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An Analysis on the Personal Laws and Constitutional Challenges of the Uniform Civil Code in India

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ABSTRACT

The Uniform Civil Code is a single code which applicable for all the citizens of our country in personal matters such as marriage, divorce, adoption, maintenance and guardianship. Article 44 of the Constitution of India confers "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". Although, India has many religious law practices such as hindu marriage act which is merely applicable for Hindus and the term "Hindu" included along with the Sikhs, Jains and Buddhists. Besides, the Muslim personal laws are based on their religious texts such as the shariat application act and dissolution of muslim marriage act which are merely applicable on the muslim and Indian christians have the Indian christian marriage act where Parsis are subject to the parsi marriage and divorce act. Nevertheless, there have some "Secular" laws which are applicable for all the citizens irrespective of their religion and caste such as the special marriage act, guardianship and wards act, juvenile justice care and protection of children act, etc. However, Goa is the merely one state in India which has a UCC which is applicable upon the citizens of the state irrespective of their caste and religion. Though, this paper aims to evaluate on the personal laws in India and its various practices in social institutions as well as Constitutional challenges of the implementations of the UCC.

Keywords: Marriage, Divorce, Constitutional Provisions..

I. INTRODUCTION

"Faith must be enforced by reason, when faith becomes blind it dies"

Mahatma Gandhi.

India celebrates the 75th years of Independence Day but still women of the nation are neglected for evil practices of personal laws. The Human rights of a woman always been infringed for impulsively practices in personal laws such as marriage and family. Although, India's many states have not same practices in despite of same religion. Hence, Hindus of West Bengal and Kerala have different practices and norms in their marriage. In Islam the Shia and Sunni have

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different recognition and practices in their religion. In such a situation, a Uniform Civil Code is a solution to handle the impulsive evil practices which are existing inside personal laws yet and a UCC can simplify the complex practices of personal laws as well as protect the vulnerable section including women because women have confined rights in personal laws, be it any religion either Hindu or Muslim.

The principle of UCC generally involves the question of secularism and it is a principle which requires to be laid down at great length due to various interpretations of secularism. It is a topic which are foremost glorified and criticised. Some people of our society consider that the UCC is against the spirit of secularism while some regard it as secularism and religious faith.

II. HINDU PERSONAL LAWS

The term Hindu was derived from the "Sindhu". It denotes those who were lived around the Sindhu river. Usually, we are known that the Hinduism is the most ancient religion in the world. It came probably 6000 years ago and time to time it was passed varied phases through practices. The first stage of Hindu Law came by "Shruti" and it means "what was heard". The Shruti is four kinds such as Rigveda, Yajurveda, Samaved and Atharveda. The second stage of Hindu Law came by "Smriti" and it means "which is remembered". There are many kinds of Smritis such as Manu Smriti, Yajnavalka Smriti, Narada Smriti etc. On the edge of 11th century the "Mitakshra" and 12th century "Dayabhaga" concepts came in Hinduism by digest and commentaries of Shrutis and Smritis. Generally, the Hindu means when a person is born of both the Hindu parents or one parents is Hindu and he/she brought up as a Hindu culture or follower of the Brahmo, Prarthana or Arya Samaj, or any person who is a Buddhist, Jaina or Sikh by religion.

In Hinduism the marriage is a sacrament of religious ties between two individual for ultimate eternity. Thus, they can pursue the darma. The marriage is solemnized as per the customary rites and ceremonies which are based on caste or community to which parties belong. 'These can be dispensed with merely if one of the parties to marriage can establish a customary ceremonies in substitution of the Shastric ceremony'² The exogamy rule confers a person is not permitted to marry within the same tribe and the Shastric prohibits of marrying within the same gotra or pravara or sapinda. According to Satapanthda Brahmana prohibits that nobody could marry a person related within five degrees on mother's side and seven degress on father side. According to The Hindu Marriage Act, section 5 provides some conditions for marriage solemnized between two Hindus such as party has no spouse, must be conferring a valid

² Robindra Nath V. State.1969 Cal 55.

consent, completed the age of twenty-one years, etc.

In 1857 the divorce concept was recognized for first time in England. "If only marriages that are based on love and moral, then only those are moral in which love continues. A definite cessation of affection or it's displacement by a new passionate love, makes separation a blessing for both parties as well as for society. People will only be spared the experience of wading through the useless mire of divorce proceedings"³. In Hinduism there has some grounds for the divorce such as after the solemnized of marriage had voluntary intercourse with any person except his or her spouse, cruelty, desertion, religion conversion, mental illness, presumption of death, judicial separation and mutual consent.

In Hindu law, the term "maintenance" has been used in a wide sense. Generally, it means to provide food, clothing, residence, education and medical aid, treatment etc. 'The obligation of the husband to maintain his wife doesn't arise out of any contract, express or implied, but out of the status of marriage, out of the jural relationship of husband and wife created by the performance of the marriage'. *Udayanath V. Siridei*⁴ 'The obligation of the husband to maintain his wife begins with marriage. It's irrespective of the fact whether he has or has no property. Hindu law-givers did not deny maintenance even to an unchaste wife, provided she continued to live with her husband though in such a case she was entitled to starving maintenance'. *Parami V. Mahadevi*⁵. The Hindu Marriage Act, 1955 permits both husband and wife to claim maintenance because of the ancient practices of equality irrespective of gender. The statute provided this right to only the "deserving man", who does not capable of earning their daily requirements and essentials. In *Nivya V. M. V. Shivaparsad M. K.*⁶ the Kerala High Court propound that husband is entitled to have maintenance by proving his permanent disability to work and earn moral necessities.

According to 'Manusmriti' Adoption signifies "taking someone else's son and raising him as one's own". Hindu Adoption & Maintenance Act, 1956 conveys a clear perspective of certain rules and restrictions on 'who' and 'whom' to adopt. Though it is recognized by the Hindu Law, still there were some castes and tribes who prohibited adoption by custom. The statute provided a uniform legislation and any adoption neglected the procedure mentioned in this Act would be null and void. One who wishes adopt a child have to fulfil some requirements provided under the statute such as, one should be a Hindu by religion, major and sound mind, have the financial capability to maintain a child, unmarried if married should take the

³ Origin of Family, Private Property and State, 117-18.

⁴ *Udayanath v. Siridei*, 1973 Or. 196.

⁵ *Parami V. Mahadevi*, (1909) 34 Bom. 278.

⁶ *Nivya V. M. V. Shivaparsad M. K.* 2017 (2) KLT 803.

permission of the other spouse, 21 years older than the child he wants to adopt.

III. MUSLIM PERSONAL LAWS

According to Aghnides a muslim is one person who believes on Mohammad as Prophet or who says there is no God except Allah and Mohammad is 'His prophet'. The origin of Muslim Law is Arabia where Mohammad laid down the Islam. It's the law which is established by a communication from Allah with reference how will a men's acts. In Islam the body of common law known as Shariat. The Arabic meaning of Shariat is 'the clear water and path to be followed'. It's used to denote that how a Muslim should lead a living as per Allah's footmark. The Quran, Hadith, Sunna, Ijma and Qiyas are part of the Shariat. The Quran is a holy religious book of Islam which is divine communication through the Prophet Mohammad. It conforms the Prophet's teachings to the world. The Hadith is a written format which says about the life of the Prophet Mohammad as explained in the Hadith. The Sunna is the practices and traditions of the Prophet Mohammad in Islam. It constituted a model for Muslim to follow and not included in the holy religious book Quran. In Islam the Ijma denotes when there is nothing in the Quran or Hadith or Sunna to answer a particular question regarding Muslim Law then the Islamic Jurists will be decided the particular matters. The Qiyas denotes when some points aren't clearly covered in Quran, Hadith, Sunna and Ijma then Qiyas would be applied by the prediction of interpretation of the Muslim Law.

In Islam there are two main communities (I) Shia (II) Shunni. The Shia community is minority in Islam and most of the population is living in Iran, Iraq, Bahrain etc. The second major community is Sunni in Islam. Usually, they are living in India, China, Pakistan, Saudi Arabia and Bangladesh. India's most of the Muslims are being followed by the "Hanafi" school.

In Muslim Law the marriage (Nikah) is a contract and not a sacrament of religious ties as in Hinduism. The Arabic word "Nikah" means a sexual intercourse between a man and women based on mutual concept. In Muslim Law there is a "Nikahnama" system that means the wife and husband entering into a contract put their Signature through a written document. Besides, there has a Dower (Mahr) system as well. The Dower is a gift or a certain amount of money which to be paid by husband to his wife at the time of marriage or later. In Islam there has a Polygamy system which denotes a Muslim man can marry four wives. Therefore, some conditions may be followed for instance - if any Muslim man fear that he can't do justice between them then marry merely one wife. Although, it can be said that the Muslim law is inherited the doctrine of plurality of wives but it restricted for Muslim Women that they will not marry more than one husband and The Indian Penal Code 1860, Section 494 is not apply in this matter. In Islam there has another kind of marriage system which is "Nikah Halala". The

"Nikah" means marriage and "Halala" means something that is permissible. For example - if a Muslim woman is being divorced by her husband to 'Talaq-e-biddat' (Triple Talaq) then the woman will marry another man, after getting divorced by the second husband, she would be able to re-marry her former husband. It's called "Nikah Halala" and this process is followed by 'Hanafi' rules in Islam.

In *Samema Begum Case*⁷ the Supreme Court held that the evil practice of "Polygamy" and "Nikah Halala" violating of fundamental rights under part III of the Constitution of India, article 14, 15 and 21. Therefore, the Court declared it as unconstitutional.

In Muslim Law there are many kinds of divorce rules e.g. Talaq, Khula, Mubarat, Liar, Khiar, Taqbish etc. Generally, a marriage would be dissolved either death of husband or wife, or by divorce. However, in Islam after death of a wife the husband may re-marry but the widow wife cannot re-marry before expiring of Iddat period. This time is four months and ten days. If she is pregnant that time it will be extended until delivery of the child.

In *Shayara Bano Case*⁸ a Constitutional bench held by 5:3 majority that the "Triple Talaq" was violating the fundamental rights under article 14, 15, 21 and 25. So that the Apex Court banned the "Triple Talaq". In 2019 the Parliament of India passed an act which is "The Muslim Women Protection of Rights on Marriage Act, 2019" for protecting the rights of a married Muslim woman and prohibited the Triple Talaq by her husband.

Generally, a Muslim married woman is entitled to confer maintenance to her husband until the end of the Iddat period. The Spouse will be divorced when the Iddat period expired. In case of a pregnant wife then the Iddat period will extend up to the delivery of the child. Thus, we can see a direct conflict with section 125 of The CrPC. However, section 125 of CrPC is not recognize the Iddat period. After delivery of the child the husband will be bound to pay maintenance until two years age of the child. If he is refused to confer the maintenance costs then Muslim woman may be filled a petition against her divorced husband under "Muslim Women Protection and Rights on Divorce Act, 1986".

In *Shah Bano Case*⁹ the plaintiff claimed maintenance to her husband under The Code of Criminal Procedure 1973, section 125. Although, this case challenged the religious domination on women and raised the voice for a Uniform Civil Code. After the verdict, Central Government was overruled the decision by passed the "Muslim Women Rights to Protection on Divorce Act, 1986" which barred the rights of a Muslim women for maintenance under Section 125, of CrPC.

⁷ Samema Begum Case AIR 2018.

⁸ Shayara Bano V. Union of India AIR 2017, 9 SCC 1.

⁹ Mohd. Ahmed Khan v. Shah Bano Begum AIR 1985, SC 945.

In *Shamim Ara V. State of U. P.*¹⁰ the Apex Court held that the liability of a husband to pay the maintenance costs to his children and wife. Generally, it means that voluntarily take a child from other parents in compliance with formal legal procedure. However, in Muslim Laws there are no provision for adoption but a Muslim person can be hold guardianship for a certain period. In *Shabnam Hasmi Case*¹¹ the Apex Court held that any person can be adopted a minor child under the "Juvenile Justice (Care and Protection of Children) Act 2000" irrespective of religion.

IV. CHRISTIAN PERSONAL LAWS

LORD STOWELL who was a most eminent ecclesiastical Judges in England who proceeded to quote from Henry Swinburne (1560-1623) on Espousals. He wrote "It is a present and perfect consent which alone maketh matrimony without either public solemnization or carnal copulation for neither is the one nor the other the essence of matrimony but consent merely". This view after a long past has been endorsed by the House of Lords in a decision¹². It is emphatically stated by the House of Lords that the procreation of children is not an essential requirement for a valid marriage. Besides, it may be said that Christian marriage is the lifelong union of a man and a woman to the exclusion of all others which is proceeded by some form of ceremony recognised by the law of a particular country in which it takes place.

The section 4 confers that every Christian marriage is to be solemnized according to the provisions of the Christian Marriage Act,1872. However, a presumption of marriage can be drawn from cohabitation for a long time. This presumption is not but an irrebuttable one. Where the fact of marriage is admitted by the parties then it is safe to draw the presumption. However, a marriage according to Christian rites alone would be valid when both parties are Christians¹³. In regard to marriage among Christians marriage performed according to the law of the land governing the parties will make the marriage valid. The effect of marriage between a Syrian Catholic girl and a Latin Catholic is that the girl becomes a member of the husband's community, namely, Latin Catholic¹⁴. Though under the Canon Law a marriage performed by a Schismatic priest where the parties to the marriage are Roman Catholics will not be recognised as valid by the Catholic Church and the offspring will be described as illegitimate, such a marriage would be perfectly valid under ss. 4 and 5 of the Christian Marriage Act and the progeny perfectly legitimate.¹⁵

¹⁰ *Shamim Ara V. State of U. P.* AIR 2002.

¹¹ *Shabnam Hashmi vs Union Of India* AIR 2014.

¹² *Baxter v. Baxter* 1948, AC 274.

¹³ *Kochan Nadar Yovan Nadar V R.N.V. Nadar* AIR 1955, Track 182.

¹⁴ *Public Service Commission V Dr. Kunjamma Alex* 1980, KLT 24.

¹⁵ *Gnanamuthu V Anthoni* AIR 1960, Mad 430.

The section 60 lays down the conditions on which marriages of Indian Christians may be certified. There are three conditions, such as :-

- Age of parties for Man 21 and women 18.
- None has a spouse living.
- Oath or declaration in specified form in presence of a person licensed under section 9 and at least two other credible witnesses.

This section has no application to the law of marriage of the Roman Catholic Church in India which follows the age of capacity as prescribed by the Canon Law.¹⁶

The section 10 provides the grounds on which a Christian marriage may be dissolved.¹⁷ These grounds for dissolution of marriage cannot be extended by virtue of section 7 of the Indian Divorce Act, 1869 to other grounds which are prevailing for the time being in England.¹⁸ The history of all matrimonial legislations will show that at the outset conservative attitudes influenced the grounds on which separation or divorce could be granted. Over the decades, a more liberal attitude has been adopted. Although, the grounds for divorce have been liberalised, yet they nevertheless continue to form an exception to the general principle favouring the continuation of the matrimonial tie. When a legislative provision specifies the grounds on which divorce may be granted, they constitute the only conditions on which the court has jurisdiction to grant divorce. The ground of mutual consent is available under section 28 of the Special Marriage Act and section 13B of the Hindu Marriage Act. The court cannot read this ground under section 10 of the Indian Divorce Act by adopting a policy of "social engineering".¹⁹ Similarly, an irretrievable breakdown of marriage as in England cannot be read as a ground for divorce under section 10 of the Act in view of the provisions of Section 7. All these are for consideration of Parliament. A Christian marriage can merely be dissolved under the provisions of a statute of general application to such marriages and not by means of a procedure prescribed by the personal law of any particular community to which one of the parties has become a convert. Thus, where the parties to a marriage were Russians who were married in Berlin according to civil rites and the wife subsequently on coming to India embraced the Mohammedan faith and cabled to her husband in Berlin to accept Islam and on his refusal to do so, she could not have recourse to the procedure prescribed by the Mahomedan Law for the purpose of obtaining a dissolution of a Christian marriage.²⁰

¹⁶ Lakshmi Dhar V Sachit Dhar 73 CWN 1001.

¹⁷ Khambatta V. Khambatta 36 Bom LR 1021.

¹⁸ Shireen Mall V. John James Taylor, AIR 1952, Punj 277.

¹⁹ Reynold Rajamani V. Union of India AIR 1982, SC 1261.

²⁰ Noor Jehan Begum V. Engine Tiscenko AIR 1941, Cal 532.

The section 10 has prescribed a solitary ground for dissolution of marriage on a petition of a husband. On the other hand, a wife is given a long rope to present a petition for dissolution of marriage. Though apparently this discrimination is inconsistent with the provisions of article 13, 14, 15 of the Constitution of India, however, it was held that section 10 is not repugnant to the said articles as it is based on sensible classification.²¹ Both under section 10 and section 18 of the Act and it is the husband or wife who is alone competent to institute proceedings for divorce or nullity. Therefore, it appears that a matrimonial status is conferred on them by the mere fact of solemnization of marriage.²² Where a marriage between the plaintiff and the defendant was not according to the Indian Christian Marriage Act 1872 but according to 'Seerthirutha' form of marriage, the Indian Divorce Act cannot be invoked. Section 10 of the Act does not apply to a case where a valid marriage does not exist.²³

V. PARSİ PERSONAL LAWS

Amongst Parsis there is a statutory impediment to marriage contained in section 3 of the Parsi Marriage & Divorce Act, 1936 until the parties in case of a male attains the age of twenty-one and in case a female attains the age of eighteen, however, that impediment must be strictly confined to the purpose for which it was intended. It is an impediment which interferes with the freedom to contract after attaining the age of 18 and it cannot be extended further to prevent a person who is above 18 years from enforcing his rights under the contract.²⁴ There are two other conditions of a valid Parsi marriage are :-

- That the parties must not be related to each other in any of the degrees of consanguinity or affinity as set out in Schedule 1 of the Act.
- That such marriage must be solemnized according to the Parsi form of ceremony.

The section 32 lays down different grounds for dissolution of marriage. Where right to sue for nullity of marriage on the ground of unsoundness of mind accrues before the commencement of the new Act, but is brought after the Act, section 32(b) shall apply to such cases. In such a case both the conditions laid down in proviso to section 32(b) must be satisfied before relief by divorce can be granted under this section.²⁵ In case of desertion under section 32(g) of the Act, if the husband quarrelled with his wife and deserted her by leaving the house with his kit, the mere fact that he subsequently used to visit his wife's place for a specific purpose not as her

²¹ Dwarka Bai (Dr.) V. Nainan Mathews AIR 1953, Mad 792.

²² Rose Simpson V. Binimoy Biswas AIR 1980, Cal 214.

²³ G. Packia Raj V. P Subbammal AIR 1991, Mad 319 (SB).

²⁴ Freny B. Engineer V. S.K. Modi AIR 1937, Bom 392.

²⁵ Phiroze B. Pothiwalla V. Shirinbai P. Pothiwalla AIR 1938, Bom 65.

husband, but merely as a boarder does not indicate that he had revived the matrimonial relations and that the desertion which had commenced had come to an end.²⁶ The desertion means the abandonment of one spouse by the other with the intention of breaking off matrimonial relations between them and thereby bringing cohabitation to an end. The question of desertion cannot be decided merely by enquiring which party left the matrimonial home first. It is the party who by his or her conduct brings the cohabitation to an end, that is guilty of desertion. In order to prove desertion under section 32(g) it is necessary for the wife to prove that she has been deserted by the husband for at least three years and that she has been deserted without her consent or against her will.²⁷

The parties living under the same roof may have separated and may have ceased to cohabit together and even in those circumstances can prove that there had been constructive desertion by one spouse against the other. The fact of separation and the animus deserendi must co-exist for the offence of desertion. The period during which the husband is confined in the Lunatic Asylum has not to be taken consideration in computing the period of three years (now two years) as required by section 32(8) of the Act. Under the strict wordings of section 32(j) it is enough for one of the spouses to prove that the other spouse has ceased to be a Parsi Zoroastrian during their married lives. The Act does not say that the defendant should not only have ceased to be a Parsi but must continue to be a non-Parsi till the date of the suit or for any particular period of time. It is enough if the plaintiff shows that during their married life the defendant had ceased to follow the tenets and doctrines of Zoroastrian religion. The onus lies upon the plaintiff and in the discharge of that onus the plaintiff is entitled to rely upon any admission which the defendant may have made, provided it is clearly and unequivocally made and has not been withdrawn or satisfactorily explained.²⁸

VI. CONSTITUTIONAL CHALLENGES OF THE UNIFORM CIVIL CODE

The UCC concept was adopted by Dr. B.R. Ambedkar during the Constituent Assembly debate but his idea was denied by the opposition because of their objection based upon the ground that India has an immense variety of cultures and religion. At the time, UCC would have been imposed then diversity could be destroyed. Although, there has many challenges for it implementation. Firstly, the Constitution of India, article 25 confers the right to "Freedom of Conscience" as well as Profess, Practice and Peaceful propagate the religion. However, these fundamental rights have restriction and not absolute in nature. The article 25 Clause (2) (b)

²⁶ Kaikhushroo Tantra V. Meherbai Tantra AIR 1946, Bom 211.

²⁷ Khohshed M. Kapadia V. M. S. Kapadia AIR 1938, Bom 86.

²⁸ Dhumbai S. Palkhiwalla V. Sorabji A. Palkhiwalla AIR 1938, Bom 68.

confers the State is empowered to make laws for social welfare and social reform. Therefore, the State can eradicate the social practices and dogmas which will stand in the part of the nation's towards progress. This clause provides that where there is a conflict between the need of social welfare and reform and religious practices then religion would be relent and social evils would not be practiced in the name of the religion. However, article 26 (b) provides "Right to manage matters of Religion" Includes religious practices, rites and ceremonies. It means a religious organization to manage its own affairs and State would not be interfered unless they are violated the public order, health or morality.

On the other side, article 14 says "Equality Before Law" it means the State shall not deny to any person equality before the law. However, the women are being discriminated and not living with human dignity, the reason behind evil practices in personal laws. Besides, article 15 provides "No discrimination on grounds of Religion, Race, Caste, Sex etc." as well as article 15 (3) empowers the state to make special provision for women and children and they are required a special treatment on account of their nature. The reason is that Children and "women's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race"²⁹. On the other side, article 21 provides 'Protection of Life and Personal Liberty' it means 'no person shall be deprived of his life or personal liberty except according to procedure established by law' as well as the Apex Court held in *Maneka Gandhi Case*³⁰ that right to 'live' is not merely limited to physical existence but it includes within its ambit the right live with human dignity.

In *Francis Coralie case*³¹ the Apex Court held that the right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not limited to the protection of any faculty or limb through which life is enjoyed or soul communicates with the outside world as well as it also includes 'the right to live with human dignity' and all that goes along with it namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing in diverse forms, freely moving and commingling with fellow human being.

Besides, article 13 (3) confers the term 'law' means any ordinance, order, rule, custom etc. But anything can be challenged if these are infringing a fundamental right. Besides, the article 13 (1) provides all pre-Constitution or existing laws which were in force immediately before the commencement of the Constitution shall be void if they are inconsistent with fundamental

²⁹ Muller v. Oregon, 52 L.Ed.551.

³⁰ Maneka Gandhi V. Union of India, AIR 1978.

³¹ Francis Coralie V. Union Territory of Delhi, AIR 1981.

rights.

Though there are some special provisions for Tribal societies which consists in part XXI of the Constitution, article 371 (A) which was inserted by 13th Amendment Act 1962 and it confers special provision for State of Nagaland, clause (1) (a) says Parliament cannot make any law regarding religious, social practices, customary law and its procedure of Nagas unless the state legislative Assembly will be passed a resolution as well as article 371 (G) provides special provision for State of Mizoram and same rules are applicable for Mizos as it has been prescribed in article 371 (A).

VII. WHY DOES INDIA NEED A UNIFORM CIVIL CODE?

There is a rising trend of divorce amongst all the communities religions and regions in India. The far-reaching effect of divorce falls on the hapless children born out of lawful wedlock. It is often suggested that to tackle the increasing rise of divorce proceedings there should be the following steps :-

- Appointment of an officer like the King's Proctor in England to look after the interest of the public as contemplated in section 17A of the Indian Divorce Act.
- Immediate formulation of a common Civil Code as envisaged in article 44 of the Constitution of India.

It is quite true that a uniform Civil Code shall concretise the unity and integrity of India. There is also a discrimination about the ground of divorce for adultery between the husband and the wife under the Indian divorce Act 1869. Adultery of wife is a ground for divorce whereas adultery of the husband must be accompanied by desertion for divorce. It seems that many substantive and procedural problems relating to matrimonial causes shall be solved by introduction of uniform Civil Code in India.

In *Jorden Diengdeh v S.S. Chopra*³² it has been observed by the Supreme Court that the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform. The time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste. It is also necessary to irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases. The time is ripe now for the intervention of the Legislature in matters like these to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situations in which couples are often placed. Though the Supreme Court directed that a copy of the judgment should be forwarded to the Ministry of Law and Justice for necessary action in this regard, yet nothing

³² *Jorden Diengdeh v S.S. Chopra* AIR 1985, SC 935.

has been done so far. The urgency of infusing life into Art. 44 of the Constitution was also emphasised by Chief Justice CHADRACHUD, in *Mohd. Ahmed Khan v Shah Bano Begum*³³ but that has been ignored by the Legislature on mere political consideration.

In *Sarla Mudgal v Union of India*³⁴ the Supreme Court further requested the Government of India through the Prime Minister to have a fresh look to secure a uniform Civil Code throughout the territory of India as provided in Art. 44 of the Constitution of India.

In *Shayara Bano v. Union of India*³⁵ after accepting Shayara Bano's petition, the Apex Court formed a 5 judge constitutional bench on 30th March 2017. The first hearing was on 11th May 2017. On 22nd August 2017, the 5 Judge Bench pronounced its decision in the Triple Talaq Case, declaring that the practise was unconstitutional by a 3:2 majority.³⁶

(A) Effects of the Uniform Civil Code

- Compulsory registration of both marriage and divorce of the parties.
- Simplification of procedural law of divorce, judicial separation and nullity of marriage.
- Provision for parentage and custody of high tech-babies.
- Provision for transsexual marriage.
- Rights and obligations of husband and wife should be, as far as possible, spelt out.
- Limitation of period of maintenance.
- Compulsory establishment and conduct of the Family Courts with the help of lawyers, under the Family Courts Act, 1984.

VIII. CONCLUSION

The reason behind of the UCC has a national integration with one nation, one rule which applicable for all the citizens as well as it will eradicate the gender based injustices in personal laws. Besides, it will protect the women to the patriarchal domination and confer them the right to equality, right to liberty, right to live with human dignity, defect of the communal and discriminate forces. The UCC also confers to simplify the convoluted practices of religious custom on the women in regarding of social institutions such as marriage and family. Although, it will be taken a truly 'secularism' concept in our society which is the basic structure of the Constitution of India and a secular republic requires a uniform law such as IPC, CrPC which are applicable for all the citizens rather than many different practices based on their religious faith and it will also promote the true spirit of secularism and unity of the republic of India for

³³ Mohd. Ahmed Khan v Shah Bano Begum AIR 1985, CrLJ 875.

³⁴ Sarla Mudgal v Union of India AIR 1995, SC 1531.

³⁵ Shayara Bano v. Union of India WP (C) 118/2016.

³⁶ <https://www.scoobserver.in/court-case/triple-talaq-case> (last visited on 20.10.2021)

over its various diversities.

Besides, the Government must be taken care before implementing of the UCC that how the society will accept it and what will be the consequences after enforcing it. Otherwise, the Government could be abolished or modified the evils and unconditional practices in personal laws such as "Triple Talak" as well as emphasis to build up the progressive thoughts to the people or would be taking inspiration from another countries which may be more progressive in these aspects such as France, Germany, UK etc. Thus, they may terminate such evil practices itself which are occurring in personal laws in India yet.
