IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION WRIT

PETITION (CIVIL) NO 202 OF 2018

(UNDERARTICLE32OFTHECONSTITUTIONOFINDIA)

IN THE MATTER OF:

ASHWINI KUMAR UPADHYAY ...PETITIONER

VERSES

UNION OF INDIA& ANOTHER ...RESPONDENTS

PAPER BOOK

[FOR INDEX KINDLY SEEINSIDE]

(ADVOCATE FOR PETITIONER: R.D.UPADHYAY)

SYNOPSIS

On 16.10.2015, while deciding the Civil Appeal - 7217/2013 [Prakash & others v. Phulavati & others], this Hon'ble Court ordered registration of a PIL [Suo Motu Writ (Civil) 2 of 2015] to consider gender discrimination suffered by Muslim women owing to *"arbitrary divorce and second marriage of their husbands during the currency of their first marriage".* This comes 30 years after this Hon'ble Court urged the Centre government to frame a uniform civil code to *"help in the cause of national integration"* in the Shah Bano case.

Issuing notices to Attorney General of India and National Legal Services Authority of India, the Division Bench of Justice Anil Dave and Justice Adarsh Kumar Goel sought their reply by 23.11.2015 on a question as to if *"gender discrimination suffered by Muslim women should not be considered a violation of the fundamental rights under Articles 14, 15 and 21 of the Constitution and international covenants"*.

The verdict dated 16.11.2015 refers to dozens of its own judgments since 1990 in order to record the Apex Court's growing realization that gender discrimination is a violation of the constitutional rights of women. Writing the judgment, Hon'ble Justice Goel said - *the decision to consider the rights of Muslim women came up during discussions with lawyers on gender discrimination at the hearing of a batch of civil appeals on the issue of a daughter's right to equal shares in ancestral property under the Hindu succession law*. The judgment said:

"An important issue of gender discrimination which, though not directly involved in this appeal, has been raised by some of the learned counsel for the parties which concerns rights to Muslim women. Discussions on gender discrimination led to this issue also. It was pointed out that in spite of guarantee of the Constitution; Muslim women are subjected to discrimination. There is no safeguard against arbitrary divorce and second marriage by her husband during the currency of the first marriage, resulting in denial of dignity and security to her. It is pointed out that the matter needs consideration by this court as the issue relates not merely to policy matter but to fundamental rights of women under Articles 14, 15 and 21 of the Constitution and international conventions and covenants."

The Hon'ble Justice Goel noted that recent judgments, like Javed vs. State of Haryana in 2003 in which a three-judge Bench of this Hon'ble Court intervened in personal law to uphold the dignity of women, shows the change in attitude. It is pertinent to state that in the Javed case, the Court held that *"polygamy is injurious to public morals and can be superseded by the State just as practice of „Sati".*"

Hon'ble Justice Goel referred to the John Vallamattom case judgment of 2003, which said —laws dealing with marriage and succession are not part of religion.|| Finally, Justice Goel refers to the 2015 judgment in the Charu Khurana case, in which the court struck against gender discrimination shown to women make-up artists in the film industry.

On 17.05.2016, petitioner submitted a representation to the Government to constitute Expert Committee or Judicial Commission to draft a Uniform Civil Code in spirit of Article 44 of the Constitution. On 01.07.2016, Central Government asked the Law Commission of India to examine issue of Uniform Civil Code in spirit of Article 44 of Constitution.

On O7.10.2016, the Law Commission of India sought public opinion on the exercise of revising and reforming family laws in the context of Article 44 of the Constitution.

On 15.11.2016, Petitioner filed an application for impleadment as Co-petitioner (IA-85002/2016), which was registered as IA-19 in SMW(C) 2/2015 and on 12.05.2016, Senior Advocate V. Shekhar argued for petitioner.

On 22.8.2017, this Hon'ble Court in SMW(C) 2/2015 has held that *Section 2 of the Muslim Personal Law (Shariat) Application Act,1937,* is arbitrary and violative of Articles 14, 15 and 21 of the Constitution, insofar as it seeks to recognize practice of *Talaq-Ul-Biddat*. Similarly, Nikah-Halala and Polygamy is also unconstitutional and violative of Articles 14, 15 and 21 of the Constitution. But, Executive has not declared that Triple Talaq, Polygamy and Nikah Halala are offence under Sections 498A, 375 and 494 of the IPC, respectively.

Polygamy and Nikah-Halala is injurious to public order, morality and health also. Thus, can be superseded by the State just it prohibited human sacrifice or practice of *sati*. But, Executive is inactive. Hence, this petition in public interest.

LIST OF DATES

16.10.2015: The Division Bench of this Hon'ble Court, while deciding the Civil Appeal No-7217/2013, Prakash & Others v. Phulwati & Others, taken suo-motu cognizance of genderdiscrimination.

17.05.2016: Petitioner submitted a Representation to the Government to constitute Expert Committee /Judicial Commission to draft Uniform Civil Code in spirit of Article 44 of the Constitution.

01.07.2016: The Central Government asked the Law Commission to examine issue of Uniform Civil Code in spirit of Article 44 of the Constitution.

07.10.2016: Law Commission sought public opinion on the exercise of revising and reforming family laws in context of Article 44 of the Constitution.

15.11.2016: Petitioner filed application for impleadment as Co-petitioner (IA-85002/2016), which was registered as IA-19 in SMW(C)2/2015.

12.05.2016: Sr. Advocate V. Shekhar argued for petitioner.

22.08.2017: This Hon'ble declared *Section 2 of the Muslim Personal Law Application Act,1937,* arbitrary insofar as it seeks to recognize *Talaq-Ul-Biddat*.

05.03.2018: *Polygamy and Nikah-Halala* is violative of the Articles 14, 15 and 21. But, Government has declared them an offence under the IPC. Hence, this petition in larger public interest.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION WRIT

PETITION (CIVIL) NO 202 OF 2018

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay
S/o Sh. Suresh Chandra Upadhyay Office: 15, M.C.
Setalvad Chambers Block
Supreme Court of India, New Delhi-110001
Residence: G-284, Govindpuram, Ghaziabad ...Petitioner

Verses

1. Union of India Through the
   Secretary,
   Ministry of Law and Justice, Shashtri
   Bhawan, New Delhi-110001
2. Law Commission of India
   Through the Chairman,
   4th Floor, B-Wing, Loknayak Bhawan,
   Khan Market, New Delhi-110003 .....Respondents

WRIT PETITION UNDER ARTICLE 32 TO DECLARE SECTION 2 OF THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937, UNCONSTITUTIONAL AND VIOLATIVE OF ARTICLES 14, 15 AND 21 OF THE CONSTITUTION INSOFAR AS IT SEEKS TO RECOGNIZE AND VALIDATE THE PRACTICE OF POLYGAMY AND NIKAH-HALALA;

To,
THE HON'BLE CHIEF JUSTICE
& LORDSHIP'S COMPANION JUSTICES OF
HON'BLE SUPREME COURT OF INDIA
HUMBLE PETITION OF ABOVE-NAMED PETITIONER THEMOST RESPECTFULLYSHOWETHASUNDER:

1. Petitioner is filing this writ petition under Article 32 to declare Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, unconstitutional and violative of Articles 14, 15 and 21 of the Constitution, insofar as it seeks to recognize and validate the practice of *Polygamy and Nikah-Halala*.
2. Petitioner has not filed any other petition either in this Hon'ble Court or in any other High Court seeking same and similar directions as prayed in this writ petition.

3. Petitioner's full name is Ashwini Kumar Upadhyay. Residential address is [redacted] Petitioner is an Advocate & social-political activist, contributing his best to development of socially-economically downtrodden people.

4. The facts constituting cause of action accrued on 22.08.2017 and every subsequent date, when this Hon'ble Court declared Triple-Talaq void and unconstitutional. But, the Executive has neither taken steps to prohibit Triple-Talaq, Nikah-Halala and Polygamy nor declared them an offence under the IPC, 1860.

5. The injury caused to the women as practice of Triple-Talaq, Polygamy and Nikah-Halala is violative of Articles 14, 15 and 21 of the Constitution and injurious to public order, morality and health. However, police does not lodge FIR under Sections 498A, 494 and 375 of the IPC respectively for these offences.

6. Petitioner has 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.

7. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with the issue involved in this writ petition. It is totally bona-fide.

8. There is no reason to move concerned government authority for relief sought in this petition because it has not taken steps on petitioner's representation dated 28.8.2017. There is no other remedy available except approaching this Hon'ble Court.

9. Petitioner is filing this writ petition under Article 32 of the Constitution seeking a writ, order or direction or a writ in the nature of mandamus to declare Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, unconstitutional and violative of Articles 14, 15 and 21 of the Constitution, insofar as it seeks to recognize *Polygamy and Nikah-Halala*.

10. It is well settled that Common Law has primacy over the Personal Laws. Hence, this Hon'ble Court may declare that –

-Triple Talaq is cruelty under Section 498A of the lPC, 1860, Nikah-Halala is Rape under Section 375 of the IPC,1860, and Polygamy is an offence under Section 494 of the IPC,1860".

11. The Laws dealing with marriage and succession are not a part of religion, law has to change with time, and international covenants and treaties could be referred to examine validity and reasonableness of a provision. Accordingly, this Hon'ble Court directed that the issue of gender discrimination against Muslim women under Muslim personal laws, specifically, the lack of safeguards against arbitrary divorce and second marriage by a Muslim husband during the currency of first marriage notwithstanding the guarantees of the Constitution, was registered as a public interest litigation and five Judges Bench pronounced the judgment on 22.8.2017.

12. Practice of Polygamy and Nikah-Halala is injurious to basic rights guaranteed under Articles 14, 15, 21 and public order, morality and health. Hence, can be superseded by the State just it prohibited human sacrifice or the practice of *Sati*.

13. This Hon'ble Court in Triple Talaq Case [SMW(C) 2/2015] has held that practices permitted or not prohibited by religion do not become a religious practice or a positive tenet of the religion and a sinful practice does not acquire the sanction of religion merely because it is practiced since long time.

14. It is submitted that ban on *Polygamy and Nikah-Halala* has been the need of the hour to secure basic rights and in the interest of public order, morality and health. This Hon'ble Court has already expressed the view that *Oral Talaq* is not an integral part of religion and Article 25 merely protects religious faith, but not the practices, which may run counter to public order, morality and health and fundamentalrights.

15. Presently, once a Muslim woman has been divorced, her husband is not permitted to take her back even if he had pronounced *Talaq* under influence of any intoxicant, unless his wife undergoes *Nikah-Halala,* which involves her marriage with another man, who subsequently divorces her so that her previous husband can re-marry her. This unfortunate practice was highlighted by the media in the case of *Nagma Bibi* of Orissa, whose husband divorced her in the spur of the moment in a drunken state and wanted her back the next morning, when he realized that he had committed a mistake. Unfortunately, she was prevented by her community's religious leaders, who forcibly sent her with three children to her father's house suggesting that she will have to undergo *Nikah-Halala* before she can re-unite with her husband.

16. Polygamy is practice that has been recognized as an evil plague similar to *sati* and has been banned under Section 494 of the IPC. Unfortunately, even in 21st century, it continues to vex Muslim women notwithstanding that such practice poses extremely serious health, social, economic, moral and emotional injury. It is submitted that religious leaders and priests like *imams, maulvis*, etc. who propagate, support and authorize practices like *Talaq-E-Bidat*, *Nikah-Halala* and *Polygamy* are grossly misusing their position, influence and power to subject Muslim women to such gross practices which treats them as chattel, thereby violating their basic rights enshrined in Articles 14, 15 and 21 of the Constitution.

17. It has been noted in Sarla Mudgal case that bigamous marriage has been made punishable amongst Christians by the Christian Marriage Act, 1872, (No. XV of 1872), amongst Parsis by the Parsi Marriage Act, 1936 (No. III of 1936), and amongst Hindus, Buddhists, Sikhs and Jains by the Hindu Marriage Act, 1955 (No. XXV of 1955). However, Dissolution of Muslim Marriages Act, 1939 does not secure for Muslim women the protection from bigamy, which has been statutorily secured for women belonging to other religion. The citizens, who follow religion other than Islam traditionally, practiced polygamy, but the same was prohibited not only because laws dealing with marriage are not a part of religion, but also because the law has to change with time and ensure a life of dignity unmarred by discrimination on the basis of gender.

18. The Constitution has primacy over the Common Law and Common Law has primacy over Person Laws. So, India doesn't need another personal law on Talaq, Polygamy and Halala.

19. It is submitted that the failure to secure the same equal rights and life of dignity for Muslim women violates their most basic human and fundamental right to life of dignity unmarred by gender discrimination, which in turn have a critical impact on their social and economic rights to say the least.

20. In 2015, A high-level committee titled *"Women and the law: An assessment of family laws with focus on laws relating to marriage, divorce, custody, inheritance and succession",* set up by the Union Government, in its report to the Ministry of Women and Child Development has recommended a ban on various practices that are purportedly Islamic but require reform, including the practice of *talaq-e-bidat* and polygamy.

21. According to Hindustan Times Article dated 23.8.2014 titled *"High-level panel seeks overhaul of family laws",* the report of the high-level committee not only recommends a complete ban on *triple-talaq and polygamy* as it renders Muslim women insecure and vulnerable, but also recognizes that equality should be the basis of all personal law, since the Constitution envisages equality, justice and dignity for women. The Article also reports that it is the view of the high-level committee that the Dissolution of Muslim Marriages Act, 1939 must be amended to declare *triple-talaq* and *polygamy* void. Copy of Article dated 23.8.2014 is Annexure P-1. (Pages 38-39)

22. It is submitted that Muslim Personal Law (Shariat) Application Act, 1937, by providing for the application of Muslim personal law in matters relating to marriage where the parties are Muslims, conveys a wrong impression that the law sanctions the sinful form of *talaq* and the practice of *Halala* and *Polygamy*, which is grossly injurious to the basic rights of married Muslim women and offends Articles 14, 15 and 21.

23. The assumptions and beliefs upon which *talaq-e-bidat* form of divorce is recognized are factually false, scientifically untenable and contrary to spirit/provision of the Constitution. This form of divorce has been declared to be a spiritual offence in the *Holy Quran* and giving recognition to that form interferes with the Muslim women's right to profess and practice her religion, inasmuch as it unleashes a spiritual offence on her to say the least and is, thus, violative of Articles 14, 15 and 21. It is, accordingly, submitted that the Muslim Personal Law (Shariat) Application Act, 1937, which is subject to the Constitution, is invalid, insofar as it seeks to recognize and validate practices of *Polygamy* and *Nikah-Halala*.

24. The Constitution neither grants any absolute protection to personal law of any community that is arbitrary or unjust, nor exempts personal laws from jurisdiction of the Legislature or Judiciary. To the contrary, Entry 5 of List III in the Seventh Schedule confers power on Legislature to amend and repeal existing laws or pass new laws in all such matters, which were on August 15, 1947, governed by the personal laws.

25. The freedom of conscience and free profession, practice and propagation of religion guaranteed by Article 25 of the Constitution is not absolute and, in terms of Article 25(1), *"subject to public order, morality and health and to the other provisions of this Part".* It is submitted that a harmonious reading of Part III of the Constitution clarifies that the freedom of conscience and free profession, practice and propagation of religion guaranteed by Article 25 is subject to the fundamental rights guaranteed by Articles 14, 15 and 21. In fact, Article 25 clearly recognizes this interpretation by making the right guaranteed by it subject not only to other provisions of Part III of the Constitution but also *public order, morality and health*.

26. It is submitted that the Legislature has failed to ensure the dignity and equality of women in general and Muslim women in particular especially when it concerns matters of marriage, divorce and succession. Despite the observations of this Hon'ble Court for the past few decades, Uniform Civil Code remains an elusive Constitutional goal that the Courts have fairly refrained from enforcing through directions and the Legislature has dispassionately ignored except by way of paying some lip service.

27. Petitioner respectfully submits that the laws dealing with marriage and succession are not part of religion and the law has to change with time, and it finds support from the views expressed by this Hon'ble Court in *John Vallamattom* (supra) and *Prakash v. Phulavati* (supra).

28. This Hon'ble Court has held that discrimination against women under Muslim personal laws, specifically the lack of safeguards against arbitrary divorce and second marriage by husband during currency of first marriage not withstanding the guarantees of the Constitution, needs to be examined.

29. In Pakistan (Section 7, Muslim Family Laws), safeguards have been introduced to protect dignity of women including requirement that notice of *talaq* must be in writing, prescribing punishment for contravention of such requirement of notice, prescribing a mandatory period of separation and reconciliation for divorce to be effective, prohibiting divorce during pregnancy of wife, introducing an arbitration council for facilitating reconciliation process between husband and wife who seek to divorce, and empowering women to remarry their husband after divorce without the need for an intervening marriage with a third person. Similarly, in terms of Section 6 of Muslim Family Laws, polygamy has been severely restricted by prescribing that a married man may not enter into another marriage without just reasons for the proposed marriage, seeking the consent of existing wife or wives, and obtaining the approval of an Arbitration Council established by the law, which Arbitration Council must necessarily consult the existing wife or wives to consider whether the proposed marriage is necessary and just. Violation of this law has also been declared a punishable offence. It is submitted that same law of divorce and polygamy is also followed by Bangladesh.

30. Article 3 of the Universal Declaration of Human Rights provides that everyone has the right to life, liberty and security of person while Article 7 provides that everyone is equal before the law and is entitled without any discrimination to equal protection of the law. Since the adoption of the Universal Declaration of Human Rights, universality and indivisibility of human rights have been emphasized and it has been specifically recognized that women's human rights are part of universal human rights. In the year 2000, on the grounds that it violates the dignity of women, the United Nations Human Rights Committee considered polygamy a destruction of the internationally binding International Covenant on Civil and Political Rights (to which India acceded on 10.04.1979) and recommended that it be made illegal in all States. It is accordingly submitted that it is well recognized in international law that polygamy critically undermines the dignity and worth of women. On the same lines, it is submitted that the practices of *Talaq-e-Bidat*, *Nikah-Halala* and *Polygamy* critically undermine the dignity of Muslim women.

31. The United Nations Economic and Social Council's Committee on Economic, Social and Cultural Rights explained in its General Comment No. 16 of 2005 that the parties to the International Covenant on Economic, Social and Cultural Rights are obliged to eliminate not only direct discrimination, but also indirect discrimination, by refraining from engaging in discriminatory practices, ensuring that third parties do not

discriminate in a forbidden manner directly or indirectly, and taking positive action to guarantee women's equality. It is submitted that failure to eliminate *de jure* (formal) and *de facto* (substantive) discrimination constitutes a violation of the rights of women envisaged in such international treaties and covenants. Therefore, it is submitted that not only the *Talaq-e-Bidat* but also practices of polygamy, and *nikah halala* should be declared illegal and unconstitutional. The actions of religious groups, bodies and leaders that permit and propagate such practices must also be declared unconstitutional.

32. The protection of Muslim women from *Talaq-E-Bidat*, *Nikah-Halala* and *Polygamy* has profound consequences on quality of justice rendered in the country as well as ensuring a life of dignity as guaranteed by Part III the Constitution.

33. Various eminent Muslim scholars, judgments of eminent judges and also Muslim citizens' groups have expressed disapproval of the notion that the whimsical and capricious divorce by a husband is *-good in law though bad in theology*‖ as well as observed that such view is not only an affront to the fundamental rights guaranteed by the Constitution, but also based on the concept that women are chattel belonging to men, which the Holy Quran does notbrook.

34. A life of dignity and equality is undisputedly the most sacrosanct fundamental right guaranteed by the Constitution and it prevails above all other rights available under the laws of India. It is therefore submitted that the solutions to societal

problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity, decency of life, and dictates of necessity in the pursuit of social justice should be decided on considerations other than religion or religious faith or beliefs, or sectarian, racial or communal constraints.

35. The Muslim Personal Law (Shariat) Application Act, 1937, by providing for the application of Muslim personal law in matters relating to marriage where the parties are Muslims, conveys a wrong impression that the law sanctions the sinful form of *Talaq*, *Nikah-Halala* and *Polygamy,* which is grossly injurious to the fundamental rights of married Muslim women and offends Articles 14, 15, and 21 of the Constitution.

36. The Dissolution of Muslim Marriages Act, 1939 fails to secure for Indian Muslim women the protection from bigamy, which protection has been statutorily secured for Indian women belonging to all other religions, and is to that extent violative of Articles 14, 15 and 21 of the Constitution.

37. The assumptions and beliefs upon which *polygamy* is recognized are false, scientifically untenable and contrary to the spirit and provisions of the Constitution and, in any event, this has been declared a spiritual offence in the Holy Quran.

38. Giving recognition to *Talaq-E-Bidat*, *Nikah-Halala and Polygamy* as a valid form of divorce interferes with the Muslim women‘s right to profess and practice her religion, inasmuch as it unleashes a spiritual offence on her to say the least and is, thus, violative of Articles 14, 15 and 21 of the Constitution.

39. The Constitution neither grants any absolute protection to any personal law that is unjust, nor exempts personal laws from the jurisdiction of the Legislature or the Judiciary.

40. Entry 5 of List III in the Seventh Schedule confers power on the Legislature to amend and repeal existing laws or pass new laws in all such matters (including marriage and divorce) which were on August 15, 1947, governed by personal laws, and the Legislature has practically abdicated its duties and permitted the basic fundamental rights of Muslim women to be widely violated which also affects the entire country as a matter of public order, morality and health.

41. The freedom of conscience and free profession, practice and propagation of religion guaranteed by Article 25 of the Constitution is in terms of Article 25, *"subject to public order, morality and health and to the other provisions of this Part"*.

42. It is submitted that the Constitution does not preclude the State from introducing social reforms and enacting laws on subjects traditionally associated with religion, especially when such laws aim to secure public order, morality, health and the rights guaranteed by Part III of the Constitution.

43. The Constitution only protects religious faith and belief while the religious practices under challenge run counter to public order, morality, and health and must therefore yield to the basic human and fundamental right of Muslim women to live with dignity, under equal protection of laws, without any discrimination on the basis of gender or religion.

44. The Legislature has failed to ensure the basic dignity and equality of women in general and Muslim in particular when it concerns matters of marriage and divorce and succession.

45. A complete ban on *Polygamy* and *Nikah-Halala* has long been need of the hour as it renders Muslim wives extremely insecure, vulnerable and infringes their fundamental rights. Equality should be the basis of all personal law since the Constitution envisages equality, justice and dignity forwomen.

46. Several Islamic nations have banned / restricted practice of *Polygamy* and *Nikah –Halala* while Indian Muslims are still being compelled to follow such practice which neither has any basis in the Holy Quran nor is associated with the practice of Islam. Thus, the fundamental rights of Indian Muslims are being violated continuously, without any basis in Islam or Holy Quran, despite reforms introduced by Islamic nations to secure a life of dignity unmarred by gender discrimination.

47. Failure to eliminate *de jure* (formal), *de facto* (substantive) discrimination against women including by non-State actors, either directly or indirectly, violates not only the basic human rights of women but also violates their civil, economic, social and cultural rights as envisaged in international treaties and covenants. It is submitted that not only the practices of *Polygamy* and *Nikah-Halala* be declared unconstitutional, but the actions of religious groups, bodies and leaders that permit/propagate such practices must also be declared illegal, and violative of Articles 14, 15 and 21 of the Constitution.

48. If the Preamble is key to understand the Constitution, the Directive Principles are its basic ideals. The Constitution makers poured their mind by setting forth humanitarian socialist principles, which epitomized hopes and aspirations of people and declared the Directives as the fundamental in the governance of the country. They 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 Part 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.

49. The object of the Article 44 is to introduce a uniform civil code for all the Indian citizens to promote fraternity, unity and national integration. It proceeds on the assumption that there is no necessary connection between religion and personal law 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 Muslim Countries like Turkey and Egypt. The object of Article 44 is not to encroach upon religious liberties. The Article 25 already reserves such right of the State**.** Dr. B.R. Ambedkar said in the Constituent Assembly: *"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 (adoption, guardianship)."*

50. It is to be noted that the several enactments, which have been made by 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 uniform civil code for all citizens of India**.**

51. In ShahBano case, this Hon'ble Court has observed thus: *"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".

52. The objection against uniform civil code that it would be a tyranny to minority community was rejected by Sh. 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 didnt 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 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 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 our national consolidation. It is very necessary that whole of our life so far 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 the majority community".*

53. Sh. Alladi Krishnaswami Iyer said that a 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*".

54. The Drafting Committee Chairman 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."*

55. In John Vallamattom versus Union of India, *[AIR 2003 SC 2902: (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, observed thus: *"A common civil code will help the cause of national integration by removing all contradictions based on ideologies".* The 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".*

56. In Sarla Mudgal *[AIR 1995 SC 1531: (1995) 3 SCC 635]*, while insisting the need for a Common Civil Code, this Hon'ble 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 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 social relation and personal law. Marriage, succession and like matter of secular character cannot be brought under Article 25, 26 and 27. Hon'ble Judges requested the Prime Minister of India to have a fresh look at Article 44 and endeavour to secure for the citizens a uniform civil code throughout the territory of India and wanted the Court to be informed about the steps taken. However, in Lily Thomas case, the Court clarified the remarks made in Sarla Mudgal case only as an opinion of the Judge and declared that no direction have been issued for any 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 to the Executive.

57. That diversity in personal matters along 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 till today. It can never be forgotten that the policy of British imperialism was ‗divide and rule' and for that purpose, they would at times fan anything, which might make the cleavage between Hindus and Muslims, wider and wider. The British rulers, thus, lost no opportunity in inserting even newer wages like the 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 and inhuman outrages. The ideological concept, which led to partition was the assertion of the Muslims that they constitute a ‗Nation' separate from the Hindus. Even though Hindu leader didn't admit two-nation theory, the partition is an accomplished fact and cannot be wiped off. The framers of the Constitution had in their mind the fresh experience of atrocities, which were committed at the time of partition. 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 repeated itself.

58. By the 42nd amendment; expression ‗Unity of Nation' was replaced by the ‗Unity and Integrity of the Nation' and Article 51A was introduced as the fundamental duty, which is thus:

(a) to abide by the Constitution and respect its ideals and institutions; (b) to cherish and follow the noble ideals which inspired our national struggle for freedom; (c) to uphold and protect the Unity and integrity of India; (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 parties derogatory of dignity of women.

59. The Constitution makers wanted to establish a ‗Secular State' and with that purpose they codified the Article 25(1) which guaranteed freedom of religion, freedom of conscience and freedom to profess, practice and propagate religion, to all persons. But at the same time they sought to distinguish between the essence of a 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) as thus: *"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 other secular activities, which may be associated with religiouspractices."*

60. Anybody who raises an objection to implementation of the Article 44 becomes guilty of violation of the Preamble, Article 44 as well as Article 51A of the Constitution 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 Article 44 and Article 51A specifically, and also of guarantee of non- discrimination on the ground of religion, race, caste, sex and place of birth under Article 15 of the Constitution.

61. Clause (e) of the Article 51A enjoins every citizen to renounce practices derogatory to the dignity of woman. It needs little arguments to point out that a man marrying up to four wives or divorcing his wife by the utterance of word ‗Talaq' thrice; or refusal to maintain a divorced wife after a limited period of time (three months); are all practices derogatory to the dignity a woman. Therefore, any member of the Muslim community, who resorts to such practices, who himself or urges that such practices should be immuned from legislation or that Article 44 itself must be wiped off or restricted to persons other than Muslims, is violating Article 51A. Whether that provision is unenforceable in the Courts of law are not is a different question; but in other countries such a person would have lost his citizenship if not something more.

62. It is the most radical argument that Article 44 should not be implemented because it is opposed to Sharia. It is pertinent to quote former CJI Justice Chagla's 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".*

63. As far as the plea of Muslim identity is concerned, it is nothing but a relic of the two-nation theory, which was asserted by the Muslim leaders to carve out a separate State on the basis of religion. On the other hand, the nationalist Indian 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. There should not be any fear of losing identity when the Constitution guarantees religion, language, culture, in Articles 26, 29, 30 of the Constitution. After the partition, the Muslims who preferred to remain in divided India knew very well what they could get from the secular government. *To cry for more, is nothing but a resurrection of slogan „Islam in Danger" which led to the partition of India*.

64. It is next contended that even though a common civil code is desirable, it could not be brought about until the Muslim themselves came forward to adopt it. It is only a diluted form of plea for abolition of Article 44 of the Constitution altogether, 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 the citizens. Constitution was adopted after due deliberation as to its provisions being beneficial to the people of India, by a Constituent Assembly having enough Muslim representatives.

65. 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 the unity 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 the State to implement it in letter and spirit in consonance with Article 14, 15 and 21.

66. This Hon'ble Court has obserevd: *"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 this Constitutional mandate for more than six 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.

67. The State has not only failed to implement the Article 44 but also violated the norm of the much-vaunted secularism. It is also 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 Court will not only sound a death knell to the Article 44 but also to the provisions in the Constitution providing for one system of judiciary for the entire nation and all its people. It is a retrograde step cutting at the roots of the Constitution.

68. It is also urged that the Shariat is immutable being founded on the Koran 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 of India, 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 never 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."*

69. 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 of India.

70. Polygamy is totally prohibited in Tunisia and Turkey. In countries like Indonesia, Iraq, Somalia, Syria, Pakistan and 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 but in India, it is continuing. 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. The Act has been adopted in Pakistan and Bangladesh with amendments. The statement of objects and reasons of the Act, which has been conceded by Muslims in India, Pakistan and Bangladesh is illuminating: *"There is no provision in the Hanafi Code of Muslim Law enabling a married Muslim women 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."

71. History of triple-talaq (*Talaq-Ul-Biddat)* is intriguing. *(a) It has no sanction in the Koran and the Shiahs don‟t recognize its validity. Under Shiah Law, divorce by the husband may be valid only if the husband pronounces an Arabic formula in the presence of two witnesses. (b) Even though contrary to the Shariat, Hanafis (that is Sunnis) follow this form of Talaq as an „irregular‟ form, founded on practice introduced by the Ommayede monarchs in the second century of the Mohammedan era. During the British regime, many High Courts condemned it as contrary to Shariat and upheld its validity on the ground of practice. This Hon‟ble Court has declared it void.*

72. Under the Constitution, controversy continued and various Muslim scholars expressed their opinion against triple-talaq. The Government, however, remained inactive in order to appease the sentiments of one section of the Muslim population, viz., the Sunnis. On 21.05.1993, the *Jamiat Ahle Hadith*, the highest authority of Shariat has come out with the conclusion that *Talaqul-Ul-Biddat* is contrary to Shariat. If Government is serious to bring about a common civil code, it should now come forward on support of the aforesaid authoritative pronouncement instead of being beguiled by

statements issued by few fundamentalists led by All India Muslim Personal Law Board, which is a NGO, registered under the Society registration Act 1860.

73. Shariat is controlled by legislation in Pakistan and Bangladesh. In India, a uniform law of maintenance was adopted by Section 488 of the CrPC. When Section 125 of the CrPC extended to divorced women, Muslims contended that it should not be applied to them as it was contrary to Shariat but this Hon'ble Court turned down this contention. This Hon'ble Court also rejected the argument that according to Muslim Personal Law, husband's liability to provide for the maintenance of his divorced wife is limited to period of iddat. It was held that Section 125 of CrPC overrides the personal law.

74. To overcome this decision, Parliament enacted Muslim (Protection of Rights of Divorce) Act 1986. In spite of legislation, this Hon'ble Court has held that 1986 Act actually codifies what has been stated in Shah Bano's Case. It was held that as regards to divorced Muslim women's right, the starting point should be Shah Bano's Case, and not the original texts or any other material – all the more so when varying versions as to the authenticity of the source or shown to exist. It was held that the law declared in Shah Bano's Case, was after considering *„Holy Quran"* and other Commentaries and texts. It was observed that the rationale behind Section 125 of CrPC is to avoid vagrancy or destitution on the part of a Muslim women. Articles 14, 15, 21 were also taken into consideration.

75. This Hon'ble Court interpreted that under Section 3 of the Muslim Women (Protection of Rights & Divorce) Act, 1986, a Muslim husband is liable to make provision for the future of a divorced wife even afte iddat period. *[Sabra Shamim versus Maqsood Ansari, (2004) 9 SCC 606]* Justice Khalid of Kerala High Court (as his Lordship then was) reminded the plight of Muslim women and wanted the law to be amended to alleviate their sufferings and above decisions were approved by this Hon'ble Court in Shamim Ara v State of UP *[(2002) 7 SCC 518]*.

76. In regard to tribal women, the Court recognized the laws as patriarchal and declined to give general direction regarding customs and other inheritance laws which discriminated women. The Court protected rights of women by suspending the exclusive rights of male succession until the women chose other means of livelihood. This enactment cannot, therefore, be cited in support of the contention that Muslim Personal Law is immutable and cannot be subjected to legislation.

77. It is pertinent no quote Mr. Nasiruddin's speech in the Constituent Assembly: *-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". [Constituent Assembly Vol-VII, P542]*

78. Petitioner filed impleadment application [IA-19/2016] in Triple Talaq Matter [SMW(C) 2/2015] and also submitted a Representation to the Government. Copy of the Representation dated 17.5.2017 is annexed as Annexure P-2. (Page 40-58)

79. On 1.7.2016, the Central Government asked the Law Commission of India to examine issue of Common Civil Code.

80. On 7.10.2016, Law Commission sought public opinion on the exercise of revising and reforming family laws in the context of Article 44 of the Constitution. The Commission appealed to members of religious, minority and social groups, NGOs, political parties and government agencies, to present their views through a questionnaire on a range of issues, including the practice of *triple talaq* and right to property for woman. The relevant part of the Commission appeal is thus: *"……..The objective behind this endeavour is to address discrimination against vulnerable groups and harmonize the various cultural practices. The Commission invites suggestions on all possible models and templates of a common civil code…….The Commission hopes to begin a healthy conversation about the viability of a UCC and will focus on family laws of all religions and the diversity of customary practices, to address social injustice rather than plurality of law…The Commission will consider the opinions of all stakeholders and general public for ensuring that the norms of no one class, group of community dominate the tone or tenor of the family law reforms The responses can be sent within 45 days to the Law Commission.."*

81. Copy of the Law Commission's Appeal and Questionnaire dated 7.10.2016 is annexed as Annexure P-3. (Page)

82. Copy of the Judgment on *Triple Talaq* in SMW(C) 2/2015 dated 22.8.2017 is annexed as Annexure P-4. (Page)

83. In its questionnaire, the Law Commission has sought public opinion on issues like - whether the UCC should include all of some of the subjects, including marriage, divorce, adoption, guardianship and child custody, maintenance, successions and inheritance; whether the existing personal laws and customary practices need codification; whether codification can ensure gender equality; and whether the UCC should be optional.

84. Questionnaire includes the views on issues pertaining to the denial of maintenance or insufficient maintenance, compulsory registration of marriages, protection of couples who enter into inter-religion and inter-caste marriages, and the legal validity of the Uniform Civil Code *vis-a-vis* the individual right to freedom of religion.

85. Responses on whether polygamy, polyandry and other customary practices like *„maitri-karaar*" (friendship deed) should be banned or regulated, and whether the practice of triple talaq should be abolished in toto, retained, or retained with suitable amendments, have also been invited.

86. Besides the above question, the Law Commission has asked if steps need to be taken to ensure that Hindu women are better able to exercise their right to property, which is often bequeathed to sons under customary practices; whether the two-year waiting period for finalizing divorce violates Christian women's right to equality; and whether all religious denominations should have common grounds for divorce.

GROUNDS

A. Because Section 2 of the Muslim Personal Law Application Act, 1937, is unconstitutional and violative of Articles 14, 15 and 21 of the Constitution and also injurious to public order, morality and health, insofar as it seeks to recognize and validate the practice of Polygamy and Nikah-Halala.

B. Because on 22.8.2017, this Hon'ble Court in SMW(C) 2/2015 has held that *Section 2 of the Muslim Personal Law (Shariat) Application Act,1937,* is arbitrary and violative of Articles 14, 15 and 21 of the Constitution, insofar as it seeks to recognize practice of Triple Talaq or *Talaq-Ul-Biddat*.

C. Because the Executive has not declared that provisions of the Indian Penal Code,1860, are applicable on all Indian Citizens and practice of Triple Talaq is a cruelty under Section 498A of the IPC, Nikah-Halala is Rape under Section 375 of the IPC and Polygamy is an offence under Section 494 of the IPC.

D. Because the Laws dealing with marriage and succession are not a part of religion, and, law has to change with time and international covenants / treaties. Hence, this Hon'ble Court may examine validity and reasonableness of personal laws.

E. Because while deciding the Civil Appeal - 7217/2013 [Prakash & others v. Phulavati & others], this Hon'ble Court ordered registration of a PIL [Suo Motu Writ (Civil) 2 of 2015] to consider gender discrimination suffered by Muslim women owing to *"arbitrary divorce and second marriage of their husbands during the currency of their first marriage".*

F. Because the Constitution has primacy over Common Law and Common Law has primacy over the Personal Law. Thus, India doesn't need another personal law on Talaq-Halala-Polygamy.

G. Because on 07.10.2016, the Law Commission of India sought public opinion within 45 days on the exercise of revising and reforming family laws in the context of Article 44 of the Constitution of India. However, neither it has submitted its report to the Government not published it on its official website till date even after 16 months have been past.

H. Because Nikah-Halala and Polygamy is unconstitutional and violative of Articles 14, 15 and 21 of the Constitution and this Hon'ble Court said that both issues would be taken up after hearing the Triple Talaq issue. However, surprisingly, petition was disposed of without hearing Polygamy and Nikah-Halala.

I. Because Polygamy and Nikah-Halala is injurious to right to life and liberty guaranteed under Article 21 of the Constitution and public order, morality and health and can be superseded by State just it prohibited human sacrifice and practice of *sati*.

J. Because Government has not taken apt steps against the decision of Muslim Personal Law Board to setup parallel Courts in many districts to decide cases under Shariat, even though the setting up of such a parallel Court will not only sound a death knell to the Article 44 but also to the provisions in the Constitution providing for one system of judiciary for the entire nation and all its people. It is a retrograde step cutting at the roots of the Constitution.

PRAYER

Keeping in view the above stated facts and circumstances and appalling effects of Polygamy and Nikah-Halala on basic rights guaranteed under Articles 14, 15 and 21 of the Constitution, it is prayed that this Hon'ble Court may be pleased to issue a writ, order or direction or a writ in the nature of mandamus to:

a) declare Section 2 of Muslim Personal Law (Shariat) Application Act, 1937, unconstitutional and violative of Articles 14, 15 and

21 of the Constitution, insofar as it seeks to recognize and validate practice of Polygamy andNikah-Halala;

b) direct the Central Government to take appropriate action against the person, institution and organizations, running Sharia Courts to decide the cases related to Marriage, Divorce, Inheritance and Succession or other similar matters;

c) declare that provisions of the IPC are applicable on all Indian Citizens and Triple-Talaq is a cruelty under Section 498A of the IPC, Nikah-Halala is Rape under Section 375 of the IPC, and Polygamy is an offence under Section 494 of the IPC;

d) direct the Law Commission of India to consider the Civil Laws of developed countries, particularly the Civil Law of France, Japan and China and publish its Report in spirit of Article 44 of the Constitution within three months; (Annexure P-3)

e) take such other steps as this Hon'ble Court may deem fit and proper in this matter and allow the cost to petitioner.

DRAWN ON:02.3.2018 **(R.D.UPADHYAY)**

FILED ON:05.3.2018 **ADVOCATE FOR PETITIONER**

APPENDIX

THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT,1937

Section 2 in the Muslim Personal Law (Shariat) Application Act,1937

2. Application of Personal law to Muslims.—Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law.

THE CONSTITUTION OF INDIA

Article 14 in the Constitution of India, 1949

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

Article 15 in the Constitution of India, 1949

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 in the Constitution of India, 1949

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 in the Constitution of India, 1949

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

****

Hindustan Times

HIGH-LEVEL PANEL SEEKS OVERHAUL OF FAMILY LAWS

August 23, 2014, Moushumi Das Gupta

A high-level committee set up by the previous UPA government has sought an overhaul of family laws by recommending a ban on the practice of ―oral, unilateral and triple talaq (divorce)‖ and polygamy, and ―mandatory payment of maintenance to wife and children‖ in the event of separation or divorce.

The report — titled ‗Women and the law: An assessment of family laws with focus on laws relating to marriage, divorce, custody, inheritance and succession' — was submitted to women and child development minister Maneka Gandhi recently. The view taken by it is close to the current BJP regime's position on a uniform civil code.

Ministry officials refused to comment, saying they were still going through the report.

The committee, headed by former Panjab University professor Dr Pam Rajput, examined the rights of women under the broad framework of Hindu, Muslim, Christian and Parsi law. Supporting uniformity in the minimum age for marriage for boys and girls (18 years), it recommended the passing of a ―central enactment‖ for registration of marriages that is ―applicable to all religious groups‖.

Another recommendation of uniformity dealt with a clause in the Hindu Marriage Act (HMA), 1955 on irretrievable breakdown of marriage. This should not be made grounds for divorce until financial safeguards are in place, it said.

A bill (now lapsed) introduced in Parliament last year sought to cover this clause only in the HMA, 1955 and Special Marriage Act, 1954. But the report said, ―If and when this amendment is introduced, irretrievable breakdown of marriage as grounds for divorce should also be introduced under the Divorce Act, 1869, Parsi Marriage and Divorce Act, 1936 and Dissolution of Muslim Marriage Act, 1939 as well. It should be a general matrimonial relief available to all.‖

On Christian laws on divorce, it recommended amending the prescribed two-year period in mutual consent cases under the Divorce Act to one year, in order to ensure consistency in all related laws.

However, lawyer Kirti Singh, part of a core panel on legal issues set up by the committee, told HT, ―We are not recommending uniform civil code or abolition of personal laws. But equality should be the basis of all

personal law... We are also recommending that some laws like Right to Marital Property be framed for allwomen.||

—Women are discriminated against in family laws. The report highlights this and what needs to be done to make them equal. After all, article 14 of our Constitution envisages equality, justice and dignity for women,|| said Rajput.

On Muslim law, the committee called for a —complete ban on oral, unilateral and triple divorce as it renders wives extremely insecure regarding their marital status…. The Dissolution of Muslim Marriages Act, 1939 should be amended and specific provisions introduced, making triple talaq and polygamy void. A provision should be added providing interim maintenance.||

It also called for a minimum —meher|| (mandatory payment to a bride before marriage by the groom‘s family) that should not be less than the groom‘s annual income.

Though the Supreme Court has held triple talaq to be illegal, it is still common practice.

On inheritance and succession laws in the community, the report said, —A woman, Shia or Sunni, gets half the share of a man... There is a need to address such discriminatory practice.||

It went on to recommend that section 125 of the CrPC be amended to include maintenance for women in live-in relationships and for unmarried dependent daughters.

Suggesting changes to the Special Marriage Act, 1954, the committee said, —Notices (of intended marriages) should not be displayed on notice boards outside the registrar‘s office as it places young people, desirous of contracting a marriage of choice, at great risk.||

Objecting to the 30-day notice period for couples wishing to get married under this law, it recommended bringing it down to seven days.

—This provision serves no purpose except to delay the process and a couple wanting to marry in a hurry because of parental or other disapproval cannot afford to wait a full month.||

The act is a secular alternative to personal law for many couples who face difficulties in getting married, mostly due to matters of religion and caste.

****

To, **17.05.2016**

The Hon'ble Prime Minister,

Government of India, New Delhi,

Through: The Principle Secretary - Prime Minister Office

Subject: Uniform Civil Code in spirit of the Article 44

Respected Sir,

1. If the Preamble is key to understand the Constitution, the Directive Principles are its basic ideals. The Constitution makers poured their mind by setting forth humanitarian socialist principles, which epitomized the hopes and aspirations of people and declared the Directives as the fundamental in the governance of the country. They 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. 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 Part 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.

2. The object of the Article 44 is to introduce a uniform civil code for all the Indian citizens to promote fraternity, unity and national integration. It proceeds on the assumption that there is no necessary connection between religion and personal law 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 Muslim Countries like Turkey and Egypt. The object of Article 44 is not to encroach upon religious liberties. The Article 25 already reserves such right of the State**.** Dr. BR Ambedkar said in the Constituent Assembly: -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 (adoption, guardianship).‖ It is to be noted that the several enactments, which have been made by 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 the framing of a uniform civil code for all the citizens of India.

3. In Shah Bano case, the Apex Court held: —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 Civil Code. Justice to all is for more satisfactory way of dispensing justice than justice from case to case||.

4. One of the main objection against uniform civil code that it would be a tyranny to minority community was rejected by Sh. K.M. Munshi in the Constituent Assembly asthus:

—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 didnt 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 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 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 our national consolidation. It is very necessary that whole of our life so far 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 the majority community‖.

5. Sh. Alladi Krishnaswami Iyer said that a 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.

6. The Drafting Committee Chairman Dr. 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.‖

7. In John Vallamattom versus Union of India, AIR 2003 SC 2902: (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, observed as thus: —A common civil code will help the cause of national integration by removing all contradictions based on ideologies‖. The 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‖.

8. In Sarla Mudgal Vs. Union of India, AIR 1995 SC 1531: (1995) 3 SCC 635, while insisting the need for a Common Civil Code, the Apex Court 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 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 social relation and personal law. Marriage, succession and like matter of secular character cannot be brought under Article 25, 26 and 27. Hon'ble Judges requested the Prime Minister of India to have a fresh look at Article 44 and endeavour to secure for the citizens a uniform civil code throughout the territory of India and wanted the Court to be informed about the steps taken. However, in Lily Thomas Vs. Union of India, the Court clarified the remarks made in Sarla Mudgal case only as an opinion of the Judge and declared that no direction have been issued for any 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 to theExecutive.

9. That diversity in personal matters along with religious differentiation leads to sentimental tension between different communities as has been learnt by bitter experience from the history leading to the partition and by subsequent events till today. It can never be forgotten that the policy of British imperialism was ‗divide and rule' and for that purpose, they would at times fan anything, which might make the cleavage between Hindus and Muslims, wider and wider. The British rulers, thus, lost no opportunity in inserting even newer wages like the 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 and inhuman outrages. The ideological concept, which led to partition was the assertion of the Muslims that they constitute a

‗Nation' separate from the Hindus. Even though Hindu

leader didn't admit two-nation theory, the partition is an accomplished fact and cannot be wiped off. The framers of the Constitution had in their mind the fresh experience of atrocities, which were committed at the time of partition. When the Muslims were given the options to go away to the 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 repeated itself.

10. By the 42nd amendment; expression ‗Unity of Nation' was replaced by the ‗Unity and Integrity of the Nation' and Article 51A was introduced as the fundamental duty as thus: (a) to abide by the Constitution and respect its ideals and institutions; (b) to cherish and follow the noble ideals which inspired our national struggle for freedom; (c) to uphold and protect the Unity and integrity of India; (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 parties derogatory of dignity ofwomen.

11. The Constitution makers wanted to establish a ‗Secular State' and with that purpose they codified the Article 25(1) which guaranteed freedom of religion, freedom of conscience and freedom to profess, practice and propagate religion, to all persons. But at the same time they sought to distinguish between the essence of a 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) as thus: —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 other secular activities, which may be associated with religious practices.||

12. Anybody who raises an objection to implementation of the Article 44 becomes guilty of violation of the Preamble, Article 44 as well as Article 51A of the Constitution and any Government, which yields to such demands, even after 66 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 Article 44 and Article 51A specifically, and also of guarantee of non-discrimination on the ground of religion of Article 15 of the Constitution.

13. Clause (e) of the Article 51A enjoins every citizen to renounce practices derogatory to the dignity of woman. It needs little arguments to point out that a man marrying up to four wives or divorcing his wife by the utterance of word ‗Talaq' thrice; or refusal to maintain a divorced wife after a limited period of time (three months); are all practices derogatory to the dignity a woman. Therefore, any member of the Muslim community, who resorts to such practices, who himself or urges that such practices should be immuned from legislation or that Article 44 itself must be wiped off or restricted to persons other than Muslims, is violating Article 51A. Whether that provision is unenforceable in the Courts of law are not is a different

question; but in other countries such a person would have lost his citizenship if not something more.

14. It is the most radical argument that Article 44 should not be implemented because it is opposed to Sharia. It is pertinent to quote former CJI Justice Chagla's 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||.

15. As far as the plea of Muslim identity is concerned, it is nothing but a relic of the two-nation theory, which was asserted by the Muslim leaders to carve out a separate State on the basis of religion. On the other hand, the nationalist Indian 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. There should not be any fear of losing identity when the 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 government. To cry for

more, is nothing but a resurrection of slogan -Islam in Danger|| which led to the partition of India.

16. It is next contended that even though a common civil code is desirable, it could not be brought about until the Muslim themselves came forward to adopt it. It is only a diluted form of plea for abolition of Article 44 altogether, because the Article 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 100% consents. Constitution was adopted after due deliberation as to its provisions being beneficial to the people of India, by a Constituent Assembly having Muslim representatives.

17. Illiterate and ignorant parents do not 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 till 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 the unity and progress of the entire nation and the implementation of the fundamental law of the country, adopted by a solemn Constituent Assembly? Article 44 of the Constitution is addressed to the State thus it is duty

of the State to implement it in letter and spirit in consonance with Article 14, 15 and 21 of the Constitution.

18. The Apex Court has 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 this Constitutional mandate for more than six 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. The State has not only failed to implement the Article 44 but it has violated the norm of the much-vaunted secularism.

19. It is also 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 Court will not only sound a death knell to the Article 44 but also to the provisions in the Constitution providing for one system of judiciary for

the entire nation and all its people. It is a retrograde step cutting at the roots of the Constitution of the India.

20. It is also urged that the Shariat is immutable being founded on the Koran 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 of India, 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 never 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.||

21. 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. Applicant 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 the 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 person within the territory of India.

22. Polygamy is totally prohibited in Tunisia and Turkey.

In countries like Indonesia, Iraq, Somalia, Syria, Pakistan and 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 but in India, it is continuing. 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. The Act has been adopted in Pakistan and Bangladesh with amendments. The statement of objects and reasons of the Act, which has been conceded by Muslims in India, Pakistan and Bangladesh is illuminating: ―There is no provision in the Hanafi Code of Muslim Law enabling a married Muslim women 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.||

23. History of triple-talaq (*Talaq-Ul-Biddat)* is intriguing.

(a) It has no sanction in the Koran and the Shiahs don't recognize its validity. Under Shiah Law, divorce by the husband may be valid only if the husband pronounces an Arabic formula in the presence of two witnesses. (b) Even though contrary to the Shariat, Hanafis (that is Sunnis) follow this form of Talaq as an ‗irregular' form, founded on practice introduced by the Ommayede monarchs in the second century of the Mohammedan era. During the British regime, many High Courts condemned it as contrary to Shariat and upheld its validity on the ground of practice. This Hon'ble Court has also declared it void.

24. Under the Constitution, controversy continued and various Muslim scholars expressed their opinion against triple-talaq. The Government, however, remained inactive in order to appease the sentiments of one section of the Muslim population, viz., the Sunnis. On 21.05.1993, the Jamiat Ahle Hadith, the highest authority of Shariat has come out with the conclusion that *Talaqul-Ul-Biddat* is contrary to Shariat. If Government is serious to bring about a common civil code, it should now come forward on support of the aforesaid authoritative pronouncement instead of being beguiled by statements issued by few

fundamentalists led by Personal Law Board, which is a NGO, registered under the Society registration Act 1860.

25. Shariat is controlled by legislation in Pakistan and Bangladesh. In India, a uniform law of maintenance was adopted by Section 488 of the CrPC. When Section 125 of the CrPC extended to divorced women, Muslims contended that it should not be applied to them as it was contrary to Shariat but this contention was turned down by the Apex Court. The argument that according to Muslim Personal Law, husband‘s liability to provide for the maintenance of his divorced wife is limited to the period of iddat was rejected by the Apex Court. It was held that Section 125 of CrPC overrides the personal law. To overcome this decision, Parliament enacted Muslim (Protection of Rights of Divorce) Act 1986. In spite of legislation, the Apex Court has held that the Act 1986 actually codifies what has been stated in Shah Bano‘s Case. It was held that as regards to divorced Muslim women‘s right, the starting point should be Shah Bano‘s Case, and not the original texts or any other material – all the more so when varying versions as to the authenticity of the source or shown to exist. It was held that the law declared in Shah Bano‘s Case, was after considering -Holy Quran‖ and other Commentaries and texts. It was observed that the rationale behind Section 125 of CrPC is to avoid vagrancy or destitution on the part

of a Muslim women. Article 21 of the Constitution was also taken into consideration.

26. The Supreme Court interpreted that under Section 3 of the Muslim Women (Protection of Rights and Divorce) Act 1986, a Muslim husband is liable to make provision for the future of a divorced wife even after the iddat period. [Sabra Shamim versus Maqsood Ansari (2004) 9 SCC 606] Justice Khalid of Kerala High Court (as his Lordship then was) reminded the plight of Muslim women and wanted the law to be amended to alleviate their sufferings. The above two decisions were approved by the Supreme Court in Shamim Ara versus State of UP [(2002) 7 SCC 518]. In regard to tribal women, the Court recognized the laws as patriarchal and declined to give a general direction regarding customs and other inheritance laws which discriminated women. The Court protected the rights of women by suspending the exclusive rights of male succession till the women chose other means of livelihood. This enactment cannot, therefore, be cited in support of the contention that Muslim Personal Law is immutable and cannot be subjected to legislation. In this context, we may recall the concession made by Mr. Nasiruddin in the Constituent Assembly, that certain aspects of the Civil Procedure Code, 1908, have interfered with our Personal Law and *very rightly so* and also that marriage and

inheritance are similar practices associated with religion. [Constituent Assembly Debate Vol-VII,P542]

Respected Sir,

Keeping in view the above stated facts and circumstances, the constitutional obligation of the Union Government to implement Article 44 in consonance with Article 14, 15 and 21 of the Constitution, for all the Citizens throughout the territory of India, I request you to:

a) constitute a High Level Expert Committee or a Judicial Commission or direct the Law Commission of India to draft a Uniform Civil Code for all the citizens of India, considering the best practices of all the religions and sects, Civil Laws of the developed countries, international conventions in consonance with Article 44 read with Article 14, 15 and 21 of the Constitution and publish it on the website for at least 30 days for comprehensive public debate and feedback before introducing it in Parliament;

b) take appropriate steps to make a Uniform Civil Code for all the citizens of India in spirit of Article 44 read with Article 14, 15 and 21 of the Constitution and International Conventions on top priority without further delay.

Thanks and Warm Regards.

Ashwini Kumar Upadhyay

[redacted]

[redacted]

[redacted]

****