

DIVORCE MECHANISM 2.0: A CRITICAL ANALYSIS OF POSSIBLE UPGRADATION TO A UNIFORM DIVORCE SYSTEM IN INDIA

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ABSTRACT

The framers of the Constitution of India dreamed about certain future prospects and idealism in the form of the Directive Principles of State Policy which could not be achieved due to various socio-economic constraints in the early years of independence. Uniform Civil Code was also one of such Directive Principles of State Policy which has been stimulated continuously since independence for different political and personal advantages. Variety of personal law processes have made the task of the judiciary tedious and replacing them with uniform civil law seems impossible in India as often people attach sentimental value to their personal laws. Judiciary had shown some hopes in the past on the path of uniform civil code in the form of provisions related to maintenance under the Criminal Procedure Code, 1973 and a Uniform Divorce Mechanism may be the next small step in achieving the aspirations of constitution makers. In all the existing personal laws, the mechanism of getting divorce is different and the same creates complex situations in the judicial system to solve it smoothly. A Uniform Divorce Mechanism may make the task easy with lesser monetary burden and would further benefit the parties enabling them to get on with their lives. Personal Laws may be good in one time frame but it may be exploitative in another. So, the incarnation of Divorce Mechanism 2.0 having a distinguished feature of uniformity would provide relief to every stakeholder and help in eradicating unnecessary social evils from personal laws. The article analyses all the available divorce laws in India critically and provides a possible upgradation towards the Uniform Divorce Mechanism. The article also analyses the existing divorce mechanism for uniformity in terms of procedure, the grounds of divorce and other implications.

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I. INTRODUCTION

Article 44 as a directive, even though it contains a mere persuasion rather than compulsion, necessarily reflects the hope of achieving a uniform civil law for all citizens devoid of religious differences. This paper critically analyses the divorce process through the lenses of all the dominant laws available in India and possibility of the upgradation of divorce mechanism. Every step for the uniform mechanism of divorce may be another step in achieving the dream of uniform civil code.

Divorce remedies the matrimonial strains by termination of marriage. It comes into play to alleviate the marital hardships where several factors render the marriage as an unendurable system and an impossible burden.² Divorce is a secure escape from an unbearable relationship without any fruits where no integrity to continue is left and it is better to get relieved from spoiled union instead of having devastating future destruction.

In India, the very concept and integrities of divorce are drenched in religion, age-old traditions, and customs. For instance, amongst Hindus, a union through marriage is considered a seven-births relationship and divorce is not deemed good. Different schools in Muslim law conduct different procedure for marriage and divorce.³ Most of these rituals continue from the age-old practices. Enactment of different laws has been done by the State to curb the harassment of women in bad unions and to empower them. On one hand these laws have helped a lot, but also have resulted in a further mess as the laws are being misused by a few and resulting in the degradation of the union. Some allege that this easy process of divorce attainment through the court is creating a cumulative effect to break the marriage easily. But above all, the divorce is no longer a taboo in India.

The paper recommends the ways through which divorce mechanisms can be unformalized and another step for Uniform civil code can be taken. The paper has been divided into five schemes. Beginning with introduction, the paper in the second part does a legislative analysis of all the major divorce processes available in India. It then moves on to discuss the need for upgradation of Indian Divorce Mechanism, highlighting the practicability of uniform divorce mechanism in countries like India in fourth part. The paper ends up with conclusions and recommendations in the last section.

² Dommaraju, P., *Divorce and Separation in India*, 42(2) POPULATION AND DEVELOPMENT REVIEW, 195–223 (2016).

³ ALI, KECIA, PROGRESIVE MUSLIMS, 163-189 (Oneworld 2005).

II. LEGISLATIVE AND RELIGIOUS FRAMEWORK FOR DIVORCE IN INDIA

2.1 Divorce under Hindu Law

For a Hindu person, marriage is a bond for seven births, a ceremony consecrated by gods he worships. A marriage, as per Vedas, intends for religious practice, i.e. performance of *dharma*, creation of progeny, i.e. *praja* and sexual pleasure, i.e. *rati* which makes marriage a sacrament as well as an obligation.⁴ Initially this obligation bound men and women equally but eventually the performance onus increased for women and the wife was supposed to be submissive to husband and rever him as God even if he behaved with cruelty, engaged in polygamy or other evil practices. Thus Old Hindu law did not recognise divorce as such. With time endeavours, though hesitant, were made to legally introduce the process of divorce for Hindus. Finally, *Hindu Marriage Act, 1955* was introduced which allowed men and women to legally put an end to their marriage.

2.1.1 Grounds of divorce under Hindu Marriage Act, 1955

The fault theory of divorce

The HMA, 1955 prominently provides for divorce on ‘fault’ grounds. Under section 13(1) both husband as well as the wife can seek divorce citing the following nine grounds:

- **Desertion:**

Under section 13(1)(ib), a decree annulling marriage can be obtained by a person who has been deserted by his/her married partner. Desertion implies permanent withdrawal or disengagement from matrimonial obligations. This desertion by the married partner must be devoid of a reasonable cause and exist for a continuing period of at least two years immediately preceding the presentation of divorce

⁴ S. Pothen, *Divorce In Hindu Society*, 20(3) JOURNAL OF COMPARATIVE FAMILY STUDIES, 377–392 (1989).

petition. Divorce on the ground of desertion u/s 13(1)(ib) would not be available if the desertion was caused with consent or wish of the party alleging desertion.

- Cruelty:

Cruelty is a conduct with respect to marital obligations which endangers the life or health, whether physical or mental, or gives rise to apprehension of such endangerment. Initially, cruelty was only a ground for seeking judicial separation but later was added as a ground for divorce by the Marriage Laws (Amendment) Act 1976. While granting the decree of divorce on the ground of cruelty, the court inspects whether the circumstances alleged as cruelly were unbearable for a reasonable human.

- Adultery:

Voluntary sexual intercourse outside marriage is construed as adultery for the purposes of grant of divorce under Hindu Marriage Act, 1955. Prior to the decision of the apex court in Joseph Shine vs. UOI, adultery by a male with a married female was punishable under section 497 of IPC.

- Insanity:

A person can seek divorce under section 13(1)(iii) of Hindu Marriage Act, 1955 the marriage partner has been suffering from unsoundness of mind either for continuous period or for intermittent ones. Such unsoundness or mental disorder⁵ should be incurable and of such a nature, degree that the person seeking divorce could not be reasonably expected to live with such a partner.

- Venereal disease:

Venereal disease includes all such diseases which can be contracted or transmitted by sexual contact such as gonorrhea, syphilis, HIV-AIDS, HPVs, chlamydia, etc. A spouse can seek divorce u/s 13(1)(v) on the ground that the married partner is suffering from a venereal disease.

- Conversion to another religion:

On account of religious conversion of the spouse, the aggrieved married partner can seek divorce under section 13(1)(ii) of HMA, 1955. For a divorce on ground

⁵ Section 13(1)(iii)(a) defines 'mental disorder' as - "... mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia."

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of conversion under the Act, the spouse should have ceased to be a hindu and converted to any other religion.⁶

- **Renunciation of world:**

Engaging in withdrawal from worldly activities and pursuits, i.e. renunciation of the world by the spouse whilst entering into religious order of any kind is a ground to obtain divorce under section 13(1)(vi).

- **Civil death:**

If the spouse is unheard of for at least a period of seven years, by persons who as a matter of course would have heard of him, if he had been alive, then the presumption of death arises. The married partner of such a person can seek divorce on ground of presumption of civil death under section 13(1)(vii). Although the period of 7 years is flexible and if the person seeking divorce owing to special instances is able to establish presumption even before the interval of 7 years, the court may grant divorce.

Section 13(2) provides for four additional ‘fault grounds’ available only to the wife:

- **Husband has more than one wife at time of commencement of HMA, 1955:**

If the husband had engaged in bigamy prior to the commencement of the HMA, 1955, the subsequent wife could seek divorce under section 13(2)(i) provided that the first wife is alive on the date of filing of divorce petition.

- **Husband is guilty of rape, sodomy, bestiality:**

A Hindu wife can seek divorce under section 13(2)(ii) if the husband has been, since the marriage between them has been solemnized, found guilty by the court of offences like rape, sodomy or bestiality.

- **No resumption of cohabitation post the grant of maintenance:**

If for one year or more of the decree of maintenance being passed against the husband and in favour of the wife, cohabitation has not resumed, the wife can seek divorce under section 13(2)(iii).

⁶ For the purposes of Hindu Marriage Act, 1955, the person who is a Buddhist, Sikh or Jain by religion is a Hindu. Hence, conversion to these religions would not be a ground for divorce under the Act.

- Repudiation of marriage after attainment of 15 years of age:
After the attainment of the age of fifteen, but before attaining the age of eighteen, a Hindu wife can repudiate the marriage and divorce her husband by virtue of section 13(2)(iv). This repudiation can be done whether the marriage has been consummated or not.

Irretrievable breakdown theory of divorce

Under section 13(1A) of HMA, 1955 any of the spouses can seek divorce citing following grounds:

- Non-resumption of cohabitation:
If after the grant of decree for judicial separation, the spouses have not resumed cohabitation for one year or more, then either spouse can seek a decree for divorce.
- No restitution of conjugal rights:
Where after the passing of decree for restitution of conjugal rights under section 9 of the HMA, 1955, no restitution of such rights took place for one year or more than either spouse can obtain divorce.

Mutual consent theory of divorce

Section 13B of the Hindu Marriage Act, 1955 provides for the process of dissolution of Hindu marriage by mutual consent where the husband and wife can agree for mutual divorce on concerted terms and conditions if they think that living together is not possible. They have to show at the first motion that both the parties are living separately for more than one year and then the second motion must be applied between 6 months to 18 months after the first motion.

2.2 Divorce Under Muslim Law

Concept of divorce in Muslim Law has its origin in the reforms of Prophet Mohammad and these reforms lead to entirely a new framework. Under Muslim Law, marriage is considered as civil contract which gives right to both the parties to seek divorce. Muslim Law confers a man unilateral right to divorce her wife, but this is under the cover of some restrictions. These rights of men have also been abrogated through reformative legislation the *Muslim Women (Protection of Rights on Marriage) Act, 2019*.

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If we observe the spirit of divorce under Islam, procedure has numerous checks at every stage. A Muslim husband cannot divorce her wife abruptly without observing necessary rules and regulations obliged under Muslim Law. One has to go through the proper process of maintenance and dower before separating from her wife. Islam encourages divorce only in exceptional cases not just for the object avoiding troubles for each other. At one place Al-Ghazali⁷ elaborated that divorce in Islam is permissible only on just and fair grounds and troubling each other on trifles cannot be a substantive ground of divorce.

Muslims have been classified in four main schools: Hanafi School, Maliki School, Shafai School and Ismaili School. Broadly divorce has been classified into four types which are as follows:

2.2.1 Divorce by the husband:

- **Talak (Repudiation)**

Talak is the repudiation of marriage when it proceeds from the side of the husband. It consists of three forms Talaq-e-ahsan, Talaq-e-hasan and Talaq-al-bida. Talaq-e-ahsan can be pronounced by husband through a single sentence in the period of *Tuhr* (Period between two menstruations) which becomes irrevocable after passing the time of three consecutive periods of *tuhr* or one *iddat* period. In Talaq-e-hasan, pronouncement of divorce must be during every three periods of *tuhr* without any intercourse between husband and wife. Talaq-al-bida is considered unjust form of talaq as pronouncement of divorce is done during single *tuhr* arbitrarily without giving reasonable time which has been removed through the Muslim Women (Protection of Rights on Marriage) Act, 2019 and triple talaq has become a cognizable and non bailable offence.

- **Ila (Vow of continence)**

Ila is an obsolete form of divorce in India where the husband swears to abstain from intercourse with his wife for four months or more. In Hanafi School marriage is dissolved after the expiry of four month immediately but in Ithna Asari and Shafi'i School legal process is necessary.

⁷ Ibrahim Abdul Hamid, *Dissolution of Marriage* 3 ISLAMIE QUARTERLY 166- 175, 215-223 (1956).

- **Zihar (Injurious assimilation)**

This form of divorce is not fully developed in India and is an archaic form of divorce where the husband considers the wife as his mother. Wife can approach court for dissolution of marriage or restitution of conjugal rights.

2.2.2 Divorce by the wife:

- **Talaq-e-Tafwid (Delegated divorce)**

Talaq-e-Tafwid is a form of divorce at the instance of a wife where all the power to dissolve the marriage has been delegated in the hands of the wife. This form of divorce is considered the strongest form in the hands of the wife without any intervention of the court which is a lengthy and expensive process in India.

- **Khula (Redemption)**

Khula is another form of divorce where the wife has the right to dissolve the marriage on reasonable grounds though the husband can ask to waive her right on the amount of *mehr*. Right to Khula to the wife is parallel to man's right of Talaq so when the wife wants to get separated from husband on any ground whether it is to marry with another person or she is no longer willing to live with her husband. Section 2(9) of the Dissolution of Muslim Marriages Act⁸ supports the law of Khula that women can dissolve the marriage on any other ground valid under Muslim Law.⁹ Khula is also a kind of arbitrary divorce like Talaq-ul-biddat if not consented to by the husband. Khula has been recognised by Pakistan and Bangladesh in its original form but not as such by India.

2.2.3 Divorce by common consent:

- **Khula (Redemption)**
- **Mubaraa (Mutual freeing)**

⁸ The Dissolution of Muslim Marriages Act, 1939, Act No. 8 of 1939, Acts of Parliament, 1939.

⁹ Ahmad, F., UNDERSTANDING THE ISLAMIC LAW OF DIVORCE, 45(3/4) *Journal of the Indian Law Institute*, 484–508 (2003).

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Mubaraa is a kind of divorce where both husband and wife reach the conclusion that it is not possible for them to live with each other and decide to separate mutually. Though Khula and Mubaraa are taken as same, but both are different forms of divorce, as Khula depends on the willingness of the wife while in Mubaraa mutual consent of both the parties is necessary.¹⁰

2.2.4 Divorce by judicial process:

- **Lian (Mutual imprecation)**

Right to lian is available to the wife if she finds her husband in adultery. The Quran and Hadis recommend for the dissolution of marriage if the wife finds husband in adultery and the same right available to the wife is called right to lian. A husband can also be charged for the adultery and get punished as islam looks zina with great disfavour and condemn it vehemently.

- **Faskh (Judicial rescission)**

Though the marriage may be dissolved through the above methods on the aforesaid grounds as per Muslim law however the parties may approach court for the dissolution. Islam does not encourage the interference of court in the pious union of husband and wife but where husband and wife are not able to resolve the dispute by all means then jurisdiction of court may be invoked, this is also called rescission of contract of marriage by judicial decree. Grounds are not specifically mentioned but it may be concluded that dissolution of marriage may be done on any grounds which are not as per the duties mentioned to husband and wife. Apart from those rules and regulations mentioned in Quran, Hadis, Ijma and Qiyas shall be followed.

2.2.5. Dissolution of Muslim Marriages Act, 1939

If real spirit of Muslim law is taken into consideration, then laws are encouraging for conjugal union however different interpretation of Muslim law creates problem to the women in the society. For the purpose of avoiding misinterpretation and to clear the grounds of dissolution of marriage the Dissolution of Muslim Marriages Act, 1939 was enacted which conferred a new hope in the hands of women who were suffering in bad union due to misinterpretation related to grounds of divorce. Section 2 of the Dissolution of Muslim Marriages Act, 1939 clear the grounds where wife can seek

¹⁰ TAHIR MEHMOOD, PERSONAL LAWS IN CRISIS 79 (Metropolitan 1986).

divorce through invoking the jurisdiction of the court and further section 2(9) leaves scope to the grounds which are not incorporated under the Act. Thus, the Act at the one hand clears the major grounds of divorce and further strengthens other available grounds of divorce under Muslim law which are not mentioned in the Act explicitly.

2.2.6 Maintenance under Muslim Law

A Muslim husband has the responsibility to maintain his wife irrespective of the fact that his wife is earning or not and wife cannot be barred from claiming maintenance. A Muslim wife has also right to claim maintenance under section 125 of the Code of Criminal Procedure, 1973 if husband neglects or refuses to maintain her. There is further ground of dissolution of marriage under section 2(ii) of Muslim Marriage Dissolution Act, 1939 if the husband is not able to maintain his wife for continuous period of two years.¹¹ The amount of maintenance depends upon the facts and circumstances under which the parties are living. If the Muslim wife invokes the jurisdiction of Indian Courts System, then without any denial justice shall be provided to her.

2.3 Divorce under Christian Law

A Christian person is regulated by the *Indian Divorce Act, 1869*. The applicability of the Indian Divorce Act, 1869 is there when one of the parties is Christian and decree of dissolution of marriage can be passed by the court. Section 10 of the Act advocates the grounds of divorce which are somehow similar to the grounds under Hindu Law and Muslim Law with some variations. Section 10-A proposes for the mutual divorce between the parties if they want to get separated mutually.¹² Thus there are variations but the main purposes and principles of getting separated are the same whether it is general grounds of divorce or provision of mutual separation.

2.4 The Special Marriage Act, 1954

Under the *Special Marriage Act, 1954*, marriage of two people from different religions can be performed and provisions for the dissolution of marriage are also provided in the same Act. Grounds of divorce under the Special Marriage Act, 1954 are similar to that of the Hindu

¹¹ Anderson, J. N. D, *Reforms in the Law of Divorce in the Muslim World*, 31 STUDIA ISLAMICA, 41–52 (1970).

¹² Jacob, A, *Call for Reforms in Christian Divorce Law*, Journal Of The Indian Law Institute, 32(1), 93–96 (1990).

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Marriage Act, 1955.¹³ Section 27 of the Act deals with the grounds of divorce which can be taken by any of the spouses and section 28 of the Act advocates for the divorce by mutual consent. Divorce for the marriages under the Foreign Marriage Act, 1969 are also performed under the Special Marriage Act, 1954 subject to the Foreign Marriage Act, 1969.

III. NEED FOR UPGRADATION OF INDIAN DIVORCE SYSTEM

Upon discussing all the differing divorce mechanisms in India, one can find certain factors which highlight the need for upgradation of the Indian divorce system and are as follows:

3.1 The Indian divorce system covers many laws

The Indian divorce system reflects such a system where the divorce mechanisms for all the major religions exist. In the Indian legal system three major religions are dominantly existing and all three have different divorce mechanisms. Although divorce is sought only in exceptional circumstances where either of the spouses are not willing to live in marriage due to any valid reason, the reason is one prescribed by the personal laws. Another alternative of dissolution of marriage is divorce by mutual consent if husband and wife decide to separate from each other mutually. An approach towards one uniform system can be developed to avoid examining people of different religions through different angles even though the matrimonial issue is more or less the same.

3.2 Personal Laws procedures are good for marriage, but bad for divorce

Personal laws play a significant role in marriage, divorce, maintenance, custody of children, guardianship etc., and since these laws are based on religion therefore not much interference by the government was made. Every religion is free to maintain their personal affairs without any intervention from the State. However, if the personal affairs of families are affecting one family member or the other and the aggrieved party approaches the State for the protection, then the State has to necessarily play an active role. Consequently, laws like the *Hindu Marriage Act, 1955*, *Dissolution of Muslim Marriages Act, 1939*, *Muslim Women (Protection of Rights on Marriage) Act, 2019*, the *Indian Divorce Act, 1869*, the *Special Marriage Act, 1954*, the *Protection of Women from Domestic Violence Act, 2005* and *The*

¹³ Jagadeesan, P. Secularising the Institution of Marriage with Particular reference to Tamil Nadu, 52 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS, 771–777 (1991).

Dowry Prohibition Act, 1961 etc., were enacted showing a pro-active role of the state in regulating personal affairs as well.

Marriage ceremonies can be justified as rituals enacted to make an eternal bond and those are pious in nature but unnecessary harassment because of a long and unrealistic process for separation reflects no sense. Marriage rituals can be performed without any restriction as the parties are performing them with joy and happiness, but the process of separation filled with agony and other disheartening emotions must be short and smooth without any delay, especially when the parties have mutually agreed to separate.¹⁴

3.3 Resources of government can be saved through uniform mechanism of divorce

Instead of taking the undue advantage of laws, one must use the same for the benefit of social beings. In the present judicial system, the government has to set up family courts for the disposal of divorce cases. For the settlement of divorce cases of people belonging to different religions married under different personal laws, the government has to appoint judges of different expertise as well. If the process would have been uniform for all the religions, then the resources of the government will be less wasted and the parties to the matrimonial separation shall also be harassed less.

For instance, on the advent of a uniform divorce mechanism, the government need not any longer appoint judges who are experts of Muslim Law, Christian Law, Hindu Law etc. Also, uniform training could be provided to judges. Uniform mechanism will render the process of divorce less confusing for pleaders, judicial authorities. Moreover, less time and money will be involved. The uniform mechanism will put all the process at one place without any complexities of different personal laws. Therefore, the primary focus of law could be on providing remedies instead of satisfying the dispensable religious requirements which have no meaning in the modern times, as rights and protection are more important than providing consolation of lies, which have no sense and logic.

¹⁴ Nigam, S. S, A plea for Uniform law of Divorce, 5(1) JOURNAL OF THE INDIAN LAW INSTITUTE, 47–80 (1963).

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3.4 Grounds of divorce must be same

Though the rituals of marriage may be different as per the historical importance and past religious ceremonies, there is no sense of dragging the weight of variation in grounds of divorce as pain and agony is same for each and every human being. The concept of adultery is adultery whether the spouse is Hindu or Muslim and it will affect the parties to a marriage on a similar note. In the same way, the other grounds of divorce like desertion, renunciation of the world, conversion to another religion, communicable disease, etc. are the same in every personal law with little changes.¹⁵ Even if the grounds are put together and fixed in one basket for everyone then things will take an easier course and further judicial process can also be followed on the same uniform line. Some of the possible common grounds of divorce can be cruelty, desertion, conversion, adultery, venereal diseases, renunciation of world, non-provision of maintenance for up to two years, imprisonment for seven years or more, conviction on the charges of rape, sodomy or bestiality (for women only).

3.5 Terms and conditions for maintenance must also be same

An effort has been made in the form of section 125 of the Criminal Procedure Code, 1973 for providing common speedy remedy where the wife, children, parents or minor unmarried daughter has been refused or neglected for maintenance. In one of the prominent cases of the Supreme Court of India *Daniel Latifi and Anr vs. Union of India*¹⁶, it was held that a Muslim wife has the right to seek maintenance under section 125 even if she is denied for maintenance in her own personal laws. Thus, to make all the provisions of maintenance uniform is not a very tedious task if it is done with proper care and caution.

3.6 Custody of Children

In view of bringing uniformity in divorce attainment, the provisions related to custody of children also need to be specified in clear terms and that too equally for all religions. Yet in most of the cases the custody of children is decided on the basis of discretion of the court, but it would be easy if the matter of custody of children is identified properly. The welfare of the children is taken to be of the utmost concern in the matters of custody which is the same for every personal law.

¹⁵ Basavaraju, U. C., & Annapurnamma, M, *Social and Legal Aspects of Marriage Versus Divorce*, 6(2), INTERNATIONAL JOURNAL OF SOCIAL AND ECONOMIC RESEARCH, 173-181 (2016).

¹⁶ Daniel Latifi & Anr vs Union Of India (2001) 7 SCC 740.

Whether it is section 17 and 19 of the Guardians and Wards Act 1890, section 13 of the Hindu Minority and Guardianship Act 1956, the jurisprudence of Muslim Law or that of Christian Laws on child custody, the 'welfare of child' is taken at the paramount concern. In *Ritika Sharan vs. Sujoy Ghosh*¹⁷ the Supreme Court of India reiterated that welfare of the child is the paramount concern in matters pertaining to child custody. Recently, in *Irfan Ur Rahim Khan vs. Farha Khan*¹⁸, the Chhattisgarh High Court had held that the welfare of child would prevail in case of conflict between it and the personal law to which the minor is subject.

3.7 Time taking process

Divorce is not deemed as pious as marriage, but it is definitely a process of breaking a bond which is considered bond of seven births in Hindus and similar strong connotations have been conferred in Muslims and Christians.¹⁹ If the ground reality of India is observed then there has never been a dispute on the process of divorce but people have wasted a lot of time and money in courts for attainment of even a simplest divorce. Litigation Process is inherently time taking if divorce is contested from one party. When people contest a divorce case it takes almost three to five years that is why mutual divorce evolved where less time and money is involved. A step to improve the contestation of a divorce case can be taken for a better society.

IV. UNIFORM DIVORCE MECHANISM: PRACTICABILITY

4.1. Uniformity in procedure for obtaining divorce

Most of the time it is said by renowned scholars that implementation of uniform civil code is not possible in a country like India where variation of personal laws and other rituals are varied at a wider level and people attach their sentiments with personal affairs. Any changes or interferences in the personal matters cannot be tolerated in such a scenario. However, after examining the jurisprudence of personal laws in India, one can easily find that dissolution of marriage has never been a part of either of their essential jurisprudence. Divorce was the last

¹⁷ *Ritika Sharan vs. Sujoy Ghosh*, 2020 SCC Online SC 878.

¹⁸ *Irfan Ur Rahim Khan vs. Farha Khan*, FAM No. 165 of 2019, [https://highcourt.cg.gov.in/Afr/courtJudgementandAFR/2022/mar/FA\(M\)165_19\(09.03.22\).pdf](https://highcourt.cg.gov.in/Afr/courtJudgementandAFR/2022/mar/FA(M)165_19(09.03.22).pdf).

¹⁹ Galanter, M., & Krishnan, J., *Personal law and human rights in India and Israel*, 34(1) ISRAEL LAW REVIEW, 101-133 (2000).

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resort where the circumstances have become irretrievable in nature.²⁰ With the passage of time, culture of India has gone through the strong transition of consumerism which has also affected our relationships. The basic principles upon which the pillars of pious bond were set up, are no longer recognised. This gradual change gave birth to unusual activities like cruelty, domestic violence, etc. which today, contrary to the general notion, is not victimising the women alone. Misuse of available laws makes the union dread at the lowest level of tolerance and the real emotions between the bonds are no longer in spirit. So, the court suggested different methods of divorce based on various theories. The most prominent now-a-days is dissolution of marriage through mutual consent and the same too has its own level of compulsions and suppression since the only choice here left is separation and nothing else.

With the above discussion, the matter is no longer personal. It is more or less a social problem. The same has not been written in any personal law's texts, rather the situation is a creation of consumerism. Hence, the basic hurdles for the implementation of Uniform civil code in terms of dissolution of marriage are no longer existing and that is why legislation has enacted numerous laws for different personal laws seeking to bring them at par with each other in terms of uniformity. Now the time has come to lessen the burden of courts as well as the parties who are suffering through the uncontrolled situations, whether natural or created by human agencies. A Uniform mechanism for the dissolution of marriage will deal with it efficiently as it is no longer an issue of personal nature rather a social one and increasing continuously at an exponential rate in all religions equally.

4.2 Uniformity in grounds of divorce

Observing the grounds of dissolution of marriage under the *Hindu Marriage Act, 1955* with the grounds in the *Muslim Marriage Dissolution Act, 1939*; the *Indian Divorce Act, 1868* and the *Special Marriage Act, 1954*, one can easily find that grounds are more or less same in all personal laws. Under Muslim laws the area of grounds of divorce is wider as Muslim law provides for any other grounds specified under Muslim personal laws' jurisprudence. Yet, most of the major grounds for divorce are common in all. Hence, there must not be any difficulty in bringing uniformity in terms of grounds for dissolution of marriage.

²⁰ Nigam, S.S, *A Plea for a Uniform Law of Divorce*, 5(1), Journal of the Indian Law Institute, 47-80 (1963).

4.3 Divorce by mutual consent is a better solution, but the misuse of law is a harsh reality

Grant of divorce by mutual consent is a progressive step in the field of divorce law. Attainment of divorce by mutual consent seems to be an easy way out, but in many cases, it has been resorted to by the parties to avoid claiming separation on grounds like adultery, cruelty, desertion, etc.²¹ The ordinary process for obtaining a 'contested divorce' is a lengthy one and could take up to four to five years. It has been seen that often parties under duress comply with the demand of their spouse for filing a petition for divorce by mutual consent, which defeats the real objective of legislation permitting divorce by mutual consent.

V. CONCLUSION

The personal laws in India are a result of age-old jurisprudence, however, for divorce there is not much clarity as in most of the personal laws divorce is sought to be avoided and considered as appropriate only in exceptional circumstances. To make similar provisions for divorce and related aspects like maintenance and custody is not an unusual task and this could be another positive step to move towards the Uniform civil code which was the dream of our constitutional framers in the form of the Directive principles of state policy.

On practical grounds bringing uniformity in the divorce mechanism is the easiest task as no religious or sentimental attachments are there in the ancient jurisprudence related to divorce. The only thing preached by all is the avoidance of it. People with different religious beliefs can necessarily form consensus for a Uniform divorce mechanism to remove the societal hurdles and evils in order to bring stability to the institution of marriage.

The reservation often raised is with regard to the Muslim divorce procedure, but it can also be brought under the umbrella of Uniform divorce mechanism through little efforts in the form of harmonization of laws and spirit. Thus, the evolution of Divorce mechanism 2.0 is the best path catering to several needs, the need of bringing equality between religions; treatment of parties to marriage and recognition of their rights alike irrespective of their religion; and

²¹ Rao, A. B. S. V. R., Sekhar, K. *Divorce: Process and Correlates A Cross-Cultural Study*, 33(4) JOURNAL OF COMPARATIVE FAMILY STUDIES, 541–563 (2002).

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undeniably the need of realisation of the dream of a Uniform civil code, a law uniform in text as well as in spirit.