



WWW.LIVELAW.IN

IN THE SUPREME COURT OF INDIA

8976/21

ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO. OF 2021

[TRANSFER PETITION UNDER THE ARTICLE 139A(1) READ WITH
ORDER XLI OF THE SUPREME COURT RULES 2013]

IN THE MATTER OF:

ASHWINI KUMAR UPADHYAY

.....PETITIONER

VERSUS

UNION OF INDIA & ANOTHER

....RESPONDENTS

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR PETITIONER - ASHWANI KUMAR DUBEY



WWW.LIVELAW.IN

DIARY NO...⁸⁹⁷⁶.....OF 2021

DECLARATION

All defects have been duly cured. Whatever has been added/deleted/modified in this petition, is the result of curing the defects and nothing else. Except curing the defects, nothing has been changed. Paper books are complete in all respects.

ADVOCATE FOR PETITIONER

(ASHWANI KUMAR DUBEY)

Advocate-on-Record

Registration Code No-1797

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Section: PIL

The case pertains to (Please tick / check the correct box):

- ☐ Central Act: Constitution of India
- ☐ Section: Articles 14, 15, 21, 139A of the Constitution
- ☐ Central Rule: N/A
- ☐ Rule No: N/A
- ☐ State Act: N/A
- ☐ Section: N/A
- ☐ State Rule: N/A
- ☐ Rule No: N/A
- ☐ Impugned Interim Order: N/A
- ☐ Impugned Final Order / Decree: N/A
- ☐ High Court: N/A
- ☐ Name of Judges: N/A
- ☐ Tribunal / Authority Name : N/A

-
1. Nature of Matter: Civil
 2. (a) Petitioner / Appellant : Ashwini Kumar Upadhyay
(b) Email ID: aku.adv@gmail.com,
(c) Phone No: 08800278866,
 3. (a) Respondent: Union of India and another
(b) Email ID: N/A
(c) Phone No: N/A
 4. (a) Main Category: o8 PIL Matters
(b) Sub Category: o818, others
 5. Not to be listed before: N/A



6(a). Similar disposed of matter: No similar matter

6(b). Similar pending matter: WP(C)869/2020, WP(C)1108/2020

7. Criminal Matters: N/A

(a) Whether accused / convicted has surrendered: N/A

(b) FIR / Complaint No: N/A

(c) Police Station: N/A

(d) Sentence Awarded: N/A

(e) Period of Sentence Undergone including period of detention / custody under gone: N/A

8. Land Acquisition Matters:

(a) Date of Section 4 Notification: N/A

(b) Date of Section 6 Notification: N/A

(c) Date of Section 17 Notification

9. Tax Matters: State the Tax Effect: N/A

10. Special Category: N/A

11. Vehicle No in case of motor accident claim matters: N/A

Date: 5.4.2020

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Petitioner is filing this Transfer Petition under Article 139A(1) seeking transfer of WP(C)6483/2019, pending in Delhi High Court. Petitioner is compelled to approach this Hon'ble Court as more PILs may be filed in other High Courts seeking '*Uniform Civil Code*'. Therefore, in order to avoid multiplicity of the litigations and conflicting views on interpretation of Articles 14, 15, 21, 44 and judgments on gender justice and gender equality, the Court may be pleased to transfer the PIL and decide it collectively.

Presently, Muslim personal law allows Polygamy while the other religions don't. Even in the case of infertility, Christians, Hindus, Parsis are forbidden from marrying again by Section 494 of the Indian Penal Code. This also leads to religious conversions as people convert to Islam in order to re-marry. Even Islamic nations do not permit second marriage without the consent of the first wife. Polygamy is not a religious issue, rather an issue of civil and human rights. So, S. 494 of the IPC must be religion and gender neutral.

Minimum age of marriage is not same for men-women. The age of adulthood of Muslim girls is not fixed and the girl is considered eligible for marriage at the beginning of her periods,



hence girls are married at the age of 11-12 years, whereas in other religions the minimum age of marriage of girls is 18 years and the minimum age of marriage of boys is 21 years. It is necessary to state that WHO has stated many times that a girl is not physically and mentally mature for marriage before the age of 20 and pregnancy before 20 is extremely harmful for both mother and child. Moreover, children complete graduation after 20 years, also not financially self-reliant. Therefore, it is necessary to make the minimum age of marriage 21 years for men-women.

Minimum age of marriage is by no means a religious matter under Article 25 but a matter of physical and mental maturity, financial independence and social relationship and directly related to civil and human rights, so it should be gender religion neutral.

Despite the fact that triple talaq has been declared illegal, talaq-e-Hasan and talaq-e-Ahsan are still valid. They are also not obligated to state the basis of divorce and only have to wait for 3 months but in other religions, oral divorce is not possible. The Hindu Christian Parsi couple is denied the oral divorce even by mutual consent. The Muslim women always have to live in an atmosphere of fear because of the Muslims not being accountable to



the judiciary. It is necessary to state that even in Muslim majority countries like Turkey etc, oral divorce of any kind is not permissible but in India, which is a socialist secular democratic republic and government by the constitution, it is continuing.

In Muslim law, oral will/donation is valid, but in other sects only registered will and donation is valid. In Muslim law, more than one-third of property cannot be bequeathed to others, while in other religions, hundred percent property can be bequeathed. It necessary to state that Will and Charity are not the religious subjects by any means, but are the matter of civil right and human right, Therefore, it should be completely gender neutral and religion neutral.

In Muslim law, the system of 'succession and inheritance' is highly complex, and, there is excessive discrimination between sons and daughters in parental property. In other religions also, the rights of wife in post-marriage property and succession and inheritance are undefined. Though, these are also a matter of civil and human right guaranteed under Articles 14, 15, 21.

The basis of divorce is not the same for everyone. A Muslim can divorce his wife on the basis of adultery but wife cannot divorce her husband. In Hindus Parsi & Christians, fornication is not a



ground of divorce. Divorce can occur in Hinduism and Christianity on the basis of incurable disease like leprosy but not in Parsi and Muslim religion. Marriage may break in Hinduism on the basis of marriage at early age but it is not possible in Parsi Christian and Muslims. 'Grounds of Divorce' is not in any way a religious matter but is a matter of civil rights and human rights under Article 25, so it should be completely gender neutral and religion neutral.

Adoption-guardianship differs for Hindu Muslim Zoroastrian Christians. Muslim cannot adopt and adoption is male dominant in other religions. Grounds of adoption-guardianship is not a religious matter by any means but a matter of civil right and human right, so, it should also be completely gender neutral and religion neutral.

All the above subjects are related to civil rights and human rights which have no relation to religion but even after 73 years of independence, in the name of religion, women-discrimination continues in male dominated society. Our Constitution makers had envisaged 'Uniform Civil Code or Indian Civil Code' through Article 44 to give everyone equal rights and to strengthen and promote unity and integrity of the country but due to vote bank politics, 'Uniform Civil Code or Indian Civil Code' has not been implemented.



Article 44 is the soul of our Constitution & UCC has many benefits:

Implementing the *Uniform Civil Code/Indian Civil Code* for all the citizens on the lines of “Indian Penal Code” will free the country and society from hundreds of the complex and outdated laws.

In the present times, different British laws applicable to different religions create inferiority in everyone's mind. By applying a “*Uniform Civil Code or Indian Civil Code*” to all citizens, everyone will be free from such inferiority complex.

The noble concept of “One husband - One wife” will be equally applicable to all the Indians and exceptions like infertility or impotence will be equally available to all Indians whether male or female, Hindu or Muslim, Zoroastrian or Christian.

A gender-neutral religion-neutral law of divorce will apply to everyone. Under special circumstances, all citizens will be allowed to break the marriage in a verbal manner, whether it is a man or a woman, Hindu or Muslim, Zoroastrian or Christian.

In paternal property, son-daughter and son-daughter-in-law will get equal rights and the property-based discord and gender discrepancy over property will be abolished, and it will be applicable to all whether he is a Hindu or Muslim, Zoroastrian or Christian.



Benefit of the UCC is that in the event of divorce, the husband and wife will have equal rights in the property acquired after marriage, whether he is Hindu or Muslim, Parsi or Christian.

A gender neutral religion neutral law will apply to all Indians, whether Hindu or Muslim, Zoroastrian or Christian, in relation to the will, charity, divinity, guardianship, sharing of custody, etc. The gender-based discrepancy in the religion caste and sect will end.

A comprehensive unified gender-neutral and religion-neutral law will be passed at national level and will be equally applicable to all citizens, whether Hindu or Muslim, Parsi or Christian. Hence, it will not only promote fraternity unity and national integration but also secure gender justice gender equality and dignity of women.

Separatist mindset arising out of having different personal laws on the basis of caste, religion, region will be eliminated and we will be able to move rapidly towards the creation of a unified nation.

Due to different laws for different religions, one has to get involved in unnecessary litigation. Having a uniform civil code for everyone will save the Court's valuable time and resources.

UCC will eliminate conservatism, fundamentalism, casteism, communalism, regionalism and linguism and develop scientific



temper and humanism in spirit of the Article 51A. With its implementation, the discrimination in the rights of Hindu Muslim Parsi Christian sisters and daughters will end. The truth is that Hindu sister-daughters will not get much benefit because women and men already have almost equal rights in the Hindu marriage Act. Muslim sister-daughters will get the most benefit from this because in Sharia law they are not considered equal to men.

Article 37 states that it is the government's fundamental duty to implement the Directive Principles in letter and spirit. Just as to secure the fundamental rights of all citizens, it is the duty of the government to implement the Constitution 100 per cent. There is no separate law on religious grounds in any secular country, but we still have the Hindu Marriage Act, Parsi Marriage Act and Christian Marriage Act in force. If *"Uniform Civil Code or Indian Civil Code"* can apply to everyone in Goa, then why cannot a *"Uniform Civil Code or Indian Civil Code"* be applicable to all citizens?

It is important to clarify that fundamental religious rights such as worship, namaz or prayer, fasting or fasting, and managing temples, mosques, churches, gurudwaras or opening religious schools under Article 25 won't be affected by the implementation of



the “*Uniform Civil Code or Indian Civil Code*”. There will be no interference in propagating religious education or adopting any method of marriage or any method for funeral after death.

On the day a draft of UCC will be prepared and the general public, especially sister-daughters will come to know about its benefits, no one will oppose it. The truth is that those who do not know anything about the Uniform Civil Code are opposing it.

Separate laws based on caste, religion, language and gender are like smouldering remains of the extinguished fire of partition of 1947, which can explode and disintegrate the unity of the country at any time. 'Uniform Civil Code' is necessary not only to maintain secularism but also to keep the unity and integrity of the country

Unfortunately, the “*Uniform Civil Code or Indian Civil Code*” has always been seen as a spectacle of religious appeasement. The Supreme Court or High Court cannot ask the Government to implement Article 44 of the Constitution but can direct the Centre to constitute a committee to prepare a draft of Uniform Civil Code. The Court can express its views and Court is doing again and again.

The Supreme Court and High Court may direct the Centre to constitute a Judicial Commission or Expert Committee to study the



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Uniform Civil Code of the developed countries and the laws applicable in India and make public a draft of the 'Indian Civil Code', combining the good of all, public discussion could begin on this subject. It is necessary to state that five PILs seeking the uniform minimum marriage age, uniform divorce grounds, uniform maintenance-alimony, uniform adoption-guardianship and uniform succession-inheritance are pending in the Supreme Court.

When we talk about inequality between girl and boy child, we tend to relate it to religion. But, girl or boy, the foetus stays in the mother for 9 months and the mother has to bear the labour pain for both of them. The discrimination between a girl and a boy was not established by 'God' but by man himself. The discrimination is not a result of customs, religious rites and rituals but of male supremacy and ego, which made them oppress women. Relating this discrimination to religion is unethical, immoral and wrong.

India is a secular country, and is governed by the constitution, not by Ved-Purans or Bible-Quran. The constitution is a scripture to the Indian Democracy. It provides every freedom to the citizens, and at the same time keeps a check on them, so as to maintain public order, health and morality. Some people take the



defence of Article 25, stating that a Common Civil Code offends Article 25. They quietly neglect the fact that Article 25 contains the clause, 'subject to public order, health and morality'. The Indian Penal Code of 1860, Police Act of 1961, Evidence Act of 1872 and Civil Procedure Code of 1908 are applicable to all citizens without any discrimination. The Portugal Civil Code of 1867 is also applicable to all citizens of Goa. But, Article 44 i.e. the Uniform Civil Code is not applicable to all and no efforts were made in this regard. The constitution has been amended 125 times till now, Supreme Court's Judgement has been reversed 5 times but "*Uniform Civil Code or Indian Civil Code*" still remains an illusion. Although BJP supports UCC and the opposition opposes it, the advantages are not known to people on either side.

30.5.2019: Petitioner filed WP(C)6483/2019 in Delhi High Court

31.5.2019: Delhi High Court issued notice to the Centre

16.12.2020: Supreme Court issued notice in WP(C)869/2020

29.1.2021: Supreme Court issued notice in WP(C)1000/2020

2.2.2021: Supreme Court issued notice in TP(C)1249/2020

10.3.2021: Supreme Court issued notice in WP(C)1108/2020

5.4.2020: Similar matters are pending. Hence, this TP.



IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO.....OF 2021

[TRANSFER PETITION UNDER ARTICLE 139A (1) OF THE CONSTITUTION READ WITH ORDER XLI OF THE SUPREME COURT RULES 2013, SEEKING TRANSFER OF WRIT PETITION (CIVIL) NO 6483 OF 2019 PENDING IN THE DELHI HIGH COURT]

IN THE MATTER OF WP(C) 6483/2019, DELHI HIGH COURT

NAME OF PARTIES	HIGH COURT	SUPREME COURT
Ashwini Kumar Upadhyay, G-284, Govindpuram, Ghaziabad-201013, Uttar Pradesh	Petitioner	Petitioner
VERSUS		
Union of India, Through the Secretary, Ministry of Home Affairs, North Block, New Delhi-110001	Respondent-1	Respondent-1
Law Commission of India Through Chairman /Secretary, 4 th Floor, Loknayak Bhawan, Khan Market, New Delhi-110001,	Respondent-2	Respondent-2

TRANSFER PETITION UNDER ARTICLE 139A (1) OF THE CONSTITUTION READ WITH ORDER XLI OF THE SUPREME COURT RULES 2013, SEEKING TRANSFER OF WRIT PETITION (CIVIL) NO 6483 OF 2019 PENDING IN THE DELHI HIGH COURT

To,
THE HON'BLE CHIEF JUSTICE
AND LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA
HUMBLE PETITION OF ABOVE-NAMED PETITIONER
THE MOST RESPECTFULLY SHOWETH AS THE UNDER:



1. Petitioner is filing this transfer petition under Article 139A (1) of the Constitution read with order XLI of the Supreme Court Rules 2013, seeking transfer of Writ Petition (Civil) No 6483 of 2019, pending in the Delhi High Court; seeking direction to the Centre to constitute a Judicial Commission or High Level Expert Committee to prepare a draft of *Uniform Civil Code/Indian Civil Code*, in spirit of Articles 14, 15, 21, 44 of the Constitution and International Conventions in order to secure gender justice, gender equality and dignity of women.
2. Petitioner has not filed any other similar petition either in this Court or in any other Court seeking same or similar directions as prayed.
3. Petitioner's full name is Ashwini Kumar Upadhyay. Residence at: G-284, Govindpuram, Ghaziabad-201013, Ph. 08800278866, Email: aku.adv@gmail.com, PAN: AAVPU7330G, AADHAAR-659982174779 Annual Income is 10 LPA. Petitioner is an Advocate & social-political activist and striving for the development of downtrodden people.
4. PIL was filed to weed-out anomalies in minimum age of marriage, grounds of divorce, maintenance-alimony, adoption-guardianship, succession-inheritance and the differences based on patriarchal stereotypes, have no scientific backing, perpetrate *de jure* and *de facto* inequality against women, and go against the global trends.



5. The facts constituting the cause of action are as follows:

- a) Muslim personal law allows Polygamy while the other religions don't. Even in the case of infertility, Christians, Hindus, Parsis are forbidden from marrying again by Section 494 of the Indian Penal Code. This also leads to religious conversions as people convert to Islam in order to re-marry. Even Islamic nations do not permit second marriage without the consent of the first wife. Polygamy is not a religious issue, rather an issue of civil and human rights. Therefore, S. 494 of the IPC must be religion and gender neutral.
- b) Minimum age of marriage is not same for men-women. The age of adulthood of Muslim girls is not fixed and the girl is considered eligible for marriage at the beginning of her periods, hence girls are married at the age of 11-12 years, whereas in other religions the minimum age of marriage of girls is 18 years and the minimum age of marriage of boys is 21 years. It is necessary to state that WHO has stated many times that a girl is not physically and mentally mature for marriage before the age of 20 and pregnancy before 20 is extremely harmful for both mother and child. Moreover, children complete graduation after 20 years, also not financially self-reliant. So, it is necessary to make the minimum age of marriage 21 years.



- c) Minimum age of marriage is by no means a religious matter under Article 25 but a matter of physical and mental maturity, financial independence and social relationship and directly related to the civil and human rights, so it should be gender and religion neutral.
- d) Despite the fact that triple talaq has been declared illegal, talaq-e-Hasan and talaq-e-Ahsan are still valid. They are also not obligated to state the basis of divorce and only have to wait for 3 months but in other religions, oral divorce is not possible. The Hindu Christian Parsi couple is denied the oral divorce even by mutual consent. The Muslim women always have to live in an atmosphere of fear because of the Muslims not being accountable to the judiciary. It is necessary to state that even in Muslim majority countries like Turkey etc, oral divorce of any kind is not permissible but in India, it is continuing.
- e) In Muslim law, oral will and donation is valid, but in other religions only registered will and donation is valid. In Muslim law, more than one-third of property cannot be bequeathed to others, while in other religions, hundred percent property can be bequeathed. It necessary to state that Will and Charity are not the religious subjects by any means, but are the matter of civil right and human right, Therefore, it should be completely gender neutral and religion neutral.



- f) In Muslim law, the system of 'succession and inheritance' is highly complex, and, there is excessive discrimination between sons and daughters in parental property. In other religions also, the rights of wife in post-marriage property and succession and inheritance are undefined. Though, these are also a matter of civil and human right.
- g) The basis of divorce is not the same for everyone. A Muslim can divorce his wife on the basis of adultery but wife cannot divorce her husband. In Hindus Parsi & Christians, fornication is not a ground of divorce. Divorce can occur in Hinduism and Christianity on the basis of incurable disease like leprosy but not in Parsi and Muslim religion. Marriage may break in Hinduism on the basis of marriage at early age but it is not possible in Parsi Christian and Muslims. 'Grounds of Divorce' is not in any way a religious matter but is a matter of civil rights and human rights under Article 25, so it should be completely gender neutral and religion neutral.
- h) Adoption-guardianship also differs for Hindu Muslim Zoroastrian Christians. Muslim cannot adopt and adoption is male dominant in other religions. Grounds of adoption-guardianship is not a religious matter by any means but a matter of civil right and human right, so, it should also be completely gender neutral and religion neutral.



6. All the above subjects are related to civil rights and human rights which have no relation to religion but even after 73 years of independence, in the name of religion, women-discrimination continues in male dominated society. Our Constitution makers had envisaged 'Uniform Civil Code or Indian Civil Code' through Article 44 to give everyone equal rights and to strengthen and promote unity and integrity of the country but due to vote bank politics, 'Uniform Civil Code or Indian Civil Code' has not been implemented.
7. Article 44 is the soul of our Constitution & UCC has many benefits:
- a) Implementing the “*Uniform Civil Code or Indian Civil Code*” for all the citizens on the lines of “Indian Penal Code” will free the country and society from hundreds of the complex and outdated laws.
 - b) In the present times, different British laws applicable to different religions create inferiority in everyone's mind. By applying a “*Uniform Civil Code or Indian Civil Code*” to all citizens, everyone will be free from such inferiority complex.
 - c) The noble concept of “One husband - One wife” will be equally applicable to all the Indians and exceptions like infertility or impotence will be equally available to all Indians whether male or female, Hindu or Muslim, Zoroastrian or Christian.



- d) A gender-neutral religion-neutral law of divorce will apply to everyone. Under special circumstances, all citizens will be allowed to break the marriage in a verbal manner, whether it is a man or a woman, Hindu or Muslim, Zoroastrian or Christian.
- e) In paternal property, son-daughter and son-daughter-in-law will get equal rights and the property-based discord and gender discrepancy over property will be abolished, and it will be applicable to all whether he is a Hindu or Muslim, Zoroastrian or Christian.
- f) In the event of divorce, the husband and wife will have equal rights in the property acquired after marriage, whether he is Hindu or Muslim, Parsi or Christian.
- g) A gender neutral religion neutral law will apply to all Indians, whether Hindu or Muslim, Zoroastrian or Christian, in relation to the will, charity, divinity, guardianship, sharing of custody, etc. The gender-based discrepancy in the religion caste and sect will end.
- h) A comprehensive and unified gender-neutral & religion-neutral law will be passed at national level and will be equally applicable to all citizens, whether Hindu or Muslim, Parsi or Christian. Hence, it will not only promote fraternity unity and national integration but also secure gender justice gender equality and dignity of women.



- i) The separatist mindset arising out of having different personal laws on the basis of caste, religion and region will be eliminated and we will be able to move rapidly towards the creation of a unified nation.
- j) Due to different laws for different religions, one has to get involved in unnecessary litigation. Having a uniform civil code for everyone will save the Court's valuable time and resources.
- k) Uniform Civil Code will eliminate conservatism, fundamentalism, casteism, communalism, regionalism and linguism and develop scientific temper and humanism in spirit of the Article 51A. With its implementation, the discrimination in the rights of Hindu Muslim Parsi Christian sisters and daughters will end. The truth is that Hindu sister-daughters will not get much benefit because women and men already have almost equal rights in the Hindu marriage Act. Muslim sister-daughters will get the most benefit from this because in Sharia law they are not considered equal to men.
- l) Article 37 states that it is the government's fundamental duty to implement the Directive Principles in letter and spirit. Just as to secure the fundamental rights of all citizens, it is the duty of the government to implement the Constitution 100 per cent. There is no separate law on religious grounds in any secular country, but we



still have the Hindu Marriage Act, Parsi Marriage Act and Christian Marriage Act in force. If *“Uniform Civil Code or Indian Civil Code”* can apply to everyone in Goa, then why cannot a *“Uniform Civil Code or Indian Civil Code”* be applicable to all citizens?

- m) It is also important to clarify that fundamental religious rights such as worship, namaz or prayer, fasting or fasting, and managing temples, mosques, churches, gurudwaras or opening religious schools under Article 25 won't be affected by the implementation of the *“Uniform Civil Code or Indian Civil Code”*. There will be no interference in propagating religious education or adopting any method of marriage or any method for funeral after death.
- n) On the day a draft of 'Uniform Civil Code' will be prepared and the general public, especially sister-daughters will come to know about its benefits, no one will oppose it. The truth is that those who do not know anything about the Uniform Civil Code are opposing it.
- o) The separate laws based on caste, religion, language and gender are like smouldering remains of the extinguished fire of partition of 1947, which can explode and disintegrate the unity of the country at any time. 'Uniform Civil Code' is necessary not only to maintain secularism but also to keep the unity and integrity of the country



8. Unfortunately, the “*Uniform Civil Code or Indian Civil Code*” has always been seen as a spectacle of religious appeasement. The Supreme Court or High Court cannot ask the Government to implement Article 44 of the Constitution but can direct the Centre to constitute a committee to prepare a draft of Uniform Civil Code. The Court can express its views and Court is doing again and again.
9. The Supreme Court and High Court may direct the Centre to constitute a Judicial Commission or Expert Committee to study the Uniform Civil Code of the developed countries and the laws applicable in India and make public a draft of the 'Indian Civil Code', combining the good of all, public discussion could begin on this subject. It is necessary to state that five PILs seeking the uniform minimum marriage age, uniform divorce grounds, uniform maintenance-alimony, uniform adoption-guardianship and uniform succession-inheritance are pending in the Supreme Court.
10. When we talk about inequality between girl and boy child, we tend to relate it to religion. But, girl or boy, the foetus stays in the mother for 9 months and the mother has to bear the labour pain for both of them. The discrimination between a girl and a boy was not established by ‘God’ but by man himself. The discrimination is not a



result of customs, religious rites and rituals but of male supremacy and ego, which made them oppress women. Relating this discrimination to religion is unethical, immoral and wrong.

11. India is a secular country, and is governed by the constitution, not by Ved-Purans or Bible-Quran. The constitution is a scripture to the Indian Democracy. It provides every freedom to the citizens, and at the same time keeps a check on them, so as to maintain public order, health and morality. Some people take the defence of Article 25, stating that a Common Civil Code offends Article 25. They quietly neglect the fact that Article 25 contains the clause, 'subject to public order, health and morality'. The Indian Penal Code of 1860, Police Act of 1961, Evidence Act of 1872 and Civil Procedure Code of 1908 are applicable to all citizens without any discrimination. The Portugal Civil Code of 1867 is also applicable to all citizens of Goa. But, Article 44 i.e. the Uniform Civil Code is not applicable to all and no efforts were made in this regard. The constitution has been amended 125 times till now, Supreme Court's Judgement has been reversed 5 times but "*Uniform Civil Code or Indian Civil Code*" still remains an illusion. Although BJP supports UCC and the opposition opposes it, the advantages are not known to people on either side.



12. On 30.5.2019, petitioner filed the PIL in the Delhi High Court with following prayers [WP(C)6483/2019, **Annexure P-1**, pages 77-106]:

- a) direct the Union of India to constitute a Judicial Commission or a High-Level Expert Committee, to draft a Uniform Civil Code in spirit of Article 44 of the Constitution within 3 months, while considering the best practices of all religions and sects, Civil Laws of developed countries and international conventions; and publish it on website for at least 60 days for extensive public debate and feedback;
- b) alternatively, direct the Law Commission of India to draft a Uniform Civil Code in spirit of Article 44 of the Constitution within 3 months, while considering the best practices of all religions and sects, Civil Laws of developed countries and international conventions; and publish it on website for at least 60 days for wide public debate;
- c) pass such other order(s) or direction(s) as this Hon'ble Court may deem fit and proper to effectuate Article 44 of the Constitution of India and secure gender justice gender equality & dignity of women.

13. The Delhi High Court issued notice to the Centre. Copy of the Order dated 31.5.2019 in WP(C)6483/2019 is **Annexure P-2**. (page 107)

14. The Supreme Court Order in WP(C)869/2020, WP(C)1000/2020, TP(C)1249-1250/2020, WP(C)1108/2020 is **Annexure P-3**. (108-111)



15. The debate around Uniform Civil Code has polarised political discourse in India. The belligerent groups have transformed comment on the issue into a conflagration, the only uniformity being rigidity in respective points of view and a consequential lack of rationality in the comments with a code of silence exercised by the executive neutralising the recited constitutional mandate.

16. In **Shah Bano Case [(1985)2 SCC 556]** Court observed in **Para 33**.

“Dr Tahir Mahmood in his book Muslim Personal Law (1977 Edn., pp. 200-02), has made a powerful plea for framing a uniform Civil Code for all citizens of India. He says: “In pursuance of the goal of secularism, State must stop administering religion-based personal laws.” He wants the lead to come from the majority community but, we should have thought that, lead or no lead, the State must act. It would be useful to quote the appeal made by the author to Muslim community; “Instead of wasting their energies in exerting theological and political pressure in order to secure an ‘immunity’ for their traditional personal law from the state’s legislative jurisdiction, the Muslims will do well to begin exploring and demonstrating how the true Islamic laws, purged of their time-worn and anachronistic interpretations, can enrich the common civil code of India.”



17. In Jorden Diengdeh v. S.S. Chopra [(1985) 3 SCC 62] Court held:

Para 7. It is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform. Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste. It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases. The case before us is an illustration of a case where the parties are bound together by a marital tie which is better untied. There is no point or purpose to be served by the continuance of a marriage which has so completely and signally broken down. We suggest that the time has come for the intervention of the legislature in these matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situations in which couples like the present have found themselves in. We direct that a copy of this order may be forwarded to the Ministry of Law and Justice for such action as they may deem fit to take. In the meanwhile, let notice go to respondents.

18. In Sarla Mudgal v. Union of India [(1995) 3 SCC 635] Court held:

“Para 45. The problem with which these appeals are concerned is



that many Hindus have changed their religion and have become convert to Islam only for purposes of escaping the consequences of bigamy. For instance, Jitendra Mathur was married to Meena Mathur. He and another Hindu girl embraced Islam, obviously because Muslim law permits more than one wife and to the extent of four. But no religion permits deliberate distortions. Much misapprehension prevails about bigamy in Islam. To check the misuse many Islamic countries have codified the personal law, "wherein the practice of polygamy has been either totally prohibited or severely restricted. (Syria, Tunisia, Morocco, Pakistan, Iran, the Islamic Republics of the Soviet Union are some of the Muslim countries to be remembered in this context"). But ours is a Secular Democratic Republic. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. "But religious practices violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression." Therefore, a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity. But the first step should be to rationalise the personal law of the minorities to develop religious and cultural amity. The



Government would be well advised to entrust the responsibility to the Law Commission which may in consultation with Minorities Commission examine the matter and bring about a comprehensive legislation in keeping with modern day concept of human rights.

19. In Ahmedabad Women Action Group [(1997)3SCC573] Court held

Para 10. *In Sarla Mudgal v. Union of India [(1995)3 SCC 635] Court observed: (SCC pp. 649-50, para 33) "Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal law of Hindus, such as relating to marriage, succession and the like have all a sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of the national unity and integration, some other communities would not, though the Constitution enjoins the establishment of a 'common civil code' for the whole of India."*



20. In Lily Thomas Case [(2000) 6 SCC 224] the Court said:

Para 65. Besides deciding the question of law regarding the interpretation of Section 494 IPC, one of the Hon'ble Judges (Kuldip Singh, J.) after referring to the observations made by this Court in Mohd. Ahmed Khan v. Shah Bano Begum [(1985) 2 SCC 556] requested the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavour to secure for the citizens a uniform civil code throughout the territory of India". In that behalf direction was issued to the Government of India, Secretary, Ministry of Law & Justice to file an affidavit of a responsible officer indicating therein the steps taken and efforts made towards securing a uniform civil code for the citizens of India. On the question of a uniform civil code, R.M. Sahai, J. the other Hon'ble Judge constituting the Bench suggested some measures which could be undertaken by the Government to check the abuse of religion by unscrupulous persons, who under the cloak of conversion were found to be otherwise guilty of polygamy. It was observed that: "Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre." It was further remarked: "The Government would be well advised to



entrust the responsibility to Law Commission which may in consultation with Minorities Commission examine the matter and bring about a comprehensive legislation in keeping with modern-day concept of human rights for women.”

21. In John Vallamattom Case [(2003) 6 SCC 611] the Court said:

Para 44. Before I part with the case, I would like to state that Article 44 provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The aforesaid provision is based on the premise that there is no necessary connection between religious and personal law in a civilized society. Article 25 of the Constitution confers freedom of conscience and free profession, practice and propagation of religion. The aforesaid two provisions viz. Articles 25 and 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. It is no matter of doubt that marriage, succession and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and 26 is a suspect legislation, although it is doubtful whether the American



doctrine of suspect legislation is followed in this country. In Sarla Mudgal v. Union of India, it was held that marriage, succession and like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing contradictions based on ideologies.

22. In State of Tamil Nadu v. Shyam Sunder [(2011)8SCC 737]

Para 22. The propagators of this campaign canvassed that uniform education system would achieve code of common culture, removal of disparity and depletion of discriminatory values in human relations. It would enhance the virtues and improve the quality of human life, elevate the thoughts which advance our constitutional philosophy of equal society. In future, it may prove to be a basic preparation for the uniform civil code as it may help in diminishing opportunities to those who foment fanatic and fissiparous tendencies.

23. ABC v. State Delhi, [(2015) 10 SCC 1] Para 20. ...It would be

apposite for us to underscore that Directive Principles envision the existence of UCC but remains unaddressed constitutional expectation



24. In Jose Paulo Coutinho Case [(2019)20 SCC 85] Court held:

Para 23. It is interesting to note that whereas the founders of the Constitution in Article 44 in Part IV dealing with the principles of directive policy had hoped and expected that the State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard. Though Hindu laws were codified in the year 1956 there has been no attempt to frame a Uniform Civil code applicable to all citizens of the country despite exhortations of this court in the case of Mohd. Ahmed Khan v Shah Bano and Sarla Mudgal v union of India. Para 24. However, Goa is a shining example of an Indian State which has a uniform civil code applicable to all, regardless of religion except while protecting certain limited rights. It would also not be out of place to mention that with effect from 22.12.2016 certain portions of the Portuguese Civil Code have been repealed and replaced by the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 which, by and large, is in line with the Portuguese Civil Code. The salient features with regard to family properties are that a married couple jointly holds the ownership of all the assets owned before marriage or acquired after marriage by each spouse.



Therefore, in case of divorce, each spouse is entitled to half share of the assets. The law, however, permits pre-nuptial agreements which may have a different system of division of assets. Another important aspect, as pointed out earlier, is that at least half of the property has to pass to the legal heirs as legitime. This, in some ways, is akin to the concept of 'coparcenary' in Hindu law. However, as far as Goa is concerned, this legitime will also apply to the self-acquired properties. Muslim men whose marriages are registered in Goa cannot practice polygamy. Further, even for followers of Islam there is no provision for verbal divorce.

DIRECTION TO THE LAW COMMISSION TO PREPARE REPORT

25.In *Gujarat Urja Vikas Nigam Case [(2016) 9 SCC 103]* Court held:

***Para 41.** We are, thus, of the view that in the first instance the Law Commission may look into the matter with the involvement of all the stakeholders. **Par 43.** The questions which may be required to be examined by the Law Commission are: **43.1.** Whether any changes in the statutory framework constituting various tribunals with regard to persons appointed, manner of appointment, duration of appointment, etc. is necessary in the light of the judgment of this Court in *Madras Bar Assn. [Madras Bar Assn. v. Union of India,**



(2014) 10 SCC 1] or on any other consideration from the point of view of strengthening the rule of law? **43.2.** Whether it is permissible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time? **43.3.** Whether direct statutory appeals to the Supreme Court bypassing the High Courts from the orders of Tribunal affects access to justice to litigants in remote areas of the country? **43.4.** Whether it is desirable to exclude jurisdiction of all courts in the absence of equally effective alternative mechanism for access to justice at grass root level as has been done in provisions of the TDSAT Act (Sections 14 and 15). **43.5.** Any other incidental or connected issue which may be appropriate. **Para 44.** We request the Law Commission to give its report as far as possible within one year. Thereafter matter may be examined by authorities concerned.

26. In BCCI Case [(2016) 8 SCC 535] the Court has held thus:

Para 93. We are not called upon in these proceedings to issue any direction insofar as the above aspect is concerned. All that we need



*say is that since BCCI discharges public functions and since those functions are in the nature of a monopoly in the hands of BCCI with tacit State Government and Central Government approvals, the public at large has a right to know and demand information as to the activities and functions of BCCI especially when it deals with funds collected in relation to those activities as a trustee of wherein the beneficiary happens to be the people of this country. As a possible first step in the direction in bringing BCCI under the purview of the Right to Information Act, we expect the Law Commission of India to examine the issue and make a suitable recommendation to the Government. Beyond that we do not consider it necessary to say anything at this stage. **Para 94.** So also the recommendation made by the Committee that betting should be legalised by law, involves the enactment of a law which is a matter that may be examined by the Law Commission and the Government for such action as it may consider necessary in the facts and circumstances of the case.*

27.In **Bablu Chauhan Case** [(2017) SCC DEL 12045] the Court held:

***Para 11.** The third issue concerns the possible legal remedies for victims of wrongful incarceration and malicious prosecution in India. The report of Prof. Bajpai refers to the practice in the United States*



of America (USA) and the United Kingdom (UK). He points out that that there are 32 states in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. There are specific schemes in the UK and New Zealand in this regard. 17. The Court, accordingly, requests the Law Commission of India to undertake a comprehensive examination of the issue highlighted in paras 11 to 16 of this order and make its recommendation thereon to the Government of India.

28. In A.P.Pollution Control Board [(2001)2 SCC 62] Court held

Para 73. *Inasmuch as most of the statutes dealing with environment are by Parliament, we would think that the Law Commission could kindly consider the question of review of the environmental laws and the need for constitution of Environmental Courts with experts in environmental law, in addition to judicial members, in the light of experience in other countries. Point 5 is decided accordingly.*

29. In Mahipal Singh Rana Case [(2016) 8 SCC 335] Court held:

Para 58. *In view of the above, we request the Law Commission of India to go into all relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date. We*



hope that the Government of India will consider taking further appropriate steps in the light of the report of the Law Commission within six months thereafter. Centre may file appropriate affidavit in this regard within one month after expiry of one year.

30. In **Naresh Kumar Matta** [2013 SCC DEL 2388] Court held:

Para 12. Delay of five years in computing the cost of a flat is totally incomprehensible. This Court is of the opinion that the Law Commission should consider preparation of an enactment to recover damages/compensation from officers who take unduly long time in taking decisions or do not take a decision.

31. In **Pravasi Bhalai Sangathan Case** [(2014) 11 SCC 477] Court held:

Para 29. However, in view of the fact that the Law Commission has undertaken the study as to whether the Election Commission should be conferred the power to derecognise a political party disqualifying it or its members, if a party or its members commit the offences referred to hereinabove, we request the Law Commission to also examine the issues raised herein thoroughly and also to consider, if it deems proper, defining the expression "hate speech" and make recommendations to Parliament to strengthen the ECI to curb the menace of "hate speeches" irrespective of whenever made.



32. In Madhu Kishwar Case [(1996) 5 SCC 125] Court held:

Para 12: *“Right to life as a fundamental right stand enshrined in the Constitution. Right to livelihood is born of it. In Olga Tellis v. Bombay Municipal Corporation [(1985) 3 SCC 545: AIR 1986 SC 180] this Court defined it ...”* **Para 20:** *“Article 14 ensures equality of law and prohibits invidious discrimination. Arbitrariness or arbitrary exclusion are sworn enemies to equality. Article 15(1) prohibits gender discrimination. Article 15(3) lifts that rigour and permits the State to positively discriminate in favour of women to make special provision, to ameliorate their social, economic and political justice and accords them parity. Article 38 enjoins the State to promote the welfare of the people (obviously men and women alike) by securing social order in which justice – social, economic and political – shall inform of all the institutions of national life. Article 39(a) and (b) enjoin that the State policy should be to secure that men and women equally have the right to an adequate means of livelihood and the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Article 38(2) enjoins the State to minimise inequalities in income and to*



*endeavour to eliminate inequalities in status, facilities and opportunities not only among individuals but also amongst groups of people. Article 46 accords special protection and enjoins the State to promote with special care the economic and educational interests of the Scheduled Castes and Scheduled Tribes and other weaker sections and to protect them from social injustice and all forms of exploitation. Preamble charts out the ship of the State to secure social, economic and political justice and equality of opportunity and of status and dignity of person to everyone.”***Para 22_**“Article 1(1) assures right to development- an inalienable human right, by virtue of which every person and all people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. Article 6(1) obligates the State to observe all human rights and fundamental freedoms for all without any discrimination as to race, sex, language or religion... ..Appropriate economic and social reforms should be carried out with a view to eradicate all social injustice.”**Para 23:** *“Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been reiterated by the*



Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political social economic and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Vienna Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was ratified by the UNO on 18-12-1979. The Government of India who was active participant to CEDAW ratified it on 19-6-1993 and acceded to CEDAW on 8-8-1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 thereof. The Preamble of CEDAW reiterates that discrimination against women violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and



family and makes it more difficult for the full development of potentialities of women in the service of their countries and of humanity...”_Para 24: “Parliament has enacted the Protection of Human Rights Act, 1993. Section 2(d) defines human rights to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. Thereby the principles embodied in CEDAW and the concomitant Right to Development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the Commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.”_Para 25: “Article 5(a) of CEDAW on which Government of India expressed reservation does not stand in its way and in fact Article 2(f) denudes its effect and enjoins to implement Article 2(f) read with its obligation undertaken under Articles 3, 14 and 15 of the Convention vis-à-vis Articles 1, 3, 6 and 8 of the Declaration of Right to Development. Though the directive principles and fundamental rights provide the matrix for development of human personality, elimination of discrimination,



these conventions add urgency, teeth for immediate implementation.

It is, therefore, imperative for the State to eliminate obstacles, prohibit all gender-based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should by appropriate measures including legislation, modify law and abolish gender-based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.” **Para 26:**
“Article 15(3) of the Constitution positively protects such Acts or actions. Article 21 reinforces “right to life”. Equality, dignity of person and right to development are inherent rights in every human being. Life in its expanded horizon includes all that gives meaning to a person's life including culture, heritage and tradition with dignity of person. The fulfilment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and discrimination based on gender for human development. Women are entitled to enjoy economic, social, cultural and political rights without discrimination and on footing of equality. Equally, in order to effectuate fundamental duty to develop scientific temper,



*humanism and the spirit of enquiry and to strive towards excellence in all spheres of individual and collective activities as enjoined in Article 51-A(h) and (j) of the Constitution of India, not only facilities and opportunities are to be provided for, but also all forms of gender-based discrimination should be eliminated. It is a mandate to the State to do these acts. Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of person. Therefore, the State should create conditions and facilities conducive for women to realise the right to economic development including social and cultural rights.”***Para 37:** “..The public policy & constitutional philosophy envisaged under Articles 38, 39, 46 and 15(1) and (3) and 14 is to accord social and economic democracy to women as assured in Preamble of the Constitution. They constitute the core foundation for economic empowerment and social justice to women for stability of political democracy. In other words, they frown upon gender discrimination and aim at elimination of obstacles to enjoy social, economic, political and cultural rights on equal footing. ...If law is to adapt itself to the needs of the changing society, it must be flexible and adaptable...”



33. In VISHAKA Case [(1997) 6 SCC 241] the Court had held:

Para 7: "In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till Parliament enacts legislation to expressly provide measures needed to curb the



evil.” Para 15: “In Nilabati Behera v. State of Orissa[(1993) 2 SCC 746 : 1993 SCC (Cri) 527] a provision in the ICCPR was referred to support the view taken that “an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right”, as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity”.

34. In ANUJ GARG V. HOTEL ASSOCIATION [(2008) 3 SCC 1]

this Hon’ble Court again reiterated the concept of gender justice:

Para 36: *“Women would be as vulnerable without State protection as by the loss of freedom because of impugned Act. Present law ends up victimizing its subject in the name of protection. In that regard the interference prescribed by the State for pursuing the ends of protection should be proportionate to the legitimate aims. The standard for judging the proportionality should be a standard capable of being called reasonable in a democratic society.”* **Para 37:** *“Instead of putting curbs on women's freedom, empowerment would*



be a more tenable and socially wise approach. This empowerment should reflect in the law enforcement strategies of the State as well as law modelling done in this behalf..."_Para 43: "Instead of prohibiting women employment in the bars altogether the State should focus on factoring in ways through which unequal consequences of sex differences can be eliminated. It is the State's duty to ensure circumstances of safety which inspire confidence in women to discharge the duty freely in accordance to the requirements of the profession they choose to follow. Any other policy inference (such as the one embodied under Section 30) from societal conditions would be oppressive on the women and against the privacy rights."_Para 46: "It is to be borne in mind that legislations with pronounced "protective discrimination" aims, such as this one, potentially serve as double-edged swords. Strict scrutiny test should be employed while assessing the implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects. The impugned legislation suffers from incurable fixations of stereotype morality and conception of sexual role. The perspective thus arrived at is outmoded in content and stifling in means."



35. Voluntary Health Association of Punjab (2013) 4 SCC 1 Court held

Para 19: "A woman has to be regarded as an equal partner in the life of a man. It has to be borne in mind that she has also the equal role in the society i.e. thinking, participating and leadership. The legislature has brought the present piece of legislation with an intention to provide for prohibition of sex selection before or after conception and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide. The purpose of the enactment can only be actualized and its object fruitfully realized when the authorities under the Act carry out their functions with devotion, dedication and commitment and further there is awakened awareness with regard to the role of women in a society."

Para 23 *"In Madhu Kishwar [(1996) 5 SCC 125] Court had stated that women have suffered and are suffering discrimination in silence. "28. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination." (SCC p. 148, para 28)."*



36. In NALSA Case [(2014) 5 SCC 438]_Para 73: "Article 21 is the heart and soul of the Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has authority to take away that right. Article 21 takes all those aspects of life which go to make a person's life meaningful. Article 21 protects dignity of human life, personal autonomy, right to privacy, etc. Right to dignity has been recognized to be an essential part of the right to life and accrues to all persons on account of being humans."_Para 74: "...The recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one's sense of being as well as integral part of a person's identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution..."_Para 75: "Court held that personal autonomy includes both negative right of not to be subject to interference by others and positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21."



37. In LAXMI V. UNION OF INDIA [(2014) 4 SCC 427] Court held:

Para 14: "We, accordingly, direct that the acid attack victims shall be paid compensation of at least Rs 3 lakhs by the State Government/Union Territory concerned as the aftercare and rehabilitation cost. Of this amount, a sum of Rs 1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs 2 lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance with above direction."

38. In PRAVASI BHALAI SANGATHAN [2014 (11) SCC 477]

Para 20: "This Court has persistently held that our Constitution clearly provides for separation of powers and the court merely applies the law that it gets from the legislature. Consequently, the Anglo-Saxon legal tradition has insisted that the Judges should only reflect the law regardless of the anticipated consequences, considerations of fairness or public policy and the Judge is simply not authorised to legislate law. "If there is a law, Judges can



certainly enforce it, but Judges cannot create a law and seek to enforce it.” The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The very power to legislate has not been conferred on the courts. However, of lately, judicial activism of the superior courts in India has raised public eyebrows time and again. Though judicial activism is regarded as the active interpretation of an existing provision with the view of enhancing the utility of legislation for social betterment in accordance with the Constitution, the courts under its garb have actively strived to achieve the constitutional aspirations of socio-economic justice. In many cases, this Court issued various guidelines/directions to prevent fraud upon the statutes, or when it was found that certain beneficiary provisions were being misused by the undeserving persons, depriving the legitimate claims of eligible persons...” **Para 22:** “..This Court has consistently clarified that the directions have been issued by the Court only when there has been a total vacuum in law i.e. complete absence of active law to provide for the effective enforcement of a basic human right. In case there is inaction on the part of the executive for whatsoever reason, the court has stepped in, in exercise of its constitutional obligations to enforce



the law. In case of vacuum of legal regime to deal with a particular situation the court may issue guidelines to provide absolution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field. Thus, direction can be issued only in a situation where the will of the elected legislature has not yet been expressed..."

39. In Shamima Faruqui Case [(2015) 5 SCC 705] Court held:

Para 14: *"...It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the*



status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right..."

40. In State of M.P. v Madanlal [(2015) 7 SCC 681] Court held

Para 18: *"..We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the*



body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the “purest treasure”, is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay...” **Para 19:** “We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the élan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility...”

41. Supreme Court Women Lawyers Association [(2016) 3 SCC 680]

Para 5: “At the very outset, we must make it clear that the courts neither create offences nor do they introduce or legislate punishments. It is the duty of the legislature. The principle laid down in Vishaka case [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] is quite different, for in the said case, the Court relied on the International Convention, namely, “Convention on the Elimination of All Forms of Discrimination against Women” especially articles pertaining to violence and equality in employment



and further referred to the concept of gender equality including protection from sexual harassment and right to work with dignity and on that basis came to hold that in the absence of enacted law to provide for effective enforcement of the basic human right of gender equality and guarantee against the sexual harassment and abuse, more particularly against sexual harassment at work places, guidelines and norms can be laid down in exercise of the power under Article 32, and such guidelines should be treated as law declared under Article 141...”

42. In SHAYARA BANO Case [(2017) 9 SCC 1] Court held thus:

Para 392: *“In view of the position expressed above, we are satisfied that this is a case which presents a situation where this Court should exercise its discretion to issue appropriate directions under Article 142 of the Constitution. We therefore hereby direct the Union of India to consider appropriate legislation, particularly with reference to “Talaq-e-Biddat”. We hope and expect that the contemplated legislation will also take into consideration advances in Muslim Personal Law—“Shariat”, as have been corrected by legislation the world over, even by theocratic Islamic States. When the British Rulers in India provided succour to Muslims by legislation, and*



when remedial measures have been adopted by the Muslim world, we find no reason, for an independent India, to lag behind. Measures have been adopted for other religious denominations (see Part IX – Reforms to Personal Law in India, above), even in India, but not for the Muslims. We would, therefore, implore the legislature to bestow its thoughtful consideration to this issue of paramount importance. We would also beseech different political parties to keep their individual political gains apart, while considering the necessary measures requiring legislation.” **Para 393:** *“..Till such time as legislation in matter is considered, we are satisfied in injuncting Muslim husbands from pronouncing “Talaq-e-Biddat” as a means for severing their matrimonial relationship. The instant injunction, shall in the first instance, be operative for a period of six months. If the legislative process commences before expiry of period of six months and a positive decision emerges towards redefining “Talaq-e-Biddat” (three pronouncements of “talaq” at one and same time), as one, or alternatively, if it is decided that practice of “Talaq-e-Biddat” be done away with altogether, the injunction would continue till legislation is finally enacted. Failing which, the injunction shall cease to operate.”*



43. In K.S. PUTTASWAMY Case [(2017) 10 SCC 1] Court held:

Para 525: "...The dignity of the individual encompasses the right of the individual to develop to the full extent of his potential. And this development can only be if an individual has autonomy over fundamental personal choices and control over dissemination of personal information which may be infringed through an unauthorized use of such information. It is clear that Article 21, more than any of the other articles in the fundamental rights chapter, reflects each of these constitutional values in full, and is to be read in consonance with these values and with international covenants that we have referred to. In the ultimate analysis, the fundamental right to privacy, which has so many developing facets, can only be developed on a case-to-case basis..." **Para 526:** *"This right is subject to reasonable regulations made by the State to protect legitimate State interests or public interest. However, when it comes to restrictions on this right, drill of various articles to which the right relates must be scrupulously followed..."* **Para 534:** *"It is clear that the international covenants and declarations to which India was a party, namely, the 1948 Declaration and the 1966 Covenant both spoke of the right to life and liberty as being "inalienable". Given the*



fact that this has to be read as being part of Article 21 by virtue of the judgments referred to supra, it is clear that Article 21 would, therefore, not be the sole repository of these human rights but only reflect the fact that they were “inalienable”; that they inhere in every human being by virtue of the person being a human being;..” **Para 547:** *“..It is, therefore, the duty of the courts and especially this Court as sentinel on the qui vive to strike a balance between the changing needs of the society and the protection of the rights of the citizens as and when the issue relating to the infringement of the rights of the citizen comes up for consideration. Such a balance can be achieved only through securing and protecting liberty, equality and fraternity with social and political justice to all the citizens under the rule of law...”*

- 44. Pawan Kumar v. State of HP [(2017) 7SCC 780]** Court held **Para 47:** *“Eve teasing, as has been stated in Inspector General of Police v. S. Samuthiram [(2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566] , has become a pernicious, horrid and disgusting practice. The Court therein has referred to the Indian Journal of Criminology and Criminalistics (January-June 1995 Edn.) which has categorised eve teasing into five heads viz. (1) verbal eve teasing; (2) physical eve*



teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. Present case eminently projects a case of psychological harassment. We are at pains to state that in a civilised society eve teasing is causing harassment to women in educational institutions, public places, parks, railway stations and other public places which only go to show that requisite sense of respect for women has not been socially cultivated. A woman has her own space as a man has. She enjoys as much equality under Article 14 of the Constitution as a man does. The right to live with dignity as guaranteed under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve teasing. It affects the fundamental concept of gender sensitivity and justice and the rights of a woman under Article 14 of the Constitution. That apart it creates an incurable dent in the right of a woman which she has under Article 15. One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with dignity and freedom. It has to be kept in mind that she has a right to life and entitled to love according to her choice. She has an individual choice which has been legally recognised. It has to be socially



respected. No one can compel a woman to love. She has absolute right to reject.” Para 48: “In a civilized society male chauvinism has no room. The Constitution of India confers the affirmative rights on women and the said rights are perceptible from Article 15 of the Constitution. When the right is conferred under the Constitution, it has to be understood that there is no condescension. A man should not put his ego or, for that matter, masculinity on a pedestal and abandon the concept of civility. Egoism must succumb to law. Equality has to be regarded as the summum bonum of the constitutional principle in this context. The instant case portrays the deplorable depravity of the appellant that has led to a heart-breaking situation for a young girl who has been compelled to put an end to her life. Therefore, the High Court has absolutely correctly reversed the judgment of acquittal and imposed the sentence. It has appositely exercised jurisdiction and we concur with same.”

45. In SHAKTI VAHINI Case [(2018) 7 SCC 192] Court held:

Para 41: *“..we have stated hereinabove, to explicate, is that the consent of the family or the community or the clan is not necessary once the two adult individuals agree to enter into a wedlock. Their consent has to be piously given primacy. If there is offence*



committed by one because of some penal law, that has to be decided as per law which is called determination of criminality. It does not recognise any space for informal institutions for delivery of justice. It is so since a polity governed by "Rule of Law" only accepts determination of rights and violation thereof by the formal institutions set up for dealing with such situations. It has to be constantly borne in mind that rule of law as a concept is meant to have order in a society. It respects human rights. Therefore, the khap panchayat or any panchayat of any nomenclature cannot create a dent in exercise of the said right.." **Para 40:** *"..Is necessary to mention here that honour killing is not the singular type of offence associated with the action taken and verdict pronounced by the khap panchayats. It is a grave one but not the lone one. It is a part of honour crime. It has to be clearly understood that honour crime is the genus and honour killing is the species, although a dangerous facet of it. However, it can be stated without any fear of contradiction that any kind of torture or torment or ill-treatment in the name of honour that tantamounts to atrophy of choice of an individual relating to love and marriage by any assembly, whatsoever nomenclature it assumes, is illegal, cannot be allowed a*



moment of existence.” **Para 43:** “..Honour killing guillotines individual liberty, freedom of choice and one's own perception of choice. It has to be sublimely borne in mind that when two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognised under Articles 19 and 21 of the Constitution. Such a right has the sanction of the constitutional law and once that is recognised, the said right needs to be protected and it cannot succumb to the conception of class honour or group thinking which is conceived of on some notion that remotely does not have any legitimacy...” **Para 44:** “..The concept of liberty has to be weighed and tested on the touchstone of constitutional sensitivity, protection and the values it stands for. It is the obligation of the constitutional courts as the sentinel on qui vive to zealously guard the right to liberty of an individual as the dignified existence of an individual has an inseparable association with liberty. Without sustenance of liberty, subject to constitutionally valid provisions of law, the life of a person is comparable to the living dead having to endure cruelty and torture without protest and tolerate imposition of thoughts and ideas without a voice to dissent or record a disagreement. The fundamental feature of dignified existence is to



assert for dignity that has the spark of divinity and the realisation of choice within the parameters of law without any kind of subjugation. The purpose of laying stress on the concepts of individual dignity and choice within the framework of liberty is of paramount importance. We may clearly and emphatically state that life and liberty sans dignity and choice is a phenomenon that allows hollowness to enter into the constitutional recognition of identity of a person..." Para 45: "...The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. True it is, the same is bound by the principle of constitutional limitation but in the absence of such limitation, none, we mean, no one shall be permitted to interfere in the fructification of the said choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness. When two adults marry out of their volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do so. And it can unequivocally be stated that they have the right and any infringement of the said right is a constitutional violation. The majority in the name of class or elevated honour of clan cannot call



for their presence or force their appearance as if they are the monarchs of some indescribable era who have the power, authority and final say to impose any sentence and determine the execution of the same in the way they desire possibly harbouring the notion that they are a law unto themselves or they are the ancestors of Caesar or, for that matter, Louis the XIV. The Constitution and the laws of this country do not countenance such an act and, in fact, the whole activity is illegal and punishable as offence under criminal law..”

46. In NAVTEJ SINGH JOHAR Case [(2018)10SCC 1]Court held

Para 248: *“..We, first, must test the validity of Section 377 IPC on the anvil of Article 14 of the Constitution. What Article 14 propounds is that “all like should be treated alike”. In other words, it implies equal treatment for all equals. Though the legislature is fully empowered to enact laws applicable to a particular class, as in the case at hand in which Section 377 applies to citizens who indulge in carnal intercourse, yet the classification, including the one made under Section 377 IPC, has to satisfy the twin conditions to the effect that the classification must be founded on an intelligible differentia and the said differentia must have a rational nexus with the object sought to be achieved by the provision, that is, Section 377 IPC...”*



Para 268.1: “..The eminence of identity which has been luculently stated in Nalsa [(2014) 5 SCC 438] very aptly connects human rights and the constitutional guarantee of right to life, liberty with dignity. With the same spirit, we must recognise that the concept of identity which has a constitutional tenability cannot be pigeon-holed singularly to one's orientation as it may keep the individual choice at bay. At the core of the concept of identity lies self-determination, realisation of one's own abilities visualising the opportunities and rejection of views with a clear conscience that is in accord with constitutional norms and values or principles that are, to put in a capsule, “constitutionally permissible..”

Para 268.4: “...The primary objective of having a constitutional democracy is to transform the society progressively and inclusively. Our Constitution has been perceived to be transformative in the sense that the interpretation of its provisions should not be limited to the mere literal meaning of its words; instead they ought to be given a meaningful construction which is reflective of their intent and purpose in consonance with the changing times. Transformative constitutionalism not only includes within its wide periphery the recognition of the rights and dignity of individuals but also propagates the fostering and development of an



atmosphere wherein every individual is bestowed with adequate opportunities to develop socially, economically and politically. Discrimination of any kind strikes at the very core of any democratic society. When guided by transformative constitutionalism, the society is dissuaded from indulging in any form of discrimination so that the nation is guided towards a resplendent future...” **Para 268.5:** “...Constitutional morality embraces within its sphere several virtues, foremost of them being the espousal of a pluralistic and inclusive society. The concept of constitutional morality urges the organs of the State, including the Judiciary, to preserve the heterogeneous nature of the society and to curb any attempt by the majority to usurp the rights and freedoms of a smaller or minuscule section of populace. Constitutional morality cannot be martyred at the altar of social morality and it is only constitutional morality that can be allowed to permeate into the Rule of Law. The veil of social morality cannot be used to violate fundamental rights of even single individual, for foundation of constitutional morality rests upon recognition of diversity that pervades the society...”

47.In JOSEPH SHINE Case [(2019) 3 SCC 39] the Court has held:

Para 30: “...As we notice, the provision treats a married woman as a



property of the husband. It is interesting to note that Section 497 IPC does not bring within its purview an extramarital relationship with an unmarried woman or a widow. The dictionary meaning of "adultery" is that a married person commits adultery if he has sex with a woman with whom he has not entered into wedlock. As per Black's Law Dictionary, "adultery" is the voluntary sexual intercourse of a married person with a person other than offender's husband or wife. However, the provision has made it a restricted one as a consequence of which a man, in certain situations, becomes criminally liable for having committed adultery while, in other situations, he cannot be branded as a person who has committed adultery so as to invite the culpability of Section 497 IPC. Section 198 CrPC deals with a "person aggrieved". Sub-section (2) of Section 198 treats the husband of the woman as deemed to be aggrieved by an offence committed under Section 497 IPC and in the absence of husband, some person who had care of the woman on his behalf at the time when such offence was committed with the leave of the court. It does not consider the wife of the adulterer as an aggrieved person. The offence and the deeming definition of an aggrieved person, as we find, is absolutely and manifestly arbitrary as it does



not even appear to be rational and it can be stated with emphasis that it confers a licence on the husband to deal with the wife as he likes which is extremely excessive and disproportionate. We are constrained to think so, as it does not treat a woman as an abettor but protects a woman, simultaneously, it does not enable the wife to file any criminal prosecution against the husband. Indubitably, she can take civil action but the husband is also entitled to take civil action. However, that does not save the provision as being manifestly arbitrary. That is one aspect of the matter. If the entire provision is scanned being Argus-eyed, we notice that on the one hand, it protects a woman and on the other, it does not protect the other woman. The rationale of the provision suffers from the absence of logicity of approach and, therefore, we have no hesitation in saying that it suffers from the vice of Article 14 of the Constitution being manifestly arbitrary..." Para 48: "...From the aforesaid analysis, it is discernible that the Court, with the passage of time, has recognised the conceptual equality of woman and the essential dignity which a woman is entitled to have. There can be no curtailment of the same. But, Section 497 IPC effectively does the same by creating invidious distinctions based on gender stereotypes



which creates a dent in the individual dignity of women. Besides, the emphasis on the element of connivance or consent of the husband tantamounts to subordination of women. Therefore, we have no hesitation in holding that the same offends Article 21..." Para 162:

"...Section 497 is destructive of and deprives a woman of her agency, autonomy and dignity. If the ostensible object of the law is to protect "institution of marriage", it provides no justification for not recognising the agency of a woman whose spouse is engaged in a sexual relationship outside of marriage. She can neither complain nor is the fact that she is in a marital relationship with a man of any significance to the ingredients of the offence. The law also deprives the married woman who has engaged in a sexual act with another man, of her agency. She is treated as the property of her husband. That is why no offence of adultery would be made out if her husband were to consent to her sexual relationship outside marriage. Worse still, if the spouse of the woman were to connive with the person with whom she has engaged in sexual intercourse, the law would blink. Section 497 is thus founded on the notion that a woman by entering upon marriage loses, so to speak, her voice, autonomy/agency. Manifest arbitrariness is writ large on the



provision...” **Para 75:** “...Article 15 prohibits the State from discriminating on grounds only of sex. The petitioners contend that (i) Section 497, insofar as it places a husband and wife on a different footing in a marriage perpetuates sex discrimination; (ii) Section 497 is based on the patriarchal conception of the woman as property, entrenches gender stereotypes, and is consequently hit by Article 15...” **Para 182:** “...Implicit in seeking to privilege the fidelity of women in a marriage, is the assumption that a woman contracts away her sexual agency when entering a marriage. That a woman, by marriage, consents in advance to sexual relations with her husband or to refrain from sexual relations outside marriage without the permission of her husband is offensive to liberty and dignity. Such a notion has no place in the constitutional order. Sexual autonomy constitutes an inviolable core of the dignity of every individual. At the heart of constitutional rights guaranteed to every individual is a primacy of choice and the freedom to determine one's actions. Curtailing the sexual autonomy of a woman or presuming the lack of consent once she enters a marriage is antithetical to constitutional values...” **Para 189:** “...Article 15(3) encapsulates the notion of “protective discrimination”. The



constitutional guarantee in Article 15(3) cannot be employed in a manner that entrenches paternalistic notions of “protection”. This latter view of protection only serves to place women in a cage. Article 15(3) does not exist in isolation. Articles 14 to 18, being constituents of a single code on equality, supplement each other and incorporate non-discrimination principle. Neither Article 15(1) nor Article 15(3) allow discrimination against women. Discrimination which is grounded in paternalistic and patriarchal notions cannot claim protection of Article 15(3). In exempting women from criminal prosecution, Section 497 implies that a woman has no sexual agency and that she was “seduced” into a sexual relationship. Given the presumed lack of sexual agency, criminal exemption is then granted to the woman in order to “protect” her. The “protection” afforded to women under Section 497 highlights the lack of sexual agency that the section imputes to a woman. Article 15(3) when read with the other Articles in Part III, serves as a powerful remedy to remedy the discrimination and prejudice faced by women for centuries. Article 15(3) as an enabling provision is intended to bring out substantive equality in the fullest sense. Dignity and autonomy are crucial to substantive equality. Hence, Article 15(3) does not protect a



statutory provision that entrenches patriarchal notions in garb of protecting women..” **Para 191:** *“...The law on adultery is but a codified rule of patriarchy. Patriarchy has permeated the lives of women for centuries. Ostensibly, society has two sets of standards of morality for judging sexual behaviour. [Nandita Haksar, “Dominance, Suppression and Law” in Lotika Sarkar and Sivaramayya, Women and the Law: Contemporary Problems] One set for its female members and another for males. [Nandita Haksar, “Dominance, Suppression and the Law” in Lotika Sarkar and Sivaramayya, Women and Law: Contemporary Problems] Society ascribes impossible virtues to a woman and confines her to a narrow sphere of behaviour by an expectation of conformity. [Nandita Haksar, “Dominance, Suppression and Law” in Lotika Sarkar and Sivaramayya, Women and the Law: Contemporary Problems, (Vikas Publishing House 1994).] Raising a woman to a pedestal is one part of the endeavour. The second part is all about confining her to a space. The boundaries of that space are defined by what a woman should or should not be. A society which perceives women as pure and an embodiment of virtue has no qualms of subjecting them to virulent attack: to rape, honour killings, sex determination and*



infanticide. As an embodiment of virtue, society expects the women to be a mute spectator to and even accepting of egregious discrimination within the home. This is part of the process of raising women to a pedestal conditioned by male notions of what is right and what is wrong for a woman. The notion that women, who are equally entitled to protections of the Constitution as their male counterparts, may be treated as objects capable of being possessed, is an exercise of subjugation and inflicting indignity. Anachronistic conceptions of "chastity" and "honour" have dictated the social and cultural lives of women, depriving them of guarantees of dignity and privacy, contained in the Constitution..."

48. In order to secure gender justice, gender equality & dignity of women, the Court may issue a writ, order or direction to direct the Government of India to draft a Uniform Civil Code and publish the draft on website for larger public discussion, debate-feedback in spirit of the direction in Sarla Mudgal Case. Alternatively, Court may direct the Law Commission to draft a Uniform Civil Code including uniform minimum age of marriage, uniform grounds of divorce, uniform maintenance & alimony, uniform adoption & guardianship and uniform succession and inheritance, within three months.



Petitioner is filing this Transfer Petition on the following grounds:

- A. Because the fundamental basis of the legal system is that the dispute should be finally settled and when the same/similar facts are placed in different petitions before different Courts for the judicial test, there is a likelihood of divergence of views, different interpretations and contradictory appreciation of the materials placed before such Courts and in such a case, the aspiration of litigants to find finality to the disputes may be reduced more to a mirage than reality.
- B. Because the grounds taken in the above stated writ petition before Delhi High Courts are more or less common in nature and the factual and legal issues are more or less the same or similar.
- C. Because these PILs are pending in two Courts so respondents may face extreme difficulty in effectively conducting the same in different Courts. For this reason, also, all these matters require to be withdrawn from the respective High Court and be transferred to this Hon'ble Court so that all grounds-contentions can be decided by common judgment in order to ensure uniformity in directions. Moreover, the Judgment by this Hon'ble Court will be binding for all and also save precious time of the judicial system.



- D. Because if the aforesaid writ petitions having same/similar prayers are not withdrawn from the High Court and transferred to this Hon'ble Court, then respondents would be put to wastage of the resources, manpower and also the public exchequer.
- E. Because there is every possibility that different judgments or views may be taken by the High Court in the above matters and to avoid this confusing situation, the cases may be withdrawn from the High Court and be transferred to and decided by this Court.
- F. Because in the interest of justice it would be appropriate that all the matters be heard at a single place preferably by this Hon'ble Court so that divergent orders from various High Courts may be avoided and the said issue may be finally settled by this Hon'ble Court.
- G. Because right to live with dignity implies right to not be perceived as unequal or inferior in the society. In other words, it implies right to equal social standing and perception. Apex Court has held this in National Legal Services Authority[(2014) 5 SCC 438] Pravasi Bhalai Sangathan[(2014) 11 SCC 477] Jeeja Ghosh [(2016) 7 SCC 761].
- H. Because the Court in Joseph Shine Case [(2019) 3 SCC 39] held that the law that treats women differently based on gender stereotypes causes direct affront to women's dignity, violating Articles 14,15,21.



- I. Presently, Muslim personal law allows Polygamy while the other religions don't. Even in the case of infertility, Christians, Hindus, Parsis are forbidden from marrying again by Section 494 of the Indian Penal Code. This also leads to religious conversions as people convert to Islam in order to re-marry. Even Islamic nations do not permit second marriage without the consent of the first wife. Polygamy is not a religious issue, rather an issue of civil and human rights. So, S. 494 of the IPC must be religion and gender neutral.
- J. Minimum age of marriage is not same for men-women. The age of adulthood of Muslim girls is not fixed and the girl is considered eligible for marriage at the beginning of her periods, hence girls are married at the age of 11-12 years, whereas in other religions the minimum age of marriage of girls is 18 years and the minimum age of marriage of boys is 21 years. It is necessary to state that WHO has stated many times that a girl is not physically and mentally mature for marriage before the age of 20 and pregnancy before 20 is extremely harmful for both mother and child. Moreover, children complete graduation after 20 years, also not financially self-reliant. So, it is necessary to make the minimum age of marriage 21 years.



- K. Minimum age of marriage is by no means a religious matter under Article 25 but a matter of physical and mental maturity, financial independence, so it should be gender religion neutral.
- L. Despite the fact that triple talaq has been declared illegal, talaq-e-Hasan and talaq-e-Ahsan are still valid. They are also not obligated to state the basis of divorce and only have to wait for 3 months but in other religions, oral divorce is not possible. The Hindu Christian Parsi couple is denied the oral divorce even by mutual consent. The Muslim women always have to live in an atmosphere of fear because of the Muslims not being accountable to the judiciary. It is necessary to state that even in Muslim majority countries like Turkey etc, oral divorce of any kind is not permissible but in India, which is a socialist secular democratic republic, it is continuing.
- M. In Muslim law, oral will/donation is valid, but in other sects only registered will and donation is valid. In Muslim law, more than one-third of property cannot be bequeathed to others, while in other religions, hundred percent property can be bequeathed. It necessary to state that Will and Charity are not the religious subjects by any means, but are the matter of civil right and human right, Therefore, it should be completely gender neutral and religion neutral.



- N. In Muslim law, the system of 'succession and inheritance' is highly complex, and, there is discrimination between sons and daughters. In other religions also, rights of wife in post-marriage property and succession and inheritance are undefined. Though, these are also a matter of civil and human right guaranteed under Articles 14, 15, 21.
- O. The basis of divorce is not the same for everyone. A Muslim can divorce his wife on the basis of adultery but wife cannot divorce her husband. In Hindus Parsi & Christians, fornication is not a ground of divorce. Divorce can occur in Hinduism and Christianity on the basis of incurable disease like leprosy but not in Parsi and Muslim religion. Marriage may break in Hinduism on the basis of marriage at early age but it is not possible in Parsi Christian and Muslims. 'Grounds of Divorce' is not in any way a religious matter but is a matter of civil rights and human rights under Article 25, so it should be completely gender neutral and religion neutral.
- P. Adoption-guardianship differs for Hindu Muslim Zoroastrian Christians. Muslim cannot adopt and adoption is male dominant in other religions. Grounds of adoption-guardianship is not a religious matter by any means but a matter of civil right and human right, so, it should also be completely gender neutral and religion neutral.



- Q.** All the above subjects are related to civil rights and human rights which have no relation to religion but even after 73 years of independence, in the name of religion, women-discrimination continues in male dominated society. Our Constitution makers had envisaged 'Uniform Civil Code or Indian Civil Code' through Article 44 to give everyone equal rights and to strengthen and promote unity and integrity of the country but due to vote bank politics, 'Uniform Civil Code or Indian Civil Code' has not been implemented.
- R.** Article 44 is the soul of our Constitution & UCC has many benefits. Implementing the *Uniform Civil Code/Indian Civil Code* for all the citizens on the lines of "Indian Penal Code" will free the country and society from hundreds of the complex and outdated laws.
- S.** In the present times, different British laws applicable to different religions create inferiority in everyone's mind. By applying a "*Uniform Civil Code or Indian Civil Code*" to all citizens, everyone will be free from such inferiority complex.
- T.** The noble concept of "One husband - One wife" will be equally applicable to all the Indians and exceptions like infertility or impotence will be equally available to all Indians whether male or female, Hindu or Muslim, Zoroastrian or Christian.



- U. A gender-neutral religion-neutral law of divorce will apply to everyone. Under special circumstances, all citizens will be allowed to break the marriage in a verbal manner, whether it is a man or a woman, Hindu or Muslim, Zoroastrian or Christian.
- V. In paternal property, son-daughter and son-daughter-in-law will get equal rights and the property-based discord and gender discrepancy over property will be abolished, and it will be applicable to all whether he is a Hindu or Muslim, Zoroastrian or Christian.
- W. In the event of divorce, the husband and wife will have equal rights in the property acquired after marriage, whether he is Hindu or Muslim, Parsi or Christian.
- X. A gender neutral religion neutral law will apply to all Indians, whether Hindu or Muslim, Zoroastrian or Christian, in relation to the will, charity, divinity, guardianship, sharing of custody, etc. The gender-based discrepancy in the religion caste and sect will end.
- Y. A comprehensive unified gender-neutral and religion-neutral law will be passed at national level and will be equally applicable to all citizens, whether Hindu or Muslim, Parsi or Christian. Hence, it will not only promote fraternity unity and national integration but also secure gender justice gender equality and dignity of women.



- Z.** Separatist mindset arising out of having different personal laws on the basis of caste, religion, region will be eliminated and we will be able to move rapidly towards the creation of a unified nation.
- AA.** Due to different laws for different religions, one has to get involved in unnecessary litigation. Having a uniform civil code for everyone will save the Court's valuable time and resources.
- BB.** UCC will eliminate conservatism, fundamentalism, casteism, communalism, regionalism and linguism and develop scientific temper and humanism in spirit of the Article 51A. With its implementation, the discrimination in the rights of Hindu Muslim Parsi Christian sisters and daughters will end. The truth is that Hindu sister-daughters will not get much benefit because women and men already have almost equal rights in the Hindu marriage Act. Muslim sister-daughters will get the most benefit from this because in Sharia law they are not considered equal to men.
- CC.** Article 37 states that it is the government's fundamental duty to implement the Directive Principles in letter and spirit. Just as to secure the fundamental rights of all citizens, it is the duty of the government to implement the Constitution 100 per cent. There is no separate law on religious grounds in any secular country, but we



still have the Hindu Marriage Act, Parsi Marriage Act and Christian Marriage Act in force. If “*Uniform Civil Code or Indian Civil Code*” can apply to everyone in Goa, then why cannot a “*Uniform Civil Code or Indian Civil Code*” be applicable to all citizens?

- DD.** It is important to clarify that fundamental religious rights such as worship, namaz or prayer, fasting or fasting, and managing temples, mosques, churches, gurudwaras or opening religious schools under Article 25 won't be affected by the implementation of the “*Uniform Civil Code or Indian Civil Code*”. There will be no interference in propagating religious education or adopting any method of marriage or any method for funeral after death.
- EE.** On the day a draft of UCC will be prepared and the general public, especially sister-daughters will come to know about its benefits, no one will oppose it. The truth is that those who do not know anything about the Uniform Civil Code are opposing it.
- FF.** Separate laws based on caste, religion, language and gender are like smouldering remains of the extinguished fire of partition of 1947, which can explode and disintegrate the unity of the country at any time. 'Uniform Civil Code' is necessary not only to maintain secularism but also to keep the unity and integrity of the country.



- GG.** Unfortunately, the “*Uniform Civil Code or Indian Civil Code*” has always been seen as a spectacle of religious appeasement. The Supreme Court or High Court cannot ask the Government to implement Article 44 of the Constitution but can direct the Centre to constitute a committee to prepare a draft of Uniform Civil Code. The Court can express its views and Court is doing again and again.
- HH.** The Supreme Court and High Court may direct the Centre to constitute a Judicial Commission or Expert Committee to study the Uniform Civil Code of the developed countries and the laws applicable in India and make public a draft of the 'Indian Civil Code', combining the good of all, public discussion could begin on this subject. It is necessary to state that five PILs seeking the uniform minimum marriage age, uniform divorce grounds, uniform maintenance-alimony, uniform adoption-guardianship and uniform succession-inheritance are pending in the Supreme Court.
- II.** When we talk about inequality between girl and boy child, we tend to relate it to religion. But, girl or boy, the foetus stays in the mother for 9 months and the mother has to bear the labour pain for both of them. The discrimination between a girl and a boy was not established by ‘God’ but by man himself. The discrimination is not a



result of customs, religious rites and rituals but of male supremacy and ego, which made them oppress women. Relating this discrimination to religion is unethical, immoral and wrong.

- JJ.** India is a secular country, and is governed by the constitution, not by Ved-Purans or Bible-Quran. The constitution is a scripture to the Indian Democracy. It provides every freedom to the citizens, and at the same time keeps a check on them, so as to maintain public order, health and morality. Some people take the defence of Article 25, stating that a Common Civil Code offends Article 25. They quietly neglect the fact that Article 25 contains the clause, 'subject to public order, health and morality'. The Indian Penal Code of 1860, Police Act of 1961, Evidence Act of 1872 and Civil Procedure Code of 1908 are applicable to all citizens without any discrimination. The Portugal Civil Code of 1867 is also applicable to all citizens of Goa. But, Article 44 i.e. the Uniform Civil Code is not applicable to all and no efforts were made in this regard. The constitution has been amended 125 times till now, Supreme Court's Judgement has been reversed 5 times but "*Uniform Civil Code or Indian Civil Code*" still remains an illusion. Although BJP supports UCC and the opposition opposes it, the advantages are not known to people on either side.



- KK.** Because minimum marriage age for men has been fixed 21 so they can pursue higher education, at least graduation, after finishing the schooling. In a constitutional republic, women should also have the same opportunity without the sword of marriage- which often means a loss of freedom - hanging over their heads.
- LL.** Because right to health is integral part of Article 21. It includes protection, prevention, cure and improvement of health and is a minimum requirement to enable a person to live with dignity. Hence, It is duty of the State to ensure creation and sustaining of conditions congenial to good health. Article 21 read with Article 39 and 47, casts duty on the State to take appropriate steps to improve health of the citizens and provide necessary information/instruction in this regard. Every branch of the Executive has the constitutional obligation to extend his services with due expertise for protecting the health. Right to live as a human being is not insured by meeting only the animal needs of man but is secured only when he is assured of all facilities to develop himself and is free from restrictions, which inhibit the physical mental social and economic growth.
- MM.** Because being custodian of the Constitution and protector of fundamental rights, the Court can pass appropriate directions.



PRAYERS

Keeping in view the above stated facts and circumstance; it is the most respectfully prayed that this Hon'ble Court may be pleased to:

- a) transfer WP(C) 6483/2019 from Delhi High Court to this Hon'ble Court and decide them collectively, in order to secure gender justice, gender equality and dignity of women in spirit of Articles 14, 15, 21 and 44 of the Constitution and International Conventions;
- b) alternatively, direct the Centre to constitute a Judicial Commission or Expert Committee to draft *Uniform Civil Code / Indian Civil Code* in spirit of Articles 14, 15, 21, 44 within 3 months, while considering the best practices of all personal laws and civil laws of the developed countries and international conventions; and publish it on website for at least 60 days for extensive public debate and feedback;
- c) alternatively, direct the Law Commission of India to draft a Uniform Civil Code/Indian Civil Code in spirit of Articles 14, 15, 21, 44 within 3 months, while considering the best practices of all personal laws and civil laws of developed countries and international conventions;
- d) pass such other order(s) or direction(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case & allow the cost.

5.4.2021

NEW DELHI

ASHWANI KUMAR DUBEY

ADVOCATE FOR PETITIONER



IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO. OF 2021

[TRANSFER PETITION UNDER THE ARTICLE 139 A(1) READ WITH
ORDER XLI OF THE SUPREME COURT RULES 2013]

IN THE MATTER OF:

ASHWINI KUMAR UPADHYAY

.....PETITIONER

VERSUS

UNION OF INDIA & ANOTHER

....RESPONDENTS

CERTIFICATE

1. It is certified that the prayers of WP(C)6483/2019, pending in Delhi High Court & WP(C)869/2020, WP(C)1000/2020, WP(C)1108/2020, TP(C)1249-1250/2020 pending in this Hon'ble Court are similar.
2. It is certified that the questions raised in the above stated petitions are the substantial questions of the general importance in terms of Article 139A(1) of the Constitution of India.
3. It is certified that similar petitions WP(C)869/2020, WP(C)1000/2020, WP(C)1108/2020, TP(C)1249-1250/2020 are pending in this Hon'ble Court for detailed deliberations.
4. It is submitted that similar facts are placed in above petitions and there is likelihood of divergence of views, different interpretations and contradictory appreciation of the materials placed before High Court and in such case, the aspiration of litigant to find finality to the issues may be reduced more to a mirage than reality. Hence, the Court may be pleased to transfer WP(C)6483/2019 to this Court.

5.4.2020

NEW DELHI

ASHWANI KUMAR DUBEY

ADVOCATE FOR PETITIONER



IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO OF 2021

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & another

...Respondents

AFFIDAVIT

I, Ashwini Kumar Upadhyay aged 45 years, son of Sh. Suresh Upadhyay, Office at: 15, New Lawyers Chambers, Supreme Court, New Delhi-110001, Residence at: G-284, Govindpuram, Ghaziabad-201013, at present at New Delhi, do hereby solemnly affirm and declare as under:

1. I am the sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.
2. I have read and understood the contents of accompanying synopsis and list of dates pages (B - K) Transfer Petition paras (1 - 48) pages (1 - 73) and total pages (1 - 114) which are true and correct to my knowledge and belief.
3. Annexures filed with the petition are true copy of respective originals.
4. I have not filed any other similar petition either in this Hon'ble Court or in any other court seeking same or similar directions as prayed.
5. I have no personal interests, individual gain, private motive or oblique reasons in filing this petition. It is not guided for gain of any other individual person, institution or body. The only motive is public interest and national integration.
6. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with issue involved in this petition.
7. There is no requirement to move concerned government authority for relief sought in this petition.
8. I have gone through the Article 139A and the Supreme Court Rules 2013 and do hereby affirm that the present transfer petition is in conformity thereof.
9. I have done whatsoever enquiry/investigation, which was in my power to do, to collect the data or material, which was available; and which was relevant for this Hon'ble Court to entertain the present transfer petition.
10. I've not concealed any data/material/information in this petition; which may have enabled this Hon'ble Court to form an opinion, whether to entertain this petition or not and/or whether to grant any relief or not.
11. The averments made in this affidavit are true and correct to my personal knowledge and belief. No part of this Affidavit is false or fabricated, nor has anything material been concealed there from.

(Ashwini Kumar Upadhyay)

DEPONENT

VERIFICATION: I, Deponent do hereby verify that contents of above affidavit are true and correct to my personal knowledge and belief. No part of this affidavit is false nor has anything material been concealed there from. I hereby solemnly affirm and declare it today i.e., 5th day of April 2021 at New Delhi.

(Ashwini Kumar Upadhyay)

DEPONENT



APPENDIX

ARTICLE 14 OF THE CONSTITUTION OF INDIA

14. Equality before law, The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

ARTICLE 15 OF THE CONSTITUTION OF INDIA

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(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 palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

ARTICLE 21 OF THE CONSTITUTION OF INDIA

21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

ARTICLE 44 OF THE CONSTITUTION OF INDIA

44. Uniform civil code for the citizens The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India



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IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 6483 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

MEMO OF PARTIES

Ashwini Kumar Upadhyay

S/o Sh. Suresh Chandra Upadhyay

Office: 15, M.C. Setalvad Chambers

Supreme Court of India, New Delhi-110001

Residence: G-284, Govindpuram, Ghaziabad-201013 ...Petitioner

Verses

1. Union of India

Through the Secretary,

Ministry of Home Affairs

North Block, New Delhi-110001

2. Law Commission of India

Through the Chairman/Secretary

4th Floor, Loknayak Bhawan,

Khan Market, New Delhi-110003

...Respondents

PETITIONER-IN-PERSON

(Ashwini Kumar Upadhyay)

Advocate En. No-D/1119/12

15, M.C.Setalvad Chambers

Supreme Court, New Delhi-01

G-284, Govindpuram, Gzb-13

#08800278866, 9911966667



IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 6483 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

SYNOPSIS & LIST OF DATES

Directive Principles are affirmative instruction from the ultimate sovereign to the State authorities, to secure to all citizens; Justice – social, economic, and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all fraternity, assuring dignity of the individual and unity and integrity of the nation. Therefore, it is duty of the State to direct their activities in such a manner so as to secure the high ideals set forth in the Preamble and Parts III and IV of the Constitution. The Directives are an amalgam of diverse subjects embracing the life of the nation and include principles, which are statements of socio-economic rights, social policy, administrative policy and international policy. Object of the Article 44 is to introduce a common civil code for all, which is essential to promote fraternity, unity and national integration. It proceeds on the assumption that there is no connection between religion and



personal laws in a civilized society. While the Constitution guarantees freedom of conscience and of religion, it seeks to divest religion from personal law and social relations and from laws governing inheritance, succession and marriage, just as it has been done even in the Muslim Countries like Turkey and Egypt etc. The object of Article 44 is not to encroach upon religious liberties guaranteed under Article 25.

Dr. B.R. Ambedkar, during the Constituent Assembly debate said that: *"In fact, bulk of these different items of civil laws have already been codified during the British Rule and the major items still remaining for a Uniform Civil Code are marriage, divorce, inheritance and succession"*. The several enactments, which have been made by the Parliament since Independence in the name of the Hindu Code relating to marriage, succession, adoption and guardianship, relate only to Hindus (including Budhists, Jains and Sikhs) and excludes the Muslims, who are the major slice of the minority communities and who are more vociferously objecting to frame a common civil code for all citizens of India.

In Shah Bano case, the Supreme Court has observed: *"It is a matter of regret that Article 44 has remained dead letter. It provides*



that 'the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India' but there is no evidence of any official activity for framing a common civil code. A belief seems to have gained that it is for Muslim community to take a lead in the matter of reforms of their personal law. Common civil code will help the cause of national integration by removing desperate loyalties to laws, which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is for the State, which is charged with the duty of securing a uniform civil code and it has legislative competence to do so. A counsel in this case whispered that legislative competence is one thing, the political courage to use that competence is quite another. We understand difficulties involved in bringing persons of different faiths and persuasion on a common platform but beginning has to be made, if the Constitution has any meaning. Role of the reformer has to be assumed by the Courts because; it is beyond endurance of sensitive minds to allow injustice when it is so palpable. Piecemeal attempts to bridge the gap cannot take the place of Common Code. Justice to all is for more satisfactory way of dispensing justice than justice from case to case".



The objection against common civil code that it would be a tyranny to the minority community was strongly rejected by Ld. Munshi as thus: *"An argument has been advanced that the enactment of a common civil code would be tyrannical to minorities. Nowhere in advanced Muslim countries, personal law of each minority has been recognized as so sacrosanct as to prevent the enactment of a common civil code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights. When the Sharia Act was passed, the Khojas and Cutchi Memons were highly dissatisfied. They then followed certain Hindu customs for generations since they became converts they had done so. They didn't want to confirm to Sharia and yet by legislation of the Central Legislature where certain Muslim members who felt that Sharia law should be enforced upon the whole community carried their points. Khojas and Cutchie Memons unwillingly had to submit to it. When you want to consolidate a community, you have to consider the benefit, which may accrue, to the whole community and not to the customs. It is not therefore; correct to say that such an Act is tyranny of the majority. If you look at the Countries in Europe, which have a common civil code, everyone who has gone there from*



WWW.LIVE⁹²LAW.IN

any part of the world and even minorities has to submit the common civil code. The point is whether we are going to consolidate and unify our personal law. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance of succession. What have these things got to do with religion. I really fail to understand. There is no reason why there should not be a common civil code throughout the territory of India. Religion must be restricted to spheres, which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve as early as possible, a strong consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We think we have got national unity but there are many factors and important faction, which still offer serious dangers to national consolidation. It is very necessary that whole of our life insofar as it is restricted to secular sphere must be unified in such a way that we may be able to say- 'We are not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are a strong and consolidated nation.' From that point of view, I submit, the opposition is not, if I may say so, very well advised. I hope our



friends will not feel that, this is not an attempt to exercise tyranny over a minority community; it is much more tyrannous to majority community". Alladi Krishnaswami Iyer said that a Common Civil Code ran into every department of civil relation to the law of succession, to the law of marriage and similar matters; there could no objection to the general statement that 'State shall endeavour to secure a Uniform Civil Code'.

Dr. BR Ambedkar also spoke at some length on the matter. He said: *"We have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal court.....We have the law of transfer of property which deals with property relation and which is operative throughout the country..... I can cite innumerable enactments, which would prove that the country has practically a Civil Code, uniform in its contents and applicable to the whole of the country."*

In John Vallamattom Case [(2003) 6 SCC 611], the then Hon'ble Chief Justice of India Justice V. N. Khare, with whom the other two Judges, Justice Sinha and Justice Lakshman agreed and observed: *"A common civil code will help the cause of national integration by removing all contradictions based on ideologies".* The



Supreme Court also observed that *“the power of the Parliament to reform and rationalize the personal laws is unquestioned and the command of Article 44 of the Constitution is yet to be realized”*.

In Sarla Mudgal case [AIR 1995 SC 1531: (1995) 3 SCC 635], while insisting the need for a Common Civil Code, the Apex Court has held that fundamental rights relating to religion of members of any community would not be affected thereby. It was held that personal law having been permitted to operate under authority of legislation the same can be superseded by a uniform civil code. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized Society. Article 25 guarantees religious freedom and Article 44 seeks to divest religion from personal law. Marriage, succession and like matter of secular character cannot be brought under Articles 25-27.

23.11.1948: Article 44 (Article 35) was inserted in the Constitution

28.08.2017: Petitioner submitted a Representation to the HMO.

04.04.2018: Petitioner submitted a Representation to the LCI.

30.05.2019: Respondents have not taken steps hence this PIL.


PETITIONER-IN-PERSON

(Ashwini Kumar Upadhyay)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

**PIL TO DRAFT A UNIFORM CIVIL CODE / INDIAN CIVIL CODE IN SPIRIT
OF ARTICLE 44 READ WITH ARTICLES 14, 15, 21 OF THE CONSTITUTION**

To,

THE HON'BLE CHIEF JUSTICE

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE HIGH COURT OF DELHI

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petition is not guided by self-gain or for gain of any other individual person, institution or body. There is no motive other than the larger public interest in filing this petition. Petitioner has no personal interest or individual gain, private motive or oblique reasons in filing this PIL. It is bona-fide with sole purpose of public interest.
2. The source of averments made in this petition is personal knowledge and information collected from various sources, including newspapers and government websites. Petitioner is filing this PIL to draft a Uniform Civil Code in spirit of Article 44.



3. Present petition is for benefit of poor, disabled, economically weaker section and socially-economically down trodden people and particularly the poor women. As they are incapable of accessing this Hon'ble Court themselves, petitioner is filing this PIL to secure fundamental rights guaranteed under Articles 14, 15 and 21.
4. The Union Government and Law Commission of India is likely to be affected by the orders sought in this petition and they have been impleaded as Respondents. Petitioner submits that to its knowledge, no other persons, bodies, institutions are likely to be affected by the order/ direction sought in this writ petition.
5. Petitioner's full name is Ashwini Kumar Upadhyay. Office at: 15, M.C. Setalvad Chambers, Supreme Court, New Delhi-01. Residence at: G-284, Govindpuram, Ghaziabad-201013, #08800278866, aku.adv@gmail.com, PAN: AAVPU7330G, AADHAAR: 659982174779. Income is Rs. 4 LPA. Petitioner is able to bear the cost if any, imposed by the Hon'ble Court.
6. Petitioner is an Advocate, practice in this Hon'ble Court and Apex Court and a social-political activist, striving for gender justice, gender equality and dignity of women and contributing his best to the development of socially-economically downtrodden people.



7. Petitioner has not filed any other petition either in this Court or in other Court seeking same or similar direction as prayed in this PIL.
8. Petitioner has submitted a representation to the Central Government on 28.8.2017, which is annexed as **Annexure-1** and Law Commission on 4.4.2018, which is annexed as **Annexure-2**
9. There is no further requirement to move concerned authority for relief sought in this writ petition again. There is no other remedy available except approaching this Court.
10. Directive Principles are affirmative instruction from the ultimate sovereign to the State authorities, to secure to all citizens; Justice – social, economic, and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all fraternity, assuring dignity of the individual and unity and integrity of the nation. Therefore, it is duty of the State to direct their activities in such a manner so as to secure the high ideals set forth in the Preamble and Parts III and IV of the Constitution. The Directives are an amalgam of diverse subjects embracing the life of the nation and include principles, which are statements of socio-economic rights, social policy, administrative policy and international policy.



11. The object of the Article 44 is to introduce a Uniform Civil Code, which is essential to promote fraternity unity and national integration. It proceeds on the assumption that there is no connection between religion and personal laws in a civilized society. While the Constitution guarantees freedom of conscience and of religion, it seeks to divest religion from personal law and social relations and from laws governing inheritance, succession and marriage, just as it has been done even in the Muslim Countries like Turkey and Egypt etc. The object of Article 44 is not to encroach upon religious liberties guaranteed under Article 25.
12. Dr. Ambedkar, in Constituent Assembly debate said: *"In fact, bulk of these different items of civil laws have already been codified during the British Rule and the major items still remaining for a Uniform Civil Code are marriage, divorce, inheritance and succession"*.
13. The several enactments, which have been made by the Parliament since Independence in the name of the Hindu Code relating to marriage, succession, adoption and guardianship, relate only to Hindus (including Budhists, Jains and Sikhs) and excludes the Muslims, who are the major slice of the minority communities and who are more vociferously objecting to frame a common civil code.



14. In Shah Bano case, the Court has observed: *"It is a matter of regret that Article 44 has remained dead letter. It provides that 'the State shall endeavour to secure uniform civil code throughout the territory of India but there is no evidence of any official activity for framing it. A belief have gained that it is for Muslim community to take a lead in the matter of reforms of their personal law. Common civil code will help cause of national integration by removing desperate loyalties to laws, which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is for the State, which is charged with the duty of securing a uniform civil code and it has legislative competence to do so. A counsel in this case whispered that legislative competence is one thing, the political courage to use that competence is quite another. We understand difficulties involved in bringing persons of different faiths and persuasion on a common platform but beginning has to be made, if Constitution has any meaning. Role of reformer has to be assumed by the Courts because; it is beyond endurance of sensitive minds to allow injustice when it is so palpable. Piecemeal attempts to bridge the gap cannot take the place of UCC. Justice to all is for more satisfactory way of dispensing justice than justice from case to case".*



15. The objection against common civil code that it would be a tyranny to the minority community was strongly rejected by Ld. Munshi:
- “An argument has been advanced that the enactment of a common civil code would be tyrannical to minorities. Nowhere in advanced Muslim countries, personal law of each minority has been recognized as so sacrosanct as to prevent the enactment of a common civil code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights. When the Sharia Act was passed, the Khojas and Cutchi Memons were highly dissatisfied. They then followed certain Hindu customs for generations since they became converts, they had done so. They didn't want to confirm to Sharia and yet by legislation of the Central Legislature where certain Muslim members who felt that Sharia law should be enforced upon the whole community carried their points. Khojas and Cutchie Memons unwillingly had to submit to it. When you want to consolidate a community, you have to consider the benefit, which may accrue, to the whole community and not to the customs. It is not therefore; correct to say that such an Act is tyranny of majority. If you look at the Countries in Europe, which have a common civil code, everyone who has gone there from any part of the world and*



even minorities have to submit common civil code. The point is whether we are going to consolidate and unify our personal law. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance of succession. What have these things got to do with religion. I really fail to understand. There is no reason why there should not be a common civil code throughout the territory of India. Religion must be restricted to spheres, which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve as early as possible, a strong consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We think we have got national unity but there are many factors and important faction, which still offer serious dangers to national consolidation. It is very necessary that whole of our life insofar as it is restricted to secular sphere must be unified in such a way that we may be able to say- 'We are not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are a strong and consolidated nation.' From that point of view, I submit, opposition is not, if I may say so, very well advised. I hope our friends will not feel



that, this is not an attempt to exercise tyranny over a minority community; it is much more tyrannous to majority community”.

16. Alladi Krishnaswami Iyer said- *“A Common Civil Code ran into every department of civil relation to law of succession, to law of marriage and similar matters; there could no objection to general statement that ‘State shall endeavour to secure a Uniform Civil Code”.*

17. Dr. BR Ambedkar said: *“We have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal court...We have the law of transfer of property which deals with property relation and which is operative throughout the country..... I can cite innumerable enactments, which would prove that the country has practically a Civil Code, uniform in its contents and applicable to the whole of the country.”*

18. In *John Vallamattom* [(2003) 6 SCC 611], the then CJI Sh. V. N. Khare, with whom the other two Judges, Justice Sinha and Justice Lakshman agreed and observed: *“A common civil code will help the cause of national integration by removing all contradictions based on ideologies”.* The Court observed that *“the power of the Parliament to reform and rationalize the personal laws is unquestioned and the command of Article 44 of the Constitution is yet to be realized”.*

19. In Sarla Mudgal case [(1995) 3 SCC 635], while insisting the need for a Common Civil Code, the Court has held that the fundamental rights relating to religion of members of any community would not be affected thereby. It was held that personal law having been permitted to operate under authority of legislation the same can be superseded by uniform civil code. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized Society. Article 25 guarantees religious freedom and Article 44 seeks to divest religion from social relation and personal law. Marriage, succession and like matter of secular character cannot be brought under Articles 25, 26 and 27. Hon'ble Judges requested the Prime Minister to have a fresh look at Article 44 and endeavour to secure for the citizens a uniform civil code and wanted the Court to be informed about the steps taken. However, in Lily Thomas case, Court clarified the remarks made in Sarla Mudgal case was only as an opinion of the Judges and declared that no direction has been issued for legislation. At the same time, the Court did not express any dissenting view of the need for a common civil code. It only held that to have a legislation or not is a policy decision and Court cannot give any direction.



20. Diversity in personal matters with religious differentiation

leads to sentimental tension between different communities as has been learnt by bitter experience from the history leading to partition and subsequent events. It can never be forgotten that the policy of British imperialism was 'divide and rule' and for that purpose, they would at times can anything, which might make cleavage between Hindus and Muslims, wider and wider. British rulers, thus, lost no opportunity in inserting even newer wages like communal award, which planted separate representation in the legislature according to religion; and eventuality led to lamentable partition, which truncated the motherland and involved so much of bloodshed.

21. The ideological concept, which led to partition was the assertion of the Muslims that they constitute 'Nation' separate from the Hindus. Even Hindu leader did not admit two-nation theory. Partition is an accomplished fact and cannot be wiped off. The framers had in their mind the fresh experience of atrocities, which were committed at the time of partition of India. When the Muslims were given the options to go away to new dominion, it was quite natural for the leaders of divided India to aspire for the unity of the one nation, namely, Indian, so that history might not repeat itself.



22. By 42nd amendment; expression 'Unity of Nation' was replaced by the 'Unity and Integrity of the Nation' and Article 51A provides: *It shall be the duty of every citizen of India (a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem; (b) to cherish and follow the noble ideals which inspired our national struggle for freedom; (c) to uphold and protect the sovereignty, unity and integrity of India; (d) to defend the country and render national service when called upon to do so; (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; (f) to value and preserve the rich heritage of our composite culture; (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; (h) to develop the scientific temper, humanism and the spirit of inquiry and reform; (i) to safeguard public property and to abjure violence; (j) strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.*



23. The Constitution makers wanted to establish a 'Secular State' and with that purpose they codified Article 25 which guaranteed freedom of religion, freedom of conscience and freedom to profess, practice and propagate religion. But at the same time they sought to distinguish between essence of religion and other secular activities, which might be associated with religious practice but yet did not form a part of the core of the religion, and with this end in view they inserted Clause 2(a): *"Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law regulating or restricting any economic, financial, political or secular activities, which may be associated with religious practices."*
24. Anybody, who raises an objection to implementation of Article 44 becomes guilty of violation of the Preamble, Article 44 as well as Article 51A and any Government, which yields to such demands, even after 68 years of the adoption of the Constitution, would be not only liable to the charge of throwing the Constitution to the winds, but also of being a party to the violation of Articles 44 and Article 51A, and also of guarantee of equality and non-discrimination on the ground of religion, race, caste, sex & place of birth under Articles 14-15 of the Constitution.



25. Article 51A enjoins every citizen to renounce practices derogatory to dignity of woman. It enjoins every citizen to develop scientific temper, humanism and the spirit of inquiry and reform. It needs little arguments to point out that a man marrying up to 4 wives or divorcing his wife by utterance of word 'Talaq' thrice; or refusal to maintain a divorced wife after a limited period; are all practices derogatory to the dignity a woman. Therefore, any person, who resorts such practices or urges that such practices should be immuned or that Article 44 must be wiped off or restricted to persons other than Muslims, is violating the Article 51A. Whether that provision of the Article 51A are unenforceable in the Court of law or not, is a different question; but in other countries, such a person would have lost his citizenship if not something more.

26. It is radical argument that Arti 44 should not be implemented because it's opposed to Sharia. It is pertinent to quote Justice Chagla article 'Plea for Uniform Civil Code' - *"Article 44 is a mandatory provision binding the Government and it is incumbent upon it is to give effect to this provision. The Constitution was enacted for the whole country, it is binding for the whole country, and every section and community must accept its provisions and its Directives"*.



27. As far as the plea of Muslim identity is concerned, it is nothing but a relic of two-nation theory, which was asserted by Muslim leaders to carve out a separate State on the basis of religion. On other hand, Nationalist leaders all along urged that there was only one Nation, viz. India; and after the Muslims went away on the partition, there was nothing to stand in the way of proclaiming in the Preamble that the goal of India was One Nation united by the bond of fraternity.

28. There should not be fear of losing identity when Constitution guarantees religion, language, culture, in Articles 26, 29, 30. After the partition, the Muslims who preferred to remain in divided India knew very well what they could get from the Secular Indian Government. Hence, *to cry for more, is nothing but a resurrection of slogan 'Islam in Danger' which led to the partition of India.*

29. It is next contended that even though a common civil code is desirable, it should not be implemented until Muslim themselves come forward to adopt it. It is only a diluted form of plea for abolition of Article 44, because the Article 44 may virtually be effaced if the Muslims never come forward with their consent. None of Directives lay down that they can be implemented only if there is 100% consents of citizens throughout the territory of India. The



Constitution was adopted after due deliberation as to its provisions being beneficial to people of India, by the Constituent Assembly having enough Muslim representatives.

30. Illiterate/ignorant parents don't desire that their children should go to school instead of helping them in agriculture, or earning money in factories. Should the implementation of Article 45 wait until these people give their consent? The controversy arising from the Shah Bano case clearly exposed that it is only a section of the Muslim community, who would not accept it. Is there any precedent in any country, where the caprices of such a fraction of the population having allowed to stand in the way of unity, integrity and progress of the entire nation and the implementation of the fundamental law of the country, adopted by a solemn Constituent Assembly? Article 44 is addressed to State thus it is duty of State to implement it in consonance with Articles 14, 15 and 21.

31. The Supreme Court observed: *"A belief seems to have gained ground that it is for the Muslims community to take a lead in the matter of reforms of their personnel law.....But it is the State which is charged the duty of securing a uniform civil code for the citizens of the country. This duty has been imposed on the State with the object*



of achieving national integration by removing disparate loyalties to laws which have conflicting ideologies." The question arises - why then has the Union Government failed to discharge the Constitutional mandate for more than 6 decades? The Answer has been pithily answered by the Court - "*lack of political courage*" - which many other responsible persons have amplified as the fear of losing Muslim votes at the next election. State has failed to implement Article 44 and also violated the norm of much-vaunted secularism. It is curious that the Government has not yet protested against the decision of the Indian Muslim Personal Law Board to setup parallel Courts in many localities to decide the cases under Shariat, even though the setting up of such a parallel Courts will not only sound a death knell to Article 44 of the Constitution, but also to other provisions providing for one system of judiciary throughout the territory of India for all its people. It is definitely a retrograde step cutting at the roots of the Constitution of India.

32. It is also urged that the Shariat is immutable being founded on the Quran which is ordained by the God. Apart from the historical fact that this issue has been concluded by the partition of India and adoption of the Constitution, it has been belied by the

multifarious changes by way of reform in all the Muslim State e.g. Egypt, Jordan, Morocco, Pakistan, Syria, Tunisia, Turkey – where no question of Hindu dominance arose. It is pertinent to State the Report of the Commission on Marriage and Family Laws, which was appointed by the Government of Pakistan in 1955, and which should have demolished, once for all, the plea that the Shariat is immutable. In words of Allama Iqbal, *“The question which is likely to confront Muslim Countries in the near future, is whether the Law of Islam is capable of evolution – a question which will require great intellectual effort, and is sure to be answered in the affirmative.”*

33. One more logic is given that even if a common civil code is formulated, it should be optional for the Muslims to adopt its provisions. Petitioner states that it is only a diluted version of the forgoing pleas, viz. that the Shariat is immutable; that no Code can be imposed on Muslims without their consent. It is unmeaning to draw-up a uniform civil code as enjoined by Article 44 if it is not binding on every citizen. Polygamy is prohibited in Tunisia and Turkey. In countries like Indonesia Iraq Somalia Syria Pakistan Bangladesh, it is permissible only if authorized by the prescribed authority. Unilateral Talaq has been abolished in Egypt, Jordan,

Sudan, Indonesia, Tunisia, Syria and Iraq etc. In Pakistan and Bangladesh, any form of extra judicial Talaq shall not be valid unless confirmed by an arbitration council. The Dissolution of Muslim Marriage Act, 1939, provided Muslim women to obtain dissolution in certain cases, which they do not have under the Shariat. Under the Act, marriage with another woman would be treated as an act of 'cruelty' to bar a husband's suit for restitution of conjugal rights. Act has been adopted in Pakistan-Bangladesh with amendments. The statement of objects and reasons of the Act, which has been conceded by Muslims in India, Pakistan, Bangladesh is illuminating: *"There is no provision in the Hanafi Code of Muslim Law enabling a married Muslim woman to obtain a decree from the Court dissolving her marriage in case a husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her or absconds leaving her un-provided for and under other circumstances. The absence of such a provision has entailed unspeakable misery to innumerable Muslim women in British India."*

34. Government should come forward with firm pronouncement instead of being beguiled by statements issued by fundamentalists. Shariat is controlled by legislation in Pakistan and Bangladesh. In

India, a uniform law of maintenance was adopted by Section 488.

When Section 125 extended to divorced women, Muslims contended that it should not be applied to them as it was contrary to Shariat but Court turned down this contention and rejected the argument that husband's liability to provide for maintenance is limited to iddat. It was held that Section 125 CrPC overrides the personal law.

35. The Court interpreted that under Section 3 of the Act, 1986, a Muslim husband is liable to make provision for the future of a divorced wife even after iddat period. [*Sabra Shamim versus Maqsood Ansari*, (2004) 9 SCC 606] Justice Khalid of Kerala High Court reminded the plight of Muslim women and wanted the law to be amended to alleviate their sufferings and above decisions were approved by the Supreme Court in *Shamim Ara* [(2002) 7 SCC 518].

36. Goa has a common civil code since 1965, which is applicable on all its citizens. Now a pertinent question arises - if UCC can be implemented in Goa, then why not throughout the territory of India.

37. Mr. Nasiruddin's speech says thus: "*certain aspects of the Civil Procedure Code have interfered with our Personal Law and very rightly so and also that marriage and inheritance are similar practices associated with religion*". [Vol-VII, P542]



38. Even, minor girls are victim of Polygamy, Halala, Mutah and Misyar. Such incidents are routinely published in Electronic, Print and Social Media. That is why India urgently needs a Uniform Civil Code in spirit of Article 44 read with Articles 14, 15 and 21.
39. It is necessary to study the Civil Laws of developed countries particularly the UCC of America, France, China and Japan. It is also necessary to incorporate the best practices of all religions. It is pertinent to state that Goa has a Common Civil Code since long time. Therefore, the same code may be amended and adopted as a Common Civil Code throughout the territory of India.
40. Right of equality guaranteed under Article 14, right against non-discrimination guaranteed under Article 15 and right to life and liberty guaranteed under Article 21 can't be secured and Gender Justice Gender Equality cannot be achieved without implementing the UCC in spirit of Article 44 read with Articles 14, 15, 21.
41. If the Preamble is key to understand the Constitution, the Directives are its basic ideals. The framers poured their mind by setting forth humanitarian socialist secular principles which epitomized hopes and aspirations of people and declared the Directives as the fundamentals in the governance of the country.



PRAYER

Keeping in view the above stated facts and constitutional obligation of the Government to implement Article 44 of the Constitution, the Court may be pleased to issue a writ, order or direction to:

- a) direct the Union of India to constitute a Judicial Commission or a High-Level Expert Committee, to draft a Uniform Civil Code in spirit of Article 44 of the Constitution within 3 months, while considering the best practices of all religions and sects, Civil Laws of developed countries and international conventions; and publish it on website for at least 60 days for extensive public debate and feedback;
- b) alternatively, direct the Law Commission of India to draft a Uniform Civil Code in spirit of Article 44 of the Constitution within 3 months, while considering the best practices of all religions and sects, Civil Laws of developed countries and international conventions; and publish it on website for at least 60 days for wide public debate;
- c) pass such other order(s) or direction(s) as this Hon'ble Court may deem fit and proper to effectuate Article 44 of the Constitution of India and secure gender justice gender equality & dignity of women.


PETITIONER-IN-PERSON

(Ashwini Kumar Upadhyay)



IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO 6483 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

AFFIDAVIT

I Ashwini Kumar Upadhyay aged 44 years, S/o Sh. Suresh Chandra Upadhyay, Office at 15, M.C.Setalvad Chambers, Supreme Court of India, New Delhi-110001, R/o G-284, Govindpuram, Ghaziabad-201013, at present at New Delhi, do hereby solemnly affirm and declare as under:

1. I am sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.
2. I have filed the present writ petition as PIL. There is no personal gain, private motive or oblique reasons in filing this petition. It is totally bona-fide and purely in larger public interest and interest of justice.
3. I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the PIL is in conformity thereof.
4. I have no personal interest in the litigation and neither myself nor any body in whom I am interested, would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. The petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of Public Interest.
5. I have done whatsoever enquiry/investigation, which was in my power to do, to collect all data/material which was available and relevant for this Court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this Court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.
6. I have read and understood the contents of accompanying synopsis and list of dates (pages 4-8) and writ petition (pages (9-27) and total pages (1-36) which are true and correct to my personal knowledge and belief.
7. Annexures filed along with this are true copies of respective originals.
8. Averments in the affidavit are true/correct to my personal knowledge and belief. No part of Affidavit is false nor has anything been concealed.

 **DEPONENT**
(Ashwini Kumar Upadhyay)

VERIFICATION

I, the Deponent do hereby verify that contents of above affidavit are true and correct to my personal knowledge and belief. No part of it is false nor has anything material been concealed there from.

I solemnly affirm today i.e., the 30th day of May 2019 at New Delhi.

 **DEPONENT**
(Ashwini Kumar Upadhyay)

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6483/2019

ASHWINI KUMAR UPADHYAY Petitioner

Through: Petitioner in person

versus

UNION OF INDIA AND ANR Respondents

Through: Mr. Ajay Dipaul, CGSC with
Ms.Aakanksha Kaul, Adv. for R-1 & R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

%

31.05.2019

Issue notice. Mr. Ajay Digpaul, learned CGSC accepts notice on behalf of respondents No.1 and 2. Counter affidavit be filed before the next date of hearing.

List on 08.07.2019.

CHIEF JUSTICE

BRIJESH SETHI, J

MAY 31, 2019

ns



ITEM NO.14

102
WWW.LIVELAW.IN

Court 1 (Video Conferencing)

Annex P-3
SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 869/2020

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION)

WITH

W.P.(C) No. 1144/2020 (PIL-W)
(FOR ADMISSION)

Date : 16-12-2020 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Ms. Pinky Anand, Sr. Adv.
In WP No.869/20 Mr. Ashwini Kumar Upadhyay, Adv.
Mr. Ashwani Kumar Dubey, AOR
Ms. Saudamini Sharma, Adv.
Mr. Manish Kumar, Adv.
Mr. Sumit Teterwal, Adv.

In WP(C)1144/20 Ms. Meenakshi Arora, Sr. Adv.
Mr. Ashwini Kumar Upadhyay, Adv.
Mr. Ashwani Kumar Dubey, AOR
Mr. Manish Kumar, Adv.

For Respondent(s) Mr. Tushar Mehta, SG
UOI Mr. K.M. Nataraj, ASG
Mr. G.S. Makker, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Issue notice.

Signature Not Verified

Digital Signature
Madhu Bala
Date: 26/12/2020
17:33:11 IST
Reass...

(MADHU BALA)
A-1-CUM-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR



ITEM NO.7

109
WWW.LIVELAW.IN

Court No.1 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).1000/2020

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

([Along with Record of W.P(C)No 598 of 2019])

Date : 29-01-2021 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Ms. Anjana Prakash, Sr. Adv.
Ms. Geeta Luthra, Sr. Adv.
Mr. Ashwani Kumar Upadhyay, Adv.
Mr. Ashwani Kumar Dubey, AOR
Mr. Manish Kumar, Adv.

For Respondent(s) Mr. Tushar Mehta, Ld. SG
Mr. B V Balaram Das, AOR

UPON hearing the counsel the Court made the following
O R D E R

Issue notice.

Tag with W.P.(C)No. 869 of 2020.

(MADHU BALA)
AR-CUM-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR



ITEM NO.7

110
WWW.LIVEINLAW.IN

Court 1 (Video Conferencing)

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Transfer Petition(s)(Civil) No(s). 1249-1250/2020

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(FOR ADMISSION)

Date : 02-02-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Ms. Geeta Luthra, Sr. Adv.
Ms. Priya Hingorani, Sr. Adv.
Mr. Ashwini Kumar Upadhyay, Adv.
Mr. Varun Dhavan, Adv.
Mr. Manish Kumar, Adv.
Mr. Ashwani Kumar Dubey, AOR

For Respondent(s) Mr. Tushar Mehta, SG for MHA
Mr. B V Balaram Das, AOR

UPON hearing the counsel the Court made the following
O R D E R

Issue notice returnable within four weeks.

(MADHU BALA)
AR-CUM-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR



ITEM NO.16

WWW.LIVELEAW.IN

Court No.1 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).1108/2020

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION AND WITH IA NO.35532/2021 - APPLICATION FOR INTERVENTION)

Date : 10-03-2021 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s)

Ms. Kiran Suri, Sr. Adv.
Ms. Geeta Luthra, Sr. Adv.
Mr. Ashwini Kumar Upadhyay, Adv.
Mr. Ashwani Kumar Dubey, AOR
Mr. Manish Kumar, Adv.
Mr. Prashant Patel Umrao, Adv.
Mr. Sandeep Mishra, Adv.
Mr. Ashish Chaubey, Adv.

For Respondent(s)

Mr. Tushar Mehta, Ld. SG
Mr. Gurmeet Singh Makkar, AOR
Mr. B V Balaram Das, AOR

Mr. Vivek Narayan Sharma, AOR
Mr. Shubham Awasthi, Adv.
Mr. Akash Sharma, Adv.
Mr. Saptrishi Mishra, Adv.
Mr. Ajay Singh, Advocate
Ms. Mahima Kalucha, Adv.
Mr. Rajeev Kumar Jha, Adv.
Mr. Pranshu Kaushal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The instant interlocutory application for intervention is allowed.

Issue notice.

Tag with Writ Petition (C) No.869/2020.

Signature Not Verified

Digitally signed by
Sanjay Kumar
Date: 2021.03.10
16:26:43 IST
Reason:

(SANJAY KUMAR-II)
ASTT. REGISTRAR-cum-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR