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EMERGING JUDICIAL TRENDS ON UNIFORM CIVIL CODE - AN ANALYSIS

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INTRODUCTION

It is necessary here, to evaluate the role of judiciary in respect of Article 44 of the Constitution, although like all other constitutional directives, the mandate of Article 44 too, is not enforceable in a Court of Law. And it is also necessary to mention that judiciary is not specifically included in the definition of "State" as applicable to Directive Principles1 enshrined in Part IV of the Constitution. Therefore, judiciary cannot be expected to have taken any direct step to ensure the implementation of the mandate. Nevertheless, the role of judiciary is much more appreciable than that of executive process, in one way or the other, towards achieving this Constitutional goal, either by upholding the validity of the unifying or partly unifying social legislation when challenged on the ground of unconstitutional discrimination2 or by upholding those legal provisions which if liberally interpreted would furnish uniform family law in fragments, applicable to all citizens. Thus in Shahulameedu v. Zubaida Beevi3 while interpreting the rule relating to wife's maintenance contained in Section 488(3) of the (old) Criminal Procedure Code, the High Court of Kerala did not deny its benefit to the wife of a bigamous Muslim staying away from him after his second marriage. Here in this case, specifically referring to the mandate of Article 44, Justice Krishna Iyer said: "The Indian Constitution directs that the State should endeavor to have a Uniform Civil Code applicable to the entire Indian community, and indeed when motivated by a high public policy, Section 488 has made such a law. It would be improper for an Indian court to exclude any section of the community born and bred up on Indian earth from the benefits of that law…4

It is needless to emphasize that judiciary can play a very vital role to galvanize strength in moulding the pubic opinion in favor of the Code. Indeed it has been doing so, although its progress in the field of family law is much slow when compared it its revolutionary stand in evolving and upholding socio-economic depilation. Some of the judgments, particularly pronounced by the Kerala High Court have been most educative, bringing no time-light certain progressive features of the Muslim Personal law.5 In doing so the court has impliedly pointed out that the proposed Civil Code will be enriched by such superb and exemplary Islamic principles. Another judgment also delivered by Justice Krishna Iyer in Abhubaker Haji v. Mamu Koya6 was, in his own words that: "the only system of marital law in India which accepts the ultra-modern but responsibility realistic ground of 'break-down' as against 'fault' is Islam and that its spin-off benefits to the emerging Indian family Code will be unexpectedly large; A welcome bonus to secularism."7

It is submitted that such judicial pronouncements will diminish the aversion towards a Common Civil Code, by allaying the apprehension that in future such code will have no place for Islamic legal principles. Here we may also recall Justice Dhwan in Jtwari v. Asghari8 who had in a similar spirit emphasized the "better not" advice of the Quran which according to him qualified the permission of polygamy given by it. This was, in effect, a judicial effort to prepare the Muslims psychologically to accept the ideal of monogamy.

JURISPRUDENCE OF ANCIENT EPICS

The major conflict between supporters and opponents of UCC lies in the "status quo or change". Our Hon'ble Judiciary follows the concept of status quo for itself as it follows the rule of precedent. Nevertheless, the status quo of judiciary changes with demand of the hour and when judiciary finds itself capable and when it gets a much stronger option for its laws. It shall be the case everywhere. This concept is noble as it includes flexibility. When we argue for UCC, we must apply the same rule. We must implement laws relating to personal laws if we find that the people who are going to be affected are capable or they "understand" that they have the other better option. This concept fails in India in both the ways. The one is the one who are eager to implement this law have nothing to do with the condition

1. See Article 12 (Part III) also Articles 36 of the Constitutions.
2. *State of Bombay* v. *Narasuappa Mali,* AIR 1952, Bom, 85.
3. (1970) KLT 4.
4. State of Bombay v. Narasuappa Mali, AIR 1952 Bom. 85.(1970) KLT 4.
5. *Yusuf Rowchan* v. *Sowrama* (1970) KLT 477.
6. (1971) KLT 663.
7. V.R. Krishna Iyer, "Reform of the Muslim Personal Law" *op.cit*. footnote no. 39, 30.
8. (1960) 30 AWR 397

and capabilities of the common masses who know nothing but religion, and the second is the people , the common men had closed their eyes whether it be for their rights or duties.

We find a glimpse of such a concept in the Manusmriti, which says:
वेदोऽखिलो धर्ममूलं स्मृतिशीले च तद्विदाम् । आचारश्चैव साधूनामात्मनस्तुष्टिरेव च ॥

Translation 1: The whole Veda is the (first) source of the sacred law, next the tradition and the virtuous conduct of those who know the Veda further), also the customs of holy men, and (finally) self-satisfaction (Atmanastushti).9

Translation 2: The root of the religion is the entire Veda, and (then) the tradition and customs of those who know (the Veda), and the conduct of virtuous people, and what is satisfactory to oneself.

The Manusmriti give a much greater value to the traditions and customs and the satisfaction of oneself. This does not mean that it says that one should be greedy. The concept is that we should read Veda (have knowledge) and in absence of the veda the tradition and custom come to govern the religion and all come afterwards. Implementation of UCC is governing religion with just a resemblance of Knowledge and denying all other necessary factors just because we stand good in our logic.

JUDICIAL INTERPRETATION

The Supreme Court in a couple of cases has for sure mentioned some stray observations throughout the years about the codes appeal, however; they don't frame restricting precedent for reference. These comments constitute, what in legitimate speech, is called obiter dicta – an observation made in passing that is of no importance or incentive to the position of law. Many believe that it is outside the judicial privilege or ability to paddle into the strategy space of choosing which traditions and practices advance into a uniform code. Actually, the courts have gotten a handle on the trouble and impracticability of UCC as a rule and forewarned against its rushed reception. As late as 2015, the Supreme Court declined to pass bearings on UCC and laid that activity at the door of Parliament.

A few judges may in any case consider the possibility of UCC compelling to swim through the entanglement of legal pluralism however; they overlook that uniformity while implementing the laws over personal law is not a sociological fact. We can deliver uniformity of laws however where are we going to discover a ground united by convictions and practices where the State could execute these laws without intimidation or struggle?

In the much-talked-about Shah Bano case10 the Supreme Court held that Section 125 of the Code of Criminal Procedure (Cr.P.C.), being a secular provision was applicable to all.

The Supreme Court connected the teaching of harmonious construction and understood the authorization particularly in accordance with its Shah Bano judgment. The position, consequently, is that a Muslim woman is qualified for reasonable and sensible maintenance under Section 125 of the Cr.P.C. insofar as she stays unmarried after the separation. Many Petitions were filed in Supreme Court on various events in regards to Uniform Civil Code, however it has declined by saying that parliament is appropriate body to enact such law. In spite of the appeal of a uniform code, the Supreme Court advised in, that the sanctioning of uniform law for all people "in one go might be counterproductive to the solidarity of the country". Subsequently, it is a rough way that should be carefully trodden11

The Supreme Court for the first time, directed the Parliament to frame a UCC in the year 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum, popularly known as the Shah Bano case, In this case, a penurious Muslim woman claimed for maintenance from her husband under Section 125 of the Code of Criminal Procedure after she was given triple talaq by him. The Supreme Court held that the Muslim women have a right to get maintenance from her husband under Section 125. The Court also held that Article 44 of the Constitution has remained a dead letter. The then Chief Justice of India Y. V. Chandrachud observed that,

"A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies" After this decision, nationwide discussions, meetings, and agitation were held. The then Rajiv Gandhi led Government overturned the Shah Bano case decision by way of Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of criminal procedure. The explanation given for implementing this Act was that the Supreme Court had merely made

[9] George Bühler, The Laws of Manu 830 (Oxford University Press, 25th vol., 2005).

[10] Mohd. Ahmed Khan v. Shah Bano, AIR 1985 SC 945.

[11] Pannalal Bansilal Patil v. State of Andhra Pradesh, (1996) 2 SCC 498.

an observation for enacting the UCC; not binding on the government or the Parliament and that there should be no interference with the personal laws unless the demand comes from within.

In Mary Roy v. State of Kerala12, the question argued before the Supreme Court was that certain provisions of the Travancore Christian Succession Act, 1916, were unconstitutional under Art. 14 Under these provisions, on the death of an intestate, his widow was entitled to have only a life interest terminable at her death or remarriage and his daughter. It was also argued that the Travancore Act had been superseded by the Indian Succession Act, 1925. The Supreme Court avoided examining the question whether gender inequality in matters of succession and inheritance violated Art.14, but , nevertheless, ruled that the Travancore Act had been superseded by the Indian Succession Act Mary Roy has been characterized as a "˜momentous' decision in the direction of ensuring gender equality in the matter of succession.

Finally, the Supreme Court has issued a directive to the Union of India in Sarla Mudgal v. Union of India13 to "endeavour" framing a Uniform Civil Code and report to it by August, 1996 the steps taken. The Supreme Court opined that: "Those who preferred to remain in India after the partition fully knew that the Indian leaders did not believe in two- nation or three ""nation theory and that in the Indian Republic there was to be only one nation- and no community could claim to remain a separate entity on the basis of religion".

It is, however, to be noted what the Supreme Court expressed in Lily Thomas case. The Court said that the directives as detailed in Part IV of the Constitution are not enforceable in courts as they do not create any justiciable rights in favour of any person. The Supreme Court has no power to give directions for enforcement of the Directive Principles. Therefore to allay all apprehensions, it is reiterated that the Supreme Court had not issued any directions for the codification of a Common Civil Code.

The Supreme Court's latest reminder to the government of its Constitutional obligations to enact a UCC came in July 2003, when a Christian priest knocked the doors of the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act. The priest from Kerala, John Vallamatton filed a writ petition in the year 1997 stating the Section 118 of the said Act was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purpose by will. The bench comprising of Chief justice of India V.N. Khare, Justice S.B. Sinha and Justice A.R. Lakshamanan struck down the Section declaring it to be unconstitutional. Chief justice Khare stated that, "We would like to State that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India it is a matter of great regrets that Article 44 of the Constitution has 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 the contradictions based on ideologies".

Upadhyay in his impalement petition in the main case Albert Antony vs. Union of India14 submitted that the object of the Article 44 is to introduce a uniform personal law for all the purposes of national consolidation. In Albert Antony Case, the petitioner also challenged the legal provision that forces Christian couples to wait for at least two years for divorce whereas other religions like the Hindu Marriage Act and the Parsi Marriage and the Special Marriage Act, and Divorce Act prescribed only one year for it. Recently the Law Commission of India has sought public opinion on the exercise of revision and reform of family laws, in view of Article 44 of the Constitution of India which envisions a Uniform Civil Code for all Indian citizens.

Advocate Farah Faiz, has filed a Public Interest Litigation (PIL) seeking the centre to enact the Uniform Civil Code (UCC) to bring all communities on the common platform in the light of diverse personal laws in different religions.15 Filing the PIL, the petitioner lawyer said the Uniform Civil Code is the urgent need of the day "to abolish the discrimination among citizens on the basis of region and to end the vote bank politics." The recent issue over the practice of triple talaq has sparked debate as to whether the age-old practice should be there or not?

The petitioner has referred the issues of divorce under personal laws particularly under the Muslim Personal Law, saying a "UCC will help the society to move forward and take India towards its goal of becoming a developed nation." That the various personal laws are basically a loophole to be exploited by those who have the power. Our

12. AIR 1986 SC 1011
13 AIR 1995 SC 1531
14 Writ Petition (civil) No. 127/2015
15 BY: PRABHATI NAYAK MISHRA APRIL 18, 2017 7:02 AM.

Khap Panchayats and Darul-Qazas continue to give judgments in the name of religion that are against our Constitution and we don't do anything about it and their associated organizations.

It was contended that religious fundamentalism must go, social and economic justice must be made available to all women including Muslim women and their dignity and equality be ensured, basic human rights guaranteed and there should be an end to exploitation of women, By providing this equality to all Indian women whether she is Hindu, Muslim, Sikh, Christian or Parsi; we are uplifting our country's dignity. Thus, as seen above, the apex court has on several instances directed the government of realize the Directive Principle enshrined in our constitution and the urgency to do so can be inferred from the same.

In 2003, in John Vallamattom V. Union of India.16, the Court has reason once again to express its opinion on the subject of a uniform civil code. In this instance, John Vallamattom, a Christian Priest, challenged the constitutional validity of Section 118 of the Indian Succession Act, 1925, claiming that it was unfairly discriminatory against Christians for placing unreasonable restrictions on their ability to will away land as donations for charitable and religious purposes. A three-judge bench of the Supreme Court, comprising Chief Justice V.N. Khare, and Justices A.R. Lakshman and S.B. Sinha, struck down the provisions as being volatile of Article 14 of the Constitution. Chief Justice Khare commented: "We would like to State the Article 44 provides that the State shall Endeavour to secure for all citizens a uniform civil code throughout the territory of India… It is a matter of great 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 the contradictions based of ideologies". This case was also acknowledge in the 209th Law Commission Report on the proposal of the Omission of Section 213 of the Indian Succession Act, 1925. In the immediate aftermath of the ruling, the BJP called for a national debate on a uniform civil code, and wanted the Law Commission to incorporate "fair and equitable ingredients" from the personal laws of the Hindus, Muslims, Christians, and Parsis to formulate a common code.

Therefore, despite the political ambivalence surrounding the issue, the Supreme Court's consistent advocacy in favour of a uniform civil code suggests that from a legal perspective, India may well be ready for uniform personal laws and also that there is sufficient institutional competence and willingness for the adjudication and administration of these news laws.

KEY POINTS OF SUPREME COURT'S VERDICT ON TRIPLE TALAQ17

Here are key point of the judgment :

1. After reading separate judgment, the 5- Jude bench of the supreme court ruled in 3:2 majority that triple talaq is void and illegal.
2. CJI JS Khehar and Justice Nazeer said triple talaq is to a fundamental right while 3 other judges - Justices Kurian Joseph, R F Nariman and U U Lalit - said is not a fundamental right.
3. Justice Nariman, Justice Lalit and Justice Kurien said triple talaq was unconstitutional.
4. The SC put six-month stay on practice of Muslim men giving their wives instant divorce through triple talaq.
5. The SC bench has asked Parliament to make a new law on triple talaq issue in six months.
6. If law doesn't come in force in six months, then SC's injunction on triple talaq will continue.
7. The SC bench referred to abolition of triple talaq in Islamic countries and asked why can't Independent Indian get rid of it.
8. The SC said "triple talaq violates fundamental right of Muslim women as it irrevocably ends marriage."
9. Justice Joseph said what cannot be true in theology cannot be protected by law.
10. Justice Nariman and Lalit also said that triple talaq granting instant divorce is unconstitutional.

JUDICIAL RESPONSE TO THE PHILOSOPHY OF UNIFORM CIVIL CODE

Though it is quite implicit from the spirit of Article 44 that the State18 is under constitutional obligation to make earnest efforts towards the establishment of one civil code for all persons yet if these provisions come in direct conflict

16 *AIR 2003 SC 2902*
17 August 22, 2017 TimesofIndia.com

with related provisions in Part III, then the judiciary has been given regulatory power under Constitution. The courts have not only regulatory power but it has very wide powers to expound the provisions of the Constitution and bring into practice the basic philosophy of the Constitution and bring into practice the basic philosophy underlying the provision.

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 discussion here. The emphasis is to examine the extent to which the judiciary has been successful in promoting the spirit of uniform civil code as intended to by the wise founding fathers of the Constitution.

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 Bombay v.Narasu Appa Mali.19 In this case the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 was challenged and was held intra vires the Constitution. The Act has imposed serve penalties on a Hindu for contracting a bigamous marriage. In this case the validity of the abolition of polygamy in particular communities only was challenged. Former Chief Justice M.C. Chagla of the Bombay High Court had observed:20

"One community might be prepared to accept and work social reform; another may not yet be prepared for it, and Article 14 does not lay down that any legislation that the State may embark upon must necessarily by of an all embracing character. The State may right decide to bring about social reform by stages and the stages may be territorial or they may be community wise. From these considerations it follow that there is a discrimination against the Hindu in the applicability of the Hindu Bigamous Marriage Act, the discrimination is not based only upon ground of bigamous marriages is not uniform, the difference and distinction is not arbitrary or capricious, but is based upon reasonable grounds."

In 1952, the Madras High Court had to face the similar problem when the Madras Hindu (Bigamy and Divorce) Act, 1949, was challenged in Srinvasa Aiyar v. Sarawathi Ammal,21 In this case Section 4 of the said Act was challenged which provide:22 "Notwithstanding any rule of law, custom or usage to the contrary, any marriage solemnized after the commencement of this Act between a man and a woman either of whom has a spouse living at the time of such solemnization shall be void."

Apart from this provision other grounds regarding the constitutional validity of the Act were the same as in the case decided by the Bombay High Court.23 While rejecting all the arguments put before the court the Madras High Court through Satyanarayan Rao and Rajgopalan JJ. Pointed out that the abolition of polygamy did not interfere with religion because if a man did not have a natural born son, he could adopt one.24

Another case which came to Allahabad High Court was related to Muslim Personal Law. In the case a very important issue was raised before the court. The petitioner in this case prayed before the court to pass a decree for the restitution of conjugal rights against his first wife. His main contention was that Muslim Personal Law allows second marriage even while first marriage subsists. He contended that he was, therefore, entitled to the consortium of the respondent under his Muslim personal law. The Court through Dhavan J. refused to grant a decree of restitution of conjugal rights, and observed25 :

"Muslim law as enforced in India has considered polygamy as an institution to be tolerated but not encouraged, and has not conferred upon the husband any fundamental right to compel the first wife to share his consortium with another woman in all circumstances.

Coming one step ahead the learned Justice observed26:

"the onus today would be on the husband who takes a second life to explain his action and prove that his taking a second wife involved no insult or cruelty to the first …….. Under modern condition it would be inequitable for the

18 Article 12 (Part III). Article 36 says that State in Part IV has the same meaning as in Part III.
19 AIR 1952 Bom. 84
20 *State of Bomaby v.Narasu Appa Mali* ,AIR 1952 Bom. 86
21 AIR 1952 Mad. 193
22 Madras Hindu (Bigamy and Divorce) Act, 1949
23 AIR 1952 Bom. 84
24 Srinvasa Aiyar v. Sarawathi Ammal, AIR 1952 Mad. 194
25 Itwari v. Asghari, AIR 1960 All 684
26 Ibid

court to compel her against her wishes to live with such a husband. There are no divergent forms of cruelty such as Muslim cruelty, Hindu cruelty, Hindu cruelty or Christian cruelty but the concept of cruelty is based on universal and humanitarian standards."

In B. Chandra Manil Kyamma v. B. Sudershan,27 the Andhra Pradesh High Court had to decide a very unique case. In this case a Hindu husband who had a Hindu wife contracted second marriage during the first marriage. This marriage was objected by the first wife. Thereafter to escape from the objection of the first wife, they converted to Islam and then remarried according to Islamic customs. The court held that this second marriage is void from its inception and conversion to another religion cannot make it a valid one.

JUDICIAL RESPONSE TO PROPERTY AND SUCCESSION

In 1972 a very complicated issue was raised before the Kerala High Court in Makku Rawther's Chidren: Assan Rawther and other v. Manahapara Charayil,28 regarding Muslim Personal Law and Article 44 of the Constitution. The main issue which came up for discussion was regarding the hiba or gift under Mohammedan Law. Under the Muslim law gift can be made by an oral agreements between the parties and the same are exempted for the registration under the Indian Registration Act, 1908 but it was challenged on the ground that Section 129 of the transfer of Property which exclude the operation of Registration Act in case of Hiba is violation of Articles, and 15 of the Constitution and, therefore, it may be declared void under Article 13 of the Constitution. Justice V.R. Krishna Iyer delivered a dynamic judgement and observed: 29

"Whatever might have been the content of the gift in Section 129 of Transfer of property Act, when it was originally enacted, its meaning has to be gathered today in the Constitutional perspective of Article 14, 15, 25, and 44. The application of Muslim Personal Law to gifts does not preclude the application of other law which do not run counter to the rules of Muslim Law. A Muslim gift may be valid even without a registered deed and may be invalid even with registered deed. The important thing is that the old laws must be tuned up to the new law of the Constitution and the spirit it of the times".

In other words, the judgment clearly mentioned that the provisions of the personal laws must run in the accordance with the provisions of the Constitution. It is the function of the judiciary to construe the words in the personal laws with the passage of time which is the need of the hour in the light of constitutional mandate.

In D. Chelliah Nadar v. G. Lalita Bai30, the Madras High Court came across the very controversial issue that whether the Indian Christian regarding intestate succession would be governed by the Christian Succession Act, Regulation II of 1092 (Travancore) or Indian Succession Act, 1925. The main issue in the case before the High Court was that whether with the coming into force of the Indian Succession Act, 1925, the Indian Christina will be governed by the Act of 1925 of Travancore Regulation II of 1092. The plaintiff submitted before the trail court that he may be governed by the State Law. But the trial court rejected the plea and held that State law is no more in existence and stands repealed by the Indian Succession Act of 1925. The reading of the Act makes it crystal clear that the State Government under Section 3 of the Act, by an official notification in the official gazettee can exempt the operation of the said act. Chief Justice Kailasam, while delivering the judgment for the court held:31 In the case before us both the laws relate to intestate succession. Though the Travancore Regulation is confined to Christians in that State but the filed of the legislation succession. Though the Travancore Regulation is confined to Christians in that State but the field of the legislation is the same. The Indian Succession Act has a universal application to the extent provided for under the Act. In the light of Section 29(2) of the Indian Succession Act neither the Travancore Regulation was repealed nor its applications was made inapplicable to Indian Christians in case of intestate succession. Thus taking into account all the facts of the case of Travancore Regulation is a law corresponding to the Indian Succession Act and therefore, the plaintiff would be governed by the Travancore Regulation II of 1092.

JUDICIAL RESPONSE TO DIVORCE AND MAINTENANCE

In Bishnu Charan Mohanty v. Union of India,32 the Constitutional validity of Section 5 of Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged. The main ground of attack was that this section provides provision

27 (1989) A.P. I HLR 183; (1989) 1 DMC 109
28 AIR 1972, Ker. 27
29 *Makku Rawther's Chidren: Assan Rawther and other v. Manahapara Charayil*, AIR 1972, Ker. 33.
30 *21st of July, 1976*
31 *D. Chelliah Nadar v. G. Lalita Bai*, p. 70
32 AIR 1993 Ort. 176

was violative to Article 14 and 15(1) of the Constitution of India and hence it may be declared unconstitutional. Chief Justice B.L. Hansaria pronounced the opinion of the court and opined:33

"Merely because the basis of classification made by the legislation is based on religion would not ipso facto make the legislation offensive of Article 15(1). The same has to be discriminatory in the sense that it involves an element of unfavourable basis. This apart, the classifications must have been made only on the basis of religion which would not be so if there exist historical, personal or other persons supporting the classification. Thus, the provision of Section 5 of the Act permitting Muslim husband of Section 5 of the Act permitting Muslim husband to opt to be government by Section 135 Criminal Procedure code has no unfavourable bias."

In Personal Bansilal Pitti v. State of A.P.,34 validity of sections 15, 16, 17, 29 (5) and 144 of the A.P. Charitable Hindu Religious and Endowments Act, 1987 were challenged. One of the questions before the court was whether it is necessary that the legislature should make law uniformly applicable to all religious legislature should make law uniformly applicable to all religious or charitable or public institutions and endowments established and maintained by people professing all religions. The Court held :

"A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. If would, therefore be inexpedient and incorrect to think that all law have to be made uniformly applicable to all people in one go"35

In Krishna Singh v. Mathura Ahir,36 the Supreme Court, while considering the question whether a Sudra could be obtained to a religious order and become a Sanyasi or Yati and, therefore, installed as Mahant of the Garwaghat Math according to the tenets of the Sant Mat Sampradaya, observed: "Part III of the Constitution does not touch upon the personal laws of the parties. In applying the personal laws of the parties, he (judge) could not introduce his own concepts of modern time but should have enforced the law as derived from the recognized and authoritative sources of Hindu law."37

Thus on the basis of the observations made in its earlier decisions viz., Maharshi Awadhesh, Pannalal, Narasu Appa Mali, Mathura Ahir etc. cases the court came to the conclusion that the issues raised in the instant case i.e. Ahmedabad Women A Group v. Union of India,38 were the matters of state policies with which the courts are not concerned. Hence the writ petitions were dismissed.

Srinivasa Aiyer v. Sarawathi Ammal,39 wherein the judiciary took the view that evolution of polygamy does not interfere with religious because if a man does not have a natural son, he can adopt one from the other family. The court bravely has held that religious practices are always subject to the State Regulation and can be governed through appropriate legislations irrespective of their religion emotions.

To conclude, the forgoing discussion disclose that the judicial response to encourage the constitutional philosophy of uniform civil code has always been quite praise worthy. But unfortunately the efforts on the part of the legislature shows that nothing has so far been done by this august body to promote the philosophy of Article 44. The objective of uniform civil code can be achieved only if the three organs of the State endeavor to take imitative to put this philosophy into action.

Thus, it is clearly from the discussion in this chapter, 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'. This happened mostly when the issued involved in the cases did not at all require such incidental observations. Sometimes, even side-stepping the issues involved in the case, the court made un-called for remarks about 'uniform civil code'.

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33 *Bishnu Charan Mohanty v. Union of India,* AIR 1993 Ort. 177.
34 (1996) 2 SCC 498
35 *Personal Bansilal Pitti v. State of A.P,* (1996) 2 SCC 510.
36 (1981) 3 SCC 689.
37 *Krishna Singh v. Mathura Ahir* , (1981) 3 SCC 699.
38 (1997) 3 SCC 573.
39 AIR 1952 Mad 193, *Ram Prasad v. State of U.P.,* AIR 1957 All 411.