CHAPTER -7
CONCLUSION AND SUGGESTIONS

India has a complex system of personal laws governing inter-personal relationships. Diverse personal laws exist in India despite the Constitutional directive to the legislature to enact a Uniform Civil Code applicable to all religious groups which should uniformly govern all family relationships such as marriage and divorce, maintenance, custody of children, guardianship of children, inheritance and succession, adoption and the like. In fact, the absence of uniformity in laws governing these vital inter-personal relationships has resulted in the denial of constitutionally mandated equality of all citizens before the law and equal protection of laws as also the allied mandate of non-discrimination on the ground of sex in the crucial area of family laws. Most family laws being old and religious in origin, contain discriminatory provisions against women.

There are five broad sets of family laws in India based on the religions professed by its different communities. Hindu law governs all Hindus, as also Buddhists, Jains and Sikhs. Muslim law applies to Muslims, Christian law governs Christians, and Parsee law applies to the Parsees. Jews have their own personal law. There is an overarching secular civil law which the parties may opt for is the Special Marriage Act of 1954 under which persons professing any faith or differing faiths can marry. If they are married under the Special Marriage Act, the determination of their heirs and the right to inheritance or succession is then governed by the Indian Succession Act of 1925 which applies to all married under the Special Marriage Act except Hindus. In addition, there is the Foreign Marriage Act of 1969 enacted to cover the marriage of an Indian citizen to a non-Indian solemnized abroad. Also, Hindu as well as Muslim law has within it, several schools which may prescribe, for
example, differing sets of legal heirs. These religious laws are derived
originally from religious texts and their interpretations by scholars or
courts, interspersed with customary law which may differ in different parts
of the country. These laws have also been modified by legislation from
time to time. Now, with the exception of the Muslims and the Jews,
matrimonial law for almost all the other communities in India is statutory.
The statutes, however, often make only piecemeal changes in the
original religious laws, thus retaining vestiges of an older discriminatory
system. These personal laws go with an individual across the states of
India where they are the part of the laws of the land and the individual is
entitled to have the individual’s own personal law applied and not the law
which would be applied in the local territory. Thus, the religion and
personal laws in India are more or less closely intertwined. The idea of a
Uniform Civil Code, therefore, strikes at the heart of custom and
orthodoxy of the various religious communities. The objective of the
present study is to effect an integration of India by bringing all
communities into a common platform which is at present governed by
personal laws which do not form the essence of any religion. There
should be a Uniform Civil Code irrespective of all religions as for as
social ethics are concerned.

Uniform Civil Code is a term originating from the concept of a civil
law code. It envisages administering the same set of civil laws to govern
different religions and regions. This supersedes the right of citizens to
subject themselves different personal laws based on their religion or
ethnicity. A Uniform Civil Code envisages a legal system that will subject
ALL the citizens of a country to the same set of civil laws regardless of

---

1 Sujata Manohar, “Inter-Personal Laws In India, an article given on site accessed on
24.9.2007 (indiacode.nic.in/coiweb/fullact1.asp?fnm=00+56)
their gender, religion, ethnicity etc. The Article 44\(^3\) which is a ‘Directive Principles of state Policy’ in the Constitution of India calls for the development of a Uniform Civil Code. But such a uniform code has not yet been achieved in India even after fifty years of independence. The personal laws of different religious communities continue to operate irrespective of the fact that the Preamble to the Constitution of India describes the modern nation state of India as a “Sovereign, Socialistic, Secular, Democratic, Republic”. That when a Hindu, a Muslim and a Christian, all are citizens of the same country, governed by different personal laws is an anachronism indeed in modern India and diametrically opposed to the fundamental principle of secularism. In 1976 the word ‘secular’ was added to the Preamble of the Indian Constitution to emphasize that no particular religion in the state will receive any state patronage whatsoever and no citizen in the state will have any preferential treatment or will be discriminated against simply on the ground that he or she professes a particular form of religion.

The Constitution of India itself gives protection to the different religions and religious groups by including religious rights. Under Article 25 of the Constitution all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion subject to public order, morality, and health, whereas Article 26 gives to every religious denomination a fundamental right to manage its own affairs in matters of religion. This cannot be abrogated in any way. On the other Article 29 gives the absolute and unqualified right to minorities to conserve their distinct language, script and culture. The Constitution maker both implicitly and explicitly appears to be aware about the great disparities and inequalities in Indian society, thereby recognizing the continuing validity of the system of personal laws. In the

\(^3\) “The state shall endeavour to secure for the citizens of a Uniform Civil Code throughout the territory of India.”
words of Lloyd I and Susanne H Rudolph the contradiction in India's concept of secularism and its attribute towards the relation between religion and personal law in particular was their simultaneous commitment to communities and to equal citizenship\(^4\).

But while recognizing the need of ethnic and religious groups to affirm their religious identities, the Constitution does not treat personal laws as religion though they may have derived from it. The underlying assumption of Article 44 of the Constitution is that a Uniform Civil Code would create a sense of “Indianess” and strengthen national unity. By making Article 44 a Directive Principle (which is not directly enforceable), the Constitution guaranteed that a Uniform Civil Code can only be brought about by Parliament, although the seeds of a Uniform Civil Code are sown in the very article of the Constitution which protect religion. Article 25 of the Constitution itself does not speak of the personal laws of any religious denomination and a citizen can not claim a fundamental right to follow the personal law of the group or the community to which he belongs. But Article 25 contains a clause giving power to the State to regulate and restrict economic, financial, political or other secular activity that may be associated with the religious practice. The freedom of religion, therefore, does not include social and economic practices and in certain matters relating to civil laws that do not form part of the essence of religion but are secular practices or usage connected or associated with religion the legislature would be competent to make a uniform law relating to such secular activities and thereby implement Article 44 of the Constitution\(^5\). In one of a highlighted case\(^6\) Justice Jeevan Reddy also observed that “religion is the matter of individual faith and can not be


\(^3\) S R Bommai v. Union of India (1994) 3 SCC 1.
mixed with secular activities. Secular activities can be regulated by the state by enacting a law”.

In India there exist a concept of “positive secularism” as distinguished from the doctrine of secularism accepted by United States of America and some European States i.e. there is a wall of separation between religion and state. In India positive secularism separates spiritualism with individual faith. The reason is that America and the European countries went through the stages of renaissance, reformation and enlightenment and thus they can enact a law stating that state shall not interfere with religion. On the contrary, India has not gone through these stages and thus the responsibility lies on the state to interfere in the matter of religion so as to improve the impediments in the governance of the state.

So the Uniform Civil Code is not opposed to secularism and will not violate Article 25 and 26 of the Constitution of India. The Uniform Civil Code shall not result in interference of one’s religious beliefs relating to marriage, divorce, maintenance, succession and so faith but it only means there will be a common law for all such matters. The judiciary has also tried time and again to make it clear that there is no necessary connection between religion and personal law in a civilized society. Marriage, succession and like matters are of secular nature and therefore law can regulate them. No religion permits deliberate distortion7. While giving a latest reminder to the government of its Constitutional obligation to enact a Uniform Civil Code, Justice Khare in a recent case8 observed that “It is no matter of doubt that marriage, succession and the like matters of secular character can not be brought with in the guarantee enshrined under Article 25 and 26 of the Constitution”. The court further went to the extent that any legislation which brought succession and like

7 Sarla Mudgil v. Union of India AIR 1995 SC 1531
8 John Vallamattom v. Union of India AIR 2003 SC 2902
matters of secular character with in the ambit of Article 25 and 26 is a 
suspect legislation. Article 25 confers right to practice and profess
religion, while Article 44 divest religion from social relations and personal
laws. Justice R. M. Sahai while stressing on the objective of Uniform Civil
Code clearly said that: “Ours is a secular democratic republic. Freedom
of religion is the core of our culture. Even the slightest of deviation
shakes the social fibre. But religious practices, violative of human rights
and dignity and sacerdotal suffocation of essentially civil and material
freedoms are not autonomy but oppression. Therefore, a unified code is
imperative both for protection of the oppressed and for promotion of
national unity and solidarity”

Further more, the criminals and procedural law in India have been,
of course, long codified by the British Raj with the Code of Civil
Procedure (1859); the Penal Code (1860) and the Code of Criminal
Procedure (1861), but the Britishers held back from codifying the so
called “personal law” of Hindus and Muslims. The matters (involving
marriage, divorce, maintenance, succession and so faith) were in the
judgment of the British Administrator and legal experts inextricably
intertwined with the customs and laws of their specific religious
communities and these matters were administered in the regular courts
by judges trained in, and familiar with the style of the common law. Until
about 1860, the courts had attached to them “native law officers” pundits
and kais, to advice them on questions of Hindu and Muslim Law
respectively. To make the law more uniform, certain and accessible to
British judges as well as to check the discretion of the law officers the
courts relied increasingly on translation of texts, on digests and manuals
and on their own precedents. In 1860, when the whole court system

---

9 Sarla Mudgil v. Union of India AIR 1995 SC 1531
10 John H. Mansfield, “Personal Laws or a Uniform Civil Code?” In Religion and Law in
11 Ibid, P.165.
was rationalized and unified, the law officers were abolished and the
judges took exclusive charge of finding and applying the personal law.
Thus, religious law systems which were reduced to texts were
administered by the courts of British India and later on in independent
India. The Constitution of 1950 appears to envision the dissolution of the
personal law system in favour of a Uniform Civil Code.

A first attempt towards the development of a Uniform Civil Code
came shortly after independence in 1948 with the introduction of the
Hindu Code Bill, a bill designed to codify the myriad of regional Hindu
customs and laws as a first step towards a Uniform Civil Code for all.
There was much opposition from Hindus and the bill was set aside
without passing in the session. The Hindu Code Bill was later introduced
and passed as a piecemeal in the form of series of legislations\textsuperscript{12}. Thus,
even the Hindu laws that were different in different parts of the country
had a turbulent change courtesy geographically united India and Hindus
accepted it considering the change in time and took it positively. These
legislations provided a basic codification for the Hindu communities.
These statutes modified the Anglo Hindu Law by abandoning the Varna
distinctions, the indissolubility of marriage and inheritance by male\textsuperscript{13}.
Thus, while diluting if not effacing the traditional dharamshastric basic of
Hindu Law; the Hindu Code rearranged the relationship between the
state and religious authorities. It marked the acceptance of the Indian
parliament as a kind of central legislative body for Hindus in matters of
family and social life. It discarded the notion, prevalent during the British
period, that government had no mandate or competence to redesign
Hindu Society\textsuperscript{14}.

\textsuperscript{12} The Hindu Marriage Act 1955 ; The Hindu Succession Act 1956 ; The Hindu Minority and
Guardianship Act 1956 ; The Hindu Adoption and Maintenance Act 1956
\textsuperscript{13} Marc Glanter, “The Displacement of Traditional Law in Modern India” in “Law and Society in
\textsuperscript{14} Ibid, Pp. 25-26.
While retaining the personal law system in independent India introduced a note of voluntarism. In 1954, the parliament passed the Special Marriage Act which provides a special form of marriage that any person in India and all Indian nationals in foreign countries can take advantage of it irrespective of the faith either party may profess.\textsuperscript{15} Even the parties who have solemnised their marriage under any other law may also get their marriage registered under this Act if they fulfil the conditions laid down in the Act.\textsuperscript{16} Persons who are married under the Act enjoy the benefits conferred by it and are subject to its prohibitions. Even if one is permitted to have more than one spouse under one’s personal law, once the marriage is solemnized under this act, one can not have more than one wife. But submission to this Act, however, is optional which is contrary to the concept of uniformity.

Thus, India retains a system that governs certain family matters of Hindus, Muslims, Christians and Parsis, for example, there are twelve pieces of national legislations only to deal with particular issues of marriage and divorce for the various religious groups\textsuperscript{17} in the country. The administration of these personal laws in India remains in the hands of state judges. After this burst of activities in mid-fifties there was no further move to have more uniformity on a national basis. Codifying the Hindu law was only a partial step towards a uniform code. As a result, India continues to have legal practices which are unique to particular religious groups and their way of life. Furthermore, diversity in personal laws reinforces gender inequality and injustice. There is no justification\textsuperscript{15} Section 4, The Special Marriage Act, 1954  
\textsuperscript{16} Section 15, The Special Marriage Act, 1954  
\textsuperscript{17} The Native Converts Marriage Dissolution Act,1866; The Indian Divorce Act, 1869; The Indian Christian Marriage Act,1872; The Kazis Act,1880; The Anand Marriage Act,1909; The Child Marriage Restraint Act, 1929; The Parsi Marriage and Divorce Act,1936; The Dissolution of Muslim Marriage Act,1939; The Special Marriage Act,1954; The Hindu Marriage Act, 1955; The Foreign Marriage Act,1969; The Muslim Women ( protection of Rights on Divorce) Act,1966.

192
for these laws to continue today when criminal laws and some aspects of civil laws are common to the country as a whole.

In the midst of all the continued diversity the sporadic attempts of the judiciary to achieve greater uniformity in personal laws have not met with much success. Rather the move has been firmly upset by parliament because of political considerations. The Supreme Court's first step towards creating this uniformity was in 1979 when it granted maintenance to a Muslim wife under Section 125 of the Code of Criminal Procedure, 1973\(^{18}\). Section 125 gives a wife, including a divorced wife, a right to maintenance from her husband. But the right is limited by Section 127 of the Code, which provides that a woman would not be entitled to maintenance if she has received any sum under any customary or personal law applicable to the parties. While giving relief the Supreme Court construed the provisions of Muslim law and observed that the purpose of the payment under any customary or personal law must be to obviate destitution of the divorcee and to provide her with wherewithal to maintain herself. Law is dynamic and its meaning cannot be pedantic but purposeful. Again in 1980 the Supreme Court restated the Muslim Personal Law on the subject and held that "Neither personal law nor other salvationary plea will hold against the policy of public law pervading Section 127(3). So a farthing is no substitute for a neither fortune nor naïve consent equivalent to intelligent acceptance"\(^{19}\).

The fear that a Uniform Civil Code would jeopardize the rights and integrity of minority religious communities manifested itself dramatically in the reaction of religious communities and later on by parliament in response to the Supreme Court’s decision on personal laws in the

---

\(^{18}\) Bai Tahira v. Al Husain Fissali AIR 1980 SC 362.
\(^{19}\) Fazlunbi v. K. Khalid Bali AIR 1980 SC 1731
famous Shah Bano’s case. In this case the Supreme Court categorically stated that the right conferred by Section 125 of the Criminal Procedure Code, 1973 can be exercised irrespective of the personal law of the parties. While stressing on the objective of Article 44 of the Constitution the court observed that a common civil code will help the cause of national integration by removing desperate loyalties to law which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the state which is charged with the duty of securing a Uniform Civil Code for the citizens of this country and unquestionably it has the competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use the competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasion at a common platform. But a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the Courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But this decision led to an uproar among a certain section of the Muslim community which the government then in power sought to control by promptly enacting the Muslim Women (Protection of Rights on Divorce) Act 1986, which is not only contrary to the mandate of Article 44 of the Constitution but which contains precisely those provisions the Supreme Court had condemned as a “most unreasonable view of law as well as life”. Thus, this Act reinstated the Muslim law at least as previously understood.

21 Ibid, p.949.
22 Id, P. 954
Laws may be derived from religion, but they do not form part of it and the need of the Uniform Civil Code cannot be overstated. It would neither impinge on the freedom of an individual’s conscience, nor on the expression of it.24 The anxiety of the minorities about their personal law does not relate to the laws themselves but rather to their privileged position as minorities in a country25. Political conflict in India over personal law appears more prevalent over the issue of Uniform Civil Code. Successive governments have acquiesced in this argument either for political gains; fear of political loss, or from a misunderstanding of the word “religion tolerance”. They have not sufficiently realized that differences in the law create a feeling of disparity and inevitably resentment. Given this “inertia of timidity” the task of unification has been indefinitely postponed. The Bhartiya Janta party (BJP), principal party in the coalition in 2000 has been a supporter of a Uniform Civil Code over the past many years. During the 1996 and 1998 national election campaigns, the BJP, according to some observers, even made the enactment of a Uniform Civil Code a tenet in its platform26. After coming to power in the spring of 1998, however, the BJP has not initiated any formal legislative proposal to altered the existing personal law structure27.

Politics apart, the case for a Uniform Civil Code – which will cover the entire gamut of laws governing rights relating to property, marriage, divorce, maintenance, adoption and inheritance – has been most argued on behalf of women. There is universal agreement that personal laws, regardless of the community, are skewed against women. A Universal

25 Supra note 2 P-274
27 Article, “Temple Art. 370 not on campaign agenda: PM,” Times of India (Internet edition), August 24, 1999.( In this Article BJP party leader K.N. Govindacharya admits that the BJP has not come out with its own manifesto with regard to a Uniform Civil Code.)
Civil Code will most affect these issues relating to the marriage, divorce, maintenance, succession and so forth. In almost all recent cases where the need for a Uniform Civil Code has been emphasised women were at the receiving end of torture in the garb of religious immunity. Apart from the famous Shah Bano\(^2^8\) and Sarla Mudgal's\(^2^9\) case, there have been several other pleas by wives whose husbands converted to Islam only in order to get married again without divorcing the first wife. Furthermore, one should not forget that nationhood is symbolised by one Constitution, a single citizenship, one flag and a common law applicable to all citizens and India's obligations under international law also require a common civil code in respect to the personal matters of the various religious communities. India having ratified the International Convention on Civil and Political Rights, 1966 and the International Convention on Elimination of All Forms of Discrimination against Women, 1979 is bound to enforce the relevant provisions and ensure gender equality under national laws\(^3^0\). Another legal expert Satyabrata Rai Chowdhuri also observed that: “Since differential treatment for any religious group is violative of the UN Covenant on Civil and Political Rights and the Declaration on the Right to Development adopted by the World Conference on Human Rights, it is hoped that Parliament will frame a common civil code without further delay, divesting religion from social relations and personal law\(^3^1\)."

\(^2^8\) AIR 1985 SC 945
\(^2^9\) (1995) 3 SCC 635.
\(^3^1\) Satyabrata Rai Chowdhuri, “A Common Civil Code: It is a Constitutional Obligation” *The Tribune* 30 July 2003 p.10
Keeping in view the legislative silence till today it is clear that the piecemeal attempts by the Courts\textsuperscript{32} in number of cases, however, to bridge the gap between personal laws can not take the place of a Uniform Civil Code. Justice for all is a far more satisfactory way of dispensing justice than in justice from case to case. Even the proponents of a Uniform Civil Code points to Article 14 and 15 (1)\textsuperscript{33} of the Indian Constitution as well as to Article 44 as evidence that the “Uniform Civil Code is an ideal towards which the State should strive\textsuperscript{34}. Further more, the object of incorporating Article 44 in the Constitution is to govern all relationship of life by uniform system of law for the reason that human relationships and human requirements do not differ by the mere fact that different group of persons belongs to different relations. The success of a democratic process lies in harmonizing these group interests leading ultimately to common good.\textsuperscript{35} Recently in a case before the Supreme Court whereby while giving a reminders call to the government of its Constitutional obligations to enact Uniform Civil Code the Chief Justice V.N. Khare of the Supreme Court stated that: “A common civil code will help the cause of national integration by removing the contradictions based on ideologies.”\textsuperscript{36}

The biggest obstacle in implementing the Uniform Civil Code apart from obtaining a consensus is the drafting of a common civil code. Should it be a blend of all the personal laws or should it be a new law adhering to the Constitutional mandate? Many contend that if a Uniform

\textsuperscript{32} See generally the Chapter V supra.
\textsuperscript{33} Article14 – “The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India.”
Article 15(1) – “The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”
\textsuperscript{34} Mansfield, “Personal Laws or a Uniform Civil Code?” In "Religion and Law in Independent India," (ed.) R. P. Baird Delhi: Manohar (1993) ; p.140
\textsuperscript{35} Mohammad Imam, “Minorities and the Law,” N. M. Tripathi Pvt. Ltd., Bombay (1972), P 386
\textsuperscript{36} John Vallamattom v. union of India AIR 2003 SC 2902
Civil Code were adopted, the new laws would reflect the concerns of the majority Hindu population\(^{37}\). The major opposition to the framing of the Uniform Civil Code is coming from the second largest community in India viz. the Muslims. They object even the slightest reform or change in their personal law in the name of religion or in the name of culture or in the name of immutability of the law as ordained by Allah and prophet\(^{38}\). Even the Supreme Court's decision in a highlighted case of Shah Bano Begum whereby the court tried to interpret the Shari'at was not acceptable to the Fundamentalist Muslims. Rather it was taken as a deliberate move to subvert Muslim personal law in favour of the primarily Hindu based Indian Code of Criminal Procedure\(^{39}\). The other minority community, the Christians also fear that their status and autonomy as a minority community may be in jeopardy without separate personal law and their constitutionally recognised status might eventually fade and that they may lose their identity as well as their ability to practice their religion freely. Many Parsi's also argue that without separate personal law system the result would be a Uniform Civil Code that would inevitably reflect mainly Hindu interests\(^{40}\).

The fear that under the guise of Uniform Civil Code, the Hindu Code will be imposed on all is misconception. A uniform law code does not necessarily mean a law of one community (Hindu) but inclusion of personal laws of different religious communities based on the principle of equality of sexes and the liberty for the individuals of all the communities.


\(^{38}\) Bhagwati Prasad Singhal on "Uniform Civil Code - Framing is Imperative", published in AIR 1998 Journal Section 168


\(^{40}\) Flavia Agnes, *Law and Gender*, Oxford University, New Delhi (1995) PP. 141-163
The Uniform Civil Code should curve a balance between protection of Fundamental Rights and religions dogmas of individuals. It should be a code without any bias with regard to religions or political considerations. While explaining the reasons for including Article 44 in the Directive Principles, during the Constituent Assembly debate it was observed that “when you want to consolidate a community, you have to take into consideration the benefits which may accrue to the whole community and not to the customs of a part of it. If you look at the countries in Europe, which have a civil code, everyone who goes there forms a part of the world and every minority has to submit to the civil code. It is not felt to be tyrannical to the minorities”.41 While drafting, the Uniform Civil Code the need is to draw a balance i.e. to safeguard civil rights and the identity of the minorities, while refusing to pander to religions fundamentalism of any colour. Under the uniform laws a Hindu will not be compelled to perform a nikah or a Muslim be forced to carry out saptapadi, but it means basic essentials or principles of marriage, divorce, maintenance succession etc. will be common for all irrespective of their religions e.g. principle of monogamy should be imposed on all or age at marriage is to be fixed for all.

Coming to the working of the Uniform Civil Code, some legal experts feel that a suitable atmosphere must be created so that all sections of society get ready to accept the uniform laws in respect to the matters relating to marriage, divorce maintenance, success etc. Some think that there is a possibility of the Uniform Civil Code being abused or rejected but this should not eschew the Parliament from enacting the Uniform Civil Code because the social welfare and benefits resulting from

---

41 Constituent Assembly Debate, Volume VII, p. 547.
the implementation of Uniform Civil Code are far greater. When the Hindu Code Bill, was introduced in 1948, there was lot of protest from Hindus on the ground that the code was contrary to the Dharamshastra which incorporates classical Hindu jurisprudence. But the then law Minister Dr Ambedkar had said that for India’s unity the country needs a codified law, and later on four Acts were passed. In a similar fashion the Uniform Civil Code can be implemented which will cover all the religious communities and also any person who comes to India. Moreover the Uniform Civil Code exists in the state of Goa called Family law applicable on all communities which was framed and enforced by the Portuguese colonial rulers through various legislations in the 19th and 20th centuries. After the liberation of Goa in 1961, the Indian state scrapped all the colonial laws and extended the Central laws to the territory but made the exception of retaining the family laws because all the communities in Goa wanted it. The philosophy behind the Portuguese Civil Code was to strengthen the family as the backbone of society by inculcating a spirit of tolerance between husband and wife and providing for inbuilt safeguard against injustice by one spouse against another. The most significant provision in this law is the pre-nuptial deed regarding the disposal of immovable and movable property in the event of divorce or death. During matrimony both parents have a common right over the estate but on dissolution, the property has to be divided equally, son and daughters have the equal right on the property. As the procedure involves compulsory registration of marriage, this effectively checks child and bigamous marriages. While commenting on Uniform Civil Code in Goa and realisation of the dream of the Uniform Civil Code in the

42 The Hindu Marriage Act 1955; The Hindu Succession Act 1956; the Hindu Minority and Guardianship Act 1956; The Hindu Adoption and Maintenance Act, 1956.
43 See Appendix 7.
country, former Chief Justice of India Y.V. Chandrachud once had expressed hope that it would one day awaken the rest of bigoted India. While appreciating the desirability of a common civil code for the country even the BJP President L K Advani had also made a special appeal to Union Minister of State for Law and Justice Ramakanth Khalap to extend Goa’s uniform civil code to the rest of the country. Goa’s personal laws which, are uniform in matters of marriage, divorce and succession should be adopted nationwide to give the country a sense of unity.

Further, there is controversy regarding the ideal time for enactment of Uniform Civil Code, it can be contended that India has moved much further from ideal than when the Constitution was written fifty eight years ago. It is high time that India has a uniform law dealing with marriage, divorce, succession, maintenance and so forth. Rather it is the need of the hour that sentiments and emotions have to be cooled and tempered by sincere efforts to change the mindset of the masses to accept the Uniform Civil Code.

An empirical study is also conducted to see the desirability of the Uniform Civil Code as per legal obligation under Article 44 of the Constitution of India. The respondents were asked questions pertaining to their awareness regarding the concept of Uniform Civil Code and their satisfaction on the existing system of personal laws, their opinion on the right time to frame, the government’s obligation to enact the code and the essential steps required to accomplish the goal of the Uniform Civil Code in India. From the analysis of the empirical data, it is very much clear

44 Mohammad Ahmed Khan vs. Shah Ban begum AIR 1985 SC 945.
45 Deccan Herald, May 22, 1997
46 See, Chapter VI for the findings of the empirical study.
that majority of the respondents are in favour of the enactment of the Uniform Civil Code and more than sixty percent think that government is duty bound to enact the Uniform Civil Code as it is a Constitutional obligation on the state to enact one such code. On the issue of ideal time to frame 74 percent of the respondents are of the view that it is the need of the hour to enact the uniform laws for the members of various religions communities. More than fifty percent of them feel that there is no need of consensus of all the religious communities before the enactment of the Uniform Civil Code and also stressed on the need of equal representation of all personal laws as an essential step to accomplish the goal of the Uniform Civil Code. Further, on the issue that application of the uniform laws should be made voluntary or optional in the beginning, only 31 percent think that it should be made applicable on the choice of the parties. Thus, it is very clear from the findings of the study that majority of the respondent want that Uniform Civil Code should not be left on the choice of the parties i.e. it is to be made applicable on all irrespective of their sex, religion etc. Rightly so because once we make it optional, the uniformity ceases. From the above analyses it is clear that enactment of the Uniform Civil Code is the need of the hour. Very recently The Times of India leading daily news paper of India also conducted a poll for their program titled ‘Lead India’ to know the opinion of people on this sensitive issue of framing Uniform Civil Code in India. Later on 24th December 2007 in a show telecasted on channel ‘Star One’ it showed that a vast majority 75 percent answered in favour of enactment of Uniform Civil Code where as 19 percent said ‘no’ and 6 percent did not reply. So this report further supports the view that

47 Telecasted on dated 24th December,2007
Uniform Civil Code is a necessity to build integrity and solidarity in a democratic country like India.

Furthermore, India is a secular democratic republic and freedom of religion is the core of our culture. But religious practices which are violative of human rights and dignity are not signs of autonomy but of oppression. Therefore, a unified code is imperative both for the protection of the oppressed and as well as for promotion of national unity, equality and solidarity. The Uniform Civil Code is in no way violative of Article 25 and 26 of the Constitution; rather Article 44 is based on the concept that there is no necessary connection between religion and personal law in a society. No religion permits deliberate distortions. So time has now come to frame a uniform law in respect to the personal matters which are applicable to all irrespective of their religion, sex or caste. A Common Civil Code must imply that ALL citizens are covered under the same laws on civil and commercial matters. Let us dismantle at the same time, special privileges for Hindus under the Hindu Undivided Family provisions as also any special laws governing the personal affairs of Christians, Parsis, Jains, Buddhists, and Sikhs as well as other groups like the Nairs of Kerala who follow the principles of matrilineal descent. Do away not only with Muslim Personal Law but also other laws on the statute books that grant legal sanctity to unique practices of the diverse communities of India. As an Indian I wholeheartedly support the idea of a Uniform Civil Code. It is a fair and equitable Directive Principle in the Constitution of India. However, it is essential to understand this matter in its entirety, away from the hysterical jubilation and frantic wailing of communalists on both sides. One people one law why not? Nationhood is
symbolized by one Constitution, a single citizenship, one flag and a common law applicable to all citizens.

In order to promote the spirit of uniformity of laws and accomplish the goal enshrined in Article 44 of the Constitution, the following suggestions needs to be followed /considered while drafting Uniform Civil Code in matters relating to marriage, divorce, maintenance, succession, inheritance and adoption. These are put under the following headings:

I Marriage and Divorce

The personal laws of various religious communities contain different essentials of a valid marriage. All major religions, thus, have their own laws that govern divorces within their own community, and there are separate regulations under the Special Marriage Act, 1956 regarding divorce in interfaith marriages. Under a common civil code, one law would govern the matters relating to marriage and divorce. The Uniform Civil Code should have the basic essentials which should be common for all such as:

i) In the Uniform Civil Code the monogamy should be imposed on all and ban on polygamy because it discriminates against the women and violate their basic rights. It is not recommended because it is followed under Hindu law but for the reason that it adheres to Article 21 of the Constitution and basic human values.

ii) The minimum age limit for a male and female should be twenty years hears and eighteen years. This would help on curbing the practice of child marriages. Strict punishment should be prescribed for any person violating this provision. Punishment for the parents of such
minors should also be prescribed which would have a deterrent effect on society.

iii) Registration of marriage should be made compulsory. This will help to ascertain the validity of the marriage. All sarpanches, patwaris should be authorized to keep marriage register for the same so that the chances of fraud and mock marriage could be checked and detected.

Recently, the Law commission has also recommended to the government to bring a legislation declaring all marriages between minors null and void. It also recommended that the registration of all marriages should be made compulsory as had been recommended by the Supreme Court. The commission chairman Justice A.R. Lakshmanan said the purpose behind reforms of marital laws on these lines is to protect the rights of women and children but at the same time curb the practice of child marriage prevalent in many states.

iv) The grounds for divorce should be specifically laid down for all irrespective of their religion. It is necessary to introduce the ground of irretrievable breakdown of marriage and divorce on the ground of mutual consent which is essential for the changing needs of the society.

Very recently, Punjab government also passed the Compulsory Registration of Marriages Bill, 2008 making mandatory the registration of all marriages in the state to counter the growing numbers of marriage frauds, especially those pertaining to NRI’s who desert their spouses.

---

\textsuperscript{48} The Tribune, February 7, 2008
\textsuperscript{49} The Tribune, March 13, 2008
Under the Act all the marriages solemnized under various personal laws relating to marriages\textsuperscript{50} or under any other customs taking place in Punjab must irrespective of religion, caste or creed - be registered with in the three months of being solemnized. It is in the fitness of things that all the religions have been covered under the new provision and there is no scope of finding loop-holes. The Bill has been passed on the directions of the Supreme Court given in the case of \textit{Seema vs. Ashwini Kumar}\textsuperscript{51}, seeking compulsory registration of all sorts of marriages across the country. The ruling was an outcome of an appeal in a routine maintenance suit. In this case the husband disputed her marriage with him in the absence of any documentary proof which she had failed to produce. While stressing on the lack of mandatory provision for marriage registration as a serious flaw in the matrimonial laws, a bench of Mr Justice Arijit Pasayat and Mr Justice S H Kapadia said that absence of matrimonial records have far-reaching consequences therefore, marriages of all persons who are citizens of India, belonging to various religions, should be made compulsorily registrable in their respective states where the marriage is solemnized. The Supreme Court also directed the Centre and State Governments to take necessary steps and notify the amended rules with in three months time.

While speaking on the statement of objects and reasons, Justice Minister Dr. Upinderjit Kaur said the Bill was aimed at mitigating the hardships by women regarding matrimonial disputes, to check bigamy, polygamy and to settle legal rights in property etc. The Bill would also help women exercise their right to seek maintenance from husband and serve as deterrent to the NRI husbands deserting their wives. It will also

\textsuperscript{50} Hindu Marriage Act, 1955; Indian Christian Marriage Act, 1872; Muslim Personal Law (Shariat) Application Act, 1937; Anand Marriage Act, 1909.

\textsuperscript{51}\textit{(2005) 4 SCC 443}
prevent parents and guardians from selling daughters or young girls under the garb of marriage. At the same time, Punjab government has also removed lacuna in the Anand Marriage Act, 1909. So far, there was no provision for the registration of a marriage under the said Act, despite the fact that it had been in the statute books since 1909. As such, The Sikhs had to get their marriages registered either under the Hindu Marriage Act or the Special Marriage Act. Strangely, Pakistan had passed a draft of the Anand Marriage Act and allowed Sikhs to register marriages under it in January 2008 itself. Punjab is now followed the lead given by Pakistan.

It is very much appreciable effort made by the State government and the central government is required to follow by enacting a Uniform Civil Code for all the citizens in matters relating to the marriage, divorce, maintenance, succession and so forth, as also desired by the Constitution makers.

II Maintenance

The maintenance laws for Hindus, Muslims and Christians are very different in their respective laws. A Muslim women can claim maintenance under the Muslim women (Right to Protection on Divorce) Act, 1986. A Hindu wife or husband can claim maintenance pending the proceedings and permanent alimony as well. Apart from the personal laws of various religious communities, one can also claim maintenance under Section 125 of the Code of Criminal Procedure, 1973. Apart from this, maintenance to wife, father, mother son and unmarried daughter is also given under Hindu Adoption and Maintenance Act, 1956. So we have various laws to provide maintenance to the needy parties. But these

laws are not common; sometimes they are discriminatory towards the females. Uniform Civil Code should contain the following basic principles in matters relating to maintenance:

i) A husband should not only maintain the wife during the marriage but also after they have divorced till the wife remarries.

ii) The parents should be made responsible to maintain their children, son till he is capable of earning on his own and daughter till she gets married. This is suggested as we do not have any social security system like in the western countries which can take care of the needs of the individuals especially of those who are incapable to maintain themselves like disabled etc.

iii) Both the parties should be entitled to alimony depending on the status of the parties.

iv) Both son and daughter should be made equally responsible to maintain their parents. This will help to solve the problem of the aged persons in the present society.

III Successions and Inheritance

The laws relating to succession and inheritance are very much different in the laws of various religious communities. Inheritance rights are loaded in favour of male heirs. Until the Hindu Code Bill was passed in 1956, Hindu law prohibited women from inheriting any property. Now with the recent amendment in the Hindu Succession Act, 1956, women have equal share even in the coparcenary property. But Under the Hindu law still there is a distinction between joint family property and self acquired property. On the other, under Muslim personal law, women have subordinate rights of inheritance. The Indian Succession Act of 1925, modified in 1997, is applicable to persons other than Hindus but
not of Islamic faith - like Christians and Parsis. This Act does not recognise women’s right to succession. Time to time judiciary has tried to give justices to the aggrieved parties by interpreting the laws on the touchstone of the rights given under the Constitution of India. Patriarchy, thus, is the basis of personal law, regardless of community. The concept of Hindu undivided family needs to be abolished. Similarly under Muslim law and Christian law, the testamentary powers are restricted which needs to be changed in the fast changing society. Considering these few examples the Uniform Civil Code should include following:

i) There should be no discrimination based on the sex in matters of inheritance because it is violative of the Fundamental Right of equality under Article 14 and 15 of the Constitution of India

ii) Equal shares to son and daughter from the property of the father whether it is self acquired property or joint family property. Similarly in the case of property of mother whether she has self acquired or acquired through her relatives.

iii) Regarding the testamentary power, there should be no limitations imposed on the extent to which the property can be bequeathed, the person to whom such property can be bequeathed and also the donation of the property for religious and charitable purposes.

iv) The procedure for proper execution and compulsory registration of the will should be provided so that chances of fraud and disputes regarding immovable property can be reduced.

IV Adoptions

Of all aspects of personal laws, those of guardianship, custody of children and adoption are the most inextricably linked to religion and culture. This is about bloodlines and perpetuation and with children and
young people involved, it can have serious implications. A Universal Civil Code will affect laws on adoption and therein could lay a lot of resistance. Islam, for instance, does not allow adoption as only blood relations are recognised by Islamic jurisprudence. It has been argued that if adoption is made legal, then the adopted child has all rights to succession that a biological child has. But if a biological child is born subsequently, to the same mother or through another wife of the father, which child would have succession right? Hindus may adopt but a stress on inheritance in the male line, male children get favoured during adoption adding to a social problem. Hindus, Sikhs, Buddhists and Jains and any other person who is not a Muslim, Christian, Parsi or Jew is governed by the Hindu Adoption and Maintenance Act, 1956. Like Muslims, personal law for Parsis, Christians and Jews too do not recognise complete adoption. So if anyone from these communities has to adopt a child, he can do so only in "guardianship". This does not give the child equal status to that of a biological child. The Uniform Civil Code should have clear guidelines for matters relating to the custody and adoption of children such as:

i) The custody of children should be the main concern of the court while granting a decree of divorce because it is only the children who suffers the most in case of break up of the marriage.

ii) Both the parents should be given the equal power to adopt the child.

iii) The adopted child should be given same status as to a biological child born out of wedlock.

Thus, on the basis of these fundamental principles, an unbiased and fair Uniform Civil Code can be framed which will be in consonance
with the Constitution of India. Apart from these suggestions the other factors deserves immediate concern are:

1. A committee of eminent jurists and representatives belonging to different religions should be constituted to make the task of uniformity of laws possible and assist the parliament in the enactment of the cherished goal of Uniform Civil Code. The attempt should be made to adopt the best from the personal laws of the various religious communities.

2. Mass media communication mode, such as Radio, T.V., News papers etc. must be used for creating awareness about the concept of Uniform Civil Code and its benefits for the masses in the present society.

3. It is the duty of legal jurists, advocates and academicians to promote the idea of secularism and create environment for the adoption of uniform personal laws applicable to all irrespective of their religion.

4. Lastly, non government organizations also can play a positive role in changing the mindset of the masses and gear them to accept the reforms in their personal laws in the present scenario. Only a sincere effort without any sentimental approach would be of great value in fulfilling this obligation (as desired by the Constitution makers) of the enactment of the Uniform Civil Code. Ultimately it is the people of India themselves, through education and open debate and responsible political action will be able to achieve this desired goal of Uniform Civil Code.

Thus, Uniform Civil Code is a must for the unity of a nation like India. It is disappointing that various governments in power failed to fulfill their
promise of implementing Uniform Civil Code. For the past 57 years Uniform Civil Code is in cold storage (thanks to our politicians). Though various courts including the Supreme Court of India favours to implement Uniform Civil Code but our governments are not bothered to enact and implement one such code. A Uniform Civil Code will focus on rights, leaving the rituals embodied in personal law intact to preserve the identity of ethnic and religious groups within the bounds of Constitutional propriety. It will provide facilitate harmonisation of social relationships across the country in keeping with the changing contours of emerging societal realities. A Uniform Civil Code should not be constructed, as sometimes suggested, just by putting together the best elements from various existing personal codes but it should be framed by some body like the Law Commission, in consultation with relevant experts and interests, as citizens' charter governing family relations. If the Centre is unwilling to move forward, there is no reason why some progressive States should not take the lead as they have done in the past as in case of legislating Freedom of Information Acts for the states. A national Uniform Civil Code could follow. Goa has shown the way and there is absolutely no reason for delay. Therefore, to summarize it can be said that a secular India needs a Uniform Civil Code for the protection and promotion of national unity and solidarity for its citizens. It is time to make a concerted attempt. An indigenous law, applicable to all communities coexisting democratically, is needed in the country. Accommodating personal laws of all religions under such a code may be an uphill task and may require time, but the legislature will ultimately have to perform this onerous duty of compiling the code. In fact, codification of a Uniform Civil Code is the ultimate solution.