to the triple talaq case, had wanted codification of Muslim personal law. Garbage of theological abstruseness has accumulated over centuries also needs clearing. But it needs to be understood that the majority religion is easier to reform anywhere, as governments would not like to be seen as imposing the majoritarian will on minorities in trying to reform their personal laws. Further law alone cannot bring in social change, it comes gradually and incrementally. The Hindu personal law was codified in the 1950s by Parliament, but it could not erase the gender gap between Hindu men and women. Hindu Succession Act was enacted by Parliament only in 2005 to regulate intestate or unwilled succession among Hindus, Buddhists, Jains, and Sikhs and giving women equal rights to property as men. Christian divorce rights were made gender neutral only in 2001. But Muslim personal law has not been codified by Parliament, except through the Shariat Act of 1937 and the Muslim Women (Protection of Rights of Divorce) Act of 1986, enacted in the aftermath of Shah Bano judgment of the Supreme Court that is a blot on our democracy and a shameless example to kowtowing to the Mullahs. Judges still rely on Islamic jurisprudence for resolving disputes related to Islamic practices.

The discrimination against women will not be removed only by codification, just as it has not been done so for Hindu women. To remove gender discrimination and to bring in transparent justice with equality as promised in article 14, a Uniform Civil Code (UCC) is imperative. In my article in these columns, "Towards Liberation – II, May 22, 2017", I had argued that only a uniform civil code, as mandated in article 44 of the Constitution under Directive Principles of State Policy, can resolve the contradictions that will otherwise arise from any system that derives its sanctity from religion. In today's political climate, in which even national parties vie with each other to woo voters on the basis of religion and castes and indulge in selective secularism, consensus on UCC would be well-nigh impossible. It is imperative that a single-party majority Government must show the courage and conviction to carry it forward and not be swayed by vote bank politics. That is the only way to truly unify India, and close the divides created by religion.

In the Constituent Assembly debates, Dr. Ambedkar had forcefully argued for adoption of a Civil Code against those who stood for upholding personal laws of religion and Shariat: "I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities,

discriminations and other things, which conflict with our fundamental rights.” However, in those uncertain strife-torn post-partition days, the Constituent Assembly did not force it. Instead, it included it as desirable under the Directive Principles, to be made mandatory once the time is ripe.

Seven decades hence, has the time still not arrived to enact a UCC for the entire country, covering all religions and all communities uniformly and removing all traces of religion from our marriage, succession, inheritance and divorce in a fair and just way? In all these seven decades, we have ignored and forgotten the individual citizen – the fulcrum in a democracy that is built on the foundation of individual adult franchise - and instead perfected the art of pampering to groups and subgroups on the basis of religion - Hindus and Muslims, majority and minority, castes and sub-castes, while treating and cultivating them as vote banks. The demands of these groups have been given precedence over the rights of the individual. That why in the recent Supreme Court judgment, no judge talked about the abhorrence and unfairness of the practice to the individual woman and instead drew their arguments and conclusions from the personal laws of the minority group they belong to. It is time to restore the forgotten dignity and rights of the individual through the UCC and abolish, once and for all, the intrusion of religion and the clergy into our personal lives - to redeem the ideals of our founding fathers.