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UNIFORM CIVIL CODE AND CONFLICT IN PERSONAL LAWS*

Introduction

India is a country which practices many religions and each community abides by its own personal Laws. The proposal for a Uniform Civil Code for India is to replace existing religious personal la w system which appears to be a major source of a never-ending debate. Uniform Civil Code is thr ee words if implemented will be the spirit that will be sufficient to divide India politically, religio usly and socially. It has acted as a catalyst to resolve the problems related to National integration, modernity, secularism and very recently gender equality.

The framers of the Constitution have envisaged the concept of Uniform Civil Code for administeri ng the same set of secular Laws with respect to civil matters to govern people of different religion s and in different regions. The civil matters mentioned by the framers are marriage, divorce, adopt ion, inheritance, and certain other personal and familial matters.

The Uniform Civil Code controversy rises from the three-dimensional tension between the traditio nal political impulse to leave communities alone to manage their social life, the modernist politica l values of "rule of law" which requires that one law apply to everyone and that everyone should b enefit equally from the Laws of the state and third, the political imperative of pleasing every consi stency possible.

This might be one of the main reasons behind our constitutional framers to decide and bring the c oncept of Uniform Civil Code under Directive Principle of State Policy (Art. 44) and not under Fu ndamental Rights of our Constitution.

Art. 44 of the Constitution enumerates the concept of Uniform Civil Code, laying down that :

"The state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territor y of India."

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The constituent assembly debated on the concept, relevance and utility of the Uniform Civil Code in the constitution making process. The Muslim members of the constituent assembly did not give consent to the concept of Uniform Civil Code with all possible intensity at their command. In the assembly many arguments were put forward for and quest for the objective evaluation of the Unif orm Civil Code, will not be out place in India which is known for its religious, cultural and lingua l diversities.

The constituent assembly debated the Uniform Civil Code under article 35. Mohammad Is mail from Madras moved the following proviso for addition to article 35, which provided that any group, section or community of people shall not be obliged to give up its own personal law in cas e it has such a law. He advocated that the right to adhere to own personal Law was one of the fund amental Rights. He asserted that Personal Laws were the part of the way of life of the people. In h is evaluation, personal laws were the part and parcel of religion and culture.

To strengthen his argument he cited precedents of Yugoslavia, the kingdom of the serbe, Croats, a nd Slovenes which were obliged under treaty obligations to guarantee to Muslims being in Minori ty in the matter of family Laws and personal status.

Mr. Naziruddin Ahmed, another noted member of the constituent assembly, moved a proviso to A rticle 35 which reads:

> *Provided that the personal law of any community which has been guaranteed by the state shall not be changed except with the previous approval of the community ascertained in s uch a manner as the Union Legislature may determine by law.*

However, the British Administration, as he pointed out, during its 175 year rule, did not interfere with the institution of marriage, dower, divorce, maintenance, guardianship, paternity, acknowledgement, waqf, wills, gifts, pre-emption, administration of estate, and inheritance. Whatever laws were enacted in the area of MPL during the British administration of Justice, were mostly on the initiative of the Muslim community.[1]

In this perspective his note of caution is pertinent to be quoted:

"What British in 175 years failed to do or was afraid to do what the Muslim rulers in the course of 500 years refrained from doing; we should not give power to the state to do"

Dr.B.R.Ambedkar, tried his best to solace the Muslim members on the issue of the Uniform Civil Code: "I shall also like to point out that the state is claiming in this matter power to legislate.

[1] Dargah Khawaja Sahib act 1936, Dissolution of Muslim Marriage Act 1939, Kazi Act 1880, MPL (Shariat) Application Act 1931, Muslim Dower Act 1920, Muslman waqf validating Act 1913

No government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion. I think it would be mad government if it did so."

Dr. Ambedkar persuaded the Muslim members "not to read too much into article 44." He affirmed even if the Uniform Civil Code was implemented, it would be applicable to those who would consent to be governed by it.

Thus, MPL being the part and parcel of the religion and culture of the Muslim Community is duly protected by Part III of the Constitution. In such Constitutional scenario if the state enacts any Law, it shall attract Article 13(2) of the Constitution which reads:

"The state shall not make any Law which takes away Or abridges the Rights conferred by this part (III) And any Law made in contravention of this clause shall to extent of the contravention, be void."

Not only religious belief, but acts done in pursuance of religious performance or practice: rituals, rites, ceremonies, observances and modes of worship are protected under Article 25(1) and 26(B) of the Constitution.

The Indian Judiciary, on the issue of the Uniform Civil Code and the personal laws has not been consistent. It has adopted diverse approaches on different occasions. The division bench of the Calcutta High court In *Naresh Chandra Bose Vs. Sachindra Nath Deb*,[2] held that the expression ' Law in force' under article 372(2) of the constitution was not limited to statutory laws, but it extended to cover customary laws and personal laws like that of the Muslim community. Further, observed that article 44 of the constitution itself recognized the existence of different sets of personal Laws for different communities.

The Supreme Court in *Krishna Singh vs. Mathura*[3] opined that in process of applying the personal laws of the parties, the judges of the High Court 'could not introduce their own concept of modernity'. In view of the Supreme Court, the constitution maintained the position of personal laws status qua.

PERSONAL LAW AND THE CONSTITUTION OF INDIA

Personal Law and Directive Principles

(i) Article 44

Article 44 of the constitution is as follows:

2 AIR 1956 Cal 224
3 AIR 1980 SC 707

"That state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India".

Undoubtedly, the expression 'civil code' used in this article refers to a code of law relating to those matters which are, at present being regulated or governed by different personal laws. It is noteworthy take like all other directive principles specified in the Constitution, the provision of article 44 too "shall not be enforceable by any court", but it is "nevertheless fundamental in the governance of the country" and has to be "applied" by the State "in making laws".[4] Despite its being "legally non-enforceable", the Court at times has raised the issue of the enactment of a 'uniform civil code' more often when the case did not require any such incidental generated by the obiter dicta in Shah Bano's Case,[5] Jordan Diengdesh's case[6] will be discussed in the succeeding 'chapters'.

(ii) Family Law, Religion and Social Justice

The family law, by controlling the institutions of marriage and property, determines the very cour se of human life. Marriage is a substantial tie in the life process of human being.[7]

Justice in these matters is necessary for a happy home and this task is onerous when factors of love and morality do not generate fair familial relations.[8] It is for this reason that scholars have rightly observed that the test for a just social order lies in a just and fair family law.

In its essence, social justice means the quality of being fair and just in social relations of human beings.[9] This noble quality is attained within the family by eschewing exploitation of the vulnerable members like women and children by the dominant members and by forbidding, the operation of irrational notions and religious beliefs of blind nature, the concept of social justice aims to attain a social arrangement wherein the good things of the society, amenities and responsibilities are justly distributed among the members of the society.[10]

On the contrary in the background of broad concept of Dharma[11] (justice) or the egalitarian charter in the Shastrik writings[12] and the Quaranic emphasis on human dignity and equality[13] it is not possible for anyone to justify some of the unjust, discriminatory and exploitative usages of personal laws as in accordance with the true ethos of the religions.

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[4] Article 37 of the Constitution of India.
[5] *Mohd. Ahmad Khan v.Shah Bano*,, AIR 1985 SC 945.
[6] *Ms. Jordan Dienghed v. S.S. Chopra*, AIR 1985 SC 935.
[7] T.M. Knox, Hegel's Philosophy of Right, p. 111 (1958).
[8] Steven Vago, Law and Society, p. 265-67 (1931).
[9] K, Suibba Rao, Social Justice and Law, p. 1
[10] R.W.M. Dias, Jurisprudence pp. 81-82; Also see John Rawis, A Theory of Justice pp., 3-4 (1972).
[11] M. Rama Jois, Legal and Constitutional History of India, pp. 3-10. (Vol. 1, 1984).
[12] Ibid.
[13] Neil, B.E., Bailliee, Digest of Mohummudan Law pp. 62-65 (1957).

(iii) Directive Principles, Social Change and Uniform Civil Code

"Social change means", observes Steven Vago, "modifications of the way people work, rear a family, educate their children, govern themselves, and seek ultimate meaning in life. It also refers to a restructuring of the basic ways in which people in a society relate to each other with regards to government, economics, education, religion, family life, recreation, language, and other activities "[14] The equation whether law can and should lead, or whether, it should never do more than cautiously follows changes in society, has been and remains controversial. Despite the debate, modern welfare states make use of law as "instruments that set off, monitor, or otherwise regulate the fact or pace of social change,"[15] Law can shape social institutions directly or indirectly. It cannot lead the society, in its own way, to the land of social justice provided that factor resisting social change do not counter-balance the effort of the law.[16]

The Directives persuading for uniform civil code, compulsory education, panchayat raj, prohibition of cow slaughter and prohibition of alcoholism can be considered as belonging to this category. Social morality, religious feelings, sentiments, ignorance and traditions inhibit any change in these spheres. Imposition of change through law without regard to the feelings of people would be simply counterproductive or futile in these matters.[17] In pursuance of the policy of rendering social justice and economic security to the dependents, Criminal procedure Code (the earlier Act and the present one) provided for obligation of all persons to maintain his/her spouse, minor, children, unmarried daughter and parents who are unable to maintain themselves.

In *Bai Tahira*,[18] and *Shah Bano*,[19] cases the Supreme Court applied Sec. 125 of Cr.PC. providing for the duty of maintenance and the argument that Sec.125 violated the Muslim Personal law and religious freedom of the community were rejected. According to the Court, payment of *Mehr* and maintenance during *iddat* period did not absolve the husband from the duty to maintain. About the argument on the basis of religious freedom, the court viewed that for purpose of secular and welfarist provision like Sec. 125 of Cr.P.C. application of religious principle was irrelevant. The court laid emphasis upon the objective of uniform civil Code under Art. 44.

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14 Steven Vago, Law and Society pp. 238-239 (1981); B.S. Sinha, Law and Society Social Change p. 16-23 (1983).

15 Lawrence M. Friedman, Legal Culture and Social Development, Law and Society Review 4 (1) p. 29 cited by Steven Vago.

16 For a detailed discussion of factors resisting social change.

17 The failure of prohibition law, compulsory education programmes and panchayat raj can be traced to this reason.

18 AIR 1979 SC 362

19 AIR 1985 SC 955

JUDICIAL RESPONSE TO UNIFORM CIVIL CODE

In democratic countries, the judiciary is given a place of greater significance because the courts co nstitute a dispute-resolving mechanism. And, in case of written constitution the judiciary has more specific and special role to play.

The controversy between right to religion and provision regarding Uniform Civil Code surfaces in the early days of the working of the constitution. How judiciary has worked as a balancing wheel to preserve the rights and promote the idea of Uniform Civil Code is the subject matter of discussi on here. The emphasis is to examine the extent to which the judiciary has been successful in prom oting the spirit of uniform civil code as intended to by the wise founding fathers of the Constitutio n.

Judicial Response to Polygamy

The first case which came to court regarding the conflict between right to freedom of religion and directive towards one civil code was the *State of Bomaby v.Narasu Appa Mali*.[20] In this case the B ombay Prevention of Hindu Bigamous Marriages Act, 1946 was challenged and was held intra vir es the Constitution. The Act has imposed serve penalties on a Hindu for contracting a bigamous m arriage. In this case the validity of the abolition of polygamy in particular communities only was c hallenged.

He observed;[21] "It is impressed upon us that our Constitution sets up a secular State, the Article 44 contains a directive to the State to secular for the citizens a Uniform Civil code throughout the ter ritory of India, and still the State of Bombay by this legislation has discriminated between Hindu a nd Muslims only on the grounds of religion and has set up a separate code of social reform for Hi ndu different from the applicable to the Muslims. "While deciding the case Chagla C.J., relied hea vily on *Davis v. Beason*.[22] In this case the constitutionality of an Idaho Statute of 1882, which outl awed bigamy was challenged. Mr. Justice Field, who delivered the opinion of the Supreme Court; however observed: "However free the exercise of religion may be, it may be subordinate to the cri minal laws of the country passed with reference to actions regarded by general consent as properl y the subjects of punitive legislation."[23]

Thus, the court in this case again stressed that second marriage may strictly be prohibited during the subsistence of first marriage. The court tried to give practical shape to the basic tenets of

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20 AIR 1952 Bom. 84

21 *State of Bomaby v.Narasu Appa Mali* ,AIR 1952 Bom. 86.

22 (1989) 133 US 637.

23 *Davis v. Beason,* (1989) 133 US 640

Hindu and Muslim religion which has prohibited second marriage. In this way the judiciary was always in favour of monogamy which is our cultural heritage.

Judicial Response to Property and Succession

In *Smt. Gurdial Kuar v. Mangal Singh*,[24] the custom against Jats in Patiala district and the Hindu Succession Act, 1956 were challenged before the Punjab and Harayana high Court. The facts of the case were that one Sandhu an unmarried young man died on May 5, 1956 leaving behind some land. Mangal Singh who was respondent in this case, a distant collateral of the deceased took possession of the land. Smt. Gurdial Kaur appellant, the widowed mother of the deceased filed a suit on March 3, 1958 for possession of the land left by her son as his sole heir. In order to exclude herself from the prevailing custom and to take the benefit of Hindu Succession Act of 1956, she contended that Sandhu had died in June 1956. The court relying on the decision of the lower court regarding the date of death of Sandhu refused to accept the contention of Smt. Gurdial Kaur and affirmed the date of death May 5, 1956. The judgement in this case was delivered by C.J. Mehar Singh and Justice R.S. Narula.

The court going one step ahead held[25] "if the argument of discrimination based on caste, creed or race could be valid, it would be impossible to have different personal laws in this country … relating to all matters and covering all cases, creeds or communities to be constitutional."

Judicial response to Divorce and Maintenance:

***a) Shah Bano Case*[26] (1985)**

This case happens to be one of the most controversial judgments of the Apex Court in Independent India. It caused ripples among all sections of the society, particularly by the Muslim community which its extremely sensitive about its personal law.

In this case the simple issue before the Court was whether the provisions of the Criminal Procedure Code 1973, providing a temporary relief to divorced women to be finally adjusted in their actual entitlement under the personal law applicable, was to apply Muslim women as well.[27] In arriving at its decision that "there is no escape from the conclusion that a divorced Muslim wife is entitled to apply for maintenance under section 125 (CrPC) …"[28] the court used inflammable obiter dicta which judicial wisdom required to be avoided.

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24 AIR 1968 Punj 396

25 *Smt. Gurdial Kuar v. Mangal Singh,* AIR 1968 Punj. pp. 398-99. .

26 *Mohd. Ahmad Khan v. Shah Bano Begum*, AIR 1985 SC 945.

27 Sections 125 to 127 of Cr. P.C. 1973

28 *Mohd. Ahmad Khan v. Shah Bano Begum*, AIR 1985 SC 945, 954.

Infact, the fault does not lie with the court only. It was Counsel Danial Latifi,[29] was saw nothing wrong in inviting the Supreme Court to interpret a certain verse of the Holy Quran, and the court naively obliged him. Certainly it could have told him that it was beyond its jurisdiction to interpret or re-interpret that basic religious scripture, especially, when there were established Privy Council rulings warning the courts to keep away from such an adventure.[30]

What made the things worse was that the learned judge chose to close his judgement virtually declaring that the actual and final solution of the problem he was tackling lay in an immediate enactment of a uniform civil code. He observed that, "a common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies."[31]

The judgement as a whole could thus be read like this: Islam degrades women; Quran negates certain popular Muslim briefs; therefore all Muslims must be subjected to a uniform civil code by altogether scrapping their personal law'.

It is a different story whether actually the law of Islam leaves a divorced woman wholly unprotected after the period of 'iddat'. The fact is that Islam does not leave any woman, married, divorced, separated or widowed, without adequate protection even for a day. Islam does not look at marriage as a perpetual bondage; from the very beginning it treats it as dissoluble union. After the dissolution of marriage, therefore, it would not keep former spouses tied down to each other for any purpose. At the same time it would provide adequate protection, financial and social, to the man and woman who were formerly married. In a truly Islamic society divorced woman would infact not remain unmarried for long after her 'iddat'. Misuse of Islamic laws by the Muslims themselves is infact, the greatest factor responsible for its misinterpretation by the courts.[32]

***b) Ahmadabad Women Action Group Case*[33] (1997)**

About two years after the mind-boggling judgment in Sarla Mudgal case showing the court's unnecessary interference in the realm of the functions of the legislature, came a sensible judgment in ***Ahmadabad Women Action Group (AWAG) v. Union of India***.

In the instant case three writ petitions were filed before the Apex Court as public interest litigation under Article 32 of the Indian Constitution. In the Writ Petition (C) No. 494 of 1996, it was

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29 Senior Advocate Supreme Court, supporting the appellant before the court.

30 *Aga Mohomed Jafar v. Koolsum Bibi*, (1897) 25 Cal. 9-18, *Baqar Ali v. Anjuman Ara*, (102) 25 All 236, 254; 301 A, 94.

31 *Mohd. Ahmad Khan v. Shah Bano Begaum*, AIR 1985, SC 945..

32 *Mohd. Ahmad Khan v.Shah Bano Begaum*, AIR 1985, SC 945.

33 *Ahmedabad Women Action Group v. Union of India*, (1997) 3 SCC 573.

prayed to declare Muslim Personal Law which allows polygamy as void as offending Articles 14 & 15 of the Constitution.

In the second WP(C) No. 496 of 1996, it was inter alia prayed to declare Section 2(2), 5(ii) and (iii), 6 and Explanation of Section 30 of the Hindu Succession Act, 1956 as void offending Articles 14 and 15 read with Article 13 of the Constitution of India.

In the third petition i.e. WP(C) No. 721 of 1996 the relief prayed was as follows :

> *To declare Section 10 and 34 of the Indian Divorce Act void and also to declare Sections 43 and 46 of the Indian Succession Act void.*

The court, in this case, - realizing the complexities involved in the issues raised before it and also knowing fully its powers and limitations- refused to oblige the petitioners by observing, at the outset, that:

"*These writ petitions don't deserve disposal on merits in as much as the arguments advanced by the learned Senior Advocate before us wholly involve issues of State policies with which the court will not ordinarily have any concern*"[34]

The court supported its judgment in this case on the basis of its observations in earlier decisions, where the court had held that "the remedy lies somewhere else and not by knocking at the doors of the courts." The court quoted from a number of significant judgment where similar issue came before it from adjudication.

The judiciary has gone to the extent of holding that the institution of polygamy is not based on necessity. If there is son out of the first marriage then instead of taking recourse to the second marriage the proper course in adoption of a son.[35]

Thus, it is clear that whenever the constitutionality of any provision(s) of any personal laws was challenged on the ground of being violative of fundamental rights, the court exercised self-restraint and left the matter for the wisdom of the legislature saying that it is matter of state policies, with which the court is not, ordinarily, concerned. However, it is equally true that on many occasion the court unnecessarily stepped into the shoes of an activist, emphasizing the desirability of the enactment of a 'uniform civil code'.

CONFLICT OF THE PERSONAL LAWS

Conflicts of Law and Uniform Civil Code

[34] *Ahmedabad Women Action Group v. Union of India*, (1997) 3 SCC 575.
[35] *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom. 95

In India, generally there is no possibility of direct conflict arising between the laws of various communities. Every community has its own personal law which ordinarily prohibits inter-religious marriages. However, such conflict of inter communal law may rise indirectly. For instance, when one of the spouses of marriage converts to another religion then the question that arises is: whether the marital relations between the parties will be governed by the law as applicable at the time of marriage or the law applicable after conversion. In the later cases, whether it would be the law of the spouse who has converted or the law of the non-converted spouse. This question has come before our courts in several cases discussed ahead. Almost in all cases one of the spouses has embraced Islam.

A. CONFLICT BETWEEN HINDU LAW AND CHRISTIAN LAW

Now the question before us to be decided is that, when there is a conflict between Hindu law and Christian law, then which law will be applied to decide the case? The first case related to this conflict is *Parmial Khosla vs. Rajnish Kumar Khosla*,[36]. The parties to the case married according the Arya Samaj rites. The wife has petitioned for judicial separation under Indian Divorce Act, 1869 on the ground of cruelty. She justified that as she is professing Christianity she has to right to approach the through Indian Divorce Act, 1869 because the act required at least one party should be a Christian for its applicability.[37] The husband contented that as their marriage was performed as per Hindu rituals they matter is to be decided under the Hindu Marriage Act, 1955. Thus court faced a problem whether the said marriage was governed by the Hindu Marriage Act, or the Indian Divorce Act.

The court in this case observed that the whole position has been radically changed by the Hindu Marriage Act, 1955, which by Section 2(a) applied to 'Arya Samaj'. A Hindu Marriage has now been rendered monogamous by that Act, as Section 5 makes it a condition that neither party has a spouse living at the time of the marriage. The bar to relief emanating from English law by virtue of Section 7 of the Indian Divorce Act,[38] no longer operates. Reliefs can now be had under the Act in respect of Hindu marriage provided, of course, one of the parties professes the Christian religion when the petition is filed.

The court thus reached to a conclusion that in respect of a Hindu marriage, relief can be hand under the Hindu Marriage Act and the Indian Divorce act as well if one of the parties is a Christian when proceedings are commenced.

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36 AIR 1978 Delhi 78.

37 Section 2, Indian Divorce Act, 1869

38 Indian Divorce Act, 1869, Section 7 para 2-. Nothing in this section shall deprive courts of jurisdiction in a case where the parties to a marriage professed the Christian religion at the time of the occurrence of the facts on which the claim to relief is found.

A pertinent question was raised by one Research fellow[39] i.e. whether a valid marriage could take place where one party was a Hindu and other a Christina? Because Section 5 of the Act,[40] requires that both parties to the marriage must be Hindus. Here the court mentioned that presumption of validity was granted to every marriage, which in this case would only mean that both parties were competent to marry according to Hindu rites as they were Hindus. Thus, if the wife now professed to be a Christian, it can only mean that she later converted (on reconverted) to Christianity. If so, the case will be governed by the Hindu Marriage Act, 1955.[41]

B. <u>CONFLICT BETWEEN HNDU LAW AND MUSLIM LAW:</u>

Now the important question that requires a little stipulation is: when one party at the time of the institution of the suit of dissolution of marriage is a Hindu and the other is a Muslim, which personal law, whether Hindu or Muslim is to be administrative by the court. This involves the obvious question of a 'apostasy and conversion' for which we have to first consider the case of Mohammadan law, the application of which differs in a county under Islamic rule as compared to one under non-Islamic rule. The former Dar-ul-Islam and the latter is Dar-ul-Harb. As India is a non-Muslim State, Mohammadan law of Dar-ul-Harab will apply, the position under this law is that Islam is to be offered by the court three times to the non convert spouse, and if he does not accept Islam the court can dissolve the marriages.

In *Ayesha Bibi vs. Suboth Chandra Chakravarty*,[42] the plaintiff and the defendant were Hindu Brahmins married in 1941. In 1943 the plaintiff was converted to Islam, and then offered Islam to defendant, her husband. As he refused conversion to Islam, the plaintiff brought a suit for dissolution of marriage. The Court after considering the position under Mohammadan law, examined if the Hindu law could be administrated in this case. Since there was no Hindu Marriage Act, 1955, it came to the conclusion that the Hindu law neither provided that after one spouse forsaking the religion, the marriage was dissolved, nor did it lay down that it was not dissolved. The court observed that, in the absence of any general law, to be administered in this case, and since the court had assumed jurisdiction, it was for the court to make a choice of law, to be applied by it to such a case of conflict of personal laws.

In the instant case, Hindu wife has intentionally converted to Islam to get divorce from her husband, the court without proper analysis granted divorce to her under Mohammedan law instead

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39 Parsher Archana : "Conflict of Laws – Hindu vs. Christian Law", 1982, 1 & CLQ, Vol. II, p. 302.

40 Hindu Marriage Act, Section -5A marriage may be solemnized between any two Hindu.

41 The Hindu Marriage Act, 1955, Section 13(1) (ii) – Any marriage solemnized whether before of after the commencement of this Act, may on a petition presented by either the husband or the wife. Be dissolved by a decree of divorce on the ground that the other party has ceased to be Hindu by conversion to another religion.

42 ILR (1945) 2 Cal. 405.

of punishing her for her misconduct. According to Hindu Law, the converted spouse does not have any right to dissolve her marriage on the ground of difference of religion. The marriage between the parties should be automatically converted to a civil marriage and civil law should be applied i.e. the special marriage Act, 1872 -1954. It will be in the real spirit of Article 44 of our Constitution.[43]

This will serve at least two purposes:

1. Welfare of the Children is considered i.e., they are not separated from their parents;
2. If the spouses think that the charm of the matrimonial life has gone and no use of keeping empty shells together then they may go the court to seek divorce.

As the defendant did not contest this case, the court's decision in the circumstances of the case might be correct from the practical point of view. But it has been observed that this decision was against the rule of justice and right.

Marriage is the very foundation of the civilized society. Past several years, it has become very common amongst the Hindu males who not get a divorce from their first wife; they convert to Muslim religion solely for the purpose of the marriage. This proactive is invariably adopted for the purpose of second marriage but again reconvert so as to retain their rights in the properties etc. and continue their service and all other business in their old name and religion. Of course Islam never encourages this. Infact the conflict a common civil code and not uniform civil code may be enacted.

C. CONFLICT OF BETWEEN CHRISTIAN LAW AND MUSLIM LAW:

The next problem taken into consideration is very complex problem i.e., Muslim Christian marriage where the lex celebrations and the *lex personam* are different. According to the law in existence a Muslim male can marry with any Kitabiyya women. If the situation is when a Muslim male marry with a Christian female according to Muslim rituals, then such marriage would be recognized by the general law notwithstanding Section 4 of the Christian marriage Act, 1872.[44] Hence it is humbly submitted before the court that section 4 of the Christian marriage and Divorce Act 1872 should be interpreted in such a way as to harmonies with the general Muslim law. It should, therefore, be read in such a way that "every marriage purporting to be Christina marriage shall be solemnized…"

[43] Article 44, The state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

[44] The Christian Marriage Act, 1872, Section 4 says Every Marriage between persons, one or both of whom is (or are) a Christian or Christians , shall be solemnized in accordance with the provisions of the next following section; any such marriage solemnized otherwise than in accordance with such provisions shall be void.

In an Indian case of *John Jiban Chandra Dutta vs. Abinash Chandra Sen.*[45] Dukhiram an Indian Christian married an Indian Christian woman Sudakshina. He was subsequently converted to Mohammedanism and contracted a marriage with a Muslim woman Alfatenessa in a Mosque. The court had to decide whether the second marriage was valid but in course of his judgment. Mr. Justice Henderson said: "It might be difficult to say whether Dukhiram could have divorced Sudakshina by talaq.[46]

CHALLENGES CLOUDING UCC

The biggest obstacle in implementing UCC, apart from obtaining a consensus, is the drafting of th is civil code. Should UCC be a blend of all personal laws or should it be a new law adhering to th e constitutional mandate? It was objected by many people that UCC will be nothing but merely a r epackaged Hindu law. The section of the nation against the implementation of UCC contends that in ideal times, in an ideal state, a UCC would be an ideal safeguard of citizens' rights. But India h ave moved much further from ideal than when the constitution was drafted 65 years ago. UCC not only promises integrity of the nation but also eradicates all sorts of social disparities. The vote ba nk politics which is like a plague to our Indian political system ,it will be cured and India could br eathe in the air of much developed, much wiser and much successful nation .If all Indians have sa me laws governing them, then the politicians will have nothing to offer to any community in exch ange of their votes. The Supreme Court has time and again reiterated the importance of enacting a Uniform Civil Code.

SUGGESSTIONS

Article 44, lays down only a 'principle of uniformity' which is though fundamental in the governa nce of the country, 'not judicially enforceable'. Therefore the judiciary must exercise utmost self-r estraint on commenting on this Article.

1. A family law board should be set up in the Union Law Ministry on the pattern of the Company Law Board working under the Ministry of Industrial Affairs. It should be a statutory body having an all-India network of regional branches. It duties should include:

(i) to produce periodical and other literature pointing out the drawbacks in the existing family l aws, highlighting the complications resulting from the plurality of personal laws, and explaining t he need for the features of the uniform civil code:

(ii) to set up committees of experts in family law and sociologists to study the working of the e xisting legislation and report thereon;

[45] ILR (1939) 2 Cal 12

[46] *John Jiban Chandra Dutta vs. Abinash Chandra Sen* , ILR (1939) 2 Cal 16.

(v) to educate the people on the need for family law reform and unification through the use of a udio-visual aids and other media of mass communication;

(vi) to encourage empirical research of a socio –legal nature in the problems of family law in va rious parts of the country; and

(viii) to prepare and submit to the government periodical reports on its activities.

2. An attempt should be made to enact a model Uniform Civil Code embodying what is best in all personal laws. It must be a synthesis of the good in our diverse personal laws. It should represent one, drawn up by consultation between the different communities in India on the principle of give and take.

3. To gauge the feelings of the community the government should hold the referendum in the min ority communities in which all adult men and women can participate. Before the referendum the g overnment should propagate the importance of referendum through press, radio, television, interne t and public meetings conducted by all the shades of opinion.

4. To dispel the fear from the minds of the minority especially the Muslim the state can repeal 'Art icle 44' of the Constitution or at least to treat it as unworthy of being activised. Removal of this thr eat or perception of threat to Muslim identity will, it can be hoped, because the enlightened sectio ns of Muslims to undertake the required reforms.

5. Before enacting a Uniform Civil Code throughout the territory of India the government must al so keep in mind the religious freedom guaranteed under 'Article 25' and 'Article 26' of the Constit ution.

6. The government must prepare a good environment for Uniform Civil Code by explaining the co ntents and significance of Article 44.

7. The government must also take into account the legality and enforceability of 'Article 44' and th e relationship between Fundamental Rights and Directive Principles of state policy. The state mus t realise that in case of conflict between Fundamental Rights and the Directive Principles of the C onstitution of India must the former shall prevail over the later.

8. The state should bring social reform slowly and in stages, and the stages may be territorial or th ey may be community-wise.

CONCLUSION

The family life of Indians is, rightly or wrongly, guided by their respective religious and customar y beliefs Religions more or less survive only through the ceremonies and social customs enforced upon its members if they are negated, soon enough religions will lose their eminence in social sph ere.

The debate on Uniform Civil Code must be widened beyond four wives and three talaqs. Look at t he honour killings and Khap Panchayant verdicts. They all want to enforce their religious and cust omary beliefs on the members of their family and community.

In my opinion, there is no urgent need to force any Uniform Civil Code on unwilling population. Most people be it Hindu, Christian, Muslim or any other community are not ready to adopt truly s ecular laws separated from religious customs. Also, it is not right to force the customs of one grou p, however dominant it may be, upon other groups. So we can try to solve thousands of other less contentious problems that our society is facing and are more public in nature than personal laws. As for the social obligations or protection of human rights etc are concerned, we can ensure certai n bottom line rules through general laws. For example, Prohibition of Civil marriage Act, 2006 is a general law that prevails over all personal laws. Any conditions that are considered appropriate c an be incorporated in that Act so as to ensure no child marriage takes place even if personal laws permit it. Another such example is Section 125 of the Code of Criminal Procedure (CrPC). This s ection provides a system by which courts are permitted to pass orders for maintenance of wives, c hildren and parents, under criminal procedures, irrespective of person's religious status.

Much is to be done by various organs of the state towards "endeavouring" to "secure" a unifor m civil code for the citizens. The above of the progress so far made in that behalf and of the curre nt trends indicates how disappointingly little has been achieved and how very much stupendous a task is still ahead.

> *"Talk of making India strong; ....it is all right and a very desirable thing to have a uniform law. It is a must thing because otherwise we would be guilty of making a nation within a nation, a community withi*