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CHAPTER V

Analysis of Interviews Data

5.1. Introduction:

The issue of uniform civil code in India is very complex due to several historical, social and cultural factors. Most of the issues can be identified by doctrinal methods such as: a) analysis of various family laws of India, b) study of their sources, c) their evolution through legislation, d) the judicial responses in form of precedent and obiter dicta etc. These have been discussed in earlier chapters. It is now decided to apply empirical touches and collect views of eminent academicians, judges, advocates and NGOs on this complex issue by resorting to interviews. It is hoped that their views will give insights into the complexity of the problems involved and provide signboards for navigating safely and satisfactorily through Uniform Civil Code.

5.2. Identification of complexities of Family Laws of India.

Before conducting the interview several complexities in the way of uniform civil code were identified by the researcher from his own teaching experience, as well as from preliminary talk and discussion with various academicians on Family Laws of India. Most of these points have been discussed in earlier chapters. However they are listed again for clarity of purpose. They are:

- India at present has a various distinct personal laws, like Hindu, Muslim, Parsi, Christian, etc.

- Family laws of India are distinct and diverse, having distinct sources. For instance the sources of Hindu Law and sources of Muslim Law are distinct and diverse and so are the others. Thus Family Laws do not flow from a blend of sources producing one tree. It is to be noted that the Family Laws of India do usually have Legislation, Precedent and Equity as Source of Law. Though too little extent they may tend towards uniformity, these sources have largely conceptualized as distinct over the years and hence not achieved unity.

- As yet there is not even a Hindu Code but there are sets of legislations on various aspects of Hindu Family laws. For example: 1) Hindu Marriage Act, 1955; 2) Hindu Adoptions and
Maintenance Act, 1956; 3) Hindu Succession Act, 1956; 4) Hindu Minority and Guardianship Act, 1956. Though to a large extent there is an internal uniformity for Hindu law as a whole, yet there are places for customs and usages such as in Marathwada region of Maharashtra State there is custom after attaining age of majority, after 18 years person can be adopted by the adoptive parents. In marriage the practice of saptapdi is not essential in several castes including scheduled caste. In south maternal uncle and nice can marry. In south maternal cousin can marry. Thus these practices are legal in these respective areas.

- The legislation on various family laws has not achieved uniformity across religion and gender, though sometimes mitigated to some extent gender inequality.

- The jurisprudence evolved after the Indian constitution has due to several reasons not been bold or adventures enough to radically move the family laws towards a uniform civil code. It is commendable that the courts often have come with obiter in order to move the system towards unity. The obiter due to several reasons political and otherwise, have not opened the road towards uniform civil code.

- Over six decades after India’s Constitutional commitment to Uniform civil code, we just see a very dim light at the end of the channel.

- The fact of replacing all the personal laws thus existing by Uniform Civil Code is an uphill task.

- The social fabric of India with diverse religions with variety of ramifications, caste, sub castes, race, Jat Panchayat or caste panchayats etc makes the implementation of uniform civil code a difficult task.

- The indigenous people in India and tribal, especially in isolated areas have their own personal laws.

- On the other hand with India undergoing rapid social and cultural changes and the growing issues of inter caste marriages, gender problems etc make a demand for uniform civil code.
• India has accepted Democracy, Socialism, Secularism, Justice, Equality, Liberty and Fraternity. These lofty goals are principally accepted generally by the Indian people. Hence it favours the movement towards the uniform civil code.

• Vulnerable Sections of the society have entered into public life. Scheduled Castes Scheduled Tribes and other Backward Classes are also intrinsic part of Public Life with a positive role towards nation building. Today women are also on forefront of several issues. Hence there is a movement towards uniform civil code to meet their rightful aspirations.

• Uniform civil code may help to resolve the conflict cases of private international law.

• Uniform Civil Code may have to incorporate modern principles for the governance of the relations of various parties such as Principle of Gender Justice, Best Interest of Child etc. Identification of these principles is another task.

5.3. Interview Report

Researcher has interviewed persons who are learned in the field of personal law namely judges, lawyers, Academicians, Bureaucrats, NGO’s with extensive knowledge of family laws of India. In total sixteen 16 persons have been interviewed. Among them there are three advocates of family courts, five law teachers, two NGO’s who are family counselors. Besides there are four administrators, one social Activist and lecture were included. Almost half percent are doctorate degree holders. Maximum person have respond to the interview under a cooperative atmosphere. Following were the issues on which the interview was conducted.

1) Issue 1. Whether India should have a Uniform Civil Code?

2) Issue 2. Whether it is time to implement Uniform Civil code?

3) Issue 3 Whether the Uniform Family Laws should be codified into one composite piece like a code or whether to have separate legislative pieces, (ex. Uniform Marriage laws for all citizens of India, similarly for succession, maintenance etc.)

4) Issue 4 whether the Code should contain Principles initially (likesome western codes or International laws?) which will help to interpret the code?
5) Issue 5. Whether the present Family laws of India or at least some suffer from Gender Bias?

6) Issue 6 whether the present family laws of India are insufficient to protect children?

5.4. The responses given by the persons to Issues wise are as follows:

I) Issue 1. Whether India should have a Uniform Civil Code?

Respondent 1

India should have a Uniform Civil Code. Undoubtedly it will in the long run ensure Equality. But before answering the question whether India should have a uniform civil code or not – a more pertinent question is whether it is possible or practicable to articulate a uniform civil code that is acceptable to various religious personal laws as practiced by Hindu, Muslims and other religious minorities in India. A look reveals that there is absolute diversity in the laws of these communities, coupled with religions. Will such diversity permit uniformity of any sort? In fact, the heterogeneity of laws amongst one religion that is Hindus itself is such that the possibility of a uniform Hindu code is also ruled out.

If Uniform Civil Code is ever brought into effect it should be uniform to all its citizens, irrespective of their religion, caste, creed or tribe. This is because such law will help to protect all the citizens from injustices bestowed upon them by factors like religion, caste etc.

Respondent 2

Response was in affirmative and he favored uniform Civil Code.

Respondent 3

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1 Ms. Sathya Narayan, LL.M., Law Teacher teaching experience: 35 + years. Established author of Law. Date of interview- 2/7/2015, Time 2.00 p.m.

2 Prof. Dr. Dilip Ukey, LL.M. Ph.D. Teaching Experience 24 years, Date of interview- 18/6/2015. Time 2.00 p.m.

3 Dr. Harishchandra GopalraoKulkarni, B.A.M. &S., LL.M. Ph.D. (Law) Teaching experience 28 Years out of which 14 years as principal, Achievements Happiness to teach law of the students. Date 11/6/2015 time 11.00 a.m.
It is better to have Uniform Civil Code. With the help of old or existing laws which should be considered one can formulate uniform civil code. Necessary modification agreeable broadly to the all religions could be incorporated.

It should be in concurrent list i.e. IIIrd list of the VIIth schedule

**Respondent 4**

Yes, India should have Uniform Civil code for the purpose of gender equality and justice.

It should be in central list i.e. IST list of the VIIth schedule

**Respondent 5**

Yes there should be Uniform Civil Code. There are uniform legislations in other field like criminal law. So it should in Civil laws area. Therefore it should be in family laws too. Personal laws create animosity among different religious group. Separate personal lawshad been created and maintained by the British; they wanted to divide Indians on religious line. Independent India should think independently. One must create social background for uniformity in family laws. Without creating necessary background if uniform civil code is introduced, then it create more animosity in society. Before applying Uniform Civil code to the tribal community they should given equal opportunity. To bring the tribal in mainstream before applying the uniform civil code. Uniform Civil Code will prevent the functioning of KhapPanchayats.

It should be in Central list

**Respondent 6**

Yes, as per fundamental rights every person, citizen of India can settle anywhere in the territory of India and hence it will be possible for any citizen to take civil laws required.

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4 Dr. Sita A. Bhatia, Ph.D. (Poli. Sc.) LL.M. Teaching experience 18 years. Achievements former Vice-Principal, ILS Law College, Pune, In charge of legal aid cell. In charge of Diploma in Human rights and law. Date 22/6/2015 Time 12.30 p.m.

5 Ms. Sikha Buattacharya, M.A., M.Lip sc. Profession Librarian, Experience 25 years. Date- 5/6/2015, Time 11.00 a.m.

6 Dr. Suresh Damodar Tikhe, Bsc. LL.M. Ph.d. ,Profession Advocate, Experience: last 40 years Date: 22/6/2015. Time: 1.55 p.m.
It should include in the central list.

**Respondent 7**

Yes, for giving gender justice and protection of children’s rights.

It should be in central list.

**Respondent 8**

Yes for the gender justice. One nation, one law, applicable to the all citizens is the ideal. How to formulate uniform personal laws is a very difficult task. One needs to build consensus among the society for such a big change. Then one can formulate uniform civil code otherwise it will lead to the conflict in the society.

It should be in the concurrent list i.e. IIIrd list of the VIIth Schedule.

**Respondent 9**

Principally yes, but practically it is difficult. Uniform civil code today in India is a political issue. It has become religious cum political issue. It is very difficult to find out the way towards uniform civil code. Therefore middle path like reforms should take place and Government should take the initiative. Consciously it should frame and formulate some ideas. In implementation of Family laws there is no doubt that there is problem of justice for women especially Muslim women. Justice to women is much more important from the point of view of modern India. Uniform civil code must give justice for woman.

It should be in central list.

**Respondent 10**

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7 Adv. Sandhya Chavan, B.Com, LL.B. Advocate family Court Pune, Experience: 22 Years, Date 22/6/2015. Time: 2.15 p.m.
8 Adv. Shweta Kulkarni, LL. M. , M.B.A. Profession Visiting Faculty and Advocate Family Court at Pune, Date 22/6/2015 Time 3.00 p.m.
Yes there should be Uniform Civil Code. All people should be governed by one law. As per divorce is concerned, there are different laws of every personal law. Hindu divorce law, Muslim divorce law Christian divorce law etc. As per Christian women’s divorce is concerned they are governed by Indian Divorce Act, 1869. According to the legal provisions of Divorce Act, 1869, it is very difficult to get divorce through Court. Therefore they approach to the church or priest of the church and they put their grievances before the priest and they get divorce by way of mediation. Sometimes parties can approach to the respectable person of the community and get divorce with mediation. In Muslim law Talak is arbitrary so there should be uniform civil code to prevent this practice. When there are inter-religious marriages then the problem is of which law to apply. This problem can be resolved by formulating uniform civil code. Similarly uniform civil code could address the problem of tribal’s and caste panchayats.

It should be in Central list.

**Respondent 11**

Yes India should have uniform civil code for the reason that it will establish rule of law; law will bring certainty. It will be easy to apply in day today life. People can refer and realize law. It will clear confusion from the mind of the people. One state, one law to all people in family matters is the goal.

It should be included in the central list.

**Respondent 12**

No, Due to cultural plurality of masses implementation of Uniform Civil Code would be an anti-minority exercise. Instead, law reformers must be encouraged to formulate provisions on the behest of communities themselves

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10 Ms. Supriya Bendkhale, M.S.W., Profession: Counselor, Experience: 25 years. Date: 5/6/2015. Time 4.00 p.m.
11 Ranjana S. Bhosle M.S.W. Profession Team Leader, Counselor Experience 20 years Achievements’ Social Awards. Date 11/6/2015. Time 4 P.m.
12 Dr. Sanjay Jain, Ph.d.in law. Associate professor, experience 19 years Achievements’ Disability Rights Activist, Winner of Best Disable Employee, President Award 2004. Date: 15/6/2015. Time: 3.25 p.m.
It should be in the concurrent list. That is List III - Concurrent List of the Seventh Schedule.

Respondent 13 13

Yes, but the law should take into account the divorce provisions of personal laws and respect them.

It should be in central list.

Respondent 14 14

Yes, if there is a possibility of uniformity in a particular subject matter, it can be codified. If there would be conflicting situation and if the community interest is hampering then to that extent diversity is to be permitted. But it should have some uniform standard.

It should be in central list.

Respondent 15 15

Yes, it should be Uniform throughout India. If it is not possible then community wise reforms or territorial reforms should be introduced so that needy persons should get benefit of such type of reforms.

It should be in central list.

Respondent 16 16

Yes, Indian constitution provides secularism, a basic structure of India. Irrespective of religion, we have to look into vulnerable classes like women, children. They are affected by personal law. To give justice for them we need a uniform civil code.

13 Dr. Deepa J. Paturkar, Ph.d. (law) Profession: Assistant professor Experience: 12 years. Date 9/6/2015 Time: 12.30 p.m.
14 Dr. Saleem M. Shaikh, Ph.D. (Law) Assistant Professor Experience 9 years. Date 20/6/2015. Time: 1 p.m.
16 Kendre Dnyeshwar Prahaldrao, LL.M. Assistant Professor Experience 7 years. Date: 15/6/2015 Time 3.00 p.m.
It should be in the central and concurrent list namely 1ST and IIIrd list of VIIth schedule.

II) Issue 2 - Whether it is time to implement Uniform Civil Code?

Respondent 1

It was in 1950 by virtue of Article 44 of the Constitution India, it was proposed to provide a Uniform Civil Code. The Article stated: “The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”. But even after 70 years of the Constitution, due to lack of political leadership and vested interests Uniform Civil Code is not yet implemented.

In spite of concern and anguish expressed by the Supreme Court and the disability of achieving the goal set by Article 44 of the Constitution, nothing has happened until now. There is no justification to keep in abeyance, any more, the introduction of uniform civil code for all citizens in India.

Thus it is essential that Uniform Civil code is implemented as early as possible. It is not possible to give estimate of time limit. Before implementing uniform civil code, the political leadership has to take careful consideration of many factors outside the law, including the sentiments of the communities involved. All personal law boards must be abolished before implementing uniform civil code.

Respondent 2

His response is yes.

Respondent 3

It is proper time to implement it. The religions are adequately matured so they will properly respond to this reform. Literacy as well as public maturity has also increased. People are ready to accept. Due to modernization people are ready to accept it. It is a proper time now.

Respondent 4
Yes it is proper time to implement Uniform Civil Code at the earliest taking all the communities into confidence.

**Respondent 5**

The implementation; it is dependent on overall development of the society. If you can take positive steps within twenty years we can achieve otherwise situation will remain same. It will depend upon Integrity of the Society and harmony of the Society.

**Respondent 6**

Already it is in existence for example families belongs to any community are taking child in adoption even thought is contrary to their personal laws. In succession local laws are going to govern. Generally Hindu law of succession is going to govern irrespective of their community. Daughters are not getting share in the property of father. Marriages are not registered. People get customary divorce etc. It means by and large people of all communities are going to govern according to the local customs or general customs those are the way of life of the people. Therefore in reality the secular affairs of family are governed according to the local customs, several times they are opposite to modern principle of law, therefore there is need of uniform civil code.

**Respondent 7**

Yes, it is right time to implement it. Society is adequately educated; they are also demanding. Various complications like Irretrievable Breakdown of Marriage etc. are required in uniform civil code.

**Respondent 8**

Yes, at least we have to start without wasting time. Then one should prepare to face the consequences. People will get justice from uniform family laws. Justice delayed is justice denied. Therefore for the interest of victims it is the right time to get pass this legislation. It is also in the interest of justice. Necessary steps should be taken by the states. One should get public opinion
of the various sections of the society. Therefore prepare draft, keep open to the public discussion, and get public suggestions start passing such type of laws.

Consider all personal laws; take good principles from various personal laws. Prepare composite code for the betterment of citizens in general and woman and children in particular.

**Respondent 9**

It is also a question of sentiment. Uniform Civil Code should be debated in the parliament first. Then the law should be passed and then it should be implemented. Therefore first law should pass by the Indian Parliament.

**Respondent 10**

There should be a Uniform Civil Code within four years. For the reason, that if it will delay the needy people will not get the benefit.

**Respondent 11**

Codification of Uniform Civil Code should be according to changing time. People’s aspirations and awakening is ripe for the acceptance of the Uniform Civil code. Therefore without wasting time, law should be codified for giving justice to the needy people.

**Respondent 12**

No. India has adopted a counter-majoritarian constitution recognizing and protecting rights of minorities at par with majority. Article 29 and 30 of our constitution, cast obligation on the state to afford protection to the culture, scripts and languages of minorities. Articles 25 and 26 of constitution of India guarantees freedom of religion not only to every person in the territory of India but also to the religious denominations. India has expressed categorical reservation to the article 5 of CEDAW. The same is compatible with our constitutional frame work.

**Respondent 13**
No. We have to create a social fabric conducive to accept and digest the concept and then implement. It is disastrous to dream of overnight change/implementation.

**Respondent 14**

It has been 65 years since Independence, lot of changes occurred in the societal values and standards. So it is the time to accommodate those rules in the interest of humanity by implementing uniform Civil Code according to the situation.

**Respondent 15**

Yes, as early as possible.

**Respondent 16**

Yes, we have a strong government at center and their election manifesto has agenda of uniform civil code. So I am optimistic that now is the time for implementing Uniform Civil Code.

**III. Issue 3. Whether Uniform family Laws should be codified into one Composite piece like acode or whether to have separate legislative piece, (ex. Uniform Marriage law for all citizens of India, similarly for succession, maintenance etc.).**

**Respondent 1**

The plea for a uniform civil code basically means unifying all the Personal Laws. This is because civil law and criminal law is already in the form of uniform law for all the Citizens of India. Instead of keeping separate personal law for separate religions there should be one set of secular laws dealing with all domestic aspects- for example essentials of marriage, divorce, custody of children, maintenance etc. Such law should be made applicable to all citizens of India regardless of the community to which they belong to. This will help India to move forward in its social growth also.

**Respondent 2**

Response is one composite Code.
Respondent 3

Pieces of law are required. Separate Acts should be passed. It will not havemore opposition onetopic consist one Act. For example marriage, divorce, succession, adoption, wills etc. It should pass with the consensus of all religious leaders. It is religious matter therefore their consensus is required. Religious faith should be respected. Reforming personal law with consensus of all religious communities.

Respondent 4

Uniform family laws should be codified into one composite law on the basis of equality, fairness and justice.

Respondent 5

One code. If Uniform civil code will be impossible then individual community laws should be reformed. It will prepare ground for Uniform civil Code. Step by step approach should be there.

Respondent 6

Uniform family laws should be codified into one composite piece as it will be easy to implement all over India.

Respondent 7

Composite code is required. It will easy to carry one family law book. It will be a composite code and therefore it will applicable all over India. It will protect effectively the family right of the people. It should contain substantial law and procedural law so that it will be easy to refer in the court of law. It can also refer by the people in their day today life.

Respondent 8

It is difficult to bring Uniform Civil Code. Therefore subject wise uniformity should brought. If there will be one code for all then succession is most difficult part of the family law. Succession has different, different angles. For example male succession, female succession, share in
residential home, share in the Agricultural lands etc. Succession cases are filed in Family Court and the matter of succession between mother-in-law and daughter-in-law are going to file in the District court.

**Respondent 9.**

There should be gender justice law. Therefore gender just composite law should be there. There is loss of flexibility due to codification. If there will be codification then there is less scope for judicial interpretation and therefore there is less scope for natural development of law. Therefore reforms are required to carry in respective family laws and then thereafter composite code of family law should be passed.

**Respondent 10.**

There shall be only one code, for the reason that if a woman or victim wants to file case he/she will file case under that Act; and in one case relevant issues will be going to solve. It means if different Acts will be there like marriage Act, Divorce Act, Succession Act, then the several or multiple cases will be going to file in respective Acts. And also one has to file in the jurisdiction of the Court according to the respective Act. It will create multiplicity of litigations’ therefore unnecessarily the victim will be sufferers. Some cases are going to file before civil judge junior or senior division and some are going to file before district court. Some case is going to file before Family Court and the cases like domestic violence will be filed before Judicial Magistrate First class. It will cause hardship to the litigants and they are going to spend more time, energy and money. Therefore there shall be only one code; it shall provide one forum; it will file one litigation. It will avoid multiple litigation it will avoid filing cases before different courts. It will provide simple and easy and speedy justice to the litigants.

**Respondent 11.**

There shall be one code. It will be easy to understand and apply in day to day life. If more laws more confusion and it will lead to harassment to the victim. More laws more court cases, more harassment.
Respondent 12.

Uniform family law is not solution because it cannot capture the diversity of the traditions of minority communities. Instead, each personal law may be reformed by taking the relevant minority community into confidence. Judiciary also may play constructive role in the same through its pronouncements and judgments.

Respondent 13.

Separate legislations would be more beneficial as personal laws would get more attention and scope.

Respondent 14.

State should frame proper policies and prepare strategies to bring uniformity as far as possible.

Respondent 15.

It should be codified into one composite piece like a code.

Respondents 16.

Answer is affirmative, India need one uniform civil code basically code means compilation of various laws together with procedure. Family matters like Marriage, divorce, succession, adoption, maintenance, all family matters should be compiled in one composite code. The Uniform civil Code should compilation of family laws and it should also includes the procedural law in the same code for filing the cases and taking varies steps during trial of the case as well as the provisions of appeal and their procedure too. So I want single uniform civil code. It will implement equality, justice to all classes.

IV. Issue 4. Whether the Code should contain Principles initially (like some western codes or international laws?)

Respondent 1.
The Code can contain basic principles as a preamble to the Uniform Civil Code. Some of the basic principles can be as under:

- The Uniform civil code is the set of civil laws that governs the residents of the Indian state of Goa. In India, as a whole, there are religion-specific civil codes that separately govern adherents of different religions. This Uniform Civil Code will governs all Indians irrespective of religion, ethnicity or linguistic affiliation.

- Uniform Civil Code in India is to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen.

- Uniform civil code will ensure Equality to illustrate principle of Gender equality, etc.

**Respondent 2.**

Response yes.

**Respondent 3.**

Foreign law should not take the basis of family law. There is no need. Indian culture is unique.

Suggestion: surrogacy law should be codified.

**Respondent 4.**

The Code should be based on principles of International Human Rights.

**Respondent 5.**

It is expected to consider the International conventions and incorporate them in the municipal laws according to situation.

**Respondent 6.**
Code should be applicable if any spouse is residing outside India but married in India. Then his/her divorce petitions will be governed by laws of India. Irrespective of where he/her staying outside India for the purpose of service and or business.

**Respondent 7.**

If it is necessary it may use it. In the Indian context mere imitation without considering Indian situation is not helpful.

**Respondent 8.**

Our culture is family oriented. Therefore our law should evolve; if there are some basic principle which are protect Human Rights those should be included. The international conventions /laws should be modified according to Indian culture. Its essence should be: Indian faith and belief should be protected.

**Respondent 9**

International conventions like CEDAW should get implemented strictly. So that the people will get justice. The woman can get justice.

**Respondent 10.**

The International laws should be considered at the time of codification. The new cases like NRI marriages or their matrimonial disputes should resolve according to the new laws which are prevailing in foreign countries.

**Respondent 11.**

There shall be some consideration of international laws at the time of codification. But the code should be passed considering Indian situation. If International law will be there it will save the time of legislature. And it will contribute the world experience for Indians. But we should not remain dependant on the International law. We have to develop our own laws.

**Respondent 12.**
The idea is not viable in India as we will have to exclusively depend on judiciary for the interpretation of such principles. In my opinion judiciary lacks competence as well as legitimacy to act as an arbiter or interpreter of religious texts and scriptures. According to him the religious principles can interpret by the priest or religious heads. They have having right to interpret the religious laws. Therefore judiciary has no right to interpret the religious law. It means the holy Koran, the holy Bible; any other holy scriptures can interpret the respective priest of the respective religion.

Respondent 13.

It is a good idea to have basic principles like Private International Law. However, one day we need to articulate the comprehensive code. (May be separate- subject wise- Marriage, Divorce, and Succession… etc.

Respondent 14.

As per the need. As we are signatory to various International conventions so there should not be any hesitation in adopting / implementing these principles.

For instance: - CEDAW, UDHR.

Respondent 15.

The code should contain principles of Indian tradition. If required those International principles in the interest of India may be considered.

Respondent 16.

Answer is affirmative, all the international covenants, if India is party then it is moral responsibility to adopt all principles which are related to women empowerment, child protection, sexual abuse etc. it should become a part of municipal law automatically. It will become part of Uniform Civil code.
V. Issue 5. Whether the present Family laws of India or at least some of them suffer from Gender Bias?

Respondent 1.

Constitution of India is in force since more than seventy years. The Constitution had incorporated provisions to raise the status of women to one of equality whereas in practice it is still not achieved. Since Independence a number of laws like the Dowry prohibition Act 1961, the Equal Remuneration Act 1986, The Hindu Marriage Act 1956, The Hindu Succession Act 1956, The Muslim Women (Protection of Rights on Divorce) Act, 1986, The Commission of Sati (Prevention) Act 1987, Protection of the Women from Domestic Violence Act 2005, etc. have been enacted but these laws are hardly implemented in their letter and spirit.

One can still see such bias with regard to Muslim Personal law-to illustrate in case of giving Divorce-it is easier for the man than the woman. Under the Hindu Laws, one can see gender bias in case adoption, succession, maintenance and also son preference over a girl child. In spite of ban on pre-natal sex examination the practice continues as many people in the rural areas think that girl child is a burden on the family.

If the Uniform Civil Code for India contemplates only law regarding domestic relations for all the citizens of India. Goa Civil Code can be an illustration for initial framing of the Code. The Goa Civil Code governs all the residents of Goa irrespective of their religion, ethnicity and Linguistic affiliation.

Respondent 2.

Response is yes.

Respondent 3.

There are gender bias; Muslim law, polygamy, Talak, succession. In Parsi law also there is gender bias. In Hindu law also daughter was not considered Coparcenary

Respondent 4.
Yes, they do suffer from gender bias.

**Respondent 5.**

Yes Muslim law, Christian law, Succession laws are gender bias.

**Respondent 6.**

In India it is suffering from gender bias for example 498 A of IPC.

**Respondent 7.**

All personal laws are patriarchal; therefore gender bias. Women are suffers. Therefore Uniform Civil Code is required.

**Respondent 8.**

In India Family laws are gender bias; it has been seen in theory and practice.

**Respondent 9.**

Most of the laws are gender bias in family matters. Present family laws should get Amendment. So SEDAW should get implemented. The basic principle of Indian constitution Justice, equality, liberty and fraternity rights should protect. Women should get equal right in all fields as well as Family matters.

**Respondent 10.**

All family laws are in one or other way suffer of gender bias. There should be gender neutral family laws under Uniform Civil Code.

**Respondent 11.**

There is gender bias in personal law. There are gender bias in Muslim law, Parsi, Christian, and Tribal laws. But those were created by the society or respective communities. These are required to change according to changing times.
Respondent 12

Family laws in India suffer from gender bias, because they have enacted/ evolved under the influence of patriarchy. Women have never been on the fore front of legislative process of enactment of these laws.

Respondent 13

Certainly, Especially Muslim law suffers quiteof gender bias.

Respondent 14.

Yes, either in theory or practice.

Respondent 15.

Yes, Muslim, Parsi, Christian, Tribal even Hindu laws also having same gender bias.

Respondent 16.

Answer is affirmative. Muslim Law: For Example Talaaq. Muslim women, she does not have equal right to pronounce Talaaq as her husband.

VI. Issue 6. Whether present family laws of India are insufficient to protect children?

Respondent 1.

An examination of family laws of India ranging from Hindu Marriage Act, Parsi Marriage Act etc. Although are meant to protect interests of children they are neither child centered nor child friendly. This is clearly visible in marriage laws which do not grant legitimacy to children born outof void or illegal marriages.

In fact even the definition of “Child” is different under different laws. In such a situation the interpretation of the definition of child is left to various laws and interpretations.

Respondent 2.
Response is simply yes.

**Respondent 3.**

Children’s right has been protected by the personal laws. If necessary changes are required it may carry according to need of the children.

**Respondent 4.**

Yes they are insufficient to protect children.

**Respondent 5.**

Adoption law sometimes not there, maintenance provision, Custody, these laws are not adequate. Protection of children has not considered by any family laws.

**Respondent 6.**

Yes, children custody should be sharing and not as it is prevailing only with the wife.

**Respondent 7.**

Yes. The welfare of the children is requiring considering in Uniform Civil Code.

**Respondent 8.**

Yes. Children’s Rights like maintenance, Custody, accesses, un-attended children, orphan children, destitute children. Their provisions should be including in Family laws.

**Respondent 9**

Present family laws in India are insufficient for protecting rights of children. As far custody of child in Muslim law women has got very limited rights as compared to father. Personal laws are required to reform in the interest of children.

**Respondent 10**
As far the children’s are concerned the custody will be given to one party either father or mother. If the custody will be given to the mother she will not allow to the father to access the child. And if the custody will be given to father then it is impossible to the mother to have access to the child. Court will give direction to have access to the child to the other party who has not having custody. But the custodian of the child do not want to give access to the other party and assigned one or other reason and avoid to give access to child. It create problem of holistic growth of child. The child could not have equal love and affection with parents. It creates prejudice in the mind of the child. Therefore under such circumstances balanced growth of child will badly hamper. Therefore as and when the Uniform Civil code will be passing at that time the interest of the child should be considered first and pass balanced law of the access to child.

Respondent 11.

These personal laws are not adequate; therefore the children’s family law shall protect the interest of children. The new law like surrogacy should be include in the personal laws as a separate chapter.

Respondent 12

The stripture of family laws in India is incompatible not only with convention on rights of child which India has both signed and ratified but it also fails to take appropriate cognizance of private International law. In respect of Human Rights, Right against human trafficking too, the issue rather than subject matters of Uniform Civil Code. According to the respondent the family law reforms must be perceived more as minority community issue rather than subject matter of Uniform Civil Code.

Respondent 13.

In certain matters, yes, but as far as maintenance is concerned, Section 125 of Cr.P.C. is a good example that protects children. However, one needs to create awareness amongst parents. Only law will not serve the purpose.

Respondent 14.
Response yes.

**Respondent 15.**

Yes, in case of custody, adoption, maintenance, education, access to children should be mentioned clearly. Surrogacy, conflict of law, irretrievable breakdown of marriage, and these issues are require to be codified in Uniform Civil Code.

**Respondent 16.**

No (partly failure on the part of implementation for example still today we don’t have a comprehensive law regarding inter-country adoption. We are depending on drafted rules framed by CARA. The Sevier problem of inter-country adoption brought before the Supreme Court of India an Advocate Lakshmi Kant Pandey send a letter to the court exposing pathetic conditions of the children of inter-country adoption. The latter was converted into write Petition: Lakshmi Kant Pandey V/S. Union of India. 1984 2 SCC 244. In this petition Supreme Court has given detail direction to Government of India to pass appropriate law for regulating Inter-country adoption of the children, and frame rules thereof. In response of Supreme Court direction Government of India framed the Central Adoption Resource Agency (CARA) under the Social Welfare Ministry of Union of India. Now it is an autonomous body. CARA has formed Inter-country adoption guidelines in 1989. It today Government of India has not passed law relating to inter-country adoption.

5.5 **Analysis of interview Data**

Researcher has taken interview of person who are having knowledge of Uniform Civil Code and family laws. They are 16 in all. Out of 16, six are law teachers, four are administrators, three are advocates, two are family counselors and one is social activist and teacher. Almost half percent are doctorate degree holders. Maximum person responded to the interview positively. Almost all are expressed their views in favor of uniform civil code. The responses given by them Issues wise are as follows:

1) **Issue 1. Whether India should have a Uniform Civil Code?**
All persons have given positive answer except one i.e. respondent no 12. These responses are as follows

Respondent No. 3 and 2 are given very cautious answer, stating that it is better if there will be Uniform Civil Code and it should have combination of old and new laws so it will be an acceptable code.

Respondent No 9 said principally yes. But they felt the present situation is not favorable. Nowadays the matter is politicized and it has given emotional color. Therefore this matter will not be handled impartially. People are not having trust over the government about their impartiality. Therefore instead of Uniform Civil Code there shall be family law reforms at initial stage and then it turn into UCC. Further said that the codification hinders the natural growth of the legislation. Even then for gender justice especially for the Muslim women it is very necessary to frame UCC.

Respondent No. 5 said that different personal laws create differences among the people and sometimes they create animosity in the minds of the people. Therefore there shall be Uniform civil Code.

Respondent No. 4 said that there is need of UCC for giving gender justice and protecting the right of children.

Respondent No. 5 and 6 have favoured UCC for the reason that for one country there shall be one law applicable to all people. It should applicable throughout India. Therefore there will not be fear to change the law according to the place otherwise people will suffer unnecessarily.

Respondent No. 2 simply said yes. He did not want to make any comment or response to the answer.

Respondent No. 12 said no because it violate minority rights. It violates right to religion and cultural rights. Apparently it is seems true argument, but in the patriarchal society whether it will be the general category or minority groups their approach towards women’s rights are negative approach. It means men are interested in women but they are not interested in their rights. The
minority community like Muslim or Christian etc. their groups women is discriminated on the basis of sex. They are powerless as compared to male; in family law. Therefore they are minority within minority. Therefore this issue should be resolved on the basis of gender justice and on the basis of human right issue. Instead of considering this issue in religious angle it may considered on the basis of human right approach. Therefore these arguments is not acceptable.

Respondent No. 3 and 8 are interested to frame UCC but divorce provisions are required to protect. It means whatever bad it may eliminate from all personal laws and whatever good in the personal law it may retain so it may keep space to maintain their identity or their culture. For example marriage: people can perform marriage according to their religious practice or secular form as per special marriage Act. But they should follow the marriage laws like minimum age of marriage, Prohibited degree, compulsory registration of marriage, etc.

Respondent No. 14 response was to keep uniform law wherever there is required to be uniform and may keep diversity where there is necessary to keep diversity.

Respondent No. 1 says in fact the heterogeneity of laws amongst one religion that is Hindus itself is such that the possibility of a Uniform Hindu code is also ruled out. The response further says; If UCC is ever brought into effect it should be uniform to all its citizens, irrespective of their religion, caste, creed or tribe, this is because it will help to protect all the citizens from injustices bestowed upon them by factors like religion, caste etc.

Respondent No. 5 as regards tribal, the UCC should not apply at once. They have to be brought at par with non-tribal, so that they will be adjust with the overall society. Otherwise it will create bad effect over the tribal people. She further said that there is one criminal law for all citizens. There is one civil laws for the all citizens therefore why there shall not be one family law for all Indians?

Majority are in favour to include this subject in the central list. Only three are in favour of the concurrent list. One is in favor that it should be put in the central and concurrent list.

In over all response it found that the family law subject should be in central list of VIIth Scheduled of Indian constitution; for the reason that the humanitarian and gender just law will
frame. Tendency of the people think globally and act locally will curb. It has also revealed from all responses that the UCC shall be there for gender justice and for giving justice to the needy person.

2) Issue 2. Whether it is time to implement Uniform Civil code?

The constitution makers expected to implement UCC codified within ten years of implementation of the constitution. After 66 years of implementation of constitution UCC has not been passed. The responses whether it is right time to implement this direction of UCC were as follows:

Respondent No. 8 said first the government should codify the Uniform Civil Code. Then question of implementation arise. The state should prepare draft of Uniform Civil Code. It should publish; it should keep open to the public discussion; Invite objections and suggestions.

Respondent No. 13 said over a night family law reforms should not apply otherwise it will create disastrous effect over the society. First prepare public opinion in favor of family law reforms then implement it. The family law reforms may implement after consulting and taking into confidence all communities.

Respondent No. 3, 4 and 7 are in the opinion that this is the proper time to implement the family law reforms. People are awakening to their rights and duties. They are well educated. Society has also become modern. Science and Technology also brought drastic changes in the outlook of people. They are become modern and accepted modern style of life. Women are also awakening to their rights; they are demanding equal rights at par with man. Therefore they are demanding gender just family law.

Respondent No. 5 has stated that the Independent India should think independently. India should abandon their colonial legacy to divide and rule. Division of society is the legacy of British rule. Therefore India should frame policy and carve out the proper plan, start now then within twenty years it will have family law reforms. Otherwise it will remain an ideal in the directive principles of State policy.
Respondent No. 11 and 12 said that already this law has delayed to implement, therefore justice delayed is justice denied. Therefore family law reforms should be implemented as early as possible.

Respondent No. 16 said this government has included this issue in their election agenda and they got public mandate with a thumping majority in the parliament. Therefore it is easy for this government to codify and implement UCC. So the state without wasting time should implement this public policy in the interest of the vulnerable section of the society.

Respondent 12 responded with a 'no' for the reason that it affect cultural plurality.

Respondent No. 1: The remarkable response says: It was in 1950 by virtue of Article 44 of the Constitution; India proposed to provide a UCC. The Article provided for “the State shall Endeavour to secure for the citizens a uniform Civil Code throughout the territory of India.” But due to lack of political will and vested interest UCC is not yet implemented.

In spite of concern and anguish expressed by the Supreme Court and the Desirability of achieving the goal set by Article 44 of the constitution, nothing has happened until now. There is no justification to keep in abeyance, any more, the instruction of UCC for all citizens in India.

Thus it is essential that UCC is implemented as early as possible. Within what time is not possible to be estimated. Before implementing the political leadership has to take careful consideration of many factors outside the law. Including the sentiments of the communities involved. All personal law boards must be abolished before implementing UCC.

The constitution Assembly given direction to the state to frame Uniform Civil code. Time already running since independent. Every Government is avoiding this mandate. Therefore every government hence forth believe that it is religious duty to implement Uniform Civil Code then the goal of Uniform Civil Code will be achieved within stipulated time. If every government feels it will implement tomorrow; then tomorrow never come; already 68 years delayed has caused. Thus 68 years have denied the legitimate rights of the gender justice to women. Justice delay is justice denied.
3) Issue 3. Whether the Uniform family law should be codified into one composite piece like a code or whether to have separate legislative pieces, (ex. Uniform Marriage laws for all citizens of India, similarly for succession, maintenance etc.)

Respondent No. 10 has very much insisting to have only one code because it will used in one court and the litigation also only one. If there will be different Acts like Marriage, divorce, maintenance, adoption, succession etc. then it leads towards the multiplicity of the litigation it leads to the unnecessary harassment of the litigants. Therefore there shall be one code and it should be also filed in one court.

Respondent No. 3 said , If it is not possible to pass in a composite code for one or another reason then as a matter of strategy state can pass different Acts like Marriage Act, Divorce Act, Maintenance Act, Succession Act, Adoption Act, Will Act, DowryProhibition Act, Domestic violence Act, etc. It could best policy to create good back ground for passing UCC.

Respondent No. 8 and 13 were in opinion that Instead of one code; it should be in different Acts for the reason that different subjects’ havedifferent angles it can be considered in that Act. It can be used in the time of interpretation of the law.

Every Act like marriage, succession, divorce etc. should be different because it is different subject matter. When the Act will be codified then it will have apreamble according to the preamble the sections will be codified and the Act will be interpreted and adjudicated.Therefore there shouldbe different laws according to the subject matter; like Marriage Act, Succession Act, Divorce Act. There is substance in this argument but it could be misused for multiplicity of litigation. For marriage there will be separate petition and for divorce there will be different petition and for succession different petition before different forums according to the respective family Act. And there is possibility of having contradictory provisions in those laws and it could cause hardship to the people.

Respondent No. 5 says UCC basically means unifying all the Personal Laws. This is because civil law and criminal law is already in the form of uniform law for all the citizens of India. Instead of keeping separate personal law for separate religions there should be one set of secular laws dealing with all domestic aspects- for example essentials of marriage, divorce, custody of
children, maintenance etc. Such law should be made applicable to all citizens of India regardless of the community to which they belong to. This will help India to move forward in its social growth also.

One response says that by and large people are in favor of Uniform Civil Code. It is not very big issues weather it should be in a composite code.

Thus majority are in favor of Composite Code. It is easy to have in one book. It contains all laws which are related to family matters. It will contain substantial law and also procedural law. If there will be any contradictory provisions in marriage and divorce then it will easy to tress out and it can easy to eliminate. Thus it helps to everybody.

Composite code will accommodate composite culture. It will reflect Indian culture and Indian family law; which will reflect the basic philosophy of Indian constitution by way of simplicity, purity, modernity secularism, nationalism and above all gender justice.

Issue 4. Whether the code should contain Principles initially (like some western codes or International laws?)

Respondent No. 4, 7, 11 and 15; said it is good it should incorporate international Human right Principles. It may apply in Indian situation.

Respondent No. 13 said it is good it should consider subject wise.

Respondent No. 8 said our family laws are family oriented therefore at the time of application of international law it should see whether it is necessary to barrow it in the interest of the people. If we are incorporating it in Indian family law then it should change according to Indian situation. Otherwise it is better to keep it aside.

Respondent No. 3 said we are habit to barrowing the other thing. Several things we have borrowed from world constitution and international documents in our constitution therefore now it is no need to borrow for this subject matter. Our culture is very rich everything has provided in our family laws we can choose which is good to the people and frame the family laws according to the need of the people.
Respondent no 12 said judiciary is not competent to interpret the international laws therefore it is not viable.

Respondent No. 1 said: the code can contain basic principles as a preamble to the Uniform Civil code: some of the basic principles can be as under:

i) The Uniform Civil Code is the set off civil laws that govern the residents of the Indian state of Goa. In India, as a whole, there are religions-specific civil codes that separately govern adherents of different religions. This Uniform Civil Code will govern all Indians irrespective of religion, ethnicity or linguistic affiliation.

ii) Uniform Civil code in India is to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen.

iii) Uniform Civil code will ensure Equality-to illustrate Principle of Gender Equality, etc.

Respondent 6, 7, 10, 13 14, 15 and 16 are in favor of application of international law at the time of codification of Family law Reforms

Thus the people’s response is very good to this issue. They are ready to accept the international principles which are suitable to India. It shows that society is enough open out to accept the qualitative change. It shows that people are ready to accept to Uniform Civil Code.

5)Issue 5 whether the present Family Laws of India or at least some suffer from Gender Bias?

Respondent 14 said all personals laws are gender bias in either theory or practice.

Respondent 13 and 16 are pointed out the Muslim law is gender bias. The provision of talak, succession law etc.

Respondent 7 and 12 have said all laws are patriarchal in nature therefore there is gender bias.

Respondent No. 1 is that; constitution of India is in force since more than 66 years. The constitution had incorporated provisions to raise the status of women to one of equality whereas
in practice it is still not achieved. Since Independence a number of laws like the Dowry Prohibition Act 1961, The Equal Remuneration Act 1976, the Hindu Marriage Act 1956, the Hindu Succession Act 1956, The Muslim Women (Protection of Rights on divorce) Act, 1986, The Commission of Sati (Prevention) Act 1987, Protection of the Women from Domestic Violence Act 2005, etc. have been enacted but these laws are hardly implemented in their letter and spirits.

One can still see such bias with regard to Muslim Personal Law- to illustrate in case of giving Divorce- it is easier for case adoption, succession, maintenance and also son preference over a girl child. In spite of ban on pre-natal sex examination, maintenance and also son preference over a girl child. In spite of ban on pre-natal sex examination the practice continues as many people in the rural areas think that the girl child is a burden on the family.

If the Uniform Civil Code for India contemplates only law regarding domestic relations for all the citizens of India Goa Civil Code can be an illustration for initial framing of the code. The Goa Civil code governs all the residents of Goa irrespective of their religion, ethnicity and Linguistic affiliation.

Almost all respondents are given response to change gender bias law and pass gender just law. Woman rights and status in the society is the parameter to gauge the culture of a nation.

6) Issue 6. Whether present family laws of India are insufficient to protect Children?

All responses said that the present family laws of India are insufficient to protect the best interest of child.

Respondent No. 1 said ; that an examination of family laws of India ranging from Hindu Marriage Act, Parsi Marriage Act etc. although are meant to protect interest of children they are neither child centered nor child friendly. This is clearly visible in marriage laws which do not grant legitimacy to children born out of void or illegal marriages.

In fact even the definition of “child” is different under different laws. In such a situation the interpretation of the definition of child is left to various laws and interpretation.
After giving direction of Supreme Court to legislate law in inter country adoption; the Government of India still not passed inter-country adoption law.

Children are wealth of nation; it is Human resource and future of country. It is abundant responsibility of the country to protect the interest of children for the sake of national interest.

5.6. Conclusion.

Thus almost all people are interested in passing UCC as early as possible. It is general will of the citizen of India. They are ready to accept the international law or international principles in family law. This is good sign for framing UCC. In the 19th and 20th century issues of family reforms were raised as social issues; in response of those issues erstwhile government has passed piece meal legislations like Sati Prohibition Act, Widow Remarriage Act, reforms in age of consent, Child Marriage Prohibition Act, Special Marriage Act, etc. But those legislations were not enough to give gender justice. After independence feudal system has come to an end and new way of life accepted as- India sovereign, socialist, secular, democratic, republic, assuring its citizens Justice, liberty, equality and fraternity.

All those principles are accepted in public life but it has not opened the door of Family life. Therefore Constitution makers have kept alive the ray of hope by providing the idea of justice, liberty, equality and fraternity assuring the dignity of the individual in family life through Article 44 -providing provision of Uniform Civil Code. The architect of the constitution was having deep thinking of past, present and future of India. Therefore as and when the state is going to frame the Uniform Civil Code, it should keep equal distance to the politics for the sake of politics and politics of religion. At the time of framing the Uniform Civil code state should keep in mind justice, liberty, equality and fraternity at focal point, without consideration of any other extraneous factors; then this humanitarian uniform civil code will successfully achieve public good. A systematic plan should be prepared and executed honestly in time bound period. Then injustice will stop and justice will prevail.