

**INDIAN JOURNAL OF CONSTITUTIONAL STUDIES**

**Issue - July, 2017**

**Volume I Issue VI**

Copyright © 2016-17. All rights reserved with the Editors of Indian Journal of Constitutional Studies.

**ISSN 2456 - 5008**

Published bimonthly

**- - 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 the Indian Journal of Constitutional Studies. The Indian Journal of Constitutional Studies (hereinafter IJCS) and its affiliates holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Board or Board of Advisors for the Indian Journal of Constitutional Studies. Though all efforts are made to ensure the accuracy and correctness of the information published, the Editorial Board or the Board of Advisors for IJCS are not responsible for any errors caused due to oversight or otherwise.

**- - Note - -**

This compilation has continuous footnoting. Kindly read the references to previous footnotes in all the Articles in isolation upon the particular Article only.

**Publisher Details -**

**Bishikh Mohanty**

**E33, AWHO Colony Chandrasekharapur, Sailashree Vihar,**

**Khorda, Odisha, Pin - 751021**

**Telephone: +91 8106743973**

**Email: editor@ijcons.com**

## **The Board of Advisors**

---

### **Dr. Bisnu Charan Patro**

Assistant - Editor, National Institute of Health and Family Welfare

### **Ms. Sudha Kaveri**

Asst. Professor, Damodaram Sanjivayya National Law University

---

## **Panel of Experts**

---

### **Ms. Prathyusha Samvedam**

LL.M., National Law University, Jodhpur

### **Adv. Siddharth Sharma**

M.P. High Court

---

## **The Board of Editors**

---

### **Mr. Bishikh Mohanty**

Managing Editor

### **Ms. Ammu Sasidharan**

Senior Editor

### **Ms. Vanya Srikant**

Compiling Editor

### **Associate Editors**

Ms. Sudipta Lenka

Mr. Himanshu Gupta

Ms. Yashasvi Gupta

Ms. Ojaswini Tripathi

---

**- Acknowledgement -**

Efforts from many quarters have gone into the successful publication of this Inaugural Issue of the Indian Journal of Constitutional Studies. We would like to express a deep sense of gratitude towards our blind peers who thoroughly validated all articles sent to them for reviews. We would also like to thank our contributors for contributing extraordinary submissions to the issue which stood at par on the rigorous scrutiny.

# UNIFORM CIVIL CODE: GENDER JUSTICE Vis-à-vis SANCTITY OF PERSONAL LAWS

## THE AUTHOR

Eshaan Bansal, Dhruv Singhal, students, RGNUL, Punjab

## CONTENTS

- I. Introduction
  - II. Understanding Gender Justice
  - III. Gender Discrimination: Personal Laws in India
  - IV. The Shah Bano Case
  - V. Gender Justice & Uniform Civil Code
- 

## I. INTRODUCTION

According to article 44 of the Indian Constitution, the State is required to codify and implement a Uniform Civil Code for all citizens of India. Given the fact that it is a Directive Principle of State Policy (DPSP) the Indian State should endeavor to codify and enforce it. According to Article 44 of the Indian Constitution “*The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India*”.<sup>1</sup> Although there exists a separate Civil Code for various religious affiliations in India, however, there is no Uniform Criminal Code for all<sup>2</sup>. Despite this the Criminal Law in India does impose uniform rights, duties and liabilities on all the citizens irrespective of their religious affiliation. However, in matters related to civil law, and more importantly to personal matters (marriage, divorce maintenance, inheritance etc.) there exists no uniformity in the law, which leads to considerable amount of confusion as well.

The law relating to marriage, separation, guardianship, progression and maintenance representing the Christians, Hindus and Muslim and so on., are unique and fluctuates from one religion to other and is oversaw by their different individual (personal) laws like the Hindu Marriage Act; the Hindu Adoption and Maintenance Act; the Hindu Minority and Guardianship Act; the Hindu Succession Act; administering the individual issues of Hindus. The Shariat Act, The Dissolution of Muslim Marriage Act and the Muslim Women (insurance of Rights on Divorce) Act and so on., which depend on the principles of Holy Quran, administer the individual issues of Muslims. A uniform common code will help India in national and to some degree in religious unification. It is opined by different experts that a typical common code is conceivable only when the legislatures consider the gender discrimination as a wrongdoing and Gender Justice as its definitive objective.

Today the need of the hour is woman empowerment in areas such as health, gender bias, social status, security etc. Under International law also, a country that signed and ratified an International agreement is bound to implement the provisions under International law. Hence, since India has signed the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, and the International Covenant on Civil and Political Rights, 1966 it is therefore bound to enforce

<sup>1</sup> Constitution of India, 1950, Article 44.

<sup>2</sup> Chintamani Rout, ‘Uniform Civil Code and Gender Justice: An analysis under Customary law’, IJRHAL, ISSN 2321-8878, Vol. 1, Issue 5, Oct 2013, 29-34.

the relevant provisions and ensure gender equality under its regional laws.<sup>3</sup> Despite this, women in India under the various personal laws, such as the Christian, Hindu and Muslim laws continue to suffer from discrimination and inequalities in the matters of marriage, divorce, inheritance and succession.

India in its periodic report before the United committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) admitted that there was prevalence of discrimination against women under various personal laws of different communities in India, India admitted, “ The personal laws of the major religious communities had traditionally governed marital and family relations, with the Government maintaining a policy of non- interference in such laws in the absence of a demand for change from individual religious communities.<sup>4</sup> Today, the requirement for moving towards a gender just civil code is the need to take a closer look and reform the various personal laws of the different communities in India, in consonance with the International law.

Contemporary Indian socio-legal scenario mandates the codification and enactment of a uniform civil code, which is closely intertwined with the issue of gender justice. However, even though the need for the enactment of such a code exists, yet the states politico-legal standpoint about its implementation attracts in-depth legal inquiry. On the other hand, the essential issue of guaranteeing equity to women is getting caught in numerous other contemporary issues like religion, secularism, and freedom. This paper attempts to establish the co-relation between the question of gender justice and the issue of the adoption of uniform civil code in the Republic of India.

---

## II. UNDERSTANDING GENDER JUSTICE

Gender Justice as a concept is mostly used to refer projects that are used to promote the rights of women, by ensuring necessary reforms in the law, and demanding protection and representation of women’s interests in the socio-economic policy of the country. The world has been for centuries past been a place where women have been the subject of social, political and economic discrimination. They have been exploited and mistreated, often through means of political and religious institutions. Hence laws, that have always been unfair to women found way into our legal systems. India has been no exception to this mistreatment of women at all levels. Patriarchy and the patriarchal structure of households has resulted in the continued suppression of women economically, making them dependent on the men for survival. Thus, to ensure better conditions for the women in India, a slew of measures in the form of legislative enactments were introduced during the colonial era such as: Abolition of Sati Act 1829, Widow Remarriage Act 1856, Female infanticide Act 1870, Hindu Marriage Act 1955, Dowry Prohibition Act 1961 etc.

“Gender justice is about more than simply questioning the relationship between men and women. It involves crafting strategies for corrective action toward transforming society as a whole to make it more just and equal and it means 'a place in which women and men can be treated as fully human'. Moreover, it implies moving away from arbitrary to well-reasoned, justifiable and balanced-that is, fair-social relations.”<sup>5</sup>

The aim of Gender Justice is to redress the gap of inequalities that has been created between men and women that has resulted in the oppression of women for so many years. Gender Justice as a concept aims

---

<sup>3</sup> Kirti Singh, ‘Obstacles to women’s Rights in India’, Human Rights of Women: National and International Perspective 375 (1994).

<sup>4</sup> V.R. Krishna Iyer, ‘Unifying Personal Laws’ The Hindu, 6 September 2003.

<sup>5</sup> Nyamu-Musembi, Celestine (2007) “Addressing Formal and Substantive Citizenship: Gender Justice in Sub-Saharan Africa” in MaitrayeeMukhopadhyay and Navsharan Singh, ed. Gender Justice, Citizenship and Development, Zubaan, New Delhi and International Development Research Centre, Ottawa.  
[HTTP://WWW.IDRC.CA/OPENBOOKS/339-3/](http://www.idrc.ca/openebooks/339-3/).

to be both a process and an outcome to ensure that there is equity for women in all sphere of life. As a process it is beneficial to look at gender justice as something which brings accountability to the table, making the institutions and social groups accountable who have been set up to ensure gender justice.

### III. GENDER DISCRIMINATION: PERSONAL LAWS IN INDIA

*Half of the Indian population consists of women. Women have always been discriminated against, and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.*<sup>6</sup>

Similar to prehistoric Rome, the head of the family in a typical Hindu family was a male who possessed complete power. The scriptures pertaining to the patriarchal structure of families amongst Hindus, talks about the complete and utter dominance of the father figure as the absolute ruler of a typical family. According to Manu there are three persons, a wife, a son and a slave that are as declared by the law, not allowed to possess any wealth of their own; the wealth in case there is any, they may earn for the man to whom they belong.<sup>7</sup> The set of possessions and slaves also consisted of the wife, who enjoyed the same social-status as them. Personal laws in India are the products of customary practices which are formed in that primitive society. In contemporary time whether it is Muslim law or Hindu law the prevalence of gender biasness, gender discrimination and inferior status of woman to man is noticeable. Upon analysis of the personal laws, it becomes amply clear that women have been subject to an inferior status than that enjoyed by men. There are some personal laws of Hindu's and Muslim where discrimination against women is still prevalent.

#### STANDING IN THE HINDU LAW

The Hindu personal laws were codified in 1955 and 1956, before which, the Hindu female had no equal rights when compared to her male counterpart. Before 1955, polygamy was prevalent, inheritance rights of a female was not recognized [though inheritance rights were recognized, but only after enactment of the Hindu Succession (Amendment) Act 2005] and there is no share of women in Fathers property, they only used to get dowry which is known as "Stridhan".<sup>8</sup> In 1955 and 1956 Hindu Law was codified but because of those affixed primitive custom discrimination against women could not be curtailed in Toto. The following examples justify the statement:

**Adoption Rights:** In this regard it is pertinent to mention Section 7 and Section 8 of 'The Hindu Adoption and Maintenance Act 1956'. According to Section 7 of 'The Hindu Adoption and Maintenance Act 1956', a male Hindu can adopt a child only if he is of sound mind, not a minor and took consent of his wife.<sup>9</sup> Section 8 of the said act provides that, a Hindu female can adopt a child subject to certain conditions such as, that she is of sound mind, not a minor and her husband is dead or he ceased to be Hindu<sup>10</sup>. In case a Hindu Male has not suffered from any of these incompetency's, then the as per the Hindu laws, the wife cannot a child on her own, also she cannot be a guardian of a child in case her husband is still alive. Such a law, results in discrimination against women, yet it is the reality which is accepted in the society as something normal.

<sup>6</sup> Madhu Kishwar vs State of Bihar, (1996) 5 SCC 145.

<sup>7</sup> "A Critical Analysis of Gender Inequality In The Existing Legislation Relating To Property Rights In India: A Comparative Study Of Hindu And Muslim Law" <http://docs.manupatra.in/newslines/articles/Upload/06EF3D18-696B-4E5F-A61E-80646EC0E664.pdf>

<sup>8</sup> Parul Chaudhary, 'Gender inequality in Hindu and Muslim Personal Laws in India', IJHS 2015; 1(1): 34-37.

<sup>9</sup> The Hindu Adoption and Maintenance Act, 1956, Sec 7.

<sup>10</sup> The Hindu Adoption and Maintenance Act, 1956, Sec 8.

**Maintenance Law:** Though in this regard the substantive law “The Hindu Adoption and Maintenance Act” clearly provides in Section 18 that the wife is entitled to be maintained by her Husband<sup>11</sup>, the procedural law lacks, as it is not an easy path for a deserted women to get maintenance. As per Section 125 CrPC in order to get maintenance, the woman is require to go to the Court against her Husband<sup>12</sup>, which is an extremely tedious and long process. The sad reality today is that majority of women in India are unable to get a reasonable maintenance to sustain themselves.

**Succession Rights:** It is pertinent here to refer to the Hindu Succession (Amendment) Act 2005 which is considered to be a landmark amendment, in drastically changing and improving the position of women in society. Before this amendment in 2005 the position of Hindu female in this regard is highly inferior to Hindu male. These are some reasons:

#### **Equal Rights to daughter in coparcenary property**

Before 2005 amendment the daughter has no right in the coparcenary property. If the Father died intestate women have no right in father’s property. But in 2005, Section 6 of the above mentioned Act has amended and provided the same coparcenary rights to daughter as to son.<sup>13</sup>

#### **Amendment in General Rules of Succession**

Before 2005 female member had no right in the property of her father and the Hindu Succession Act did not provide any succession rules for daughters. Although section 8 of the said act did provide the General Rules of Succession in the case of males yet no such provision was there for the women, and it was only after the amendment in 2005 that the General Rules of Succession for females were also added in the above mentioned act.

#### **Omitted Section 23**

According to Section 23 of the Hindu Succession Act 1956 female heirs to a male Hindu intestate's property could not ask for a partition of the intestate's dwelling house in which the intestate's family used to reside until the male heirs choose to divide their respective shares freely. This was so even when the house was part of the intestate's separate property. A female heir who was a daughter had the right of residence in the dwelling house only if she was single and had been deserted by or was separated from her husband, or was a widow.<sup>14</sup> This section clearly reiterated the Patriarchal mindset of the society and the lawmakers, and was only omitted by the 2005 amendment.

#### **STANDING IN MUSLIM LAW**

In the Pre Moslem days, girls were usually treated as chattels, weren't given any right of inheritance and were made to be completely dependent on the men. The emergence of Holy Islam has led to significant alleviation of contemporary issues of Muslim girls. The Holy Quran offers some rights to men and women and places women in a very respectable position. However, there are some aspects in Islam and some wrong practices that make position of Muslim girls particularly the wives unequal and inferior.

**Marriage:** As per the tenets of the Muslim Law, marriage is a contract for the purpose of legalization of intercourse, procreation of children and regulation of social life in the interest of society.<sup>15</sup> Certainly the

<sup>11</sup> The Hindu Adoption and Maintenance Act, 1956, Sec 18.

<sup>12</sup> Criminal Procedure Code, 1973, Sec 125.

<sup>13</sup> Hindu Succession (Amendment) Act, 2005, Sec 6.

<sup>14</sup> ‘Obstacles to women’s Rights in India’, Supra note 3.

<sup>15</sup> Aqil Ahmad, ‘Mohammed Law’, 25<sup>th</sup> Edition, Central Law Agency, 109.



personal laws of Muslims consider marriage to be the contract where the contracting parties are the bride and the bridegroom. Discrimination against women is mostly visible against Muslim wives. The following examples justify the statement:

**Polygamy:** *“Marry such women as seems good to you, two three or four, but if you fear that you cannot do justice between them then marry only one- this is better so that you cannot deviate from the right path”*.<sup>16</sup> The Muslim system of law inherited the doctrine of plurality of wives from time immemorial. At the same time a Muslim women cannot marry more than one husband and if a Muslim women gets married for the second time, she automatically becomes liable for bigamy under Section 494, Indian Penal Code and the issues arising out of such marriages are illegitimate<sup>17</sup>. This is gross injustice against the Islamic women and unveils the Patriarchal nature of Islamic Society.

**Mehr:** *Marriage among Mohammedan is considered as not a sacrament, but purely a civil contract*.<sup>18</sup> Also there are three essentials of a valid marriage in Islam which makes the contractual nature of the marriage in Islam more explicit. These are *Proposal and acceptance, Competent Parties, No Legal Disability*.<sup>19</sup> Contract between the parties is certainly for transferring some object and consideration is paid by the other party for it while in Islam Dower/Mahr is paid by the husband in consideration of his wife. Justice Mahmood in this regard himself observed *“Dower under Mohammedan law, is sum of money or the other property promised by the husband to be paid or delivered to the wife in consideration of the marriage”*.<sup>20</sup> This unveils the system prevalent in Muslim law where they treat women as nothing but a mere object.

**Age of Marriage:** Muslim law considers Puberty and Majority as one and the same thing. Hedaya lays down that the earliest period for boys is 12 years and a girl is 9 years.<sup>21</sup> As far as a Shia female is concerned, the age of marriage begins with the menstruation. However the Privy Council held that in Shia's case the age of majority for girl is 9 years<sup>22</sup>. Marriage, it shows in Muslim law is dependent on the maturity of the girl which is determined by her puberty and not by her age. This is astonishing, most discriminatory and primitive in itself.

**Divorce:** It is pertinent to in this regard to refer to Section 2 of the Dissolution of Muslim Marriages Act, 1939. According to section 2 of the act, in order to obtain a decree of divorce the wife has to be eligible under any of the 10 grounds listed in the above-mentioned section. Out of the 10 grounds given under this Section, seven relate to the matrimonial wrongdoings of the husband. The provision under this section can only be used by the wife as the Muslim Law gives an absolute right to the husband to obtain divorce without stating any reason<sup>23</sup>. Unlike wife, husband may obtain Divorce without stating any reason. The only requirement for the husband is to pronounce the word *“Talaq”*, while the manner, mode and time is not very significant<sup>24</sup>. Khalid, J. showed concern against the misuse of this power and called this practice a *“monstrosity”*<sup>25</sup>. Unlike Shias who only recognize express and delegated forms of *talaq*, the Sunnis also

<sup>16</sup> Sir Dinshaw Fardunji Mulla, 'Principles on Mahomedan law, 20<sup>th</sup> Edition , Lexis Nexis (the words of Prophet Mohammad)

<sup>17</sup> Indian Penal Code 1960, Sec. 494.

<sup>18</sup> Abdul Kadir v. Salima, (1886) 8 All. 149 at 154.

<sup>19</sup> 'Mohammed Law', Supra note 15.

<sup>20</sup> Ibid.,

<sup>21</sup> Himilton's Hedaya, 2<sup>nd</sup> edition by Grady, 44.

<sup>22</sup> 'Obstacles to women's Rights in India', Supra note 3.

<sup>23</sup> Furqan Ahmed, 'Understanding the Islamic Law of Divorce', JOURNAL OF INDIAN LAW INSTITUTE 484 (2003).

<sup>24</sup> Anita Yadav, 'Rights of Muslim women: An Analysis of Indian Muslim Personal Law', AFFIRMATIVE ACTION: WOMEN AND LAW 220, 220 (C.P. Singh ed., 2015).

<sup>25</sup> Hannefa v. Pathummal, 1972 K.L.T. 512.

recognize implied and contingent constructive *talaq*. Particularly the practice of divorce in which the husband simply pronounces triple “Talaq” is highly discriminatory and should be abolished.

**Inheritance:** Under Muslim Law, the general rule is that the male is supposed to get twice as much share in the property as compared to the female. This law is prevalent both in Shia school and Sunni School. For example in case a son and a daughter are supposed to inherit together the male will get twice the share as against his female counterpart.<sup>26</sup> Also, usually the husband is entitled to a 1/4th share while the is entitled to a 1/8th share when there is a child and in case there is no child 1/2th and 1/4<sup>th</sup> shares are accorded respectively. However even today, in Jammu and Kashmir, there are communities in which the daughter is allowed to inherit only when all male members of the family are deceased.

**Maintenance:** A divorced Muslim wife is generally not required, under the personal laws of the Muslims, to be maintained for more than the “Iddat” period. Legally the woman is entitled only to the mehr and maintenance (legally) for the duration of the iddat period settlement. However as per Section 125 of the Criminal Procedure code it is an obligation on part of the husband to maintain his wife even after he divorced her.<sup>27</sup> The controversy in this regard arose in 1985 in the famous case of Mohd. Ahmed Khan Vs Shah Bano Begum<sup>28</sup>, wherein the Hon’ble Supreme Court of India held that Section 125 of CrPC is applicable even to the members of the Muslim community and therefore, a Muslim husband is also liable to maintain his divorced wife beyond the Iddat period.

Similarly, among the Parsi and Christian Women also, gender discrimination prevails and disparity in the rights of the women as compared to the men are visible.

#### IV. THE SHAH BANO CASE

The landmark case of Shah Bano brought to the forefront the highly debated issue of gender discrimination under the Muslim (Sharia) law, and triggered the fight for Muslim women’s right to justice. A brief of the facts of the case; the lady, Shah Bano who was the petitioner filed a petition to get maintenance from her husband as she was unable to support herself and her five children. After a long and arduous legal journey of seven years, the Hon’ble Supreme Court of India ruled in her favor by granting her alimony rights against her husband. This decision by the Apex court was seen as a threat to the Sharia law by a majority of Muslim clerics and religious heads. This resulted in a heated debate over the constitutionality of different marriage and personal laws of various religions, and which subsequently resulted in the passing of the Muslim Women (protection of Rights on Divorce) Act, 1986, by the then government.

The judgment was one of the most significant judgments in the history of the country as it brought to the center the much debated issue of Uniform Civil Code. The judgment, seen as a secular one, nevertheless invoked strong reactions from the Muslim community, which was under the impression that the judgment was an attempt to encroach upon the sacred Muslim Sharia Law. This in turn gave the entire issue a communal flair, and resulted in heightened tensions between the two dominant religious communities of India, i.e., Hindus and Muslims. One result of this sharp reaction was the creation of the All India Muslim Personal Law Board in 1973, which was formed to ensure the protection of the Muslim Sharia Law. The strong backlash from the Muslim community to the judgement prompted the government to take pre-emptive measures in order to appease the community was initiating parliamentary procedures to overturn the Supreme Courts, decision. Thus, the Muslim Women Act (Protection of Rights on Divorce), 1986,

<sup>26</sup> ‘Obstacles to women’s Rights in India’, Supra note 3.

<sup>27</sup> Criminal Procedure Code, 1973, Sec 125.

<sup>28</sup> Mohd. Ahmed Khan v. Shah Bano Begum (1985) SCR (3) 844.

was passed. The act, argued by many was seen as setting of a wrong precedent, because it was seen as a way to appease a particular community that was otherwise threatening agitation.

Shah Bano's case resulted in once again highlighting the need for a well drafted Uniform Civil Code in the country so as to uphold the secular fabrics of the nation. However, to this day individual personal laws that based upon their respective religions continue to operate, with no significant move towards a Uniform Civil Code by subsequent governments, at least in the near future. Nevertheless, the case of Shah Bano brought to the forefront the need for gender justice under the personal laws and the need for a Uniform Civil Code for the entire country.

## V. GENDER JUSTICE & UNIFORM CIVIL CODE

According to Article 44 of the Indian Constitution, "The State shall endeavor to secure for citizens a uniform civil code throughout the territory of India." The intention of putting up this article under the Directive Principles was to allow the newly formed Indian State some time to integrate and unite the county Independence. This was done keeping in mind the prevailing situation partition and high communal tensions at the time when the constitution was being drafted. At that point in our history there was a reasonable apprehension in the minds of the members of the Constituent Assembly that an iron fist approach in order to enforce a common civil code may lead to widespread religious unrest and possible disintegration of a fragile union.

When India got independence in 1947, it was clear in the minds of our constitution makers that to unite and bind India, a uniform civil code would be required. This need for a uniform civil code was felt, because the constituent assembly understood that the personal laws of all communities were inherently male-oriented and hence gender injustice was common across all religions personal laws. The Apex court has in more than a few landmark judgements opined that legislation for common civil code should be enacted by the Parliament so as to enforce article 44 of the Indian Constitution.

J.L.Nehru said, 'The British policy of non- interference with personal laws and mechanical interpretation or perpetuation of Hindu customs stopped the natural growth of Hindu law and give rise to petrified rules'<sup>29</sup> In case of *Thota Manikayamma*<sup>30</sup> the apex court, while interpreting section 14 of the Hindu Succession Act, 1956 observed:

"... Article 15 (3) relieves from the rigor of Article 15(1) and charges the State to make special provision to accord to women socio-economic quality...As a fact Article 15(3) as a forerunner to common code does animate to make law to accord socio-economic equality to every citizen of India irrespective of religion, race, caste or religion".

The mother cannot be natural guardian of her children during the lifetime of her husband<sup>31</sup>. When the matter in relation to the concept of a mother as a natural guardian was questioned, the apex court held that relegation of mother to inferior position to act as natural guardian is a clear violation of Articles 14 and 15. The right of women to guardianship has undergone a sea change after this interpretation by the Hon'ble Court in *Gita Hariharan*<sup>32</sup> case. The existence of gender discrimination in matters of succession for example the mere presence of a brother makes a sister residuary. There is no maintenance provision

<sup>29</sup> P.Ishwara Bhat, *Directive Principles of State Policy and Social Change with Reference to Uniform Civil Code* vol. 25, *Banaras Law Journal* 1989 pp.75-96 at 76

<sup>30</sup> (1991)4 SCC312

<sup>31</sup> *Hindu Minority and Guardianship Act, 1956, Sec 6.*

<sup>32</sup> AIR1999 SC1149

for a divorced wife. Even though the Hon'ble Supreme Court of India took a major progressive step in the landmark case of Shah Bano<sup>33</sup> entitling women for maintenance under Code of Criminal Procedure<sup>34</sup> beyond the Iddat period but the then Rajiv Gandhi Government passed the Muslim Women (Protection of Rights on Divorce) Act 1986 (MWA,1986) to nullify the effects of Shah Bano case and therefore took a regressive step in the direction of uniform civil code in India.

Indian political parties have over the years ensured that despite the existence of constitutional safeguards, statutory provisions and plethora of pronouncements to support and champion the cause of women, by providing them equal rights, there has been scant change in social attitudes and institutions towards the plight of women. The Indian Judiciary has to be commended for taking a lot of steps to ensure that there is a positive progression towards the elimination of gender discrimination in India. Chief Justice Khare in John Vallamattom case<sup>35</sup> said that 'there is no necessary connection between religious and personal law in a civilized society. However, the reality is that the judiciary is only an interpreter of law and not a law-giver, that role has to be performed by the Parliament, however our parliamentarians have failed to do so. They have politicized the topic of Uniform Civil Code to such an extent that today it is a tool to play communal politics, be it minority appeasement or majority appeasement, various political outfits have used the issue to flair communal tensions to gain electoral dividends without ever really addressing the merit of the matter. The result is the even after 70 years of independence, Uniform Civil Code is a dream yet to be realized. For India to be a truly secular, modern state, where women are given equal rights as men, a uniform civil code is a must, for the nation to provide freedom, dignity and opportunity to both the sexes equally.

---

<sup>33</sup> Mohd.Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945

<sup>34</sup> Criminal Procedure Code, 1973, Sec 125.

<sup>35</sup> John Vallamattom and another v. Union of India (2003) 5 SCALE 384 at 397 <sup>Para</sup> 44