

## Unification of Personal Laws in India and Rights of Women

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### Abstract

*Women enjoy a unique position in every society and country of the world. Despite their contribution in all spheres of life, they suffer in silence and form a class, which is in a disadvantaged position because of several barriers and impediments. India, being a country of paradoxes, is no exception. Here too, women, an epitome of Shakti, once given an exalted status, are in need of empowerment-legal, social, political and economic. However, empowerment and equality are based on the gender sensitivity of society towards their problems. The framers of the Constitution were conscious of the unequal treatment and discrimination meted out to the fairer sex from time immemorial and, therefore, included certain general as well as specific provisions for the upliftment of the status of women. Article 14 and 15 of the Constitution of India provides for equal protection before law and there shall not be any discrimination based on sex. However, personal laws of different religions vary in laws relating to marriage, divorce, maintenance, succession, adoption and guardianship. There is no uniform civil law pertaining to personal matters however, the uniformity in laws exists in criminal laws on the other side. The Indian Constitution in its part IV, Article 44 directs the State to provide a Uniform Civil Code throughout the territory of India. However, it is only a directive principle of state policy; therefore, it cannot be enforced in a court of law. To ensure equality, protection and promotion of rights and avoid social and religious taboos acknowledged in the personal laws, which are somehow responsible for the vulnerable position of the females in the society. Therefore, it is the need of the hour to have unification of laws to acknowledge the rights of women and to give them equal status in society.*

**Keywords:** Uniform Civil Code, Equality, Personal laws, Rights

Women enjoy a unique position in every society and country of the world. Despite their contribution in all spheres of life, they suffer in silence and form a class, which is in a disadvantaged position because of several barriers and impediments. India, being a country of paradoxes, is no exception. Here too, women, an epitome of *Shakti*, once given an exalted status are in need of empowerment-legal, social, political and economic. However, empowerment and equality are based on the gender sensitivity of society towards their problems (Rao, 2012.<sup>i</sup> Human rights, which are the entitlement of every man, woman and child because they are human beings, have been made enforceable as constitutional or fundamental rights in India. The framers of the Constitution were conscious of the unequal treatment and discrimination meted out to the fairer sex from time immemorial and, therefore, included certain general as well as specific provisions for the upliftment of the status of women.<sup>ii</sup> Article 14<sup>iii</sup> and 15<sup>iv</sup> of the Constitution of India provides for equal protection before law and there shall not be any discrimination based on sex. However, personal laws of different religions vary in laws relating to marriage, divorce, maintenance, succession, adoption and guardianship. There is no uniform civil law pertaining to personal matters but the uniformity in laws exists in criminal laws on the other side. The Indian Constitution in its part IV, Article 44<sup>v</sup> directs the State to provide a Uniform Civil Code throughout the territory of India. However, it is only a directive principle of state policy; therefore, it cannot be enforced in a court of law.

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Article 25<sup>vi</sup> of the Constitution provides for freedom of religion "subject to public order, morality and health and to the other provisions of this part. The state is further able to regulate or restrict "any economic, financial, political, or other secular activity which may be associated with religious practice." Article 26 provides religious protection, allowing every religious denomination the right "to manage its own affairs in matters of religion." Article 29<sup>vii</sup> protects cultural minorities by providing that any minority group in India "having a distinct language, script or culture of its own shall have the right to conserve the same." The constitutional provisions protecting religious and minority groups are reconcilable with Articles 14 and 15. Religious practice that violates gender equality can, in theory, be prohibited without violating the Constitution pursuant to the limiting factors of Article 25. It is notable that the words "personal law" do not appear in any of the religious provisions of the Constitution. Here, as with the equality provisions discussed above, religious personal law appears to fly under the radar, avoiding constitutional scrutiny despite their blatant deviations from gender equality (Chibber, 2015).<sup>viii</sup>

Any customary belief or practice though not directly falling under the outlines of Article 13<sup>ix</sup> or Article 372<sup>x</sup> of the Constitution, still does not give a prerogative to numerous religious assemblages to promulgate and practice arbitrary and discriminatory customs and beliefs, which are not merely in direct infringement to the principles enshrined under Article 14 and other fundamental rights but against the very fabric and objective of the Constitution, i.e. to stimulate secularism.

### **Why Unification?**

The term civil code is used to cover the entire body of laws governing Personal matters as opposed to public matters to govern matters like marriage, divorce, maintenance, adoption and inheritance. Uniform Civil Code essentially means unifying all these personal laws into one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of their religious background. Though the exact dimensions of uniform code have not been laid down, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those, which are oppressive and outdated. Article 35 of the Draft Constitution of India was added as Article 44 under Part IV as the Directive Principles of the State Policy. However, even after 66 years of the adoption of our Constitution, Uniform Civil Code remains to be a constitutional dream to be fulfilled. The implementation of a Uniform Civil Code is imperative for the protection of the oppressed as well as for the promotion of national integrity and unity.(Shambhavi,2017)<sup>xi</sup>

The Constitution of India, which provides for the rights of the citizens of India. Personal Laws does not fall under the ambit of Article 13 and Article 372 of the Constitution, still it does not give prerogative to numerous religious assemblages to promulgate and practice arbitrary and discriminatory customs and beliefs, which are not merely in direct infringement to the principles enshrined under Article 14 and other Fundamental Rights but against the very fabric and objective of the Constitution, i.e. to stimulate secularism. Article 44 of the constitution provides for Uniform civil code. The 42<sup>nd</sup> Constitutional amendment inserted the word "secular" in the preamble to the Constitution. Secularism is where all the religions are to be treated equal. Part III of the constitution provides for freedom to practice, propagate and practice religion of one's choice. The nodal point of discussion is whether this is an absolute right or it has to be tested on the grounds of "public order, health, equality and morality". When it comes to judging the absoluteness of the Article 25 of the Constitution of Indian then it has to be judged based on the above stated principles. The submission to this argument is that it is not the absolute right equality prevails over it. Article 37 says that the provisions contained in the part IV of the constitution shall not be enforceable in any court and the principles laid down are not fundamental in the governance of the country rather it is the duty of the state to apply these principles while making laws. Despite this secular status, we have not touched our personal laws to bring uniformity amongst them. We have diversity of personal laws with respect to marriage, matrimonial disputes, maintenance, testate and intestate succession, gift to name few. The judiciary in India has taken note of the injustice done to the women in the matters of many personal laws.

It has been voicing its concern through a number of judgements indicating the necessity to have uniformity in personal matters of all the citizens. The constitution not only guarantees a person's freedom of religion and conscience, but also restrains the state from making any discrimination on the ground of religion.

### **Right to adopt and guardianship of a child:**

Adoption means a lawful procedure that allows prospective adoptive parent to become the parent of a child, even though the parent and child are not related by blood. However, in every other way, adoptive parents are the child's parents. Adoption is the transplantation of the child from the natural family to the adoptive family. According to Manu, adoption is the "taking of a son, as a substitute for the failure of a male issue." Before the enactment of Hindu Adoption and Maintenance Act, 1956 (HAMA) the son was assigned utmost importance in the Hindu *Dharamshastras*, male issue was treated as necessary for protecting the deceased parents from the sufferings of the hell, to achieve salvation and to perform their funeral obligations. Post (HAMA). Ancient viewpoint was gender centric neither it acknowledged adoption of the daughter nor right conferred on Hindu females even with consent with husband to adopt children. But after the commencement of HAMA not only the provision to adopt daughters was incorporated but also it has conferred right on females to adopt. However, right to adopt child has not been acknowledged in all the personal laws except Hindu Adoption and maintenance Act, 1956. A female has been conferred right to adoption under Hindu personal law but this right does not confer her right to become natural guardian of minor legitimate children in the presence of her husband as per Hindu Minority and Guardianship Act, 1956. Right to adopt and Guardianship is not conferred on the Muslim females under Muslim personal Laws. Muslim personal law provides for custody of child to females until certain age of the child but the right to become guardian has not been conferred on females. On the other hand, Christian law per se does not have any provision for custody but The Indian Divorce Act, 1869 contains provisions relating to custody of children.<sup>xii</sup> The custody under Parsi Law is dealt with by the Guardians and Wards Act of 1890, under which it is a well-established principle that "the welfare of the child is paramount - i.e., the most important thing considered by the Guardian Court when deciding custody.'

### **Maintenance Rights:**

Right to get maintenance is conferred under all the personal laws and there is a uniform law on maintenance i.e., under section 125<sup>xiii</sup>, code of criminal procedure, 1973 and everyone is governed by the said legislation irrespective of religion.

### **However, in Mohd. Ahmed Khan vs. Shah Bano Begum<sup>xiv</sup>**

In the judgment of this case created uproar in Muslim Community. A five Judges Bench of the Supreme Court declared that a Muslim husband having sufficient means must provide maintenance to his divorced wife who is unable to maintain herself. Such a wife is entitled to the maintenance even if she refuses to live with Muslim husband because he has contracted another marriage within the limits of four wives allowed to him by Quran. The Bench declared that a Muslim divorced woman who cannot maintain herself is entitled to get maintenance from her former husband until the time she is remarried. They rejected the plea that maintenance is payable for the *iddat* period only. Pointing to the *aiyats* of the Quran, the Judges declared that the Quran imposes an obligation to provide maintenance to the divorced wife. The judges also rejected the contention that deferred *Mahr* (dower) is a payment on the divorce of a wife and hence such payment under the personal law excludes the payment of any maintenance by the husband in consideration of marriage. They observed that according to Quran, the dower is a consideration and mark of respect for the Muslim woman instead of being a consideration for divorce. The learned judges stated that the religion professed by spouse has no place in the scheme of Section 125 Cr. P.C., which is measure of social justice to prevent vagrancy and destitution.

The court held that if there is any conflict between personal law and Section 125 Criminal Procedure Code then it is clear from the language of the Section that it over-rules the personal law. This judgment created a storm and preachers of Islam started an agitation. To abrogate the verdict passed by apex court in the *Shah Bano* case Indian parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986, to protect the right of maintenance Muslim women. This legislation conferred the obligation on husband to make fair reasonable provision and to pay maintenance during the period of *iddat* and gave choice whether to be governed by this law or under section 125. It also conferred liability on parents, children and relatives who will inherit her property to maintain her if she is unable to maintain herself from the dower given and fair reasonable provision for maintenance made and paid during *iddat*. It also conferred liability on state *waqf* board.

The act left her in the state of vagrancy, destitution and made her from pillar to post in search of maintenance. That is why the constitutional validity of this act was challenged in Danial Latifi case.

**Danial Latifi Vs Union of India**<sup>xv</sup> a Constitutional Bench of the Supreme Court gave a categorical finding that in view of their interpretation of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the provisions of the Act were not in violation of Articles 14 and 21 of the Constitution, which fundamental rights guarantee equality of law and right to life and personal liberty.

### **Polygamy**

Polygamy is marrying having more than one wife. Prior to the commencement of Hindu Marriage Act, 1955 polygamy was also practiced by the Hindus but after the enactment of the legislation no one solemnize second marriage during the lifetime of his or her spouse as it amounts to bigamy under section 494<sup>xvi</sup>, 495<sup>xvii</sup> of IPC. Similar position has been acknowledged in the personal laws governing Christians, Parsis and Special Marriage Act, 1954 (which is applicable in case of inter-religious marriages) pertaining to conditions to male marriage a valid marriage. But the same has been still practiced by the Muslim males and they cannot be held liable under IPC. On the other hand, if a Muslim female solemnizes polyandry, she is liable under IPC. There is gender discrimination. After the historic judgment wherein SC declared triple talaq or Talaq-e-Biddat as invalid and unconstitutional, the Supreme Court decided recently after seven months of the said judgement to examine the validity of the practices of polygamy and certain forms of marriages in the Muslim community on a petition filed by Muslim social activist that the practice of polygamy is offensive of the “right to equality” as it treats women as chattels. Therefore, the SC referred the case to a Constitution bench to adjudicate. “Practices of Nikah Halala, Nikah Mutah, Nikah Misyar and polygamy interfere with the right conferred by Article 21 of the Constitution. By considering the woman an object of man’s desire, practices of Nikah Halala, Nikah Mutah, Nikah Misyar and polygamy cause gross affront to the dignity of women. A complete ban on these practices is the need of the hour as they render Muslim women extremely insecure and vulnerable and infringe on their fundamental rights,”<sup>xviii</sup>

In **Sarala Mudgal v. Union of India**<sup>xix</sup> a Public Interest Litigation concerning the position of a Hindu wife whose Hindu husband, after conversion to Islam and without dissolving the first marriage solemnized the second marriage. The Court held that such a marriage will be illegal and the husband can be prosecuted for bigamy under Sec 494 of the IPC. The Supreme Court also directed the State to secure a uniform civil code. However, unfortunately, the Court clarified that its direction was only obiter dicta and not legally binding on the Government.

### **Divorce:**

Every personal law provides for matrimonial relief in the form of dissolution of marriage. After the commencement of Hindu Marriage Act, 1955 the old notion of marriage being eternal, sacred and indissoluble union no more exists. Now the contracting parties can dissolve marriage by pleading fault grounds, by mutual consent and irretrievable grounds of divorce under personal laws.

However, the plight of Muslim women is quite different and they can dissolve their marriage under Dissolution of Muslim Marriage Act, 1939 by stating grounds mentioned under the said legislation. In spite of having codified law still the Muslim male having prerogative under Muslim law to dissolve marriage by reciting talak against his wife even if he has pronounced under anger, intoxication or through the help of technology, it is valid. If he realizes his guilt and wants to get into the relationship with his wife then female has to undergo *Halala* marriage wherein she has to get married with other male, the consummation of the marriage is must, and marriage should be dissolved between the contracting parties. After that observance of period of *iddat*. After this compulsory requirement is fulfilled, then only husband will get married to his wife. *Halala* marriage is only exploitation of a female. This is a much debated and talked about issue.

Recently, triple *talaq* case, originative from the petition filed by Shayara Bano in a case of divorce from her husband, is not the first matter relating to personal laws before the Supreme Court. The apex court has dealt with several such cases before but unexpectedly it has not given a consistent interpretation of the laws and provisions of Constitution. The conflict arises when personal laws are perceived to be in violation of the fundamental rights. Article 13 of the Constitution states that any law, which goes against the provisions of fundamental rights, shall be void to the extent of contravention.<sup>xx</sup>Hence SC in a historic judgment declared unconstitutional and violative of fundamental rights.

### **Right to Property**

Indian succession Act, 1925 is applicable in case of interreligious marriage and it regulates the inheritance rights of the Christians, Parsis and Jews in the separate property. The shares of the females have been fixed under Indian succession Act, 1925 in the property of her husband dying intestate. On the other hand under Hindu personal Laws prior to the enactment of Hindu succession Act,1956 Women were having limited rights in the property which they have received after the death of their husbands being coparceners widow and daughter were also on the equal footing . Daughters were not conferred any propriety rights under *Mitakshara* joint family system. Status of Equality has been maintained after Hindu Succession Act, 1956 by conferring Hindu women's absolute rights in the property, she has received after the death her husband who died as a member of Hindu undivided joint family. On the other hand, Hindu Succession Amendment Act,2005the daughters right in the coparcenary property has been recognized after the Hindu succession amendment act,2005. As after the said amendment, daughters have also been made coparceners and therefore it conferred birthright in the ancestral property of the *Mitakshara* joint family system. Unfortunately, the amendment made in the Hindu succession act, suffered lot of criticism that it will promote sibling rivalry; daughters are benefitted twice, first being someone's daughter and someone's wife. Moreover, sisters out of love and affection relinquish their rights in the name of the brothers so that harmony in the relationship is maintainable. Whereas in the scheme of Muslim Inheritance the share of the female is fixed and acknowledged but share in the property fluctuates as it decreases with the presence of *quaranic* heirs (sons and daughters).

Aforesaid discussion lead to the fact that because of diversity of personal laws unification of these laws is required to strive equality amongst women to promote and protect their rights.

### **Concluding Observations**

World across everyone is concerned about upliftment and promotion of women rights. At international platform, we have Convention based on elimination of all forms of discrimination against women. India had also witnessed the transformation in the society and with the efforts of the government; we have been able to eradicate social evils from the society. Repeatedly we enacted welfare legislations to protect and promote the rights of the women. To name few- The Child Marriage Restraint Act,1929 now repealed by Prohibition of Child Marriage Act,2006 to eradicate the social evil of child marriage.

Dowry Prohibition Act,1961 enacted to prohibit and prevent the system of dowry. Caste Disability Removal Act,1850 to remove the after effects of conversion of religion. Dissolution of Muslim Marriage Act,1939,which provides rights to Muslim women to dissolve their marriage. The Constitution of India, which provides that there should not be discrimination based on sex. It does not give prerogative to numerous religious assemblages to promulgate and practice arbitrary and discriminatory customs and beliefs, which are not merely in direct infringement to the principles enshrined under Article 14 and other fundamental rights but against the very fabric and objective of the Constitution, i.e. to stimulate secularism. Female being epitome of power, creator and the world across talking about women empowerment and we the Indians are still not treating them equally and at par with men them and excluded them with certain momentous rights which should be given to them without any uproar. This situation of females we are witnessing is after having given them protection under various personal laws in the form of making bigamy as an offence, given adoption rights, propriety rights, right to dissolve marriage, right of maintenance, option of puberty etc. In spite of all the stated rights still there are some of the other loophole in all the personal laws concerning rights of women .To ensure equality, protection and promotion of rights and avoid social and religious taboos acknowledged in the personal laws, which are somehow responsible for the vulnerable position of the females in the society. Therefore, it is the need of the hour to have unification of laws to acknowledge the rights of women and to give them equal status in society.

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## Works Cited

<sup>i</sup> Rao, M., (2012), *Law Relating to Women and Children*, Eastern book company: Lucknow.

<sup>ii</sup> Id at 505

<sup>iii</sup> Article 14 of the Constitution of India states: ‘The State shall not deny to any person equality before law or equal protection of laws’.

<sup>iv</sup> Article 15, Constitution of India states: (1) ‘The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment’

<sup>v</sup>Article 44 of the Constitution states:’ The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.’

<sup>vi</sup>Article 25 of the Constitution states: “Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

<sup>vii</sup>Article 29 of the Constitution states that- “Protection of interests of minorities

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them

<sup>viii</sup>Chibber, S., (2015) Charting a New Path Towards Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code, *Indiana Journal*, Vol. 83 , Issue 2: 698-695.

<sup>ix</sup>Article 13 of the Constitution states: ‘Laws inconsistent with or in derogation of the fundamental rights

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

- (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void
- (3) In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas
- (4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368 Right of Equal

<sup>x</sup>Article 372 of Constitution of India states: ‘Continuance in force of existing laws and their adaptation

- (1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority
- (2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law
- (3) Nothing in clause (2) shall be deemed

(a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution; or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause Explanation I The expression law in force in this article shall include a law passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas Explanation II Any law passed or made by a legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra territorial effect Explanation III Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force Explanation IV An Ordinance promulgated by the Governor of a Province under Section 88 of the Government of India Act, 1935 , and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause ( 1 ) of Article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.’

<sup>xi</sup>Shambhavi, “Uniform Civil Code: The Necessity and The Absurdity”, 1 ILI Law Review, p. 2, (2017)

<sup>xii</sup>Section 41 of the said Act provides with the powers to make orders as to custody of children in suit for separation. -In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said Court.

<sup>xiii</sup> Section 125 in The Code of Criminal Procedure, 1973, Order for maintenance of wives, children and parents.

- (1) If any person having sufficient means neglects or refuses to maintain-
- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation.- For the purposes of this Chapter,-
- (a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875 ); is deemed not to have attained his majority;

- (b) " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.
- (2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.
- (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him.
- (4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.
- (5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

<sup>xiv</sup> 1985 AIR 945

<sup>xv</sup> 2001(7) SCC740

<sup>xvi</sup> Section 494 in The Indian Penal Code, Marrying again during lifetime of husband or wife.—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.

(Exception) — This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

<sup>xvii</sup>Section 495 in The Indian Penal Code, Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.—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.

<sup>xviii</sup>27th March,2018 Times of India

<sup>xix</sup> (1995) 3 SCC 635

<sup>xx</sup>Triple Talak, from <http://indiatoday.intoday.in/story/triple-talaq-supreme-court/1/951068.html>, [9<sup>th</sup> August 2017]

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