

Justice, liberty, equality and fraternity are constitutionally cherished values and guaranteed goals. Social justice, equality and dignity of individuals are the conspicuously the foundation and buttressing pillars of the edifice of social democracy, as envisaged under the Indian Constitution and the social justice becomes reality and accessible to every individual, and in a very sphere of life as contemplated in

Article - 38 becomes reality and the masses who have reposed their confidence in the Government whom they voted making their aspirations true, becomes possible only when the State always Governs keeping in mind the directives embodied in Part - 4 mindful of their substance and spirit the light focused by the Supreme Court in synthesizing both fundamental rights and the directives.

### IMRANA ILAHI'S CASE - NEED FOR UNIFORM CIVIL CODE

*By*

—**N. RAMACHANDER RAO**, Advocate,  
A.P. High Court  
&

—**Dr. N. VENKATESHWARLU**,  
Academic Consultant, Department of Law,  
Osmania University, Hyderabad

“A Common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably; it has the legislative competence to do so.”

—Justice Y.V. Chandrachud in *Mohd Ahmed Khan v. Shah Bano Begum*.

An incident occurred in Charthawal Village in Muzaffarnagar on 11th June, 2005 where Smt. *Imrana* was raped by her father-in-law and subsequent developments from religious heads in the name of Fatwa stating that now she is the wife of her father-in-law, hence she can't be the wife of her own husband, so she can't live with him. Again country reminds the need of uniform civil code applicable to all citizens. There is no uniform civil code in India but a uniform criminal civil code exists. The Criminal Law

is equally applicable to all citizens irrespective of their religious affiliation. However in the case of civil particularly in the matter of personal laws there is no uniformity. Twenty four year old *Rani Begum*, a mother of four was raped by her father-in-law at their home in Hardauli, Bulandshaher three years ago. As per a local cleric's edict issued then, she was forced to return to her parents. History repeated itself last month. The victim *Imrana Ilahi*, a mother of five children, took refuge of her native village nearby in the wake of the controversial fatwa by clerics of Darul Uloom of Deoband that disallows her to live with her husband and children, with a ruling that rape by the father-in-law establishes the mother-son-relationship between the raped woman and her husband thus annulling the marriage and further, the ruling ordered that she marry the father-in-law and stay with him.

#### **Woman raped by Father-in-Law cannot live with her husband:—**

The All Indian Muslim Personal Law Board (AIMPLB) supported Islamic seminary

Darul uloom Deoband's edict that the woman, who was allegedly raped by her father-in-law in Muzaffaragar, cannot be allowed to live with her husband any longer. The victim has agreed to abide by the ruling.

"My husband and I are willing to abide by the fatwa if the Darul Uloom Muftis want us to"<sup>1</sup> Ms. *Imrana* said in Muzaffaranagar.

Putting its stamp of approval on Deoband's decision, AIMPLB's lone woman member *Begum Naseem Iqtedar Ali Khan* told in Lucknow "as per the Quran, *Imrana's* conjugal relationship with her husband stood dissolved since she has been raped by the latter's blood relative<sup>2</sup>."

Had she been raped by anyone other than a blood relation, she could have stayed with her husband as in the *Bilkis Bano* case of Gujarat...But here a sacred relationship had been violated, the consequences of which have to be borne by *Imrana* and her husband, *Noor Ilabi, Begum*<sup>3</sup>.

However, she pointed out that the responsibility of the couple's five children would have to be shouldered by *Ilabi* as long as required.

The AIMPLB also ruled that Ms. *Imrana* had the right to marry anyone other than her father-in-law's family members.

On whether the punishment was not too harsh for the innocent victim, she said: "As believers of Islam, we have to follow what has been prescribed by the religion and even the victim and her husband have professed to abide by Shariat<sup>4</sup>."

The Board, however, strongly condemned the heinous act and wanted the harshest

punishment, as per the law of the land, be given to the accused, *Ali Mohammad*, so as to set a precedent,

#### **Fatwa should not be enforced:—**

Islamic expert and member of the National Commission for Religious and Linguistic Minorities *Tabir Mahmood* the All India Muslim Personal Law Board (AIMPLB) fatwa in the *Imrana* case need not be strictly imposed on an innocent and unwilling couple desirous of continuing in marriage<sup>5</sup>.

The AIMPLB upheld the Darul Uloom Deoband's edict that *Imrana* who was allegedly raped by her father-in-law in Muzaffarnagar, could not be allowed to live with her husband. The pronouncement has led to outrage and disbelief among the people, particularly women's groups<sup>6</sup>.

In Prof. *Mahmood's* opinion, in a country like India where Islamic Law was "only selectively applicable under the authority of its own law," the rule need not be strictly imposed<sup>7</sup>.

Explaining the history behind such a fatwa, a woman subjected to sexual indignity by any of her husband's ascendants or descendants becomes 'harma' (prohibited) for his was a rule of worldly wisdom evolved by some religious jurists of Arabia over 1,000 years ago. "Those learned jurists of the time had ruled that such conduct of the husband's relatives would create 'hurmate-musharat' (legal bar of affinity under rules of prohibited degrees) between him and the wife," Prof. *Mahmood* said, adding that pronounced in a society where almost instant remarriage of divorced women was the order of the day, this was a pro-women verdict enabling the wives outraged by sexual misbehaviour of their male in-laws to walk out of their marital bond and seek a new life elsewhere.

1. The Statement of Ms. *Imrana*, published in "The Hindu".

2, 3, 4. The Statements published in The Hindu, Dated 27-6-2005, Sunday

5, 7. The Statements published in The Hindu, dated 28-6-2005, Tuesday

6. The Statement published in The Hindu, dated 27-6-2005, Monday

Describing the fatwas as totally unacceptable, All-India Democratic Women's Association (AIDWA) VICE-PRESIDENT *Brinda Karat* also pointed out it amounted to denying a woman her dignity and basic human rights. "The edict, whether by fatwa or by caste panchayat, has no legal or Constitutional sanction and cannot be accepted," she said, adding that it was time the Government intervened to support the victim. "It is a shameful thing that the Minorities Commission has not condemned the decision.

The AIDWA along with other women's organizations and concerned individuals will hold a demonstration in Muzaffarnagar on June 30 to condemn the fatwa and to demand that *Imrana* and her husband, *Ali Mohammad* be allowed to live together without fear of violence<sup>8</sup>.

"It is indeed barbaric that instead of ensuring severe action against the culprit who has committed such an unpardonable crime, the so-called learned men are interpreting customary religious laws and pronouncing judgments which not only go against the law but also against all humanitarian norms<sup>9</sup>".

Womenpowerconnect, comprising several women's groups, described the edict as "unacceptable" and "Violated all norms of dignity and human rights." "It is time that the law enforcement agencies step into support the victim," *Ranjana Kumari*, convenor of the organisation.

#### **Fatwa is an answer, not a decree:—**

The Tamil Nadu Wakf Board Chairperson<sup>10</sup>, contended that a fatwa (edict) was only an answer to a query and not a decree.

"A decree can only be passed by a competent Court," she said referring to the All-India Muslim Personal Law Board's stamp of approval on the fatwa issued by Deoband declaring a marriage illegal on the raped by her father-in-law.

"By this act, the Board is only trying to make illegal what is actually legal that is the marriage of *Imrana* - In Islamic Law makes the establishment of justice its top priority,"

The Board was known for its conservative view and its backing of the fatwa only reaffirmed its "complete insensitivity" to Muslim women. "Instead of ascertaining the wishes of the victim and her husband, it is obvious that she has been coerced into accepting the so-called verdict.

The Board is acting clearly contrary to the established norms of law. The Muslim community has always has an enlightened approach on many other important issues and it is time they took a principled stand and make their positions known on issues affecting their lives,"

#### **No evidence to support Imrana rape claim:—**

A team of the Jamaate-Islami Hind, which visited Muzaffarnagar for an on-the-spot inquiry into the alleged rape of *Imrana* by her father-in-law, has concluded that there was no "substantive evidence" to support her claim. A property dispute between *Imrana's* husbands and his father may have been the reason for the allegation.

Members of the women's wing of the Congress - *Rita Babuguna*, *Jaya Shukla* and *Renu Poswal* - also met *Imrana* and gave her Rs.50,000/- towards her rehabilitation.

In the words of Mr. *Babuguna* that the *Mulayam Singh Yadav* Government should give Rs.5 lakhs to *Imrana*. Also, political parties should stop politicizing the case. "We demand

8. The Statements published in the Hindu, dated 28-6-2005

9. The Statements given by (Ms.) *Brinda Karat*, on 28-6-2005

10. The Statements given by Ms. *Bader Sayeed* were published in The Hindu.

that the accused father-in-law be tried by a fast-track Court and the verdict be given within 16 days.”

The Congress team said it was “shocked” that a “new twist” of no rape having<sup>11</sup> taken place was being given to the story by those out to save the culprit.

Members of the Jamaat team told the press here on Sunday that they has talked to family members and neighbours and concluded that “everyone should now wait for the Court verdict” and see the results of the police investigation.

One of the team members, *S.Q.R. Ilyas*, the team found “no substantial evidence to support the rape allegation made by *Imrana*.” Also, it was wrong to say that Islamic clerics had given any “fatwa” terminating the marriage of *Imrana* and her husband before the rape has been proven or that she has now become the wife of the alleged rapist. The team said that the case has been referred to the Darul Uloom Deoband, which had handed it to now pending.”

In a statement, the members of the Jamaat team, Mr. *Ilyas*, *Nusrat Ali*, *M.S. Malik*, *Mohammad Refeeque*, *Muhammad Sajid* and *Alauddin*, said that according to *Imrana*’s mother-in-law, the family had borrowed a “large sum of money” for the marriage of *Imrana*’s sister-in-law. As her father-in-law wanted to sell off their house to pay back the debt, *Imrana* and her husband, who were opposed to the move, decided to “teach him a lesson.” The Jamaat team said that on the intervening night of June 11 and 12, when the alleged rape took place, a large number of people were sleeping in the house - the accused father-in-law, his wife, *Imrana* and her five children and *Imrana*’s sister-in-law. “Rape being committed in utter silence seems impossible,” the team said.

*Imrana* has been quoted by the team as saying she was overpowered by the father-in-law, and later blackmailed with Rs.10,000/- being demanded from her by one of her in-laws. When she could not pay the blackmailer got the news published in newspapers and informed the police. The Jamaat criticized “those parties” which were trying to use the case to demand a uniform civil code, pointing out that the Muslim Law provided for stringent punishment. Also, “Islam does not leave an oppressed woman in a helpless State” as was being made out in some reports and interpretations by political parties.

#### **Uniform Civil Code and Indian Constitution:—**

The Indian Constitution, in its Part IV, Article 44 directs the State to provide a Uniform Civil Code throughout the territory of India. However it is only a Directive Principle of State Policy, therefore it cannot be enforced in a Court of law. It is the prerogative of the State to introduce Uniform Civil Code. The Constituent Assembly Debates clearly show that there was a wide spread opposition to the incorporation of Article 44 particularly from the Muslim members of the Assembly<sup>12</sup>. *Naziruddin Ahmed*, *Mohd. Ismail Sabib*, *Pocker Sabib Bahadur* and *Hussain Sabib etc.*, made a scathing attack on the idea of having a Uniform Civil Code in India on the grounds that the right to follow personal law is part of the way of life of those people who are following such laws, that it is part of their religion and part of their culture, that it would lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country and that in a country so diverse it is not possible to have uniformity of civil law. However, one of the most illustrious members of the Assembly, *K.M. Munshi* strongly felt that if the personal law of inheritance, succession *etc.*, is considered as a

11. The statements given by Ms. *Babuguna* and published in *The Hindu*.

12. See CAD Book No.2, Vol. III pp. 538, 552.

part of the religion, the equality of women can never be achieved<sup>13</sup>.

### Judicial behaviour and Uniform Civil Code:—

Under Article 44, *i.e.* Directive Principles of our Constitution, except the State to secure for the citizens a uniform civil code, throughout the Territory of India.

Several times when the Hon'ble Supreme Court was approached by public spirited persons to decide the issues, touching the aspects of personal law, the Hon'ble Supreme Court refused to dispose of the cases on merits expressing that the same are State policies required to be dealt by the Legislature. The same view was expressed finally by the Hon'ble Supreme Court in its judgment "*Ahmedabad Woman Acting Group v. Union of India*"<sup>14</sup>.

Considering the fairness and moral stance of the law and social justice, the Hon'ble Supreme Court of India declared the divorced Muslim women is entitled to seek maintenance under Section 125 Cr.P.C., on par with other religious women in *Shabbano's* case<sup>15</sup>.

But however, orthodox Muslim religious elders made a big issue on the said judgment stating that the same is encroaching on the principle of Muslim Personal Law.

Finally the Parliament enacted a separate law for Muslim women in respect of maintenance after their divorce called Muslim Women (Protection of Rights on Divorce) Act, 1986. Wherein as per Section 3, a divorced Muslim women entitled to a reasonable and fair provision and maintenance to be made and paid to her within the period of Iddat by her former husband.

When the said Act was challenged as contrary to *Shabano's* case, the Hon'ble Supreme Court in *Danial Liti's* case<sup>16</sup>, while upholding the Act, declared the Muslim husband is liable to make reasonable and fair provision for the future on the divorced wife *i.e.*, beyond the period of Iddat.

Infact the Hon'ble Supreme Court of India in judgment *John Vallamattam's* case<sup>17</sup>, while considering the scope of Articles 25, 26 and 44 of the Constitution of India, held as follows:

"I would like to State that Article 44 provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The aforesaid provision is based on the premise that there is no necessary connection between religious and personal law in a civilized society. Article 25 of the Constitution confers freedom of conscience and free profession, practice and propagation of religion. The aforesaid two provisions *viz.*, Articles 25 and 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. It is no matter of doubt that marriage, succession and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and 26 is a suspect legislation, although it is doubtful whether the American doctrine of suspect legislation is followed in this country. In *Sarla Mudgal v. Union of India*,<sup>18</sup> it was held that marriage, succession and like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. It is a matter of regret that Article 44 of the Constitution has not been given effect to Parliament is still to step in for framing a common civil code in the

13. CAD, Vol. III p.548

14. 1997 (3) SCC Page 573.

15. 1985 (2) SCC Page 556.

16. 2001 (7) SCC Page 740.

17. 2003 (6) SCC Page 611.

18. 1995(3) SCC Page 635



country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.”

### Need to Reform Muslim Personal Law:—

The case of *Imrana*, allegedly raped by her father-in-law, being virtually “punished” by the Muslim Personal Law Board, as an instance which proved that there was need to make the Muslim Personal Law gender sensitive pointing out that the entire nation was aghast that the victim *Imrana* was being punished and “driven to destitution” through the termination of her marriage, and that the Constitution under Article 44 provided that “the State should endeavour to secure for the citizens a uniform civil code throughout the territory of India” and yet nothing had been done about this 55 years after India became a republic. *Imrana* had been “raped by the culprit but condemned and discredited by her own” and this was “wholly unacceptable under any civilized notion of rule of law. Also referred to the *Shab Bano* case<sup>19</sup> recalling the overturning of a Supreme Court judgment by the Rajiv Gandhi Government, which was “Glaring example when the Legislature failed this reform process.”

*Imrana's* case: Muftis ruled out change: The muftis of the Darul Uloom Deoband on Thursday ruled out any change in the Muslim Personal Law to provide solace to a woman who had been raped by her father-in-law.

Mufti Habiburrehman and Mufti Ezaq Arshad Kazmi told reporters here that the Bharatiya Janata Party and Communist Party of India (Marxist) demand for a change in the law was “totally unjustified.”

“There is no scope for debate or change in the Muslim Personal Law which is a fundamental law of Quran, hadees and is

1,400 years old,” they said, citing scriptures to uphold the Deoband fatwa (edict) that had ordered the husband of the woman to leave her.

“The Quran Sharief lays down: ‘Do not perform ‘nikaah’ with a woman whom your father had bedded’,” Mufti Habiburrehman said.

Mufti Ezaq Arshad Kazmi, editor of the Deoband website, supported the stand of Uttar Pradesh Chief Minister Mulayam Singh Yadav to respect the edict of the Deoband in the *Imrana* case.

He criticized the demand of the CPI (M) General Secretary<sup>20</sup>, for a change in the law. Mr. Karat should not “echo the views of the Rashtriya Swayamsevak Sangh,” he said. The views of people like Mr. Karat should be corrected instead of the Muslim Personal Law, he said.

There are four schools of law in the Sunni sect, the major one being Hanafi School to which 80 per cent of the Muslims adhere. The Deoband edict in the *Imrana* case was as per these canons. The other three sects are Shia, Hambali and Maliki.

Another leading scholar, Mufti Abdullah Javed said there is provision in the Maliki School of Law, practiced in Africa, that allows *Imrana* to stay with her husband, *Noor Elahi*, despite having been raped by her father-in-law.

It was, however, not permitted by any of the three other Sunni Schools of Law. She could, however, marry some one else. The responsibility of bringing up the five children would rest on Noor. For avoiding repetition of cases like *Imrana* there is every need to make a uniform civil code and for that purpose an appropriate Article may be incorporated in Part III of the Constitution making uniform civil code as a fundamental right of the citizens.

19. 1985 (2) SCC Page 556.

20. Pakash Karath gave a Statement to Hindu.