

## **Dissolution of Marriage under Muslim Law:A Question of Gender Equality, Human Rights and the Uniform Civil Code.**

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**Abstract:**With the evolution of society and ideas, as emphasis started to be put on the individual, there was more to life than the obligations of the marital home, and as religion became another identity for individuals besides race, caste, creed, gender, etc., the institution of marriage changed as well. As is evident, homosexual relationships have been decriminalised by many countries and are no longer considered to be a crime. Some countries have gone so far as to legalise gay marriage, pertaining to the rejection of the contention that homosexuality is wrong/immoral/sin/crime, etc. Therefore, it is possible for a homosexual person to get married even if they prescribe to a certain religion that forbids such relationships. Meaning that, marriage also has a purely civil basis and is not limited to religion alone. Moreover, definite gender roles are no longer viable in the modern society and therefore the institution is no longer based on a patriarchal power dynamic between the married couple. Wives are also no longer considered to be the property of their husbands. And in a case where the religion(s) of the parties do not allow them to seek divorce, remedy is available in civil law, if it is of secular nature. Meaning that, not only can divorce have a civil nature but that it is to be contended that the institution of marriage itself has evolved into an institution with sanctity as well as a contractual basis. And therefore, it becomes necessary to also answer the question of the extent to which religious beliefs and personal laws extend in light of the endeavour of the State to strive for a uniform civil code, especially when they are discriminatory and even violative of basic human rights by their very nature. It is with respect to these issues that the dissolution of marriage under Islam is studied and analysed.

DISSOLUTION OF MARRIAGE UNDER ISLAMIC LAW

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### **I. INTRODUCTION**

On a fundamental level the purpose of marriage has been to facilitate the procreation of and conferring legitimacy to the children. Thereafter arise the institutions of inheritance, succession, and so on. However, in modern times the function of marriage is ascended on a more metaphysical and emotional level, which is to seek companionship or to marry someone you love to live a more intimate and wholesome life which has a more secure and definite basis. Therefore, in modern times marriage also gives ultimate legitimacy to romantic relationships. Hence, the most definite stage that any romantic relationship can reach is that of marriage. Facilitation of procreation is no longer the primary function of marriage. The evolution of this institution has been synonymous with religion. While marriage existed even before religion was founded, the governance of marriage was brought within the folds of religion as it was the functional law of ancient societies. The institution of marriage evolved to gain religious sanctity owing to the belief that marriage was a relationship/contract with divine sanction. This identity of the institution of marriage made the adherents of their respective religions to marry according to the laws prescribed by their religion. Therefore, the need was felt for the law to intervene in this intimate and personal domain, to ensure that certain connubial relationships that are against the laws of nature are not established. While the nature and methods of marriage and the question of polygamy have varied, all religions have had the common notion that incestuous relationships are taboo, although it may still be found in primitive societies. However, there were other preconceived norms necessary for the institution of marriage to run without unnecessary fiction – (i) marriage could only be accepted between a heterosexual couple since homosexual relationships were not only considered unnatural but also a sin and therefore criminalised; (ii) there had to be defined roles in the household viz. the male being the income earner and the female being the child bearer and the homemaker. Since the gender roles were defined as such, women had to be primarily dependant on their husbands for maintenance and they themselves had little choice in what they did with their lives. The status of a married woman was that of the husband's property.

It can therefore be concluded that once married, the lives of individuals were bound to the marital home as it bore the most considerable amount of importance in their lives.

Islamic marriage is defined as a contract for procreation and legitimacy of children with no sacramental value and is merely a civil contract.<sup>1</sup> It may be fair to say that there is no religious ceremony involved in contracting a marriage under Islam but the relationship arising out of such contract is not merely a cold contractual obligation. It can be said that all valid Islamic marriages, like any other modern marriage contain sacramental value as well as a contractual nature to them.

Consider the following verses from the Quran:

1. وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِن كُنْتُمْ فُقَرَاءَ غَيْرِ الْهُنَافِ وَاللَّهُ سَعِيدٌ عَلِيمٌ  
"Marry the single people from among you and the righteous slaves and slave-girls. If you are poor, Allah will make you rich through His favour; and Allah is Bountiful, All-Knowing."<sup>2</sup>

2. وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

"And one of His signs is that He has created for you, spouses from amongst yourselves so that you might take comfort in them and He has placed between you, love and mercy. In this there is surely evidence (of the truth) for the people who carefully think."<sup>3</sup>

Verse 1 talks about marriage being the favour of Allah that enriches the person who is "poor", in the sense that they have not been married and therefore by getting married, they are blessed by the Allah Himself and His bounties.

Verse 2 states that the very fact that Allah has created spouses for the purpose of getting married, which is a sign, for taking the thinking person closer to His truth. It can therefore be said that the Allah had considered marriage to be not only a mere contract but also a religious duty of every Muslim. And in marrying, a person fills their religious obligations.

Consider the following Hadiths:

1. مِنْ سُنَنِ النَّبِيِّ وَبِحُفْمَنْزَرٍ عِبْنُ سُنَيْدٍ يَقُولُ سَمِعْتُ رَسُولَ اللَّهِ (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) قَالَ سَأَلْتُ اللَّهَ

The Messenger of Allah has said, "Of my tradition is to marry. So then whoever turns away from my tradition (Sunnah) is not from me (my nation)."

2. مَا بَيْنَنَا فِي الْإِسْلَامِ أَحَبُّ إِلَيْ اللَّهِ عَزَّ وَجَلَّ مِنَ النَّزْوِجِ  
أَحَبُّ إِلَيْ اللَّهِ عَزَّ وَجَلَّ مِنَ النَّزْوِجِ

The Messenger of Allah (S) has said, "There is no foundation that has been built in Islam more loved by Allah, (The Greatest and Noblest) than marriage."

In Hadith 1 the Prophet himself states that it is the religious duty of anybody claiming to be a part of his tradition (Islam) to marry. And that whosoever refused to do so, would be considered to have renounced Islam itself.

Hadith 2 talks about the value of marriage in the eyes of the Allah, who claims greater love for nothing else than marriage, considered to be the greatest and noblest foundation built.

On perusal of the following statements derived from the very foundations of the Islamic laws, it can be said that marriage is not a cold contract in Islam and it does in fact contain sacramental value. Moreover, the relationship of a husband and wife is not guided by a contract as much as it is guided by human emotions like love, affection, etc.

This can also be illustrated with the help of the following verses from the Quran:

1. وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

"And one of His signs is that He has created for you, spouses from amongst yourselves so that you might take comfort in them and He has placed between you, love and mercy. In this there is surely evidence (of the truth) for the people who carefully think."<sup>4</sup>

2. هُنَّ لِيَسْأَلُكُمْ أَنْتُمْ لِيَسْأَلَهُنَّ

"They (your wives) are a clothing (covering) for you and you too are a clothing (covering) for them."<sup>5</sup>

<sup>1</sup>SIR DINSHAW FARDUNJI MULLA, PRINCIPLES OF MAHOMEDAN LAW, 213 (Twelfth Edition, 1944)

<sup>2</sup>THE HOLY QURAN, SURAH 24, VERSE 32.

<sup>3</sup>Ibid at SURAH 30, VERSE 21.

<sup>4</sup>Supra note 2, SURAH 30, VERSE 21.

<sup>5</sup>SURAH 2, VERSE 187.

The aforementioned two verses of the Quran describe in brief detail the intimacy that is intertwined in the married lives of people. The husband and wife are not mere puppets who remain strung to the contract of marriage, but are governed majorly by their natural instincts and feelings instead. Moreover, they have roles to play in their marriage, beyond the procreation of children. According to verse 5, the husband and wife also act as emotional support and comfort for each other, hence the comparison with clothing.

All these statements support the contention that a Muslim marriage is not a mere civil contract but also carries religious and sacramental value, even though the institution of marriage itself may have developed around the idea of procreation of and conferring legitimacy to children. Therefore, marriage carries equal sacramental value in Islam as in Hinduism or in Christianity. It is a holy union.

And since marriage carries this sacramental weight and importance, the Quran has established divorce as the most hateful in the sight of God.<sup>6</sup> Therefore, while it is possible to get a divorce under Islamic laws, the process prescribed for divorce is drawn out and lengthy to make divorce the very last resort. And it is to this effect that the Quran itself prescribes that arbiters from both husband and wife's sides try to resolve any conflict that has arisen between them and work at achieving reconciliation between them successfully, so that a divorce is avoided.

In India, more than 85% of the Muslim population consists of Sunni Muslims, and the rest are Shia Muslims.<sup>7</sup> The Islamic laws provide for three broad categories of divorce, namely – (i) *talaq*, which is preceded by a husband at his will, without the intervention of a Court; (ii) *khula*, which can be preceded by the wife, although it has certain caveats that restrict the autonomy of the wife in such a case; (iii) *mubarat*, which is divorce by mutual consent or on grounds of incompatibility.

In all cases, according to the Sunnis and a large number of Shias, no decree of the Judge is necessary to dissolve the union. Mere act of the parties is sufficient in law, provided that all the conditions required for effecting a valid divorce are complied with.<sup>8</sup>

## **II. Analysing Divorce under Islamic Laws**

Marriage has a distinct sacrosanct value in every religious order. It makes up an important aspect of the personal and religious lives of people. And therefore, to interfere with this institution in the methods and reasons by and for which people get married would mean to interfere with their personal and religious freedom. And there exists little reason to even prescribe a uniform civil law to something so personal. There is no inherent bias that infringes any other fundamental rights when people choose to profess their religion and get married according to the methods prescribed by that religion. Most religions simply look upon marriage as an institution for procreation and legitimising children. The religious and sacramental values attached to marriage are the products of collective beliefs within the community, which may not necessarily carry a rational basis but do no harm to any members of the community by discrimination or any other ways either.

Divorce, however, is different. While certain religions including Islam recognise divorce, there is an inherent patriarchal bias in the divorce laws prescribed by the Quran and the Hadiths.

*Talaq ul Biddat*, also known as Triple *Talaq*, was criminalised by the Supreme Court of India in the case of *ShayaraBano&ors v. Union of India*.<sup>9</sup> This judgement made it illegal for a husband to divorce his wife immediately by uttering an unequivocal declaration to divorce her three times. Under the Hanafi laws, this was considered a valid form of divorce, even though it is mentioned nowhere in the Qurans or the Hadiths, but was actually a form of punishment by Caliph Umar in the second century. In the *ShayaraBano* judgement, the following is stated:

“(a) Caliph Umar, finding that the checks imposed by the Prophet on the facility of repudiation interfered with the indulgence of their caprice, endeavoured to find an escape from the strictness of the law, and found in the pliability of the jurists a loophole to effect their purpose.

(b) When the Arabs conquered Syria, Egypt, Persia, etc. they found women there much better in appearance as compared to Arabian women and hence they wanted to marry them. But the Egyptian and Syrian women insisted that in order to marry them, they should divorce their existing wives instantaneously, by pronouncing three divorces in one sitting.

(c) The condition was readily acceptable to the Arabs, because they knew that in Islam divorce was permissible only twice in two separate periods of *tuhr* (period between menstrual cycles) and its repetition in one sitting was considered un-Islamic, void and not effective. In this way, they could not only marry these women, but

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<sup>6</sup>THE HOLY QURAN, Verse 1, Section 1, Sura - LXV.

<sup>7</sup>United States Department of State – Bureau of Democracy, Human Rights and Labor, International Religious Freedom Report for 2012

<sup>8</sup>SYED AMEER ALI, STUDENT'S HANDBOOK OF MAHOMMEDAN LAW, 89(Sixth Edition, 1912)

<sup>9</sup>(2017) 9 SCC 1

also retain their existing wives. This fact was reported to the second Caliph Hazrat Umar.

(d) The Caliph Umar then, in order to prevent misuse of the religion by the unscrupulous husbands decreed, that even repetition of the word *talaq, talaq, talaq* at one sitting, would dissolve the marriage irrevocably.

It was, however, a mere administrative measure of Caliph Umar, to meet an emergency situation, and not to make it a legally binding precedent permanently.<sup>10</sup>

The Supreme Court of India, in banning this form of divorce as it infringed the fundamental rights of women held that no personal laws could be in contravention to the Fundamental Rights in Part III of the Constitution.<sup>11</sup> While this landmark precedent has eliminated the problem of arbitrary instant divorce at the will of the husband, *talaq ul biddat* was only part of the problem when tackling gender justice and equality under Islamic divorce laws. The two other options of *talaq*, namely *talaq ahsan* and *talaq hasan* are still available to Muslim husbands. The former requires a declaration of divorce once during the period of *tuhr* (period between menstruation) followed by abstinence from sexual intercourse for the period of *iddat*, with divorce being irrevocable on the expiration of the period of *iddat*; the latter consists of three pronouncements of divorce made during three successive *tuhrs*, with no intercourse with the wife during any of the *tuhrs*. Divorce is revocable on the first two pronouncements but final on the third pronouncement. The major distinction between *triple talaq* and the other two forms of *talaq* lies in the waiting period or the *iddat*, which acts as a buffer to prevent divorce in the heat of the moment or by mistake, etc., since it allows time for reconciliation and the option of revocation is available. While this provides for the use of reason by the husband at some level, both of these forms of divorce still grant an absolute right to the husband to divorce his wife arbitrarily. This absolute right given to the husband leaves the wife at the mercy of the husband, since no specific grounds are required for the divorce to be valid.

The unilateral, absolute and unqualified right of the husband to declare a divorce is only part of the reason why *talaq* has an inherently patriarchal nature. It establishes the superiority of the husband in the marriage as he has the choice to stay married or dissolve the marriage whenever he so wishes, but also that no specific grounds are required to validate such a divorce. There is no bar to the husband under any law from exercising his right to declare *talaq* and dissolve the marriage without any reason, making the process completely unilateral and arbitrary. This further renders the wife subject to the wills and wishes of the husband, since the security of her marital life depends on the capriciousness of the husband. Even Islamic laws realise the degree of arbitrariness and the fact that the capricious nature of a husband might motivate him to seek divorce, which is why the period of *iddat* is prescribed to allow room for reconciliation. However, such reason is driven more by the husband being subject to frustrations of sexual gratification rather than a consideration of the rights of the wife.

*Khulais* another form of divorce practised under Islamic law. It is at the instance of the wife, unlike *Talaq* which is at the instance of the husband. However, the caveat involved is that in *akhul* divorce, the wife has to pay consideration to the husband in order to be released from her marital obligations. Meaning that the wife is fundamentally considered as an object chained to the bounds of the will of her husband, unless she can offer a consideration, often giving up her dower or some other property, in order to be “released” from the marriage. The husband, however, has the right to refuse such a divorce<sup>12</sup>, and therefore, the right, unlike *Talaq*, is not unqualified. Here again, the wife is subject to the wishes of the husband, and while the idea of divorce at the instance of the wife seems egalitarian, the caveats involved make it sufficiently clear that under Islamic laws, the power dynamics of marriage tend to lean toward a male bias and the wife is treated as an object to be controlled by the husband. The legislature was able to recognise early and provided for a judicial divorce at the instance of the wife under *The Dissolution of Muslim Marriages Act, 1939*. Section 2 of the said act states the grounds for such a divorce. These are –

(i) that the whereabouts of the husband have not been known for a period of four years; (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years; (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards; (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years; (v) that the husband was impotent at the time of the marriage and continues to be so; (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease; (vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated; (viii) that the husband treats her with cruelty, that is to say, (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or (b) associates with women of evil repute or leads an infamous life,

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<sup>10</sup> *Supra* note 9 at 90

<sup>11</sup> *Ibid* at 392, 393

<sup>12</sup> SYED AMEER ALI, *STUDENT'S HANDBOOK OF MAHOMMEDAN LAW*, 94 (Sixth Edition, 1912)

or (c) attempts to force her to lead an immoral life, or (d) disposes of her property or prevents her exercising her legal rights over it, or (e) obstructs her in the observance of her religious profession or practice, or (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran; (ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law.

While this law has certainly allowed the right to the woman to obtain a divorce from her husband without being subject to the caveats provided by the Shariat under *khuladivorce*, it cannot be considered equal to the unqualified act of *talaq* which does not require a husband to go to a court and prove the grounds for the divorce sought.

Finally, divorce is allowed if both parties mutually wish to dissolve their marriage, and such a divorce is called *mubarat*. *Mubarat* operates as an instant divorce, and the wife is expected to release her dower but this does not affect the liability of the husband to maintain her during the period of *iddat* to maintain his children by her, unless stated otherwise in the contract.<sup>13</sup>

### III. Laws in light of Equality of Genders and Uniform Civil Code

Broadly speaking, two postulates that have been established so far would be – (1) That marriage has religious sanctity as well as a contractual basis; (2) that Islamic divorce laws carry an inherently patriarchal bias. It was held by the Supreme Court in the *ShayaraBano* judgement that personal laws cannot be violative of Part III of the Constitution and they are subject to such limitations.<sup>14</sup>

The evolution of religion included its proliferation as the law and authority in ancient societies and over its followers. The attachment of religion to marriage was on the basis of the fact that the marriage between two people required the authority of a governing body to ensure that the duties and responsibilities that entailed marriage were not neglected easily. Another reason would be to provide with authority the prohibition of marriage between certain degrees of relationship to prevent practices like incest etc. in the community. As a reverse effect, marriage was shrouded as a religious practice, even though religion is not a necessary requirement for two parties to get married, as is possible in the modern society where parties may choose to have a civil marriage. The absolute requirement is legitimacy to such marriage granted by the law that the parties are subject to. The statement that religion was the only law present to grant legitimacy to marriages is further supported by the fact that before the enactment of The Dissolution of Muslim Marriages Act, 1939, apostasy from Islam by either party would automatically dissolve the marriage immediately, since such party was not governed by the Islamic law anymore.

Islamic marriages are not different in this aspect since a marriage between a Muslim male and female is granted legitimacy by the Shariat Law and it carries the sacrosanct Islamic identity distinguished from marriage under different laws, even though the basis of the marriage is contractual.

It is proposed that divorce is not a sacrosanct aspect of a Muslim marriage. Firstly, divorce does not constitute an essential for the religious identity of Muslims, and therefore to deal with divorce under secular laws would not infringe with the religious freedom of the Muslims. This can be proved by the use of Islamic laws itself.

Five degrees of obedience are established for all human actions under Islam. Justice Hidayatullah in his introduction to Mulla's Principles of Mahomedan Law (16th Ed.) (1968), states them as follows:

“**Degrees of obedience:** Islam divides all actions into five kinds which figure differently in the sight of God and in respect of which His Commands are different. This plays an important part in the lives of Muslims.

(i) **First degree: Fard.** Whatever is commanded in the Koran, *Hadis* or *ijma* must be obeyed.

*Wajib.* Perhaps a little less compulsory than *Fard* but only slightly less so.

(ii) **Second degree: Masnun, Mandub and Mustahab:** These are recommended actions.

(iii) **Third degree: Jaiz or Mubah:** These are permissible actions as to which religion is indifferent.

(iv) **Fourth degree: Makruh:** That which is probated as unworthy.

(v) **Fifth degree: Haram:** That which is forbidden.”<sup>15</sup>

By the standards of this test, and as has been stated by the Quran, divorce is the most detestable of the actions of those which are allowed, and in divorcing his wife, the man incurs a sin. So, divorce falls squarely within the fourth degree, and cannot be said to form an integral part of religion.

Secondly, matters related to divorce often violate rights that are beyond the scope of Islamic laws but fall under the laws of the secular State. The test to ascertain whether any religious law should be governed under personal laws or not should be to check whether civil or legal rights and laws of the State are violated by the

<sup>13</sup>SIR DINSHAW FARDUNJI MULLA, PRINCIPLES OF MAHOMEDAN LAW, 253 (Twelfth Edition, 1944)

<sup>14</sup>Article 25(1) of The Constitution of India states – Subject to public order, morality and health and to other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.

<sup>15</sup>M. HIDAYATULLAH, MULLA'S PRINCIPLES OF MAHOMEDAN LAW, (16<sup>th</sup> ed., 1968)

practice of such personal laws. For eg. If a person who is a Hindu chooses to pray at a mosque, they do not violate any civil or secular laws, but only their religious laws. However, if the same person wishes to place an idol of a Hindu god inside the mosque in the name of their religious rights, such an act is obviously an offense not limited to the religious but the civil domain, wherein provisions of the Constitution as well as that of the Indian Penal Code are violated.

Applying this test to Islamic divorce laws, it is sufficiently evident as proved above that these laws violate Fundamental Rights of Muslim women as well as their basic human rights since they render Muslim wives the subjects to the wills and wishes of their husbands. One part of these issues arises after the divorce, like maintenance, which was taken up in the *Shah Bano Case*<sup>16</sup> by the Supreme Court. Here also, the court had emphasised on the importance of a Uniform Civil Code<sup>17</sup>, as well as the presence of the patriarchal bias in the Islamic divorce laws.<sup>18</sup> The other part of the problem lies within the choice to get divorced itself. As has been stated above, Muslim wives do not enjoy the same autonomy to obtain divorce as their husbands do.

Firstly, through any form of *talaq*, the husband has the arbitrary power to divorce his wife whenever he wishes to do so.

Secondly, even when a *khuladivorce* is sought by the wife, she is bound by the consent of the husband and is further expected to pay a consideration to her husband, to be freed from the marital ties, implying that the Muslim wife is in some way bound to her husband and his wishes.

And the relief provided by The Dissolution of Muslim Marriages Act, 1939 is only based on specific faults of the husband and does not provide for a no-fault divorce at the instance of the wife. Therefore, it is just as important that even the options to obtain divorce should be non-arbitrary as well as equal in nature, to ensure an equilibrium between the power dynamics of the married couple.

These are contradictions in the laws due to the different spheres that the personal and secular laws operate in, under the Indian model of secularism. The Constitution of India seeks to establish a uniform civil code.<sup>19</sup> Where personal laws violate the basic rights and freedoms of citizens, the abovementioned test can be used to prescribe limits to the extent of personal laws, especially when the State provides for more egalitarian laws that are socially just, while the religious institution has failed to do the same and is moving in an opposite direction from the needs of the society. If divorce laws operate under uniform secular laws, gender justice can prevail with respect to divorce, and a step further in the direction of establishing a uniform civil code. Although there is a limited extent to which a uniform civil code can be enacted in India.

Supremacy of the Constitution has to be distinctly upheld in issues relating to social justice and equality. Even the Supreme Court has reiterated time and again that any laws infringing the Article 14 of the Constitution<sup>20</sup> are to be struck down.<sup>21</sup> Religions evolve, just like the State, to cater to the society they stem from. With the consolidation of ideas of gender justice and equality and the acceptance of ideas of feminism, the patriarchally biased religious laws fail to secure the rights of women, which are given by the egalitarian secular state and to subject women to discriminatory laws on the pretext of religious freedom is a violation of article 14 of the Constitution.<sup>22</sup>

#### IV. CONCLUSION

The Universal Declaration of Human Rights, to which India had voted for during its adoption in the United Nations General Assembly states that men and women are entitled to equal rights as to marriage, during marriage, and at its dissolution.<sup>23</sup> The Committee on the Elimination of Discrimination against Women (CEDAW) observed that due to the coexistence of multiple systems with regard to marriage and family relations applied to various religious groups had resulted in deep and persistent discrimination against women.<sup>24</sup> In the observations on the fourth and fifth reports of CEDAW, it was recommended that the State should ensure equality between men and women by ensuring that all laws on marriage and family relations governing the

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<sup>16</sup>1985 AIR 945

<sup>17</sup>*Ibid* Para 35

<sup>18</sup>*Ibid* at Para 3

<sup>19</sup>Article 44, Constitution of India.

<sup>20</sup>14. The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>21</sup>DR. SUBRAMANIAN SWAMY V. DIRECTOR, CENTRAL BUREAU OF INVESTIGATION, (2005) 2 SCC 31; AJAY HASIAV. KHALID MUJIB SEHRAVARDI, (1981) 1 SCC 722.

<sup>22</sup>*Supra* note 20.

<sup>23</sup>Article 16(1), Universal Declaration of Human Rights

<sup>24</sup> CEDAW, Concluding observations on the combined fourth and fifth periodic reports in India, paragraph 40, pp 13, 24 July 2014

various religious groups, in addition to their further amendment are in full compliance with articles 15 and 16 of the Convention.<sup>25</sup> Article 16(c) of the convention talks about the same rights during marriage and at its dissolution.<sup>26</sup> Same rights during marriage would include the right to choose how and when to dissolve the marriage. India signed the CEDAW on 30<sup>th</sup> July 1980 and ratified it on 3<sup>rd</sup> December 1993.<sup>27</sup> Therefore, it is the duty of the State to comply with the provisions of this convention and make or amend laws to ensure that this right is granted to Muslim women who suffer with arbitrary Islamic laws.

With the amount of diversity that currently exists in the country, a Uniform Civil Code has to be curated to such an effect that the religious freedoms of people are not subverted, but that cannot be at the cost of basic human rights that should be available to citizens. However, the State should not refrain from taking legitimate steps for the protection of these rights due to political considerations. A uniform civil code is not merely a feeble idea, but is envisioned within the Constitution itself. To this effect, article 44 should not be left as a dead letter within the Constitution.

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<sup>25</sup> *Ibid* at 14, Article 41(a)

<sup>26</sup> Article 16(c), Convention on Elimination of All Forms of Discrimination against Women

<sup>27</sup> [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN)