

CONSTITUTIONAL PROVISIONS AND PERSONAL LAWS IN INDIA: AN ANALYTICAL STUDY

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Abstract

India being a secular state has adopted the policy of neutrality in matters relating to religion and people belonging to different religions reside within its territory viz; Hindus, Muslims, Christians, Parsis which led to enforcement of different personal laws based on their customary and religious practices. These personal laws have been challenged many times in the court on the ground of inconsistency with the fundamental rights and therefore, violative of Articles 14, 15 and 21 of the Constitution. According to Article 13 the different personal laws existing in India are constitutionally invalid as there is no protection provided to them either expressly or impliedly under Article 13 of the Constitution. The courts hesitate to look into the matter on this aspect due to sensitive nature of the issue as it is based upon religion but in many cases recommended to introduce the uniform civil code. The implementation of a common law for all irrespective of religion, caste etc. could only bring uniformity and enforcement of fundamental rights in the true spirit.

India is a secular country and does not have any religion of its own. Secularism is the basic feature of the Constitution of India. In India, different personal laws are prevailing that regulate the people belonging to different religions namely the Hindu, Muslim, Christian, Parsi for matters connected with marriage, divorce, etc. To some extent law provides legal sanction to customs concerned with the religion. These laws were set out in earlier times as to meet the needs of the people in the society but in context to modern times, these laws seem to be incompatible with the fundamental rights enshrined in part III of the Constitution.ⁱⁱ

The Constitution of India empowers the legislature under Entry 5 of Concurrent List to enact laws on matters relating to marriage and divorce. It also directs the state to enact a uniform civil code as to bring uniformity in the family matters. The Hindu laws were enacted as to replace some important segments of the customary laws prevailing within the Hindu community. Also, from time to time various steps have been taken as to make the Hindu law neutral on the basis of sex too and to remove the social evils existing in disguise of law. It has led to demand for a uniform civil code and especially for reforms in the Muslim personal law.ⁱⁱⁱ

The validity of the personal laws have been challenged many times in the court on the ground of inconsistency with the fundamental rights and therefore, violative of Articles 14, 15, 25 and 26 of the Constitution. The courts hesitate to look into the matter on this aspect due to sensitive nature of the issue as it is based upon religion. The courts refused to include the personal laws within the ambit of Article 13 of the Constitution. Being fully aware of it that personal laws needs to be reformed and judiciary intends to introduce the uniform civil code, yet does not consider the matter on merits.^{iv} The courts do not declare these different personal laws existing as constitutionally invalid.

CONSTITUTIONALITY OF A STATUTE: LAWS INCONSISTENT WITH THE FUNDAMENTAL RIGHTS (ARTICLE 13):

Article 13 of the Constitution of India deals with the *laws inconsistent with or in derogation of the fundamental rights* enshrined in Part III of the Constitution. According to Article 13(1) any law which exists before the commencement of the Constitution if inconsistent with the fundamental rights shall be void to the extent of such inconsistency. According to Article 13(2) a state is prohibited to enact any law in future that violates or takes away any of the fundamental rights. If any such law is enacted it shall be void to the extent of contravention. The acts done before the commencement of the Constitution does not get effected being inconsistent with the fundamental rights because fundamental rights are enforced after the commencement of the Constitution. So, the provisions of the Article 13(1) shall not be applied retrospectively.^v Also, the Constitution prohibits the state from making any law inconsistent with the fundamental rights in future as per Article 13(2). The government cannot violate fundamental rights through any enactment or administrative action.

On the basis of the above points it can be observed that the different personal laws existing in India are constitutionally invalid as there is no protection provided to them either expressly or impliedly under Article 13 of the Constitution. These are void as they violate the fundamental rights enshrined in part III of the Constitution. The judiciary shall declare them void and a uniform civil law should be enacted for all irrespective of religion, caste, sex, etc. In fact, a void law needs no declaration. It is nullity in itself and even without annulling them the legislature is fully competent to enact a uniform civil code for all which should stand at par with equality.

FUNDAMENTAL RIGHTS AND PERSONAL LAWS: The personals laws are inconsistent with the following fundamental rights:-

ARTICLE 14 AND PERSONAL LAWS:

Article 14 to 18 deals with right to equality guaranteed by the Constitution of India. *Equality is one of the magnificent corner stones of Indian democracy.*^{vi} The simple meaning of the right to equality is the right to live with equal opportunities. All the personal laws are to be treated alike without assigning any special privileges to some over the others. Even, Article 7 of the Universal Declaration of Human Rights, 1948 declares, *all are equal before the law and are entitled without any discrimination to equal protection*

of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination

Article 14 states that *the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*. The main object of Article 14 is to provide the equality of status and opportunity to all whether citizens or non-citizens. It is based on the principles enshrined in the Preamble to the Constitution.^{vii} The right to equality has been declared by the Supreme Court as a basic feature of the Constitution.^{viii}

The concept of right to equality in the Indian Constitution has been violated many times under the shield of religion. Different religious communities are governed by different Personal Laws. The Hindus, Muslims, Christians, Parsis, Jews, etc. are governed by different Personal Laws in matters relating to marriage, divorce, adoption, guardianship, maintenance, inheritance, etc. There is no common law for all the citizens in respect to these matters. Some religious communities are governed by the statutory laws and some are governed according to their religious or holy books, customs, etc. Moreover, the statutory laws which are enacted by the legislature to govern them are based on the religious beliefs and customary practices of that religious community. The law which violates the provisions of the Constitution could not be enforced.

According to section 5(i) of the Hindu Marriage Act, 1955 (Act No. XXV of 1955) a Hindu can have one spouse at a time. It means during the lifetime of first spouse, the second marriage is prohibited until the decree of divorce has been passed by the competent court. If he or she solemnizes the second marriage, then, he or she will be guilty for the offence of Bigamy under Section 494^{ix} and will be penalised under Section 495^x of the Indian Penal Code, 1860 (45 of 1860) read with Section 17^{xi} of the Hindu Marriage Act, 1955. Similarly, the Christian^{xii} and the Parsi^{xiii} law also prohibit bigamous marriage. Monogamy is the law for the majority of religious communities but a Muslim male is allowed to have four wives at a time. For him, marriage with the fifth wife will constitute the offence of Bigamy. For the citizens, in the same nation, there are different laws. An act that is a crime for one is the common practice for the other, just under the name of religion. Here, it clearly violates the right to equality under Article 14 of the Constitution of India. This matter has been highlighted many a times before the honourable court but always the court hesitate to declare it unconstitutional and ends with the advice to legislature to enact a uniform civil code. The issue is that if the court will declare it unconstitutional, then definitely the legislature will enact a common law. But if the courts do not annul these laws, then the legislature itself can enact a common law. No doubt, implementing such laws are sensitive issues, people will protest, but it does not mean that on such things the basic features of the Constitution will be allowed to violate. Earlier, before the Hindu Marriage Act, 1955 (Act No. XXV of 1955) the custom of polygamy was prevailing. In the nation, where polygamy restricted against the majority class by enacting a statutory law, the same could be done against the other communities also. The religious aspect must be something confined to person not to the society.

ARTICLE 15 AND PERSONAL LAWS:

Apart from it, gender equality is the basis of the Indian Constitution that permits equality of status and negates gender bias.^{xiv} *Article 15 secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them.* The personal laws fail to meet such principles of the Constitution. Personal laws are not only violative of the right to equality but also discriminative on the basis of gender. The different religious communities have different personal laws but these are not even gender neutral within their own community. There is discrimination between the rights of men and women on various matters.

The Hindu law is gender neutral in matters relating to marriage, divorce, maintenance, succession, adoption. Originally the position was not the same but after amending these laws the personal laws have been made equal for both men and women. Before the Hindu Marriage Laws (Amendment) Act 1976 (68 of 1976), there existed different grounds for dissolution of marriage to men and women. Originally, the Act was discriminatory in nature but after the amendment, it provides the same grounds of divorce to both the spouses. After the Personal Laws (Amendment) Act, 2010 (Act 30 of 2010), a Hindu wife can also take^{xv} or give^{xvi} in adoption of a son or daughter with the consent of her husband. Now, under the Hindu law, the law of adoption is gender neutral. The Hindu Succession (Amendment) Act, 2005 (**Act 39 of 2005**) brought out the radical changes in the law of succession by conferring daughter the right or interest by birth in the joint family property. She had no right in the joint family property originally under the Act but after the amendment in 2005 she has also become a coparcenar by birth in the same way as that a son. Similarly, the personal laws of the Christians and Parsis are also gender neutral. Before the Indian Divorce (Amendment) Act, 2001^{xvii} the grounds for dissolution of divorce were not equal for men and women. Originally, the adulterer was made co-respondent under the Act, but after the amendment adulteress too has been made co-respondent under Section 11 of the Act. Earlier, the husband could file a petition for dissolution of marriage on the ground of adultery of his wife. But the wife had to apply on the ground of adultery coupled with any other matrimonial misconduct viz. bigamy, or cruelty, or desertion, or with incest.^{xviii} After the above mentioned amendment, the Act provides same grounds of divorce to both husband and wife under section 10(1)^{xix} and wife have been given additional grounds of divorce under section 10 (2)^{xx} of the Act. But the position of the Muslim women is not the same. Under Muslim law some rules are meant only to be observed by woman. Only female is bound to follow these rules strictly while the male is at liberty. He can have four wives at a time and cannot be prosecuted for the offence of bigamy under Section 494 and 495 of the Indian Penal Code, 1890 (45 of 1860). Muslim law allows polygamy to exist as a rule whereas polyandry is prohibited. The Muslim law confers more power upon husband to pronounce divorce than wife. She is left at his mercy. This power has been used in an arbitrary way many a times. There are different modes of talaq under the Muslim law. Majority of them are at the instance of husband (talaq-ul-sunnat and talaq-ul-biddat, ila, Contingent divorce or Talaq-e-taliq), a few are at the instance of wife (talaq-e-tafweez, khula and zihar), by mutual consent and the judicial divorce. The Dissolution of Muslim Marriage Act, 1939 provides nine grounds under which a Muslim wife can obtain a

decree of divorce.^{xxi} Talaq-ul-biddat is an irregular form of talaq which was introduced by Omeyyads as to escape the strictness of law. In this type of divorce there are three pronouncements made during the tuhr period either in one sentence (i divorce thee thrice) or in three different sentences (i divorce thee, i divorce thee, i divorce thee). There can be a single pronouncement to that effect- i divorce thee irrevocably. Once there is final separation of the parties, they cannot remarry without fulfilling the formal requirements under Muslim law (especially the halala nikah). It is recognized form of talaq among Hanafis. Sunnis also recognizes it, even though, they consider it as a sinful form.^{xxii} This form of divorce has been declared as unconstitutional by the honourable Supreme Court in *Shayara Bano v. Union of India and others*^{xxiii}. It is a historic judgement of the Supreme Court that has declared the unilateral divorce (talaq-e-biddat) as unconstitutional and evoked the principles of equality enunciated in the Constitution of India and International Human Rights law. The decision is taken after consulting the laws of certain Muslim countries where the practice of triple talaq has been abolished. Supreme Court observed that talaq-e-biddat is the worst form of divorce even if it is accepted by a few schools of Muslims but among the followers of these schools it is considered as a sin. The judgement is neither against any religion nor a war of 'majority v. minority' but an 'intra-community war' that violates the rights of Muslim women. The court further clarifies that the personal laws should conform to the Constitutional provisions. Only one form of triple talaq has been annulled i.e., talaq-ul-biddat but triple talaq in talaq-ul-sunnat still exist under the Muslim law. Recently, the Muslim Women (Protection of Rights on Marriage) Act, 2019 has been passed by the Parliament that strictly prohibit the husband to pronounce triple talaq (talaq-e-biddat) upon his wife. Such act attracts penalty under section 4 of the Act i.e., *imprisonment for a term which may extend to three years, and shall also be liable to fine.*

In Islam, according to customary law, the Muslim woman is entitled to maintenance from her husband during iddat period only. The Muslim Women (Protection of Rights on Divorce) Act, 1986 was enacted to dilute the secular decision of the Apex Court in *Mohammad Ahmed Khan v. Shah Bano Begum*^{xxiv} in which the court has allowed maintenance to divorced Muslim wife even after the expiry of iddat period, if she is unable to maintain herself and has not remarried. The judgement has been severely criticised by the Muslim community that it is in conflict with the rules of Quran and Islamic Laws. The Muslim Women (Protection of Rights on Divorce) Act, 1986 was enacted to protect the rights of the divorced Muslim women which in fact does not protect women's rights rather saves the men. The Act enables the husbands to escape from the liability to pay maintenance to divorced wives after the expiry of iddat period. Later in various judicial pronouncements it has been held that under Section 125 of the Code of Criminal Procedure, 1973 a divorced Muslim woman is entitled to claim maintenance from her divorced husband even after the expiry of iddat period till she does not remarry.^{xxv}

Under Muslim law, the law of inheritance is based upon the customs and usages that give preference to males over females. For example, under Sunni law the share of the surviving spouse depends upon the presence of a child or child of son. The share of surviving spouse being a widower is half of the property of deceased wife in absence of a child or the child of a son and in their presence he will take one-

fourth of the property. But in case of widow, the share in the property of deceased husband is one-fourth in absence of a child or child of a son and in their presence her share is one-eighth. In case, there are more than one widow then all of them collectively take one-fourth or one-eighth. It will further divided among them equally.^{xxvi} Here the Muslim law is discriminatory and violates Article 14 and 15 of the Constitution of India. Similarly under Shia law on the death of wife, the husband will take one-fourth share in the property of wife in the presence of a lineal descendant and half in the absence of a descendant. On the death of husband, his widow will take one-eighth share in the presence of a lineal descendant and one-fourth in the absence of a descendant.^{xxvii} Moreover, if the Shia female dies and her husband is the only heir, he will take half property as a sharer and the remaining half under the doctrine of *radd*. But if a Shia male dies and his widow is the only heir, she will take one-fourth share only and the rest of property i.e., three-fourth will pass to government under the doctrine of escheat.^{xxviii} The division of share between the husband and wife is again discriminatory and violates Article 14 and 15 of the Constitution of India. The law of inheritance in matters relating to share of daughter, grand-daughter, mother, grand-mother and other female relatives are also discriminatory on the basis of gender.

The Special Marriage Act, 1954 (43 of 1954) is a secular Act that has been enacted to provide a special form of marriage for people of India and Indian nationals in foreign Countries irrespective of religion or faith followed by either party. The marriages solemnized under the Act are not governed by the personal laws of the parties to marriages. The Act allows inter-religious marriages and even the parties belonging to same religion can also solemnize their marriage under the Act.

ARTICLE 21 AND PERSONAL LAWS:

A bare reading of Article 21 of the Constitution of India is that *no person shall be deprived of his life or personal liberty except according to procedure established by law*. People should be allowed to live with dignity which they deserve that has not been conferred upon them by their personal laws. Personal laws failed to treat all persons equally. Right to life includes right to be treated equally and to be tried equally. With the changing time and needs of the society, the scope of Article 21 has been widened by the judiciary. Judicial activism has brought various changes in the matters relating to the personal laws. But there is still more that is needed to be done to meet the demands of the society at present and to make the personal laws equal for all.

ARTICLE 25 AND PERSONAL LAWS:

Article 25 to 28 provides protection to religions and religious practices from interference of the State and treats all the religions equally without any discrimination. The concept of secularism that has been adopted by the Indian Constitution is a positive attitude of religious tolerance and equal treatment of all religions without affording any special protection to any religion in particular.^{xxix} Religion is a matter of individual faith and it cannot be intermingled with the secular activities of the State. There must be *a wall of separation between religion and state*. State is neutral in religious matters and treats all religions

equally.^{xxx} The state is having the authority to regulate the religious practices under Article 25(2). The measures of social reform are allowed and not inconsistent with fundamental rights on the ground of interference with the right to religious freedom. Among Hindus before the enactment of the Hindu Marriage Act, 1955, there existed the practice of polygamy. But after enforcement of the said Act, monogamy is the law. Hindu male marrying again during subsistence of first marriage is not an integral part of religion. The Hindu Marriage Act intended for the benefit of the society and a law meant for social welfare and reform.^{xxxii} The fundamental rights do not touch the personal rights of the parties. Article 25 clearly makes separation between the religious and social activities. It protects the former one not the latter.^{xxxiii} In a state where majority of community is Hindu and to abolish the practice of polygamy by applying the rule of monogamy has been done, then, to apply a uniform law of monogamy for all religious communities especially for minority community is not impossible. The enactment of the uniform civil code by annulling the different personal laws is not a violation of Article 25 of the Constitution of India.

ARTICLE 44 AND PERSONAL LAWS:

Article 44 of the Constitution of India laid down that “*The State shall endeavour to secure for the citizen a Uniform Civil Code throughout the territory of India.*” But the State has never made an effort to enact a new uniform civil law free from discriminations according to the constitutional provisions. Judiciary is also demanding uniform civil code as in many cases stress has been laid on it. In various reports submitted from time to time the Law Commission of India has also recommended the necessity to enact a uniform civil code.

The Constitution of India came into force in 1950 and till now no government is having guts to frame a uniform law for all according to provisions of Article 44 of the Constitution, it remained a dead letter. If a civil code is enacted, it will promote fraternity and basic values of humanism. The problem concerning bigamy is more in issue in Islam.^{xxxiii} In addition to it the personal laws in India are unjust and built on gender discrimination. There is need to maintain a balance between males and females. No doubt, the Constitution of India provides equal status and political rights to both men and women but due to diverse personal laws females experience numerous hardships, disparity and brutality. The position of woman within family is pitiable and the question of female’s human rights is totally disregarded. Therefore, there is need for a uniform civil code to maintain gender equity.^{xxxiv} A secular country like India is not able to enforce provisions of Article 44 and is lagging behind in this aspect.

The issue is not to protect the interests of any single or minority communities but to enact a law that will treat all equally and will be fair and reasonable. The implementation of a common law for all irrespective of religion, caste etc. could only bring uniformity and enforcement of fundamental rights in the true spirit.

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ii M. P. Jain, *Indian Constitutional Law* 867 (Lexis Nexis, Gurgaon, Haryana, 7th edn., 2016).

ⁱⁱⁱ Personal Laws and the Constitution of India pdf available at: <https://www.google.com/url?sa=t&source=web&rct=j&url=http://14.139.60.114:8080/jspui/bitstream/> (last visited on July 10, 2017).

^{iv} *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom. 84.

^v V. N. Shukla (ed.), *Constitution of India* 38 (Eastern Book Co., Lucknow, 12th edn., 2015).

^{vi} *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

^{vii} *Natural Resources Allocations, In Re Special Reference No. 1 of 2012*, (2012) 10 SCC 1.

^{viii} *M. Nagaraj v. Union of India*, AIR 2007 SC 1.

^{ix} *Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

^x *Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

^{xi} *Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of section 494 and 495 of the Indian Penal Code (45 of 1860) shall apply accordingly.*

^{xii} The Christian Marriage Act, s. 60 (2)- *neither of the persons intending to be married shall have a wife or husband still living;*

^{xiii} The Parsi Marriage and Divorce Act, 1936, s. 4 –

(1) *No Parsi (whether such Parsi has changed his or her religion or domicile or not) shall contract any marriage under this Act or any other law in lifetime of his or her wife or husband, whether a Parsi or not, except after his lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been declared as null and void or dissolved, and, if the marriage was contracted with such wife or husband under the Parsi Marriage and Divorce Act, 1865, or under this Act, except after a divorce, declaration of dissolution as aforesaid under either of the said Acts.*

(2) *Every marriage contracted contrary to the provisions of sub-section (1) shall be void.*

^{xiv} Dr. S. C. Tripathi and Vibha Arora, *Law Relating to Women and Children* 256 (Central Law Publications, Allahabad, 6th edn., 2015).

^{xv} The Hindu Adoptions and Maintenance Act, 1956, s. 8.

^{xvi} *Id.*, s. 9.

^{xvii} Act 51 of 2001.

^{xviii} The Indian Divorce Act, 1869, s. 10 prior to Indian Divorce (Amendment) Act, 2001.

^{xix} *Grounds for dissolution of marriage- (1) Any marriage solemnized, whether before or after the commencement* of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent—*

(i) has committed adultery; or

(ii) has ceased to be Christian by conversion to another religion; or

(iii) has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(iv) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or

(v) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or

(vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or

(vii) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or

(viii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or

(ix) has deserted the petitioner for at least two years immediately preceding the presentation of the petition; or

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

^{xx} *A wife may present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.*

^{xxi} The Dissolution of Muslim Marriage Act, 1939, s.2- *Grounds for decree for dissolution of marriage.—A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:— —A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely\;—"*

(i) that the whereabouts of the husband have not been known for a period of four years; (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; (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; (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; (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; (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 virulent venereal disease; (vi) that the husband has been insane for a period of two years or is suffering from leprosy or 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: (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; Provided that the marriage has not been consummated;"

(viii) that the husband treats her with cruelty, that is to say,— (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 (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, or (b) associates with women of evil repute or leads an infamous life, or"

(c) attempts to force her to lead an immoral life, 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 (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 (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; (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: (ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law\:" Provided that—

(a) no decree shall be passed on ground (iii) until the sentence has become final; (a) no decree shall be passed on ground (iii) until the sentence has become final;"

(b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and (b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and"

(c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground. (c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground."

xxii Aqil Ahmad (ed.), *Mohammedan Law* 171 (Central Law Agency, Allahabad, 25th edn., 2015).

xxiii (2017) 9 SCC 1.

xxiv AIR 1985 SC 945.

xxv *Danial Latifi v. Union of India*, 2001 (7) SCC 740; *Shabana Bano v. Imran Khan*, AIR 2010 SC 305; *Shamim Bano v. Asraf Khan*, (2014) 12 SCC 636.

xxvi Professor Iqbal Ali Khan (ed.), *Mulla Principles of Mohomedan Law* 66A (Lexis Nexis, Gurgaon, Haryana, 20th edn., 2014).

xxvii *Id.*, at 112.

xxviii *Id.*, at 113.

xxix *Supra* note 1 at 1245.

xxx Dr. J. N. Pandey, *Constitutional Law of India* 355 (Central Law Agency, Allahabad, 52nd edn., 2015).

xxixxxx *Supra* note 3.

xxxii *Krishna Singh v. Mathura Ahir*, AIR 1980 SC 707.

xxxiii Shabbeer Ahmed and Shabeer Ahmed, "Uniform Civil Code (Article 44 of the Constitution) A Dead Letter", 67, *IJPS*, 545-552, (2006).

xxxiv Uniform Civil Code for India- A Need of the Hour Subhadeep Sarkar available at: <https://www.google.co.in/url?sa=t&source=web&rct=j&url=http://jurip.org/wp-content/uploads/2016/12/> (visited on June 22, 2017).