CHAPTER – VI
UCC – A CRITIQUE

(6.1) Hardships arising due to unavailability of UCC

"Different Personal Law" for "Different Religion People", policy of India is criticised worldwide, by many countries and eminent law thinkers. Because, it has not worked successfully, several serious socio-legal-political problems have occurred due to this system. Personal law system of India is failed to provide equal justice to all its citizens. At many instances people of different religions are observed taking benefit of other religion laws. It has caused severe injustice inter-religion also.

Following are the issues oftenly arise due to the non-availability of a single set of personal law for all the citizens;

[A] Misuse of Personal Laws: Many instances have occurred where males from the community other than Muslim community, have converted to Muslim, just to take the benefit of getting another marriage. This is because, under Muslim law, though it is misinterpretation of the Quranic verse, Muslims are allowed to get marriages upto four wives in India. Such practices are followed by misusing the legal system. Verdict given by the Supreme Court of India in Sarla Mudgal president, kalyani v. Union of India is a landmark judgment in this regard.

[B] Inter-Religion Differences: Different Personal Laws are not different for one religion to another religion only, but also they have many inter-religion differences and that depends upon several factors, like the part of the country, usages and customs practiced in that particular part or area, sub-caste, sect or

247AIR 1995 SC 1531.
sub-sect, group and many more. Due to this, no any straight jacket formula can be opted even for one religion people.

[C] **Absence of Precedent**: Due to variety of usages and customs, and in the absence of uniform policy, people can take benefit of the loop-wholes of the laws. The authenticity of such act can not be challenged and if challenged, in the absence of any precedent in that area, affected person has to fight till the Supreme Court of India to get judgment.

[D] **Technicalities of Laws**: There is no similarity in personal laws, hence, it becomes very tough for the common people to understand the technicalities of law. Because of the plurality of the law, it is not possible for anyone to know all the provisions and hence, several socio-legal problems arise. It is quite possible that both the parties of an issue are bonafide, but they may make a mistake of law. That ultimately causes trouble.

[E] **Gender Injustice**: Different personal laws have caused grave gender injustice in the society. They have several issues which have not only caused inequality amongst the women and men, but have also arose injustice to woman to woman and man to man.

[F] **Rights of Women**: Woman had been subjugated, sidelined for many centuries in all religions. They did not have even minimum human rights. Before the advent of Quran, this was their status. After the revelation of the Holy Quran and the Prophet's intervention, their status began to change. Right to education, public participation, employment, offering prayers in mosques was granted. Women had the right to choose their partners and also to divorce. They could possess, own property and dispose of. They were the masters of their income and property. In other words they had equality. This is the Islamic image. But today in spite of modern thoughts of liberty, equality and fraternity, woman have lost every right which Quran and the Prophet had granted. A
slavish like situation prevails. This is the fallen image of Islam from woman's point of view.248

For Hindus, after independence, due to revolutionary Hindu Succession Act, 1956 and thereafter, Hindu Succession (Amendment) Act, 2005, the property rights for Hindu females are to a large extent gender just because now Hindu women are provided with equal rights of property as of men but there too, regional inequalities occur. But women of other religions, still do not have equal property rights as of men.

[G] Inequality before Law: Inequality between men and women in matter of marriage and divorce and succession exists in many personal laws which gives a bigger share to the man. Inequality is further created between people of different communities. It is also created between the state and the individual living within it. The right of a destitute divorce to demand that the state should secure her maintenance from her husband will now depend upon her religion. The husband's immunity from such a claim from the government will also depend upon his religion. In other words, for one and the same act, the state will have duties towards some citizens and not toward others.249

Due to the inequality, not only in one community, but in all the communities women of all the groups are suffering just because they are woman. From Kashmir to Kanyakumari, India is one, but personal law system of India, differs for each. It has caused injustice to all, but women are the main victims of this unjust, illogical and unequal legal system. Injustice to women, can be observed in all the areas of civil issues i.e., marriage, divorce, maintenance, adoption, inheritance, succession, etc.

248 Supra 135 at pp. 222-223
249 Supra 25 at p. 42
The feminist thinkers have always seen the personal laws as an important source for women exploitation. That is why the feminist in India have highlighted the need of a UCC to achieve gender justice.\(^{250}\) This issue was also raised by Shri Munshi, while debate regarding UCC was going on in the Constituent Assembly.

(6.2) Objections against UCC

There are several objections which are usually raised by the people who are against the UCC. Such objections are;

(A) **The UCC is against Arts. 25 and 26:** Fundamental rights incorporated under Arts. 25 and 26 of the Constitution, are always used as weapon to fight against UCC for those people who, for any reason do not want the UCC to become the reality. Their argument is that, these Arts. protect their right to have their own personal law.

(B) **Personal Laws are Religious hence Immutable:** People who argue against UCC have very strong belief that personal laws are religious and hence, cannot be changed or altered. This belief is real or artificial can not be decided truly as per their aspect.

(C) **State can not Interfere with Personal Laws:** In view of Article 13, it is many times argued that, the State can not interfere with the basic structure of family laws and they do not come under the purview of “laws”.

(D) **No need of UCC at this juncture:** On several occasions, it is being said by many politicians and selfish intellectuals, as well as social representatives, that there is no need to have a UCC for the country like India, where multi-cultural and multi-religious people reside, who are not able to leave their

\(^{250}\) *Supra* 33 at p. 2
religious belief, that their personal laws are of divine in origin. Change in their personal law system would snatch their right to freely profess their religion and right to live with the system of their own choice.

(6.3) Impediments against UCC

There have been many hurdles in the way of forming and enacting a UCC. Due to which, nothing concrete could be done in this regard. The main such hurdles are as under;

(A) Role of Governments: It is the duty of the government to implement UCC. But, from the time, this mandate has been incorporated in the Constitution, there is no any reported activity on the part of any government, which might have even initiated this issue. The reasons are many but the main reason is that, no government could dare to face the objection raised by the minorities. There is not even a single reported incident when, any government, ruled this country so far, might has tried to talk seriously with the minorities on this issue. In fact, the role and attitude of government has remained static and against the UCC. In fact, attitude of governments have remained negative towards the UCC. BJP, in its Election Manifesto, 2014, has promised to implement UCC in the country. But till yet in that reference too, there is no any serious official activity is noted so far.

(B) Lack of Political Will Power: For any change or development, in any nation, strong political will power is an immense necessity, which totally lacks in reference of UCC, in this country. In fact, politicians are very much against the implementation of UCC. In the name of “Secularism” politics is always played against the UCC. This tendency of politicians and different political parties, has led UCC to remain a dead mandate of the Constitution.
(C) Objection by Minorities: Except some individual, different religious minorities have always shown their objection against the UCC. They have a misconception that their personal laws are of divine and religious origin. They are also afraid that, by UCC, their distinct identity will be lost. This is nothing but a vague fear, which is constructed and supported by such people of the particular community who don't want their people to be freed from wrong impression of religion.

(D) Opposite view of some Constitutional Debaters: During the Constituent Assembly debate, on different rights provided for religious freedom, incorporated under fundamental rights, few debaters always showed their negative approach towards the slightest variation in religious rights, which were in fact not tenable legally and logically. Against draft Art. 35 and adopted Art. 44 too, many Muslim members filed very strong objection and also proposed several amendments in this Art., so that the rights of their community can not be modified at any point of time. Though such arguments were rejected and not included, their side effect can be observed still, on the mindset of the people of the particular community.

(E) Stubborn Attitude of Religious Minorities: Religious minorities have been very stubborn in their view towards UCC. Their fear is not real but artificial in many aspects. They are not ready to adopt progressive approach regarding these personal laws.

(F) Absence of public opinion: Whatever objections are there against UCC, are filed by few leaders of political parties and a group of such people who are leading their community or society. The general public opinion has never been noted or tried to be noted. The voice of few persons has created the present picture, which proves that the society is not ready to accept UCC. But, if the opinion of public is taken, it is surely in the favour of UCC because, they are the victims of different personal laws.
(G) Lack of Information among Citizens: It is a well admitted fact that the every information regarding UCC has not reached to all the citizens of this country. The nature, need, reliability and the authenticity of UCC is totally unknown to the general public. Hence, they are unable to express their thoughts regarding UCC.

(H) Ignorance and Illiteracy: Illiteracy is one of the serious socio-political problems in this country. The illiterate people can not understand the true nature of law, made for them. Moreover they can not read and understand such issues. Illiteracy leads them to ignorance. And both, illiteracy and ignorance, lead such people to be keep quiet. Such people strongly believe that, they are not the part of policy making system. Hence, they never try to file their view regarding any issue.

(I) Lack of effective Communication by Media: Yet too, many parts of this country are very far from the reach of the media of any kind. They are so remote that, the people of these parts are always very far from expressing their views, on any subject. Till yet, electricity supply has not been possible in several parts of this country. Due to this too, electronic media remains unused and unwarranted for them. This has led the issue undiscussed and unreached to such people who are far from media.

(J) Misinterpretation and Misconception regarding several Fundamental Rights: Fundamental rights enshrined under Arts. 25 to 30 have led several problems to policy making in this regard. Due to the misinterpretation and misconception of the object of these Arts., citizens have never understood the basic concept incorporated under these provisions.

(K) Unavailability of Draft bill: Till yet, there is not even a rough draft of UCC available to the people to understand and analyse it. Whatever talks are going on, are in dark only, which can not lead to cultivate any firm decision in
this regard. Due to unavailability of a draft bill, several misconceptions are tried to produce before people to spread fear regarding UCC, in their mindset.

(6.4) Misconception Regarding UCC

There are many misconceptions regarding UCC and these misconceptions are causing many ambiguities in the way of UCC. Such misconceptions are:

(A) There is a misconception among the people of different religions that, their personal laws are of divine origin, disturbing which shall make them lose their identity in the society, and their personal laws are of unchangeable in nature.

(B) Minorities also fear that, in the name of UCC, the Hindu Law shall be applicable to them.

(C) Minorities have fear that, right to freedom of religion shall be snatched in the name of UCC.

(6.5) Reasons for Misconception regarding UCC

There are several reasons for misconceptions due to which, even after sixty five years of the enactment of Constitution of India, no effort is made in the direction of fulfilling the imperative of UCC. The tragedy is, these reasons do not exist in reality. They are not only fake, but are also artificially arose for the self-interest by those people who want to dominate their people in the name of religion. Willfully and intentionally, such people or leaders do not allow to reach true religious knowledge to the common people. Several of Such reasons for misconception are as under;
[A] **Role of Political Parties:** All the political parties have played an immense role in developing anti-UCC atmosphere by one or other way. Vote bank politics can work only till the people are separated, and do not know their rights well. To maintain vote, these parties want the people to be ignorant.

[B] **Role of Religious Leaders:** Different religious leaders have wrongly interpreted or misinterpreted the meanings and true senses of religious verses. Many times they have carried out such kind of activities intentionally. To hold the command over their religion people, they have misrepresented them regarding their rights and duties, from and towards law and order.

[C] **Illiteracy and Superstition:** In India the ratio of illiteracy is very High. And, people believe in religion more than any other thing. Believing in religion is not a matter of worry, provided, they should be knowing and following true path of religion. Many times, the religious leaders, themselves do not possess religious knowledge in its true sense. And if they know then too, they misguide the people. Because, they know that if the people would come to know the reality, they would not be in position to dominate them. Due to illiteracy and high ratio of superstition is also high, people believe religious leaders rather believing religion.

Most of such believers are not even in position to read the real versions of their religious books. Hence, they have to be dependable on their religious leaders, who are generally working for name, fame and power. Rather giving religious Knowledge, they produce their own twisted thoughts to their followers.

Sometimes religious leaders who are not in fact related to religion in any manner, show off the people to follow them and by this, they bring mass public in their favour and such "So Called" religious leaders do their several illegal
business in the name of religion. Past decade has witnessed so many instances of such nature.

[D] Customs and Usages: Customs and usages of different parts of this country also dominate the mindsets of the people. People follow what have been practiced till yet, but they don't try to find out, what they are following has any basic authenticity or not, in the eyes of their religion?

[E] Anti-UCC Practice by Gender Bias Persons: UCC intends to eradicate all inequalities from the different personal laws, and more or less, all the personal laws are gender bias. If it is enacted, there will be cut-off in males rights, to compensate females rights and most of the leaders either political or religious are males and it will effect their rights too. That is why, they don't want to create atmosphere in favour of UCC. And they are developing mindsets of the common people, against UCC.

[F] Mindset of Minorities: Nearly all the minorities are opposing UCC, but main objection comes from Muslim Community. The law followed in the name of Muslim Law is not purely of Quranic nature. Muslim Law in India is not really, what exists in Holy Quran. Different customs usages and social practices have greatly influenced it. Specially in Muslim Community, some rights are said to be specially conferred on males and they practiced them in unilateral manner but in fact its nature, what is exactly stated in Quran, is very different than of what is practiced. i.e. "Triple Talaq", is irregular but then too, most of the Muslims in India, follow it whenever they wish. The facility of "Triple Talaq" was given as "fire exit" but it is used as main door. Such people who are misusing their personal law, would not be able to do such things after the enactment of UCC and hence, they strongly object it.

If in colonial society, it was difficult to bring changes in traditional personal laws, it is much more difficult to usher in changes in the present
democratic society. The politicians are afraid of facing the wrath of their voters. The vast number of women continue to be illiterate and unaware of their rights as equal citizens and hence it is men who decide what is good or bad for them.251

Unfortunately, in the recent times the question of UCC has been debated in a communal atmosphere. In consequence, no satisfactory answer has come out. Nevertheless the discussion has led us to some happy conclusions that reforms in personal laws are necessary to empower the position of women in our society. Secondly, 'uniformity' in civil laws does not mean uniformity between communities but uniformity or equality between men and women. Thirdly, reforms in personal law do not mean to destroy the tradition and culture of different communities but to destroy the wrong practices and customs prevailing there. This means reforms have to be progressive measures which dilute inequalities concerning gender.252

(6.6) The Core object of UCC

A uniform civil code relating to personal laws does not mean the extension of Hindu personal laws to other communities. It involves, the evolution of a rational system removing the inequality, injustice, particularly to women and children, inherent in those ancient system and the replacement of all existing personal laws by such a rational system. Now the matter is on a common level of civilization and common standard of decency, which should, in the course of time be unified and secular, we want to separate religion from personal laws. It has been seen that Muslim's generally are too sensitive to any sort of interference in their personal laws, but Tahir Mahmood a scholar on the Muslim Jurisprudence, holds that a uniform civil code is not violative of

251 Supra 29 at p. 6
252 Ibid at p. 173
"Shariat" and says "A Muslim can remain Muslim even, if he opts, out of Shariat and subscribes to a uniform civil code.\textsuperscript{253}

Uniform Civil Code thus contradicts neither the religion nor the preaching of Islam nor the concept of Secularism. What it comes in conflict with is vested interest, and it is that vested interest which is raising its voice louder and louder. They conveniently forget that even in Muslim countries, Muslim law has been changed so as to bring it in conformity with the times and the needs of the society. But in this part of the sub-continent, we have the same law, and the same underlining principles, and the same decrepit details as in the sixth century. This is the tragedy of times and this is where reason is falling prey to passion.\textsuperscript{254}

It is not that, in the name of UCC, Hindu code would be imposed on all the citizens of India. It should also be remembered that the present Hindu Law is not in its original forms. While drafting new Hindu law, nearly all the religious rituals are omitted except, the rituals for marriage. If Hindus can adopt drastic changes in their personal laws, why not other communities?

The Constitution of India equally treats all the citizens in respect of their fundamental, Constitutional and legal rights. Not only the Constitution of India but other laws too, which are not of purely family law nature, give equal treatment to all the citizens. Then, all the citizens should also respect laws equally.

UCC is required for bringing clarity, simplicity and intelligibility in personal laws, because till yet the scenario in this regard is very ambiguous.

\textsuperscript{253}Shivlal Yadav, "Some Reasons for Uniform Civil Code", 1995(1) GCD at p.27(J).
\textsuperscript{254}Supra 7 at p. 89
UCC is required as a safeguard against political dominations. It is necessary to bring gender justice, equality and uniformity in personal laws.

UCC is also required to secure the unity and integrity of this country which is divided on the grounds of different personal laws.

UCC would replace old, obsolete and outdated personal law system of India.

While religious ideologues have been responsible for derailing rational debate on a uniform code, secularists have done the nation grave disservice by opposing movement towards a uniform code or reform of personal law. A touch-me-not secularism has resulted in stalling the process of modernization and social reform by pushing large sections of emotionally besieged and ghettoized Muslims and even Christians into the arms of the religions orthodoxy. One needs to be wary of the liberal secular ideal becoming a narrow and hollow "ism."  

A uniform civil code has been wrongly posited as an assault on religion and religions identities. What it essentially aims at is secular reform of property relations in respect of which all religions have grossly discriminated against women. UCC is, therefore, foremost a matter of gender justice. But male chauvinism and greed have joined with religions conservatism to forge and unholy alliance to perpetuate a major source of gender discrimination thereby impeding the modernization of social relations and national integration.

There is a larger reason for a uniform code. With the slow but steady empowerment, modernization and even globalisation of Indian society, the country's real diversity is becoming manifest. Cohort after cohort of the long

256Ibid.
suppressed and submerged underclass is thrusting up from below to claim its place in the sun as equal citizens who will not be denied their fundamental human rights. In the process, they are breaking traditional barriers of community, caste, race, region, language and gender, challenging the old and increasingly outmoded social order of which conservative personal laws are a part. Iniquitions social prohibitions and restraints that earlier kept everybody, including women, in their "proper place" are now being falsely portrayed as religious virtues to thwart secular reform.257

(6.7) National Law Commission Reports in reference of Personal Laws

15th report, was a proposal on "Marriage and Divorce amongst Christians in India".

18th report, was a proposal regarding "The converts" Marriage Dissolution Act, 1866".

22nd report, was a proposal regarding "Christian Marriage and Matrimonial Causes Bill, 1961" and filed several objections in respect of Christian marriage and divorce issues.

23rd report, was on "The Law of foreign Marriages".

59th report, was regarding "Hindu Marriage Act and the Special Marriage Act, 1954".

65th report, was regarding "Recognition of Foreign Divorces".

71st report, was regarding "The Hindu Marriage Act, 1955 Irretrievable Breakdown of Marriage As a Ground of Divorce".

83rd report, was regarding "The Guardians and wards Act, 1890 and certain provisions of the Hindu Minority and Guardianship Act, 1956".

257 Supra 255.
98th report, of National Law commission of India was regarding "Section 24 to 26, Hindu Marriage Act, 1955: orders for Interim Maintenance and orders for the Maintenance of children in Matrimonial proceedings".

132nd report, was regarding "Need for Amendment of the provisions of chapter IX of the Code of Criminal procedure, 1973 in order to ameliorate the hardship and Mitigate the Distress of Neglected women, children and parents".

153rd report, was regarding "Inter-country Adoption".

204th report, was regarding "Proposal to Amend the Hindu Succession Act, 1956 as amended by Act 39 of 2005".

205th report, was regarding "Proposal to Amend the Prohibition of child Marriage Act, 2006 and other Allied Laws".

207th report, was regarding "Proposal to amend section 15 of the Hindu Succession Act, 1956 in case a female dies intestate leaving her self acquired property with no heirs".

208th report, was regarding "Proposal for amendment of Explanation to Section 6 of the Hindu Succession Act, 1956 to include oral partition and family arrangement in the definition of partition".

212th report, was regarding "Laws of civil Marriages in India- A proposal to Resolve certain conflicts".

219th report, was regarding "Need for family Law Legislations for Non-resident Indians".

224th report, was regarding "Amendment of section 2 of Divorce Act 1869 Enabling Non-domiciled estranged Christian wives to seek Divorce".

227th report, was regarding "Preventing Bigamy via conversion to Islam- A proposal for giving statutory effect to Supreme Court Rulings".

235th report, was regarding "Conversion/reconversion to another religion- mode of proof".

242nd report, was regarding "Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of honour and Tradition): A suggested Legal Framework".
247th report, was regarding "Sections 41 to 48 of the Indian Succession Act, 1925- Proposed Reforms".

252nd report, was regarding "Right of the Hindu wife to Maintenance : A relook at section 18 of the Hindu Adoptions and Maintenance Act, 1956".

257th report, was regarding "Reforms in Guardianship and Custody Law in India".

(6.8) Protection of Women from Domestic Violence Act, 2005: A Revolutionary Law

After independence, though no codified law is enacted in the area of personal law for all the citizens, but legislations regarding few civil issues are enforced in piecemeals. Protection of Women from Domestic Violence Act, 2005 (PWDVA) is one of them. Taking into account the objects of the Vienna Accord, 1994, Beijing Declaration and the platform for Action, 1995 and Convention of Elimination of All Forms of Discrimination Against women (CEDAW), to prohibit the domestic violence against women, this legislation is enacted.

This law intends to provide all kind of relief to the women which are essential in domestic relations, may that be in context of either right to reside in a shared household, or for protection or for residence or for monetary relief, or for custody of children or for compensation etc. This legislation is for "women" and not for any specific group of women of particular religion. Women of any religion can file application under legislation. People from no religion has objected the implementation of this law. And it is a proved fact that women from all religions and groups are approaching courts to get protection under this law.
(6.9) Tahir Mahmood’s view regarding Muslim Law

Prof. Tahir Mahmood, an international expert on Muslim Law and former dean of Delhi University Law faculty and former Chairman of the National Commission for Minorities, in an interview conducted by Ajaz Shraf, expressed his views on several issues of Muslim Law, which clears that the Muslim Law, followed in India is a mistorted version of the original Muslim Law. Some extracts of this interview are as under;

Q. But Muslim leaders and clerics insist that Muslim Personal Law is derived from the Quran and, therefore, cannot be altered?

- Well, it is absolutely foolish to say any personal law is protected by the Constitution. None of the freedom of religion clauses in the Constitution, from Arts. 25 to Art. 28, even remotely talks of personal law. On the contrary, and explanation in Art. 25 says that freedom of religions will not preclude the state from introducing social reforms and enacting laws on subjects traditionally associated with religion.

Q. Muslim Personal Law has changed in other countries, hasn't it? Why are clerics in India so resistant to change?

- I suppose this question is best asked to them. But ignorance, obstinacy, blind belief in religion and morbid religiosity are undoubtedly the factors.

Q. Muslim Law is viewed to be tilted against women. The most evocative symbol of this view is triple talaq, saying that it doesn't adhere to the correct Islamic procedure. What is correct procedure?

- The law on this point is absolutely clear in the Quran. There are two verses in the Quran pertaining to talaq. One verse says, "Divorce is only..."
twice." The background to this verse was the social condition prevailing in the pre-Islamic period- husband would divorce their wives temporarily, because every divorce was revocable till the iddat Period [This corresponds to roughly three months, the expiry of which leads to couple separating]. They would divorce their wives, revoke it on the last day of iddat, enjoy them for some time and again divorce. Basically, they kept playing hide and seek with wives all their lives.

To stop this devilish practice, the Quran declared that a person can revoke his divorce only once. This means if the husband divorces his wife the second time in his life, the marriage is instantly dissolved. She will not remain his wife, iddat or no iddat.

The other Quranic verse says a person can't divorce his wife unless there is an arbitration or reconciliation process, which requires representations from both side. The Maulvis have assumed the power of deciding that the first verse is Quranic law and the other is just Quranic morality, not law. Who has authorized them to make this distinction? The Quran does not speak of law and morality. Whatever the Quran says is Quranic.

Q. So how did this practice of triple talaq come to India and why is it entrenched in India?

- It was there everywhere. But, other than India, it has been reformed elsewhere. Islam didn't introduce this practice of triple talaq. Islam, on the contrary, tried to stop this, as I have already explained. But custom was deeply rooted and it continued thereafter.

Q. Since triple talaq doesn't have the Quranic sanction, would you say this practice should be banned in India?

- Triple talaq has been banned all over the Muslim World. Why should India be sticking to this 7th century law?
Q. I assume you must have spoken to the supporters of triple talaq and tried to make them see reason?

- I have spoken to them enough. I don't want to waste my time anymore. I can't convince the fanatics. They will remain what they are.

Q. What arguments did they cite to you for insisting on continuing with triple talaq?

- These people say they are not competent to understand the Quran. They say, they are bound by the interpretation of the Quran by this or that Imam who lived in the first 100 years of Islam's advent. Just as the Constitution is what the Supreme Court of India says it is, the Quran is what Imam Abu Hanifa (699-767 CE) or Imam Shaefic 767-820 (E) said it was. It doesn't matter to them that the Quran at the outset asks the reader to go deep into its meaning and decide it for himself. Nor does it matter to them that the revered Imams cautioned people against following them blindly. Read the Quran and decide for yourself, they said. Unfortunately, we in India are going in the contrary direction.

Q. Do you think the All India Muslim Personal Law Board has been an agent of change?

- Frankly, I want the Board to be abolished. Its members are paranoid and they speak rubbish. Every time the Supreme Court delivers a judgment, the Board members say it is interfering with Shariat. They are doing disservice to the community. They have succeeded in making the community believe that Muslim personal Law means the Quran and that there is no difference between the two, and that both are divine.

In this interview, he also expressed his view regarding provisions and procedures of "Khula", "Female witnesses", "the anomalies", "the hold of Maulvis over the Muslim Community" etc.
(6.10) Social Need and Law

In a democracy, the interplay between social opinion and the law moulding activities of the state is a more obvious and articulate one. Public opinion on vital social issues constantly expresses itself not only through the elected representatives in the legislative assemblies, but through public discussion in press, radio, public lectures, pressure groups and, on a more sophisticated level, through scientific and professional associations, universities and a multitude of other channels.259

We have seen that in a democratic system of state organization there is a great variety of interactions between social evolution and legal change. The stimulus may come from a variety of sources, some of which have been briefly surveyed. There may be the slowly growing pressure of changed patterns and norms of social life, creating an increasing gap between the facts of life and the law, to which the latter must eventually respond. There may be the sudden imperious demand of a national emergency, for a redistribution of natural resources or a new standard of social justice. There may be a far sighted initiative of a small group of individuals, slowly moulding official opinion until the time is ripe for action. There may be a technical injustice or inconsistency of the law demanding correction.260

The law responds in various ways, too. The speed and manner of its response is usually proportionate to the degree of social pressure. It is also influenced by the constitutional structure. But circumstances and personalities may hasten or retard the response. In the sphere of 'Political Law' or where a new status is created, legislative action is required. In other fields, there is a give and take between legislative and judicial remedial action, in part

260 *Ibid* at p.44.
determined by the subject-matter but in part by the changing and diverse attitudes of legislators and judges.\textsuperscript{261}

In any system there is an inevitable time lag between social change and legal response. In theory at least the problems are relatively smaller in a totalitarian society, where both legislature and judiciary are essentially arms of government. They are more complicated in democratic and pluralistic societies, and most complex in federal democracies where the divisions of functions and legal powers between the federal and the state components of the federation tend to make swift and unified responses to urgent social needs much more difficult.\textsuperscript{262}

Once a nation attains political stability on terms laid down by its Constitution, society enters into the next level of stabilization through a well defined civil law. A civil code is the foundation of an orderly abiding society which is essential for the success of democracy and orderly economic development.\textsuperscript{263}

The Muslim community in Goa accepted the Portuguese civil code. An attempt in 1981 to apply the law of India to Goa, was opposed successfully by Goan Muslim youth groups and Goan women's association. Inspite of the support of such a move by the Goa Muslim sharia organization, the civil code in Goa is applied generally.\textsuperscript{264}

\textsuperscript{261} Supra 259 at p.44.  
\textsuperscript{262} Ibid at p.514.  
\textsuperscript{264} Supra 11 at p.177