

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CRITIQUE ON THE SIGNIFICANCE OF UNIFORM DIVORCE MECHANISM AND ITS SOCIAL RESISTANCE

AUTHORED BY - POOJA SEVARAMANI

BA LLB(Hons.) Student, Jagran Lakecity University, Bhopal,

+91 8109522810, poojasevaramani1924@gmail.com

CO-AUTHOR - KHUSHI SETH

BA LLB(Hons.) Student, Jagran Lakecity University, Bhopal,

+91 8269043533, khushiseth0403@gmail.com

ABSTRACT: -

Unity in Diversity is a phrase everybody usually appreciates India for, however with respect to the personal laws, that diversity is not united, there are a lot of differences in the personal laws that is why there is a requirement to implement a Uniform Civil Code. This code will collectively aim to mitigate the differences in the personal laws of different religions by incorporating gender just and progressive laws. In terms of the divorce laws across all the religions, there are contrasts which makes the justice delivery tough, it is interesting and surprising at the same time to notice that somewhere women have more grounds for divorce than men and on the other hand they do not even have a right to ask for divorce. All these discriminatory laws would cease to exist the moment UCC becomes applicable; a lot many perplexities would be solved and too many differences would be blurred. The umbrella code would widen the horizon of family law given the opportunity to reduce the inequalities and injustice with respect to the matters involving divorce, marriage, inheritance, etc. This research paper aims to analyse the divorce laws across all religions in India and draw a comparative study for comprehending the need for UCC in India, alongside it also mentions the social resistance UCC is currently facing in the country despite its positive foreseen consequences. In the process of writing this paper, several research papers, articles, journals were referred and taken into consideration. Thus, this research paper is an outcome of Doctrinal Research Methodology.

KEYWORDS: -

Uniform Civil Code, Divorce Mechanism, Personal Laws, Gender Parity

INTRODUCTION: -

Uniform Civil Code (hereinafter referred to as UCC) is a uniform personal law for all the people irrespective of their religion. The makers of the constitution always wished to create a secular country but they were aware about the situation of India at that time so they kept the concept of UCC under directive principles of state policy so that later it could come into existence¹. This will help the matters of adoption, maintenance, succession and divorce be handled easily as it will prevent the courts from referring to different personal acts, it will also help against discrimination like women in terms of divorce rights and men in terms of seeking maintenance. The Family law is no more confined to the dusty dingy courtrooms, it has come a long way to the notice on a central stage where the union government now aims to have a Uniform Civil Code, which would encourage a gender just society where India would be exposed to an opportunity to separate rituals and laws which would be in consonance with the Constitution of India².

DIVORCE UNDER HINDU PERSONAL LAW: -

Marriage under Hindu law is not a contract, it is considered to be a sacrosanct relationship where spouses vow to spend their lives together come hell or high water, they bond in a relationship after completing seven circumambulations around the sacred fire popularly known as *saptapadi*³. In the past a marriage could not be broken because there was no concept of divorce however, with the evolution and development of law through the years the couple can get a divorce after seeking for it under certain sections of the Hindu Marriage Act, 1955. Divorce is no more a taboo in the Indian society, it takes time for the people to understand but if, the couple decides to live separately the law doesn't stop them rather, it rightfully and lawfully confers them with divorce after being satisfied of all the reasons and the circumstances because, the marriage not only involves two people, it also consists of the families and most importantly the children born out of the wedlock.

¹Ramesh Sharma, "What framers of our Constitution said about UCC and why they didn't implement it" *India Today*, Jul. 31, 2023.

²The Constitution of India, 1950.

³C.Amirdha Varshini, "Divorce Laws In India" *Legal Service India E-Journal* (2020).

Under the Hindu Marriage Act, 1955 there are two ways by which the spouses can be separated; Judicial separation and Divorce.⁴ Judicial separation means a court decree requiring a married couple to cease cohabiting but not dissolving the marriage. Here, the husband and wife start living separately while the marriage still continues, the judiciary gives both of them time to reconcile and revive back to the original state, there is always scope to go back under judicial separation which is mentioned under Section 10 of the HMA, 1955. It's a temporary separation which can eventually lead to a permanent separation i.e., divorce, if the couple doesn't agree to start cohabitating together. There are certain grounds of judicial separation that shall be proved before it is finally granted to the couple. The grounds are as follows: -

- “For Husband: - sub section (1) of section 13 of HMA, 1955
 - i) Adultery or,
 - ii) Cruelty or,
 - iii) Desertion (for a continuous period of not less than two years immediately before filing the divorce) or,
 - iv) Conversion or,
 - v) Unsoundness mind or,
 - vi) Renunciation or,
 - vii) Presumption of Death (not heard of being alive for 7 years or more).

- For wife: - sub section (1) and sub section (2) of section 13 of HMA, 1955
 - (1) i) Adultery or,
 - ii) Cruelty or,
 - iii) Desertion (for a continuous period of not less than two years immediately before filing the divorce) or,
 - iv) Conversion or,
 - v) Unsoundness mind or,
 - vi) Renunciation or,
 - vii) Presumption of Death (not heard of being alive for 7 years or more).

⁴ Judicial Separation and Divorce under Hindu Law, *available at:* <https://www.vidhikarya.com/legal-blog/judicial-separation-and-divorce-under-hindu-law#:~:text=the%20blog%20below,-.Judicial%20Separation%20in%20Hindu%20Marriage%20Act%2C%201955,while%20the%20marriage%20still%20continues> (last visited on August 23, 2023).

- (2) i) Bigamy or,
ii) Husband guilty of rape, sodomy or bestiality or,
iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards or,
iv) that her marriage (whether consummated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.”⁵

If the parties do not reconcile within one year of judicial separation, then either of the parties can file for divorce in the court of law under the HMA, 1955.

Divorce is an irrevocable form of separation where the dissolution of marriage takes place, mentioned under section 13 of the HMA, 1955. The parties file for divorce when they are sure that they have been besieged by some situations and circumstances that can't be turned back to normal or their relationship with each other is becoming abusive. Divorce as a mechanism can be mutual or contested; when it's mutual both parties voluntarily agree to separate themselves permanently whereas, contested divorce is filed by the aggrieved party because they can no longer endure the abuse. The grounds for divorce mentioned under Section 13 HMA, 1955 are as follows: -

- “For Husband: - subsection (1) of section 13 of HMA, 1955
 - i) Adultery or,
 - ii) Cruelty or,
 - iii) Desertion (for a continuous period of not less than two years immediately before filing the divorce) or,
 - iv) Conversion or,
 - v) Unsoundness mind or,

⁵ The Hindu Marriage Act, 1955.

- vi) Suffering from venereal disease in a communicable form or,
- vii) Renunciation or,
- viii) Has not been heard of as being alive for a period of seven years or more.

- For wife: - subsection (1) and sub section (2) of section 13 of HMA, 1955

- (1) i) Adultery or,
 - ii) Cruelty or,
 - iii) Desertion (for a continuous period of not less than two years immediately preceding the presentation of the petition) or,
 - iv) Conversion or,
 - v) Unsoundness mind or,
 - vi) Suffering from venereal disease in a communicable form or,
 - vii) Renunciation or,
 - viii) Has not been heard of as being alive for a period of seven years or more.
- (2) ii) Bigamy or,
 - ii) Husband guilty of rape, sodomy or bestiality or,
 - iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards or,
 - iv) that her marriage (whether consummated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.”⁶

Divorce between a couple comes with setbacks such as emotional, social and most importantly financial. One requires proper maintenance for sustenance of life when they are not able to maintain themselves. To help the unqualified and financially dependent spouse the Hindu law grants certain maintenance rights. The income fixed by the court as maintenance differs from

⁶ The Hindu Marriage Act, 1955.

case to case, it is based on the income of the husband/wife, their modest standard of living, among others. The amount of maintenance can be decided either by a mutual settlement between the husband and wife or by the court's decree.

Maintenance under the Hindu law functions according to the Hindu Marriage Act, 1955 and Hindu Adoption and Maintenance Act, 1956 where a divorced person, irrespective of the gender has a right to claim maintenance under the Hindu Law. Moreover, a male also has to maintain the children after divorce, having said this, it's not always necessary that a male is entitled to maintain his wife and children if he doesn't earn sufficiently well for his own survival.⁷ Although, unfortunately there have not been many cases where the husband actually gets maintenance despite having the mention of it under Section 24 of the HMA, 1955 which reads as "*Where in any proceeding under this Act it appears to the court that either the wife or the **husband**, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the **husband**, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable*"⁸

DIVORCE UNDER MUSLIM PERSONAL LAW: -

Divorce under Muslim law⁹ is pretty much different from divorce under Hindu law. Where under Hindu law, divorce can only be given judicially, under Muslim law it is possible through an extrajudicial way as well.

The extrajudicial ways are further divided on the basis of,

a) who can give divorce: -

1. By wife - taalaq-i-hafeez (delegated divorce) husband delegates his power to pronounce talaq to his wife or any third part,
2. By husband- talaq and its sub categories, *ila*¹⁰ and *zihar*¹¹

⁷ Swati Shalini, "Maintenance Rights of the Divorced Women under the different religions in India" *MyAdvo* (2019)

⁸ The Hindu Marriage Act, 1955.

⁹ The Muslim Personal Law (Shariat) Application Act, 1937.

¹⁰ The husband takes oath to not have sexual intercourse with his wife, and there is no consummation for consecutive four months from the date of the oath. After the expiry of 4 months the marriage stands dissolved irrevocably however, if the husband resumes co habitation within 4 months then *ila* is cancelled and the marriage is still valid.

¹¹ The husband compares his wife with another woman within his prohibited relationship. The husband doesn't cohabit with his wife for four months and after the expiry of the period *Zihar* is complete.

3. By mutual agreement- khula¹²

Talaq which we hear more commonly, is a form of divorce in which the husband has the right to give divorce to his wife by merely repudiating the marriage. This means that, only pronouncement of the word is a requirement for the end of a marriage. But there are other kinds of divorce present under the Muslim law which are different from talaq. Before 1939, it was not a matter of right available for a wife to ask for divorce. It was only possible for a wife to give a divorce when the husband by his choice transfers his right to his wife.

If we talk about Muslim law, it is a bit perplexing because of various schools which contradict each other for certain provisions, i.e., some follow the provision whereas others might not consider it because of difference in the ideologies. Among all forms of divorce, talaq is the most famous form and was recently in news because of famous landmark judgement of *Shayara Bano Vs Union of India and Ors. (2017) 9 SCC 1*¹³ where the Supreme Court held that the practice of *Talaq-i-biddat* is unconstitutional.

Talaq means to release, under this law it precisely means, repudiation of marriage by the husband. It can be said that the sole right is with the husband to give divorce. This form of talaq is always in controversy because of its absolute nature which gives absolute rights to husband. A husband under this form can give divorce to his wife without giving any kind of reason as he is not bound to specify the reason for dissolution. The problem with this kind is, when it was created its intention was never to give such absolute rights to husband but with time the husbands started misusing it. Actually, in Islam talaq was only permitted when the wife by her words or by her actions injures the husband. However, as it is rightly said that absolute power corrupts absolutely, there has been a misuse of those rights through the years. Talaq is further sub categorised into: -

- Talaq-ul-sunnat- Revocable talaq and Approved form
 - *Ahsan*
 - *Hasan*

- Talaq-ul-biddat- This was the most controversial form of talaq which is no longer

¹² Khula is a kind of divorce in which Muslim women seek to take divorce from her husband and are willing to return mahr in exchange for dissolution of marriage.

¹³ *Shayara Bano Vs Union of India and Ors.(2017) 9 SCC 1*

prevailing because of a supreme court ruling. This was popularly known as triple talaq

Section 5 of the Shariat Act, 1937 was deleted and replaced by the Dissolution of Muslim Marriages Act, 1939. From which Muslim women can seek divorce in court of law. Other than these forms there is legislative provision present for divorce i.e., Dissolution of Muslim Marriage Act, 1939. It deals with the situations in which women can file for divorce. This is a judicial form through which a Muslim women can ask for divorce.

There are some grounds mentioned by which Muslim women can obtain the decree of divorce

- “The husband was not known for the period of four years,
- Husband has failed to maintain his wife for the period of 2 years,
- If the husband is imprisoned for seven years or more,
- Husband failed to perform his marital duties for a period of three years or more,
- Husband was impotent at the time of marriage,
- Insanity for period of 2 years or more,
- Suffering from leprosy or any venereal disease,
- Cruelty (matters that come under this are also mentioned),
- If marriage was solemnised before the age of 15 years, then the wife can repudiate the marriage.”¹⁴

After the landmark judgement of *Mohd. Ahmed Khan vs Shah Bano Begum and Ors*¹⁵ women became lawfully entitled to maintenance. Moreover, maintenance under Muslim law is quite different from other personal laws. Under Muslim personal law a woman was only entitled for maintenance by her husband after divorce during the *iddat* period, after the *iddat* period she did not receive the amount of maintenance. But, according to *Shabana Bano v Imran Khan AIR 2010 SC 305*¹⁶ It was held that a woman is entitled to maintenance even after the *iddat* period, if she is unable to sustain herself.

However, under Section 125 of the Criminal Procedural Code, 1973 it is explicitly mentioned that a woman irrespective of her religion can ask for maintenance from her husband. This section's applicability would cease to exist the moment the woman entitled for maintenance

¹⁴ Dissolution of Muslim Marriage Act, 1939.

¹⁵ *Mohd. Ahmed Khan vs Shah Bano Begum and Ors*, AIR 945, 1985 SCR (3) 844.

¹⁶ *Shabana Bano v Imran Khan AIR 2010 SC 305*.

remarries.

DIVORCE UNDER CHRISTIAN PERSONAL LAW: -

The Christians of India can file for the dissolution of marriage i.e. divorce under the provisions of the Indian Divorce Act, 1869.¹⁷ The court grants separation after a petition is filed either by the wife or the husband, alongside this the couple can also file for mutual¹⁸ or no fault divorce¹⁹ where they both agree for the separation unanimously. There are certain grounds for dissolution of marriage mentioned under section 10 of the respective act; the grounds are as follows: -

- i) “Adultery or,
- ii) Conversion or,
- iii) Unsoundness of mind for a continuous period of not less than two years immediately preceding the presentation of the petition or,
- iv) Suffering from venereal disease in a communicable form for a period of not less than two years immediately preceding the presentation of the petition or,
- v) Not been heard of as being alive for a period of seven years
- vi) Refusal of consummation of the marriage and the marriage has not therefore been consummated or,
- vii) Failure 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,
- viii) Desertion for at least two years immediately preceding the presentation of the petition or,
- ix) Cruelty”²⁰

In addition to this a wife can file for divorce also on the grounds of rape, sodomy or bestiality. Further, divorce by mutual consent is exclusively mentioned under Section 10A of the Indian Divorce Act, 1869. The matter in the court would be decided after the satisfaction of the court, there has to be a confirmation for the decree of separation by the court otherwise the divorce stands void. Moreover, the matters of custody, maintenance, etc. covered after the divorce are

¹⁷ Haima Deshpande, “Uniform Civil Code and Christians: A Cross To Bear” *Outlook* (2023)

¹⁸ The couple has been living separately for a period of two years or more, and they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

¹⁹ No Fault divorce is the easiest way to seek for divorce as, as it is a divorce without blame or fault.

²⁰ Indian Divorce Act, 1869.

final.

In addition to this, we also should focus on the maintenance laws under the Christian Personal law, that is mentioned under Section 36 and Section 37 of the Indian Divorce Act, 1869. These provisions are similar to Section 24 of the Hindu Marriage Act, 1955 with an exception of only the wife being entitled to maintenance.

DIVORCE UNDER PARSI PERSONAL LAW: -

Divorce under Parsi law is governed by the Parsi Marriage and Divorce Act, 1936, under which it carries ten grounds of divorce which can be used by either of the spouse for divorce: -

1. "If the marriage is not consummated within one year from the date when it is solemnised, and the defendant refuses to consummate,
2. When any of spouse is of unsound mind at the time of marriage and has been habitually so, up to date of suit, provided that the plaintiff was ignorant of the fact that the defendant is of unsound mind, has to file a suit within 3 years from the date of marriage,
3. When the spouse is of unsound mind for 2 years or more or any mental disorder which creates an unbearable situation for the plaintiff,
4. The spouse was pregnant by any other person at the time of marriage,
5. If spouse after marriage is involved in adultery or fornication or bigamy or rape or unnatural offence,
6. If the spouse is imprisoned for seven years or more for an offence under IPC, 1860,
7. Desertion for at least 2 years,
8. The defendant has failed to comply with a decree of restitution of conjugal rights,
9. Conversion to other religion,
10. Voluntarily causing grievous hurt to the plaintiff, or infect the plaintiff with venereal disease, or compel the wife to submit herself to prostitution."²¹

Here, it is worthy to note that the grounds for divorce under the Parsi law are almost similar to the grounds for divorce under Hindu law.

²¹ The Parsi Marriage and Divorce Act, 1936.

Under Parsi personal law a woman can claim maintenance either by criminal proceedings or by civil proceedings. As we know, under criminal proceedings religion is not a matter of fact. Under the Parsi Marriage and Divorce Act, 1936 the right of maintenance for the wife is mentioned. This may continue as long as the wife is chaste and remarried. Section 39 of the Parsi Marriage and Divorce Act, 1936 is same as Section 24 of the Hindu Marriage Act.

DIVORCE UNDER SPECIAL MARRIAGE ACT, 1954: -

The Special Marriage Act too has the provision of divorce mentioned under it just like the other personal laws. To begin with, we should know that the Special Marriage Act is applicable to all Indian citizens regardless of their religion. Under this act, the marriage is solemnised between people from different religions. Here, one thing to note is that even people of the same religion can register their marriage under this act. If they do so then they will be governed under this act in future. Specifically, Section 27²² deals with it, as it states that either of the spouses can file for divorce on the grounds mentioned under this section. The grounds which are present in this section are almost similar to grounds mentioned under the Hindu Personal law. Furthermore, section 28 of this act talks about the concept of mutual divorce under which the petition for the divorce can be filed in district court by both; the husband and the wife, stating the reason and that they both are living separately for the period of one year or more and now it is impossible to live together and that they mutually agreed to dissolve their marriage.

The Special Marriage Act also has provision for maintenance under which a court can pass a decree for maintenance. It is the court's discretion to decide the amount of maintenance. Section 36 of this act mentions maintenance.

UNIFORM CIVIL CODE: AN OVERVIEW: -

Uniform Civil Code is a single law that would govern the people uniformly irrespective of their religion; it is inclusive of all the matters of marriage, adoption, succession, divorce amongst others. It is one law of the nation that aims to mitigate the complexities of the personal laws making it stand out because of its unique nature. Having the implementation of a law like this one, would help against discrimination, help for better justice, avoid complexities and irregularity of law in the country. Although, only the mention of it has sparked protests and debates, the

²² The Special Marriage Act, 1954.

implementation would require proper discourse and deliberation because drafting a uniform law for an eclectic country like India with several different personal laws that are very close to people's roots is no easy task and hence, has to be taken up sincerely.

UCC is mentioned under Article 44²³ of the Constitution of India under Part IV i.e., the Directive Principles of State Policy, that are ideals that need to be kept in mind while formulating and framing the laws, these are non-justiciable in the court of law. Moreover, the framers of the constitution have left it on the discretion of the government to adopt UCC according to the time and circumstances, the current government has touched this issue now raising many concerns in the minds of the general public. It would be interesting to witness the suggestions the state governments would put forth and finally whether UCC will actually be implemented or not.

Further, to clarify things for better comprehension there are differences in the personal laws that would be made uniform throughout the territory helping people all across the nation. As an example, to the aforementioned statement, let us examine the maintenance provided to the either of the spouse after divorce in Hindu law, it is decided according to the income of the concerned party however, under the Muslim law the women are entitled to maintenance, after many years of struggle and hardships but the husbands get no maintenance irrespective of their income, living standard and circumstances. These kinds of differences cease to exist after UCC would be implemented as every person would be treated the same despite differences in their gender, caste, religion, creed, etc in matters involving marriage, divorce, maintenance, succession, etc.

Moreover, it is absolutely agreeable that the law would have drawbacks, every coin has two sides, people would face innumerable problems and hence there are a lot of questions in the minds of common people as the implementation of UCC can either make the nation or break it. There are already too many religious differences that make people differentiate themselves, not only this, but the sensitivity people have for their religion and the personal laws can't be separated by a mere implementation of one law, one of the fears people have shown regarding UCC is that it would unfortunately end up favouring the majority group/religion's laws, neglecting the minority groups and would push them into a vicious circle of reluctant obligation to be governed by this uniform law.

²³ The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. (Article 44 of the Indian Constitution, 1950)

What would Presumably be Covered under UCC?

According to popular opinion, UCC aims to have uniform provisions for matters involving marriage, divorce, guardianship, adoption, inheritance, succession. However, UCC would prove to be a channel to make necessary changes and amendments in many other areas other than the aforementioned ones, that are not anticipated by the people.²⁴ UCC is beyond our expectations, it will be a milestone if worked upon properly and vigilantly. UCC would deal with the following matters: -

1. Adoption, maintenance, marriage, divorce, succession are dealt with according to the respective provisions of the concerned personal laws. There are too many differences in the provisions of the personal laws which discriminate against people. There is gender discrimination under personal laws that need to be changed since it's high time when everybody gets the rights to be governed by the same laws so that these differences cease to exist.
2. Not only this, the state, caste and tribe specified practices, would also likely be considered by the government while framing the law. One nation, one law.
3. The rights of the LGBTQI+ community would also to an extent be secured, because in a recent debate of same sex marriage, the issue that stood in front of everyone was the laws that would govern the aforementioned community. If UCC is enacted then this problem would at least start dissolving as all the people would be covered under the purview of a uniform law. Gender and religion neutral laws are the need of the hour and are not only but two of the most concerning issues in the matter of rights of the LGBTQI+ community. Having UCC that would help the country foster because it will then be properly able to focus on issues apart from religion and gender and further would properly incline the interest towards making just laws for the community, their betterment, inclusivity and future.
4. Most importantly, the debate spurred because of the differences in marriage and divorce provisions; numerous PILs and Supreme Court rulings have addressed the subject of Muslim husbands issuing a Triple Talaq, or instantaneous decree of divorce. The concerns of Muta (contract marriage), Nikah halala (conduct with a different man in the event of divorce), and other practices have also come under criticism from the public and courts.

²⁴ Aneasha Mathur, "From marriage to adoption, how Uniform Civil Code could subsume personal laws across religions", *India Today* (2023).

These have brought up important issues relating to the privacy, dignity, and protection of women. UCC would change this, the dignity, integrity and the privacy of everyone would be ensured notwithstanding the gender, religion, creed, caste, etc.

5. The age of marriage is different in different religions currently, UCC would again make it uniform giving every person similar right to marry at a right age after attaining a sense of responsibility, and education to have a secured future.
6. The grounds for divorce- Under the Hindu personal law, adultery is a ground for divorce for any of the spouse, on the other hand under the Muslim law it's a ground for divorce only for the husband exclusively.²⁵ Moreover, under the Hindu law the wife gets more grounds to file for divorce than the husband. This is against gender justice.
7. To add on, the maintenance laws do not conform to gender parity, women are entitled to it but men are not, there is no clarity on the maintenance rights of men. What if they are unable to maintain themselves, and do not have the resources to maintain the children and parents. The Hindu law does have a mention of maintenance rights for men but all men throughout the country do not get the benefit since all the people are not governed by the same law which leads to discrimination.

The government of India has asked for public suggestions and views on UCC from everyone. They have released a link where each individual has the access to express their opinions on UCC. If the GOI rightly focuses on rational opinions then UCC can be a succeeding stone for India.

There are certain acts that prohibit legislations in terms of their personal laws, one such act is the Shariat Act of 1937. It prohibits legislations in terms of the Muslim personal law, this act would be a hindrance in the enactment of UCC and hence should be repealed altogether.

MECHANISM FOR DIVORCE UNDER UCC: -

After analysing the divorce mechanisms in different religions, it is cogent that there are many lacunas present. Hence, it is required to identify such loopholes and make a uniform civil law for divorce which will be justifiable for everyone irrespective of religion and gender. Moreover, these laws are discriminatory and anachronistic, changes for the betterment of the people are always in

²⁵ Adultery: A Ground for Divorce in India, *available at*: <https://www.indiafilings.com/learn/adultery-a-ground-for-divorce-in-india/#:~:text=Adultery%20is%20defined%20under%20Section,the%20spouse%20of%20the%20respondent> (last visited on August 23, 2023).

favour of everyone. The uniform divorce law can have the following insertions according to the understanding: -

1. The grounds for divorce: -

Grounds for divorce are mentioned under the personal laws however, they are either completely different from each other or have different meanings. As the time evolves so should the laws be made equally accessible for each and everyone. In addition to this it is believed that divorce under the Parsi law mentioned that either of the spouses can seek for divorce under any grounds mentioned under the act, these grounds have different definitions and different interpretation from other personal laws. Like, adultery is a ground for divorce under the Hindu and Parsi personal law whereas, it is not a ground for divorce under the Muslim law rather it is observed to be a form of cruelty, Section 2(viii)(b) of the Dissolution of Muslim Marriage Act, 1939, states that if a man leads an ill-famed life or associates himself with any woman of evil repute, his wife can sue the man on charges of cruelty. This concept of Muslim law is close to the concept of adultery. In the *Zaffar Hussain v. Ummat-ur-Rahma*, 191926 at Allahabad High Court, the wife accused her husband of stating before people that she had illicit intercourse with her brother. In its judgement, the court ruled that if a woman is falsely accused of adultery, she can claim divorce for the same. On the other hand, the wife is not liable to claim a divorce if the accusations of adultery are true. Not only this but the word cruelty has different interpretations under different laws making it complex and non-uniform²⁷.

Similarly, under the Muslim law dissolution of marriage can only be filed by the wives whereas, Talaq can only be pronounced by the husbands to give divorce. There is no uniformity under the act, because there are no uniform grounds for seeking divorce for both husband and wife. Having discussed this, under the uniform divorce law there should be plenty of specified grounds for divorce that would be applicable to every married person in India.

²⁶ *Zafar Husain vs Ummat-Ur-Rahman*, 1919 49 Ind Cas 256.

²⁷ Adultery: A Ground for Divorce in India, available at:

<https://www.indiafilings.com/learn/adultery-a-ground-for-divorce-in-india/#:~:text=Adultery%20is%20defined%20under%20Section,the%20spouse%20of%20the%20respondent> (last visited on August 23, 2023).

2. Divorce can only be Judicially conferred: -

There are some extra judicial ways under the Muslim Law through which divorce can be pronounced by the husband, which lands the women in trouble. Hence, it is suggested to insert a mandatory provision where divorce can only be filed judicially and, the extra judicial ways to become null and void. This would help the people at large and a proper framework can be followed for granting decree of divorce and there won't be any misuse of the powers conferred through personal laws to any one specific.

3. New concepts of Divorce to be included: -

In the current scenario for filing divorce there is a ground for divorce that is necessarily to be mentioned, and these are quite conventional and out dated which makes filing for divorce a closed process. There are certain new concepts that are not popularly known like No Fault divorce, and irretrievable breakdown of marriage, which gives the couple an opportunity to file for divorce in a manner different from the grounds mentioned in the personal laws. If UCC is made applicable, the divorce mechanism would include these relatively new concepts. Interestingly, some of the personal laws already have them like the Christian law.

- a) No Fault Divorce: - The couple files for divorce however none of the spouse has to necessarily mention the grounds for divorce, the reason for the divorce can be incompatibility and lack of understanding. None of the spouse is at fault but they both can't live together anymore and thus they file the divorce and want their paths in life to be separated.²⁸
- b) Irretrievable Breakdown of Marriage: - This is a concept for divorce in which various judgements are given related to it but still there is no statute as such for this. Generally, it means when husband and wife no longer live together, and marriage breaks down in such a manner that there is no chance of coming back together. With change in society norms, it is important to consider other such kinds of divorce in the codified law. It is in the hands of the legislature to consider this ground in the legislation and especially when UCC is initiated, so it is the responsibility of lawmakers to make a law while taking into consideration the present social norms. Basically, it is important to add such kinds of grounds for divorce because simply considering some offences or matrimonial disabilities

²⁸ https://www.law.cornell.edu/wex/no-fault_divorce (last visited August 23, 2023).

as grounds of divorce shorten the scope of justice. There may be cases in which neither spouse is at fault but still there is no scope of the couple to stay together so they will opt for the Irretrievable Breakdown of Marriage.

SOCIAL RESISTANCE: -

Today's society is not the same as that of the 1900's however owing to their religious isolationism people perceive their archaic laws as just and autonomous irrespective of how discriminatory and narrow, they are by nature. According to the understanding, when the UCC would include a uniform divorce mechanism it would most probably be resisted by the religious groups because they will still be stuck with the idea of their personal laws being abrogated, rather than thinking progressively. The constitution framers included UCC under the DPSP because they wanted to implement gender justice and national integrity completely in the future, and it's the right time when people are delivered justice and not left ignored only because the personal law doesn't mention their involvement, a law for all can prove to be a solution to all such problems.

Every initiation for good gets objected, UCC has proved to be no exception to this. The social resistance and the reasons behind it are as follows: -

1. People are resisting the law believing that UCC is nothing but enforcement of Hindu law throughout the territory of India, here there is lack of knowledge and understanding which will become the sole reason for arbitrary resistance and protest. UCC is not application of Hindu law, however it is application of a uniform law that does not discriminate and rather liberates.
2. People will also resist due to their allegiance to the political party. The influence of political parties in the country is going to give everybody a hard time defending. The political leaders would now not be able to make false claims regarding personal laws hence they would resist and try manipulating the naive around them with their persuasive delivery. Moreover, the political parties should understand the real significance of UCC and the divorce mechanism under it that would benefit one and all. There are several political parties and organisations which are opposing the union government's idea of bringing UCC in India. We can see this opposition from All India Muslim Personal Law board, Shiromani Akali Dal and All India Anna Dravida Munnetra Kazhagam

(AIADMK)²⁹ among others. Further, mainly there are a few minority organisations resisting because they think that UCC will be an interference with their laws that have delivered them justice in the past.

3. In the recent past, when Triple Talaq was abolished, there was a frenzy amongst the people, and interestingly the current government is planning to replace the whole of personal laws with UCC, so the resistance is inevitable and must have already been foreseen. Apparently, in Maharashtra Bharatiya Muslim Mahila Andolan has launched a signature campaign for a ban on customs such as 'triple talaq'.³⁰ To add on, the minority community of Naga people is distressed about the idea of implementation of UCC. In fact, the Nagaland Bar Association has admonished that the enactment of UCC would call for trouble to the dignity, integrity and culture of the Naga people. Owing to this, they have even expressed their concern to the PM through a letter stating "It will cause social disorder, and if a Uniform Civil Code is introduced covering the entire country, it shall cause so much hardship and social disorder to the Nagas as the per personal and social life of the Nagas are quite distinct from the rest of people in the country." The biggest problem with UCC is that personal laws are derived from various religious sources and changing them would appear like an interference in religious matters of a community.
4. There are certain groups resisting because they have been practising Polygamy since time immemorial, having a uniform divorce mechanism would make polygamy illegal that would hinder with this long-driven practice. It is to be noted that laws are made for the welfare of all and not to denigrate any particular religion hence, people should understand that owing to the change in time, with increased expenses and increase and exposure to the rights polygamy is an anachronistic concept that discriminates and burdens. UCC aims to bridge the gap and bestow a law that corroborates with the current time and delivers justice.
5. A very fascinating reason for the resistance is Public Referendum, the minorities' view that when the Union Government wants a UCC for the public they should conduct a public referendum that would make it cogent whether people want UCC or not. According to the understanding it is very wise of the government to not conduct a referendum because people would think emotionally and not rationally because they do not want their personal

²⁹ Outlook Web Desk, "Explained: What Is Uniform Civil Code's Politics, How Has The Opposition Responded To BJP's Pitch For UCC?" *Outlook* (2023).

³⁰ Moushumi Das Gupta, "For or Against Triple Talaq? Signature war erupts in Muslim Community" *The Hindustan Times*, Oct. 26, 2016.

laws that have been governing them to be discontinued.

6. An important resistance shown by people is that UCC would be an imposition on them if it is implemented because they would not be given a choice on whether they want to be governed by the law or not. The application of UCC should be made consensual where people voluntarily agree on the same thing in the same sense to be governed by the law not merely be imposed by it. The Special Marriage Act, 1955 is a secular law and people are given a choice under this act similarly they wish to get the voluntary decision making under UCC as well.

CONCLUSION: -

The Uniform Civil Code provides an opportunity to liberate the Indian Family law from the shackles of the Colonial Legacy of gender and religious discrimination. The Parliament recently considered three bills to decolonize the Indian Criminal law, similarly UCC can prove to be a stepping stone to decolonize the Indian Family law. UCC should definitely not be arbitrarily adopted rather due efforts should be made to develop the best principles for the contemporary society, keeping in mind the evolution as well.

After this research and deliberation, it is quite cogent that UCC is necessary in India to ensure gender justice, and equality in the country. UCC would promote one nation one family law that would weigh everyone on the same grounds. There is a need to have uniform divorce mechanism that would make everything clear and relatively easier for the courts and the people claiming for the determination of rights. Although, it is not an easy task, as there is a social backlash and resistance for this, many sections of the society including politicians do not support UCC because they are of the view that they would have to completely withdraw themselves out of their religion and then would be imposed with another law that won't include their religious beliefs and practices.

We need to understand UCC is for the collective betterment rather than collective destruction, because it aims to modify the family law to ensure justice, equity and equality in the society. Uniform Civil Code will be an umbrella code that would have a wide spectrum with the opportunity to include any and every kind of equitable and just law.