

## MINORITY RIGHTS AND PERSONAL LAWS IN INDIA: AN ANALYSIS

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From very ancient time, India is a country of multi-religions, casts, creeds, communities, sects-sub sects etc. For each religion, we have different personal laws in India. But its history is not too old. From the era of British, India was introduced with different written statutes. To please different community and religion people, British introduced different laws for them on their religion ground. It is very well understood afterwards that British ruled India for long time, due to their "divide and rule" policy. The same policy is carried out after independence too. We have different minority communities in India, they based mainly on two ground (i) religion and (ii) language. There are many forms and kinds of minorities. In this paper, minorities in context to religions only are discussed. This paper mainly focuses on issues for religious minorities personal laws. In this paper, discussion is made in reference of religion based family law of which provisions differ community to community and religion to religion. Differences and reasons behind this scenario are widely discussed here.

Concept of minority rights is not at all new. In India, from very ancient time, there is existence of *varna pratha*. Under this system there were different four varnas i.e., Brahmin, Kshatriya, Vyasya and Shudra. Shudras were getting protection by other *varnas* on the ground that they were under them and as per *dharma* (religion) they were bound for that. No doubts this system revealed as per changing time but its essence still exist in our society, not in the form as it was before but with major changes and improvements.

In today's world, concept of minority rights is not in terms of that, as it existed before centuries but its concept is definitely closely related with it. Today too their rights are protected and are advocated to be protected in the

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name of religion and language. All the religions are developed in India, in healthy atmosphere and the instances of disturbance in due course of that, are very few.

As per census 2001 Muslims, Christians, Buddhists, Sikhs and Parsis constitute about 18.4% of the total population of our country. Out of this 18.4%, 72.919% are Muslims, 12.707% are Christians, 10.140% are Sikhs, 4.198% are Buddhists and 00.037% are Parsis. In India Muslims, Christians, Parsis, Jews are the main religions minorities. Apart from Hindus, for Muslims, Christians and Parsis (minority communities) Separate Personal Laws are there to deal with their personal issues like marriage, maintenance, adoption, will, succession, inheritance etc.

A Systematic approach of international protection of minority rights began after the First World War by the League of Nations. The minority protection system was meant to protect group rights of homogenous populations within states to further the idea of self determination. After the Second World War the United Nations focus was on universal rights of individuals, rather than on minorities. The end of the cold war, and the many conflicts with ethnic dimensions marked the revival of the protection of minority rights. The result was the adoption of the Declaration on the Rights of persons belonging to National or Ethnic, Religious and Linguistic Minorities by the UN General Assembly in 1992. The 21<sup>st</sup> century faces the challenge to achieve a peaceful coexistence within the multicultural nations of the world.

The Universal Declaration of Human Rights 1948 and its two International Covenants of 1966 declare that "all human beings are equal in dignity and rights" and prohibit all kinds of discrimination-racial, religions etc. The UN Declaration against All Forms of Religions Discrimination and Intolerance, 1981 outlaws all kinds of religion-based discrimination. The UN Declaration on the Rights of Minorities, 1992 enjoins the state to protect the existence and identity of minorities within their respective territories and encourage conditions for promotion of that identity; ensures that persons belonging to minorities fully and effectively exercise human rights and

fundamental freedoms with full equality and without any discrimination; create favourable conditions to enable minorities to express their characteristics and develop their culture, language, religion, traditions and customs; plan and implement national policy and programmes with due regard to the legitimate interests of minorities; etc.<sup>1</sup>

There are Several Provisions regarding Minority Communities in Constitution of India. Main object behind this is; India is a Sovereign Socialist Secular Democratic Republic and it guarantees "Liberty of thoughts, expression, belief, faith and worship to all its citizens." To ensure this object of preamble, provisions are given in Constitution. They are mainly:

- (i)** Freedom of Conscience and free profession, practice and propagation of religion (Art. 25)
- (ii)** Freedom to manage religions affairs (Art. 26)
- (iii)** Protection of interests of minorities (Art. 29)  
Under the head of fundamental Right to freedom of religion (Art. 25 to Art.30) Art. 27, Art. 28 and Art. 30 are also of much importance.
- (iv)** Article 46 mandates for Protection of educational and economic interests of scheduled castes, scheduled tribes and other weaker section.
- (v)** Article 51A(e) states that; it is the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religions, linguistic and regional or sectional diversities.

Apart from this too, there are several other Articles in Constitution to provide wider rights to minorities.

The Constitution of India uses the word "minority" or its plural form in some Articles 29-30 and 350A to 350B- but does not define it anywhere. Article 29 has the word "minorities" in its marginal heading but speaks of "any sections of citizens having a distinct language, script of culture." This may be a whole community generally seen as a minority or a group within a majority community, Article 30 speaks specifically of two categories of minorities-religions and linguistic. The remaining two

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<sup>1</sup> Constitutional and Legislative Provisions Regarding the Minorities, Chapter-2, [www.sabrang.com](http://www.sabrang.com), Retrieved On 20/01/2014.

Articles 350A and 350B relates to linguistic minorities only.<sup>2</sup>

In common parlance, the expression "minority" means a group comprising less than half of the population and differing from others, especially the predominant section, in race, religion, traditions and culture, language, etc.<sup>3</sup>

In India, Articles 15 and 16 of the Constitution prohibit the state from making any discrimination on the grounds only of religion, race, caste, sex, descent place of birth, residence or any of them either generally i.e., every kind of state action in relation to citizens (Article 15) or in matters relating to employment or appointment to any office under the state (Article 16). However, the provisions of these two Articles do take adequate cognizance of the fact that there had been a wide disparity in the social and educational status of different sections of a largely caste-based, tradition-bound society with large scale poverty and illiteracy. Obviously, and absolute equality among all sections of the people regardless of specific handicaps would have resulted in perpetuation of those handicaps. There can be equality only among equals. Equality means relative equality and not absolute equality. Therefore, the Constitution permits positive discrimination in favour of the weak, the disadvantaged and the backward. It admits discrimination with reasons but prohibits discrimination without reason. Discrimination with reasons entails rational classification having nexus with constitutionally permissible objects.<sup>4</sup>

Constitution provides protection to minority rights with special provisions. Basic reasons behind such provisions were and are that the framers of Constitution were well aware with the social scenario of our nation because all of them belonged from different parts of Indian society. They were well aware about the difference in social system. Hence, to bring all the citizens on same footage and under same roof various provisions were put in the Constitution. The basic theory behind this, was to put strengthen weaker section with main stream and section

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<sup>2</sup> Report of the National Commission for Religions and Linguistic Minorities, Ministry of Minority Affairs, [www.jeywin.com](http://www.jeywin.com), p.12.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, p.13 & 14.

of the society. This could happen only when the weaker sections are given few more facilities to make themselves capable to stand with main stream of society and to get equal status in the society. As a part of this concept several other legislations are also enacted in the society. No doubt this all has benefited the Minority communities not only for religious or linguistic minority communities, but also for sub-caste communities.

For each religion we have different personal law and basic reason behind this is some misconceptions, misrepresentations and misinterpretation of different religion based faiths. In the name of religion many malpractices have went on from the past and they are still continue. Having separate personal law is not at all the problem, if it really gives the best solution of the problem or issue. But the scenario is that, due to special status in the name of religion and minority the old orthodox and time-out usages and customs still prevail in the society. The different group of family laws has created ambiguities among the people of different religions. The circumstances are not such that people are really enjoying their special personal laws but the scenario is that, they are in loss and trouble due to some provisions of their personal law. For illustration; in Muslim community, upto four marriages are allowed for men. In fact this provision has created nuisance in Muslim community because in present era it seems quite unjust and illogical. In Muslims even today husband has universal right to divorce his wife without giving any reason. After that he is free for another marriage if he had four wives calculating with the last divorced wife. How practical it is today? These are only two illustrations; there are many other illogical provisions in Muslim Personal Law. For Christians and Parsis, the situation is with full of ambiguity. No doubt latest Amendments in personal laws have provided few reliefs but not completely changed the social system.

In the name of protecting religious identity of communities, our family laws are claimed to be based on religion but that is not the complete truth. No religion denies for change, if its in common interest of justice. In present era when people opt for dual policy, that means, they choose the option where they get maximum benefit

but they come with arguments when the provision is contrary.

The situation should change as per the changing norms and values of society. Because if anything remains unchanged, in changed circumstances, that causes loss to any related with it. Today when people are not fully religion-abiding, why they should get the privileges only in the name of religion. For civil nature issues people claim their rights under their personal law whereas for criminal liability they are governed by main laws of the country. If it is considered widely and if people are only religion oriented why they don't ask punishment under the provisions of their religious books. The reason behind this is the punishments, for wrong doers are stricter in religious books. How many cases are there in which the culprit has asked for the penalty as provided in his particular religion? The answer is none. Why such dual policy? If one wants personal law of the choice of his religion than one should ask for the penal provisions described or mentioned in one's religion.

In any civilized society, if indeed, the principle of "equality" is followed, that should be in all the forms. Not only for some parts. Issues like marriage, maintenance, adoption, will, succession, inheritance are generally decided as per the provisions of personal laws. The system and provision of law followed for Hindus can't be followed for any other religion and the system and provision of law followed by Muslims also can't be followed by any other religion. This creates ambiguity because the laws, in all the fields are developing continuously. And the thoughts of people of different religion people are greatly affected by globalization, modernization, urbanization, industrialization etc. What is heard as the voice of community, is in fact the voice of few leaders of that particular religion or community. In present era it cannot be counted as the thought of whole community. It requires attention and deep study to know the voice of each individual. If it cannot be done, then justice cannot be made reach to the affected individual. When the justice is asked, generally it is asked by an individual. If the system can't hear the pain of an individual, no substances in providing rights to whole community.

Today not necessarily, the individual comes out to ask for civil issue only under his personal law only but he comes out to ask for relief under any other law of the country. No doubt his demand to get remedy under the provisions of any other personal law, which is not related with his religion, which he profess or follows can't sustained in the eyes of law. But if one comes to ask for the rights under the law which is of general nature, the law doesn't refuse or can't refuse to provide the remedy. For example, if women of all the religions comes to ask for remedy under the provisions of Protection of Women from Domestic Violence Act, 2005. In all the personal laws, provisions for maintenance, resident etc. are there, then why they should be treated under any other law which is not related to the personal laws or any personal law. The common and logic answer for this is, people want change and they are not fully satisfied with the provisions of their existing personal laws only. The main loss is caused to the women of all the religions because prima facie and basically too, our personal laws are not gender just. Due to timely amendments, situation for Hindu women is improved and apart from others Parsi women's rights are also quite gender just but for others situation is really unjust.

What is evident across the board is that special cultural and political rights, once they are granted, are exceedingly difficult to withdraw. Even when something is done for the sake of promoting equal treatment for all, state actions meet with suspicion and mistrust. It is for these reasons that the union state has refrained from reforming the personal laws of the minority communities. Over time, the personal laws of both the Parsi and the Christian community have been reformed internally through the initiatives of the members themselves. The same has not, however occurred in the case of the Muslim Personal Law. The question what role the state can play in ensuring more just treatment for Muslim women is an issue that has divided the community and the nation. Respect for diversity suggests an absence of direct state action and greater room for communities to govern themselves, but can the state act as a catalyst in this process of reform? Should it set targets and timetables for reform to be undertaken by the community? Should it lay down the boundary conditions

or the parameters of what is acceptable and within those parameters allow communities to govern themselves? Which of these strategies should the state adopt? Which will be an effective way of combining the concern for diversity with equality? Judgments on these questions are likely to vary from context to context. What we need therefore is an affirmation of the principle while the policies by which we give effect to that norm can be deliberated upon keeping the specifics in mind<sup>5</sup>

In a paper titled "Individual Rights in India: A Perspective from the Supreme Court" presented at the International Roundtable Conference, held at University of Georgia, between April 3 to 6, 2009, Hon'ble Justice Mr. K.G. Balakrishnan, the then Hon'ble Chief Justice of India, said that, more than the questions about the positive protections afforded to religious groups, it was questions dealing with the notion of 'equal treatment' for all religions and the related controversy over the Hindu Code Bill that evoked the strongest polarized responses. The efforts to reform Hindu Personal Law through the legislative route can be traced back to the early 1920's when several lawyers joined efforts to lobby for the codification of the law relating to marriage, maintenance, adoption, inheritance and succession among other aspects. Besides the immediate benefit of legal certainty and uniformity, codification was also intended to curtail practices such as polygamy, prohibition of inter-caste marriages, denial of property rights to women and the exclusion of lower castes and untouchables from ownership of property in due course. Hence, the progressive demand for codification was cast in the language of social reform and posed as counterpoint to language of social reform and posed as a counterpoint to the apparently regressive position of non-interference taken by the religious conservatives. In fact Dr. Ambedkar proposed that civil rights should be privileged over religious practices and argued that the provisions of a Uniform Civil Code should find place in the chapter on fundamental rights. In many ways, the case for codification mirrored the intent behind the colonial

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<sup>5</sup> Mahajan Gurpreet, Negotiating Cultural Diversity and Minority Rights in India, [www.idea.int](http://www.idea.int), p. 11 & 12, Retrieved on 20-01-2014.



legislative interventions against seemingly retrograde social practices.<sup>6</sup>

In this paper Hon'ble Lordship has further mentioned that the nexus between the exercise of "religious liberty" and the protection of minority rights in India has been prominently discussed with respect to the debates about interference with the personal laws of religions minorities. The debate on the feasibility implementing a Uniform Civil Code raises Several Complicated question- from the case for mitigating gender-based discrimination in personal laws on one hand to preserving religions autonomy on the other hand. An earlier instance of substantive codification i.e. the Hindu Code Bill faced several objections at the time of the drafting of the Constitution. The rhetoric of conservatives (both within and outside the dominant congress party) was that while restraints were placed on customs rooted in the religious beliefs of the majority community, the religious minorities were not so covered. The liberalists' case for a Uniform Civil Code was vehemently opposed on the ground that the imposition of uniformity would reflect majoritarian beliefs and would hence erode the identity of minority group such as Muslims, Christians, Parsees and Jews. The subsequent enactment of the Hindu Code in the 1950's was again criticized by the right-wing parties as an example of 'differential treatment' that amounted to an appeasement of minority interests.<sup>7</sup>

The Fifth Minorities Commission clarified that secularism in India did not connote anti sacerdotalism or anti-clericalism nor did it crusade for anti-religious faith. It said: "Our broad type of secularism looks upon traditional religion, of every label, with benevolent neutrality. It would like to see the end of exploitation or of use of religion for political and economic purposes and to purge of superstition and harmful predatory practice. But beyond that, it encourages religion as apart of beneficial human activity in so far as it can satisfy and serve the criteria of utilitarian ethics, which are secular. Hence, we tend to employ the term secularism for a healing, freedom supporting harmonizing factor in our thoughts and feelings, which enable religious cultures,

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<sup>6</sup> Supreme Court of India.nic.in, p.14, Retrieved on 20/01/2014.

<sup>7</sup> *Id.*

not only survive and live but to do with all the force and vigor they can do this without harming the general social welfare... The impact of our secularism operating as a new social, economic, ethical and moral force resulting from modern knowledge, science and enlightenment can elevate traditional religion by purging it of noxious elements."<sup>8</sup>

While providing the special rights to the minorities, the basic principle of Constitution, "Equality before law" and "Equal protection of law" should not be ignored. Art.14 basically advocates for the view, without which no society in present era can remain healthy in long term. When our Constitution was framed, the Socio-economic-legal-political circumstances were different than today, and hence, various provisions for the upliftment of minority communities were made in the Constitution. Some of these provisions such as reservations, were of such nature that the basic intention behind them was to withdraw them after some period but they are still existing. The main reason behind this is the "vote-bank oriented" politics of all the political parties. Not only this but till today too, none of the political parties have come out to delete such unequal system in the society. The rights of minorities among minorities should also be considered, but that is left behind. Class-interest is seen but individual is ignored. It shouldn't be ignored that the group of individuals constitute a class or a group which is a part of society or a society. In this view, if development of society is required, individual's rights should improve and develop with combination of the principle "equal protection of law to all" and which will really create the society in which all would be "equal before law."

But our religion based personal laws are very far from both these principles and terms of Constitution of India. All have different provisions than to others. An individual, though he is a citizen of India, though he is under the Constitution of India, though he is regulated by the same penal law as other religion people, but he is

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<sup>8</sup> Bhat P. Ishwara\_(2009), Law & Social Transformation, p. 233, Eastern Book Company: Lucknow. The Author of this book has given citation in this book as: Paras 7.62 to 7.66, Fifth Annual Report of Minorities Commission of India, 1982-83. on p.233.

treated differently when it is a question of his personal law related right. How can "equality before law" principle survive in such circumstances. "Reasonable Classification" term cannot be and should not be imposed here because, if it is thought widely, it does not include such things in its concept. If it is at all wished to provide "equal protection of law to all" it should be on the same footage and on the same platform. Without such implementation, at least in this context, Art.14 then just exists in books of Constitution only. While thinking or interpreting any provision of Constitution or any other law, object behind it should be considered first, which is really not taken in account while dealing with the personal laws by the parliament or the government ever.

As discussed above, also the founding parents of Constitution of India, while framing Constitution, were of the view to form a uniform personal law for all the citizens of India, irrespective of their caste, creed or community. And henceforth in part IV of the Constitution, under Article 44, they put a provision to form and regulate a Uniform Civil Code for the citizens of India. If they wished to keep them separate only, why they would have been made such provision in Constitution? The history of making of Constitution reveals all the ifs and buts of the discussion held before finalizing the format of the Constitution. That itself clears the intention of the Constitution framers. It is found that most of the members were of the opinion for implementation of Art. 44 in Indian society. But what delayed it, was, political will power and due to this, this mandate of Art. 44 was delayed to be implemented practically. Decades have been passed there after but still Art. 44 has remained untouched.

Since religions wield overwhelming influence on the social and individual life in traditional societies as that of India, and often overemphasis customary beliefs, thereby retarding or hindering modernization, the question of bringing or concretizing social transformation with the help of law faces practical difficulties. Religious issues often become sites of social tension because of competing religious sentiments. Society as a common hinterland for both religion and state has to prepare itself for an orderly development by respecting paramount human values. A

Principal distancing from all religions and an approach of impartiality in treatment provide a safe walk, soberness and legitimacy for state action. Being a component of the policy of multiculturalism, this approach sets ways and limits to law's regulative task, and inculcates an attitude and mindset for co-existence amidst different religious communities. Secularism as a means of liberation from prejudices and communal frenzies has inherent competence to enhance the worth of human rights and welfare. Search for viable parameters for the appropriate triangular relations among state, religion and individual become an imperative in shaping the legal policies in the task of social transformation.<sup>9</sup>

Culture is not fixed but a process, cultural norms constantly develop and reshape as a result of various factors, including external influences. It should also be recognized that culture is a rich resource that contains many alternative, sometimes contradictory components, and many offer a variety of readings to choose from. In many cases, it is inaccurate to present a single norm or practice as representing the "real" essence of a given culture. The selective use of specific cultural components, and not other, by some members of a group, may serve the interests of dominant sectors of a given community and may silence alternative readings of cultural norms.<sup>10</sup>

The concept of Art. 44 of Constitution is to provide Uniform Personal Law to all. To reveal the basic differences of different personal laws and to provide one and the same solution to all the citizens equally only practical implementation of Art. 44 is required. As discussed above personal laws provide different solutions to two different people, on the same issue, if they are of different religion. To give equal status to all, and to provide sameness in the system of personal laws, no option is available then implementing Uniform Civil Code for all the citizen of India. Here, it is noteworthy that, Art. 44 do not intend to interfere with any religious faith or propagation of religion by an individual or class but it intends to remove only technical and legal differences

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<sup>9</sup> Bhat P. Ishwara (2009), *Law & Social Transformation*, p. 225-226, Eastern Book Company: Lucknow.

<sup>10</sup> Shmueli Merav, *Minority Women, Family Law and the State*, [www.nawl.ca/en/jurisfemme/entry](http://www.nawl.ca/en/jurisfemme/entry), Retrieved on 04/02/2014.

from the various personal laws. While considering other aspects, this aspect needs to be looked first. But on this point, Art. 44 is either misunderstood or misinterpreted or misrepresented by the self centered people who are generally leaders of different communities. Except Uniform Civil Code, no solution is there for the protection of people on personal issues, equally.

The main objection for change in existing personal law comes from the Muslim community. And if it is observed widely, it can be seen easily, that some part of this community has suffered the most due to unchanging mindset. Whereas Christians and Parsis too have some objections, but they are of such nature which can be rectified and solved through talk. Personal law for Hindus is not in question here, but it is noteworthy that it has been amended so many times as per requirement and now they are very up to the level. So many instances are been noted in which people have tried to take the benefit of other personal law by conversion to that particular religion. *Smt. Sarla Mudgal* case<sup>11</sup> is noteworthy verdict on this aspect so many incidents of this nature occur but the illiteracy and poverty ratio existing in our country is one of the reasons, why all the cases don't open up in the society. National law commission has often emphasized on these issues.

Hon'ble Apex Court of India also has passed several judgments in respect of minority communities of different kinds. Many of them have been proved milestones in solving and resolving the various problems of minority communities. In reference of the issue discussed in this paper too, Hon'ble Supreme Court of India has observed in so many of its judgments and has shown its worry and concern for implementation of Art. 44-Uniform Civil Code in Nation. The crux of few of such judgments is noted here.

In *Mohd. Ahmed Khan v. Shah Bano Begum* case<sup>12</sup> Hon'ble Apex Court made a reference to uniform civil code and in para 32 of this judgment and observed that: "It is also a matter to regret that Article 44 of our Constitution has remained a dead letter. It provides that:

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<sup>11</sup> AIR 1995 SC 1531.

<sup>12</sup> ((1985) GLHEL-SC 17763).

"The State shall endeavor to secure for the citizens a uniform civil code through the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take lead in the matter of reforms of their personal law. A common civil code will help the course of national integration by removing disparate loyalties to law which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the state which is charged with the duty of securing a uniform civil code for the citizens of the country and unquestionably, it has the legislate competence to do so".

In the same para it is further observed that: "we understand the difficulties involved in brining persons of different faiths and persuasions on a common platform. But a beginning has to be made if the Constitution is to have any meddling. Inevitably the role of the reform has to be assumed by the courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts to courts to bridge the gap, between personal laws cannot take the place of a common civil code. Justice to all is a far more satisfactory way of dispensing justice then justice from case to case".

In *Smt. Sarla Mudgal President, Kalyani and other v. Union of India and others* case<sup>13</sup> Hon'ble apex court called for the requirement of uniform civil code, Art. 44 and while referring Art. 44 it was observed that: "Article 44 is based on the concept that there is not necessary connection between religion and personal law in a civilised society. Article 45 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, Succession and like matter of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26, 27. The personal law of the Hindus, such as relating to marriage, succession and the like have all the 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

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<sup>13</sup> (AIR 1995 SC 1531).

national unity and integration, some other communities would not, though the Constitution enjoins the establishments of a "common civil code" for the whole of India".

In this judgment it is also observed that "When Constitution was framed with secularism as its deal and goal, the consensus and conviction to be one, socially found its expression in Article 44 of the Constitution. But religious freedom, the basic foundation of secularism was guaranteed by Articles 25 to 28 of the Constitution, Article 25 is very widely worded. It guarantees all personals, not only freedom of conscience but the right to profess, practice and propagate religion. What is religion? Any faith or belief. The court has explained religious liberty in its various phases guaranteed by the Constitution and extended it to practice and even external over acts of the individual. Religion is more than mere matter of faith. The Constitution by guaranteeing freedom of conscience ensured inner aspects of religious belief. And external expression of it was protected by guaranteeing right to freely practice and propagate religion."

In *John Vallamattom v. Union of India* case<sup>14</sup> the Hon'ble Apex Court has observed that: "Art. 44 provides that the state shall endeavor 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. Art. 25 of the Constitution confer freedoms 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

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<sup>14</sup> 2003(0) GLHEL-SC-13037.

legislation is followed in this country. In *Smt. Sarla Mudgal, President, Kalyani and Others v. Union of India and other*, 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 the contradictions based on ideologies".

Above thoughts and views of Hon'ble Supreme Court of India also clears the necessity and need of implementing Art. 44 practically in the society. For societal interest at large, this fact has to be accepted that self-centered politics can benefit some but not all the spheres of society.

There are many aspects of minority rights. Many of them are solved but several are yet to be solved. But the issue discussed in this paper can be rectified definitely and that can happen only by forming and implementing Uniform Civil Code for all citizens. Personal rights of minority communities under their personal laws needs to be dealt equally because it is in the best interest of them only. It is widely felt that common civil code will surely help in national integration and it is the duty of the state to form the Uniform civil code for the nation. Though there are the difficulties in filling the gaps among the thoughts of different religions following people but, this was the same situation at the time of independence and at the time of framing our Constitution and as well as at the time of introducing the Hindu code bill by the then Prime Minister of India, Shri Pandit Jawaharlal Nehru. But after that too, more than 65 years have been passed but there is no any positive movement in this direction by the government. It cannot be accepted, now too, that the social scenario is not that much ripen, that uniform civil can be introduced. It is, so that it is a fact that no any such efforts are made by the legislature and hence, it could not be introduced and regulated in our society. The reasons behind that are many. They are political, social, economical, sentimental and even geographical. Strong determination of political will power is essential need for



any change in society without that no change can be made in any field and the same principle is applied in this context too. It had become not only the need but also the necessity of the hour to change the form of personal laws and uniform them as per the present time demand. In the age of globalization one cannot be allowed to have a special status in law on the ground of his religion only. For above noted views, despite of time to time amendments, present family/personal laws have become inconsistent with the time. Hence a drastic change in personal law is required and then only minority communities would be justified in context to their personal/family laws.

