

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO 1144 OF 2020
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)
IN THE MATTER OF:
Ashwini Kumar Upadhyay

.....Petitioner

Verses

1. Union of India
Through the Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001,
2. Union of India
Through the Secretary,
Ministry of Law & Justice
Shastri Bhawan, New Delhi-110001,
3. Union of India
Through the Secretary,
Ministry of Women and Child Development,
Shastri Bhawan, New Delhi-110001

....Respondents

***PIL UNDER ARTICLE 32 FOR GENDER NEUTRAL RELIGION
NEUTRAL UNIFORM GROUNDS OF MAINTENANCE & ALIMONY
FOR ALL INDIAN CITIZENS IN SPIRIT OF ARTICLES 14, 15, 21, 44 OF
THE CONSTITUTION***

To,

THE HON'BLE CHIEF JUSTICE
AND LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA
HUMBLE PETITION OF ABOVE-NAMED PETITIONER
THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing this writ petition as a PIL under Article 32 seeking

*'Gender Neutral Religion Neutral Uniform Grounds of Maintenance
and Alimony'* for all Indian citizens in spirit of Articles 14, 15, 21,
44 of the Constitution of India and International Conventions.

2. Petitioner has not filed any other petition either in this Court or in any other Court seeking same or similar directions as prayed.

4. The facts constituting cause of action accrued on 13.09.2019 and continue, when this Hon'ble Court in Jose Paulo Coutinho Case once again reiterated the need of uniform civil code by citing the shining example of Goa but Centre has not taken any step to even provide uniform grounds of maintenance and alimony for all Indian citizens. Although, Article 14 guarantees equality before the law and equal protection of laws and Article 15 not only prohibits discrimination on the basis of religion race caste sex place of birth but also enables Centre to make special provisions for women & children. Article 16 guarantees equality of opportunity and Article 21 guarantees right to life and liberty. Article 25 clarifies that freedom of conscience and right to profess practice propagate religion is subject to public order morality & health and Article 37 clarifies that directive principles

are nevertheless fundamental in the governance of country. Article 38 directs the Centre to eliminate inequalities in status, facilities and opportunities and Article 39 directs to make policies to secure that men-women equally, have adequate means of livelihood. Article 44 directs to implement uniform civil code for all citizens and Article 45 directs to provide early childhood care to children below age of six. Article 46 directs to promote economic interests of weaker sections and protect them from social injustice and all forms of exploitation and Article 47 directs to raise standard of living of people & prohibits intoxicating drinks-drugs. Moreover, under Article 51A, it is duty of the State to promote harmony, spirit of common brotherhood amongst citizens, transcending religious linguistic regional sectional diversities; renounce the practices derogatory to dignity of women; and develop scientific temper, humanism, spirit of inquiry & reform. Furthermore, on 26.11.1949, we have resolved to constitute socialist secular democratic republic and secure: Justice, social economic and political liberty of thoughts expression belief faith and worship; Equality of status-opportunity; and promote among them fraternity assuring dignity of individual and unity and integrity of the nation.

5. However, despite the above eloquent provisions in the Constitution itself, Centre has totally failed to provide even '*Gender Neutral*

Religion Neutral Uniform Grounds of Maintenance & Alimony’ for all citizens. Therefore, petitioner is filing this PIL under Article 32, seeking direction to the Centre to take appropriate steps to remove the prevailing anomalies in the grounds of ‘Maintenance & Alimony’ and make them uniform for all citizens without discrimination on the basis of religion race cast sex or place of birth in spirit of the Articles 14, 15, 21, 44 and international conventions. Alternatively, being custodian of the Constitution and protector of fundamental rights, the Court may declare that the discriminatory grounds of ‘Maintenance and Alimony’ are violative of Articles 14, 15, 21 and International Conventions and frame ‘Gender Neutral Religion Neutral Uniform Guideline of Maintenance & Alimony’ for all citizens. Otherwise, this Hon’ble Court may direct Law Commission of India to examine domestic and international laws relating to maintenance-alimony, international conventions relating to gender justice-gender equality & suggest ‘Gender Neutral Religion Neutral Uniform Grounds of Maintenance & Alimony’ for all citizens in spirit of Articles 14, 15, 21, 44 of the Constitution within 3 months.

6. The injury caused to public is extremely large because ‘maintenance and alimony’ is one of the most crucial elements of life and generally comes in Court of law. For many citizens, Maintenance & alimony

is the only source of livelihood hence discrimination on the basis of religion race caste sex or place of birth is direct attack on right to life liberty & dignity, guaranteed under Article 21. However, even after 73 years of independence and 70 years of India becoming a socialist secular democratic republic, laws relating to maintenance & alimony are not only complex and cumbersome but also against the constitutional mandate of being equal, rational and just. Hindus Buddhists Sikhs Jains are governed by the Hindu Marriage Act 1955 and Hindu Adoption & Maintenance Act 1956. Muslims are dealt as per status of valid marriage & prenuptial agreement and governed under Muslim Women Act 1986. Christians are governed under Indian Divorce Act 1869 and Parsis under Parsi Marriage & Divorce Act 1936 but none of these laws are gender neutral. Under the same circumstances, Hindu Muslim Christian & Parsi spouse get different alimony. Similarly, under the same circumstances, Hindu Muslim Christian and Parsi parents get different alimony. Likewise, Hindu Muslim Christian & Parsi children get different alimony.

7. Initially all affairs viz. crime, trade, procedure, contract, commerce were governed by religious law but with rise of civilization, religious domination on affair started contracting and pieces of legislation took its place. In developed countries, personal law is only confined to rituals of marriage, but in India, secular acts like maintenance

alimony guardianship adoption succession and inheritance are still governed by personal laws, which are against constitutional ethos and various directions of this Hon'ble Court. Maintenance and alimony is related to right to life liberty dignity and livelihood and directly affects mental & psychological wellbeing and discrimination turns vulnerable, therefore, it is dire need to have gender neutral religion neutral uniform grounds of maintenance and alimony.

8. In Vishaka Case, [(1997) 6 SCC 241, at para 7 & 15] this Hon'ble Court unequivocally held that the content of basic rights contained in the Constitution must be informed by International Human Rights obligations. Accordingly, provisions of the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), which India ratified in 1993, inform content of Articles 14, 15 and 21. It follows that the principles of equality and dignity enshrined in the CEDAW apply in all forms in the Indian context.
9. Discriminatory maintenance & alimony are based on and reinforce patriarchal and stereotypical notions about women. For this reason alone, it completely contravenes principles of gender justice gender equality and dignity of women, guaranteed under Articles 14, 15, 21. The Court in National Legal Services Authority [(2014) 5 SCC 438], Pravasi Bhalai Sangathan [(2014) 11 SCC 477] and Jeeja Ghosh

Case [(2016) 7 SCC 761] had held that right to live with dignity implies right to not be perceived as unequal/inferior individuals in society. In other words it implies right to equal social standing & perception. The Court in Joseph Shine Case [(2019) 3 SCC 39] observed that a law that treats women differently based on gender stereotypes causes direct affront to women's dignity & offends Articles 14, 15, 21. In the same spirit, Article 5(a) of CEDAW obliges States Parties to *“take all appropriate measures to modify social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”* Thus, any provision that perpetrates or reinforces discriminatory stereotypes against women is manifestly arbitrary, violative of Articles 14, 15, 21.

10. Gender neutral religion neutral uniform maintenance-alimony will be one step move in the direction of Article 44. It will strengthen constitutional spirit of gender justice and gender equality, which is regarded as heart and soul of the Constitution. It is necessary to state Article 44 very loudly and clearly directs the State ‘to secure for the citizens a uniform civil code throughout the territory of India’ but Centre has not been able to enforce the direction even after 73 years

of independence and 70 years of India becoming socialist secular democratic republic. Therefore, being custodian of the Constitution and protector of fundamental rights, this Hon'ble Court cannot be mute spectator now. The Court has reiterated the need of Uniform Civil Code in Shah Bano Begum, Sarla Mudgal, Jose Paulo Coutinho, ABC v. State NCT of Delhi, State of Tamil Nadu v. Shyam Sunder, John Vallamattom, Ahmedabad Women Action Group & Jordan Diengdeh etc. The Court even once directed the Centre to file affidavit indicating the steps taken in this matter and observed that 'successive governments have been wholly remiss in their duty to implement the constitutional mandate under Article 44.' There are various instances when the Court has directed the Law Commission of India to prepare report on particular issue.

11.Adoption, Succession, Maintenance, Inheritance, Guardianship, Custody, Marriage Age & Grounds of Divorce are secular activities. Therefore, it is duty of Centre to ensure that every men-woman has uniform succession-inheritance, uniform adoption-guardianship, uniform maintenance-alimony, uniform age of marriage, uniform grounds of divorce in spirit of Articles 14, 15, 21, 44 & International Convention. Uniformity in these secular activities is not only necessary to secure gender justice gender equality dignity of women

but also essential to promote fraternity unity national integration but Centre has not taken appropriate steps in this regard till date.

12. There is no civil, criminal or revenue litigation, involving petitioner, which has/could have legal nexus, with issue involved in this PIL.
13. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this PIL. It is not guided for gain of any other individual person, institution or body.
14. Petitioner has not submitted any representation to the respondents because issue involved is the interpretation of the Constitution.
15. There is no requirement to move any government authority for the relief sought in this PIL. There is no other remedy available except approaching this Hon'ble Court by way of the PIL under Article 32.

GENDER JUSTICE, GENDER EQUALITY & DIGNITY

16. Madhu Kishwar v State of Bihar[(1996)5SCC 125] Para 12: *“Right to life as a fundamental right stands enshrined in the Constitution. Right to livelihood is born of it. In Olga Tellis v Bombay Municipal Corporation [(1985)3SCC545: AIR 1986 SC 180] this Court defined it ...”***Para 20:** *“Article 14 ensures equality of law and prohibits invidious discrimination. Arbitrariness or arbitrary exclusion are sworn enemies to equality. Article 15(1) prohibits gender discrimination. Article 15(3) lifts that rigour and permits the State to positively discriminate in favour of women to*

*make special provision, to ameliorate their social, economic and political justice and accords them parity. Article 38 enjoins the State to promote the welfare of the people (obviously men and women alike) by securing social order in which justice — social, economic and political — shall inform of all the institutions of national life. Article 39(a) and (b) enjoin that the State policy should be to secure that men and women equally have the right to an adequate means of livelihood and the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Article 38(2) enjoins the State to minimize inequalities in income and to endeavour to eliminate inequalities in status, facilities, opportunities not only among individuals but also amongst groups of people. Article 46 accords special protection and enjoins the State to promote with special care the economic and educational interests of Scheduled Castes and Scheduled Tribes and other weaker sections and to protect them from social injustice and all forms of exploitation. The Preamble charters out the ship of the State to secure social, economic, political justice and equality of opportunity and of status and dignity of person to everyone.”***Para 22***“Article 1(1) assures right to development — an inalienable human right, by virtue of which every person and all people are entitled to participate in, contribute to, and enjoy economic, social,*

*cultural and political development in which all human rights and fundamental freedoms can be fully realized. Article 6(1) obligates the State to observe all human rights and fundamental freedoms for all without any discrimination as to race, sex, language or religion... ..Appropriate economic and social reforms should be carried out with a view to eradicate all social injustice..”***Para 23:** *“Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic, cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Vienna Convention on the Elimination of all forms of Discrimination Against Women (for short ‘CEDAW’) was ratified by the UNO on 18-12-1979. The Government of India who was an*

active participant to CEDAW ratified it on 19-6-1993 and acceded to CEDAW on 8-8-1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 thereof. Preamble of CEDAW reiterates that discrimination against women violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and family and makes it more difficult for the full development of potentialities of women in service of their countries and of humanity...” **Para 24:** “Parliament has enacted the Protection of Human Rights Act, 1993. Section 2(d) defines human rights to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. Thereby the principles embodied in CEDAW and the concomitant Right to Development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the Commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.” **Para 25:** “Article 5(a) of CEDAW on which Government of India expressed reservation does not stand in its way and in fact

*Article 2(f) denudes its effect and enjoins to implement Article 2(f) read with its obligation undertaken under Articles 3, 14 and 15 of the Convention vis-à-vis Articles 1, 3, 6 and 8 of the Declaration of Right to Development. Though the directive principles and fundamental rights provide the matrix for development of human personality & elimination of discrimination, these conventions add urgency and teeth for immediate implementation. It is, therefore, imperative for the State to eliminate obstacles, prohibit all gender-based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should by appropriate measures including legislation, modify law and abolish gender-based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.”***Para 26:**
“Article 15(3) of the Constitution positively protects such Acts or actions. Article 21 reinforces “right to life”. Equality, dignity of person and right to development are inherent rights in every human being. Life in its expanded horizon includes all that gives meaning to a person's life including culture, heritage and tradition with dignity of person. The fulfilment of that heritage in full measure would encompass right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and

*discrimination based on gender for human development. Women are entitled to enjoy economic, social, cultural and political rights without discrimination and on footing of equality. Equally, in order to effectuate fundamental duty to develop scientific temper, humanism and the spirit of enquiry and to strive towards excellence in all spheres of individual & collective activities as enjoined in Article 51-A(h) and (j) of the Constitution of India, not only facilities and opportunities are to be provided for, but also all forms of gender-based discrimination should be eliminated. It is a mandate to the State to do these acts. Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of person. Therefore, the State should create conditions and facilities conducive for women to realize the right to economic development including social and cultural rights.”***Para 37:** “..The public policy & constitutional philosophy envisaged under Articles 38, 39, 46 and 15(1) and (3) and 14 is to accord social and economic democracy to women as assured in Preamble of the Constitution. They constitute the core foundation for economic empowerment and social justice to women for stability of political democracy. In other words, they frown upon gender discrimination and aim at elimination of obstacles to enjoy social economic political and

cultural rights on equal footing. ...If law is to adapt itself to the needs of the changing society, it must be flexible and adaptable...”

17. VISHAKA V. STATE OF RAJASTHAN [(1997) 6 SCC 241] Para 7: *“In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till Parliament enacts legislation to expressly provide measures needed to curb evil. **Para***

15: “In Nilabati Behera v. State of Orissa[(1993) 2 SCC 746 : 1993 SCC (Cri) 527] a provision in the ICCPR was referred to support the view taken that “an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right”, as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution which embody the basic concept of gender equality in all spheres of human activity”.

18. ANUJ GARG v HOTEL ASSOCIATION [(2008)3SCC 1]

Para 36: *“Women would be as vulnerable without State protection as by the loss of freedom because of impugned Act. Present law ends up victimizing its subject in the name of protection. In that regard the interference prescribed by the State for pursuing the ends of protection should be proportionate to the legitimate aims. The standard for judging the proportionality should be a standard capable of being called reasonable in a democratic society.”***Para 37:** *“Instead of putting curbs on women's freedom, empowerment would be a more tenable and socially wise approach. This empowerment should reflect in the law enforcement strategies of the State as well as law modelling done in this behalf”***Para 43:** *“Instead of prohibiting women employment in the bars altogether the State*

*should focus on factoring in ways through which unequal consequences of sex differences can be eliminated. Its State's duty to ensure circumstance of safety which inspires confidence in women to discharge the duty freely in accordance to the requirements of the profession they choose to follow. Any other policy inference (such as one embodied under Section 30) from societal conditions would be oppressive on women and against the privacy rights.”***Para 46:**
“It is to be borne in mind that legislations with pronounced “protective discrimination” aims, such as this one, potentially serve as double-edged swords. Strict scrutiny test should be employed while assessing implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects. The impugned legislation suffers from incurable fixations of stereotype morality and conception of sexual role. The perspective thus arrived at is outmoded in content and stifling in means.”

19. Voluntary Health Association [(2013) 4 SCC 1] Para 19:

“A woman has to be regarded as an equal partner in the life of a man. It has to be borne in mind that she has also the equal role in the society i.e. thinking, participating and leadership. The legislature has brought the present piece of legislation with an intention to provide for prohibition of sex selection before or after

*conception and for regulation of prenatal diagnostic technique for purposes of detecting genetic abnormality metabolic disorders chromosomal abnormality or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide. The purpose of the enactment can only be actualized and its object fruitfully realized when the authorities under the Act carry out their functions with devotion, dedication and commitment and further there is awakened awareness with regard to the role of women in a society.”***Para 23**
*“In Madhu Kishwar v. State of Bihar [(1996) 5 SCC 125 : AIR 1996 SC 1864] this Court had stated that Indian women have suffered and are suffering discrimination in silence.”*28. ... *Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.”* (SCC p. 148, para 28)..”

20. National Legal Service Authority [(2014)5SCC438]**Para 73** *“Article 21 is the heart and soul of the Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has authority to violate or take away that right. Article 21 takes all those aspects of life which go to make a person's life meaningful. Article 21 protects the dignity of human life, one's personal autonomy, one's right to*

*privacy, etc. Right to dignity has been recognized to be an essential part of the right to life and accrues to persons on account of being humans. **Para 74:** “...The recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of the right to dignity and freedom guaranteed under our Constitution...” **Para 75:** “Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution.”*

21. PRAVASI BHALAI SANGATHAN

[(2014)11SCC477]***Para 20** “This Court has persistently held that our Constitution provides for separation of powers and the court merely applies the law that it gets from legislature. Consequently, Anglo-Saxon legal tradition has insisted that the Judges should only reflect the law regardless of the anticipated consequences, considerations of fairness or public policy and the Judge is simply*

*not authorised to legislate law. “If there is a law, Judges can certainly enforce it, but Judges cannot create a law and seek to enforce it.” The court cannot rewrite, recast or reframe the legislation for very good reason that it has no power to legislate. The very power to legislate has not been conferred on the courts. However, of lately, judicial activism of the superior courts has raised public eyebrows time & again. Though judicial activism is regarded as active interpretation of existing provision with view of enhancing the utility of legislation for social betterment in accordance with the Constitution, courts under its garb have actively strived to achieve the constitutional aspirations of socio-economic justice. In many cases, this Court issued various guidelines/directions to prevent fraud upon statutes, or when it was found that certain beneficiary provisions were being misused by undeserving persons, depriving the legitimate claims of eligible persons...”***Para 22:** *“..This Court has consistently clarified that the directions have been issued by the Court only when there has been a total vacuum in law i.e. complete absence of active law to provide for the effective enforcement of a basic human right. In case there is inaction on the part of executive for whatsoever reason, the court has stepped in, in exercise of its constitutional obligations to enforce the law. In case of vacuum to deal with a particular situation the*

court may issue guidelines to provide absolution till such time as the legislature acts to perform its role by enacting proper legislation. Thus, direction can be issued in situation where will of elected legislature has not yet been expressed.

JUDGMENTS OF HON'BLE COURT ON UNIFORM CIVIL CODE

22. Jose Paulo Coutinho v. Maria Luiza Valentina Pereira [(2019) SCC ONLINE SC 1190] Para 23. *It is interesting to note that whereas the founders of the Constitution in Article 44 in Part IV dealing with the principles of directive policy had hoped and expected that the State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard. Though Hindu laws were codified in the year 1956 there has been no attempt to frame a Uniform Civil code applicable to all citizens of the country despite exhortations of this court in the case of Mohd. Ahmed Khan v Shah Bano and Sarla Mudgal v union of India. Para 24. However, Goa is a shining example of an Indian State which has a uniform civil code applicable to all, regardless of religion except while protecting certain limited rights. It would also not be out of place to mention that with effect from 22.12.2016 certain portions of the Portuguese Civil Code have been repealed and replaced by the Goa Succession,*

Special Notaries and Inventory Proceedings Act, 2012 which, by and large, is in line with the Portuguese Civil Code. The salient features with regard to family properties are that a married couple jointly holds the ownership of all the assets owned before marriage or acquired after marriage by each spouse. Therefore, in case of divorce, each spouse is entitled to half share of the assets. The law, however, permits pre-nuptial agreements which may have a different system of division of assets. Another important aspect, as pointed out earlier, is that at least half of the property has to pass to the legal heirs as legitime. This in some ways akin to concept of coparcenary in Hindu law. However, as far as Goa is concerned, this legitime will also apply to the self-acquired properties. Muslim men whose marriages are registered in Goa cannot practice polygamy. Further, even for followers of Islam there is no provision for verbal divorce.

23. ABC v. State of NCT of Delhi, [(2015) 10 SCC 1] Para 20.

...It would be apposite for us to underscore that our Directive Principles envision the existence of a Uniform Civil Code, but this remains an unaddressed constitutional expectation.

24. State of Tamil Nadu v. Shyam Sunder, [(2011) 8 SCC 737]

Para 22. *The propagators of this campaign canvassed that uniform education system would achieve code of common culture, removal*

of disparity and depletion of discriminatory values in human relations. It would enhance the virtues and improve the quality of human life, elevate the thoughts which advance our constitutional philosophy of equal society. In future, it may prove to be a basic preparation for the uniform civil code as it may help in diminishing opportunities to those who foment fanatic and fissiparous tendencies.

25. John Vallamattom v. UOI [(2003) 6 SCC 611] Para 44

Before I part with the case, I would like to state that Article 44 provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The aforesaid provision is based on the premise that there is no necessary connection between religious and personal law in a civilized society. Article 25 of the Constitution confers freedom of conscience and free profession, practice and propagation of religion. The aforesaid two provisions viz. Articles 25 and 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. It is no matter of doubt that marriage, succession and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and

26 is a suspect legislation, although it is doubtful whether the American doctrine of suspect legislation is followed in this country. In Sarla Mudgal v. Union of India, it was held that marriage, succession and like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing contradictions based on ideologies.

26. Lily Thomas v Union of India [(2000) 6 SCC 224] Para 65.

Besides deciding the question of law regarding the interpretation of Section 494 IPC, one of the Hon'ble Judges (Kuldip Singh, J.) after referring to the observations made by this Court in Mohd. Ahmed Khan v. Shah Bano Begum requested the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and “endeavour to secure for the citizens a uniform civil code throughout the territory of India”. In that behalf direction was issued to the Government of India, Secretary, Ministry of Law & Justice to file an affidavit of a responsible officer indicating therein the steps taken and efforts made towards securing a uniform civil code for the citizens of India.

On the question of a uniform civil code, R.M. Sahai, J. the other Hon'ble Judge constituting the Bench suggested some measures which could be undertaken by the Government to check the abuse of religion by unscrupulous persons, who under the cloak of conversion were found to be otherwise guilty of polygamy. It was observed that: "Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre." It was further remarked: "The Government would be well advised to entrust the responsibility to the Law Commission which may in consultation with Minorities Commission examine the matter and bring about a comprehensive legislation in keeping with modern-day concept of human rights."

27. Ahmadabad Women Action Group [(1997) 3 SCC 573]P

10. *In Sarla Mudgal v. Union of India [(1995)3 SCC 635] Court observed: (SCC pp. 649-50, para 33) "Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal law of Hindus, such as relating to marriage, succession and the like has all a*

sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of the national unity and integration, some other communities would not, though the Constitution enjoins the establishment of a 'common civil code' for the whole of India."

28. Md. Ahmed Khan v. Shah Bano Begum [(1985) 2 SCC 556] *"Dr Tahir Mahmood in his book Muslim Personal Law (1977 Edn., pp. 200-02), has made a powerful plea for framing a uniform Civil Code for all citizens of India. He says: "In pursuance of the goal of secularism, the State must stop administering religion-based personal laws." He wants the lead to come from the majority community but, we should have thought that, lead or no lead, the State must act. It would be useful to quote the appeal made by the author to Muslim community; "Instead of wasting their energies in exerting theological political pressure in order to secure an immunity for their traditional personal law from state's legislative jurisdiction, the Muslims will do well to begin exploring and demonstrating how the true Islamic laws, purged of their time-worn and anachronistic interpretations, can enrich the common civil code of India."*

29. Jorden Diengdeh v. S.S. Chopra [(1985)3SCC 62] Para 7:

Surely the time has now come for a complete reform of the law of marriage and makes a uniform law applicable to all people irrespective of religion or caste.

DIRECTION TO THE LAW COMMISSION TO PREPARE REPORT

30. Gujarat Urja Vikas Nigam Ltd [(2016) 9 SCC 103] Para

41. *We are, thus, of the view that in the first instance the Law Commission of India may look into the matter with the involvement of all the stakeholders. Para 43. The questions which may be examined by the Law Commission are: 43.1. Whether any changes in the statutory framework constituting various tribunals with regard to persons appointed, manner of appointment, duration of appointment, etc. is necessary in the light of the judgment of this Court in Madras Bar Association [(2014)10SCC 1] or on any other consideration from the point of view of strengthening the rule of law? 43.2. Whether it is permissible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time? 43.3. Whether direct statutory*

*appeals to the Supreme Court bypassing the High Courts from the orders of Tribunal affect access to justice to litigants in remote areas of the country? 43.4. Whether it is desirable to exclude jurisdiction of all courts in the absence of equally effective alternative mechanism for access to justice at grass root level as has been done in provisions of the TDSAT Act (Sections 14 and 15). 43.5. Any other incidental or connected issue which may be appropriate. **Para 44.** We request the Law Commission of India to give its comprehensive report as far as possible within one year. Thereafter matter may be examined by the authorities concerned.*

31. Bihar Cricket Association [(2016) 8 SCC 535] Para 93. *We are not called upon in these proceedings to issue direction insofar as the above aspect is concerned. All that we need say is that since BCCI discharges public functions and since those functions are in the nature of a monopoly in hands of BCCI with tacit State and Centre approvals, the public at large has right to know/demand information as to the activities and functions of BCCI especially when it deals with funds collected in relation to those activities as a trustee of wherein the beneficiary happens to be the people of this country. As a possible first step in the direction in bringing BCCI under the RTI, we expect the Law Commission to examine the issue, make a suitable recommendation. Beyond that we do not consider it*

necessary to say anything at this stage. Para 94. So also the recommendation made by the Committee that betting should be legalised by law, involves the enactment of a law which is a matter that may be examined by the Law Commission and the Government for such action as it may consider necessary in the facts and circumstances of the case.

32. Babloo Chauhan [(2017) SCC DEL 12045] “Para 11. *Third issue concerns the possible legal remedies for victims of wrongful incarceration and malicious prosecution. The report of Prof. Bajpai refers to the practice in United States of America and the United Kingdom. He points out that that there are 32 states in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. There are specific schemes in the UK and New Zealand in this regard.17. The Court, accordingly, requests Law Commission of India to undertake a comprehensive examination of the issue highlighted in paras 11 to 16 of this order and make its recommendation thereon to the Government of India.”*

33. AP Pollution Control Board [(2001)2 SCC 62] Para 73. *Inasmuch as most of the statutes dealing with environment are by Parliament, we would think that the Law Commission could kindly consider the question of review of the environmental laws and the*

need for constitution of Environmental Courts with experts in environmental law, in addition to judicial members, in the light of experience in other countries. Point 5 is decided accordingly.

34. Mahipal Singh Rana v. State of U.P. [(2016) 8 SCC 335]

Para 58 In view of above, we request the Law Commission of India to go into all relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date. We hope that Government of India will consider taking appropriate steps in the light of the report of the Law Commission within six months thereafter. The Central Government may file an appropriate affidavit in this regard within one month after expiry of one year.

35. Naresh Kumar Matta [2013 SCC ONLINE DEL 2388]

Para 12: Delay of five years in computing the cost of a flat is totally incomprehensible. This Court is of the opinion that the Law Commission should consider preparation of an enactment to recover damages/compensation from officers who take unduly long time in taking decisions or do not take a decision.

36. Pravasi Bhalai Sangathan [(2014) 11 SCC 477] Para

2 However, in view of the fact that the Law Commission has undertaken the study as to whether the Election Commission should be conferred the power to derecognise a political party disqualifying it or its members, if a party or its members commit the offences

referred to hereinabove, we request the Law Commission to also examine the issues raised herein thoroughly and also to consider, if it deems proper, defining the expression "hate speech" and make recommendations to Parliament to strengthen Election Commission to curb the menace of "hate speeches" irrespective of whenever made.

PRAYER

It is respectfully prayed that this Hon'ble Court may be pleased to issue a writ order or direction or a writ in nature of mandamus to:-

- a) direct Union Home and Law Ministry to take appropriate steps to remove the prevailing anomalies in the grounds of maintenance and alimony in order to make them uniform for all citizens without discrimination on the basis of religion race cast sex or place of birth in spirit of the Articles 14, 15, 21, 44 and International Conventions;
- b) alternatively, being custodian of the Constitution and protector of the fundamental rights, declare that the discriminatory grounds of maintenance and alimony are violative of Articles 14, 15, 21 of the Constitution and frame gender neutral religion neutral uniform guidelines for maintenance and alimony for all Indian citizens;
- c) alternatively, direct the Law Commission of India to examine the domestic and international laws and prepare a report on 'uniform

grounds of maintenance and alimony' within 3 months in spirit of the Articles 14, 15, 21 & 44 and international conventions;

- d) pass such other order(s) or direction(s) as Hon'ble Court may deem fit and proper in facts of the case and allow the cost to petitioner.

3.10.2020

(ASHWANI KUMAR

DUBEY)

NEW DELHI

ADVOCAT

FOR

PETITIONER