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## **Prospectus of Uniform Civil Code in Adoption Laws in India: A Study**

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### **Abstract:**

India is a country of diversity where its citizens belong to different religions. They have their faith in different religions such as Hinduism, Sikhism, Jainism, Buddhism, Islam, Christianity, Judaism and Zoroastrianism. Every religion has its own Personal Law governing marriage, divorce, property, maintenance, inheritance and adoption. On the point of adoption, the rules and regulations are not same in these religious communities. That is why there is need for uniform civil code in adoption laws. No doubt Indian society consists of the followers of different sects or religions but India as a state cannot save itself from the duty of providing equal status to all citizens in the name of non-interference in the personal laws. It raises some questions. Is state superior to the religion or religion is superior to the state. Is it the duty of the state, being welfare state, to provide equal rights to adoptive parents or children irrespective of the caste, sect, creed or religion? Is it encroachment in the personal laws of any community if equal status is provided to the adoptive parents or children? The objective of this research paper is to find out the answers to these questions in the light of Constitution of India and the personal laws of the different religious communities relating to the law of adoption and to sketch the prospectus of Uniform Civil Code in the adoption laws in India. The doctrinal method of research is used for completing this paper.

**Key words:** Uniform Civil Code, Law of Adoption, Personal Laws

### **1.1 Introduction:**

The India of my dreams is an India where Hindus, Muslims, Sikhs and Christians -- all live in peace.

Narendra Modi<sup>1</sup>

India is a secular, democratic republic with no state religion.<sup>2</sup> It is stated that the state shall not discriminate any citizen on grounds of religion, race, caste, sex, place of birth and no citizen shall be subject to any disability, liability or restriction.<sup>3</sup> In India, the people of different communities are its citizens. Indian Society includes Hindus, Sikhs, Jains, Bodhs, Muslims, Christians, Jews, Parsis etc. Indian Constitution has adopted secular ideology and declared India as a secular state, which observes an attitude of neutrality and impartiality towards all religions. The constitution of India guarantees religious freedom to all citizens. There is no state religion of India. The state will neither establish a religion of its own nor confer any special patronage upon any particular religion. Every person is guaranteed the freedom of conscience and freedom to profess, practice and propagate his own religion subject to public order, morality and health. Every religious group has been given the freedom to manage religious affairs, own and acquire movable and immovable property and administer such property in accordance with law. Right to religion is also subject to certain limitations. The state has the

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<sup>1</sup> <http://www.rediff.com/news/slide-show/ls-election-interview-slide-show-1-the-narendra-modi-interview-we-will-empower-minorities-with-education/20140506.htm> visited on 17.01.2015

<sup>2</sup> <http://timesofindia.indiatimes.com/india/Bombay-HC-No-govt-can-force-anyone-to-list-religion/articleshow/43263028.cms> visited on 18.01.2015

<sup>3</sup> Article 15(1&2) of the Constitution of India

right and duty to intervene if any religious activity creates public disorder, immorality and so on.<sup>4</sup> Besides the Hindu and Muslim communities, there are some other minor communities in the composite culture of India. The Christians have their own Christian Marriage Act, 1872. In matters of divorce and succession they are governed by the Indian Divorce Act of 1869 and the Indian Succession Act, 1925. The Jews have their un-codified customary marriage law and in the matters of succession they are governed by the Succession Act of 1925. The Parsis have their own Parsi Marriage and Divorce Act, 1936 and their separate law of inheritance contained in the Indian Succession Act which is somewhat different from the rest of Succession Act. In fact every community in India has its own personal laws.<sup>5</sup>

No doubt people of India belong to different religions and faiths. They are free to follow any religious faith but at the same time they are duty bound under the constitution of India to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities.<sup>6</sup> There is a uniform and complete Criminal Code operating throughout India. The people of different religions are governed here by same law relating to criminal matters through Indian Penal Code, 1860, the Criminal Procedure Code, 1973, the Evidence Act, 1872 and the Juvenile Justice Act, 2000 etc. So, in criminal matters uniformity is applied irrespective of religion by the state. Although, Income Tax Act, 1961, Negotiable Instrument Act, 1881, the Sales Tax Act, 1956, the Indian Contract Act, 1872, the Partnership Act, 1932, the Sales of Goods Act, 1930, the Companies Act, 1956 etc. are applicable uniformly irrespective of religion, there is not uniformity in all civil matters. The only province the common civil law has not been able to invade so far is marriage, succession and adoption. The Special Marriage Act, 1954 is common civil law which covers marriage and divorce but the application of this Act is voluntary and not as a matter of course. For taking a child in adoption, the laws applicable are not same for all religions. In some communities for taking a child in adoption personal laws of that community are applicable, but these personal laws do not recognise complete adoption. The adoption law for Hindus is different from adoption law for other religious groups. I am here discussing the prospectus of uniformity in Adoption Laws in India irrespective of religion.

## 1.2 Constitutional Provisions regarding Freedom of Religion:

Preamble to the Constitution<sup>7</sup> provides that India is a secular republic and secures to all its citizens liberty of thought, expression, belief, faith and worship. Article 25 of the Constitution provides the freedom of religion to everyone in India.<sup>8</sup> It provides that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.<sup>9</sup> Hence, right to religious freedom is secured by this Article. But this right is not absolute. There are of restrictions on the freedom of religion for the sake of public order, morality and health. It means no person can do such religious things which affect the public order, morality and health. For example, no one has right to conduct human sacrifice. No one can perform worship on busy highway or other public places which disturb the community.<sup>10</sup> State is also empowered under clause 2 of Article 25<sup>11</sup> to make any law for regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and providing for social welfare and reform. Hence,

<sup>4</sup> [http://www.kkhsou.in/main/polscience/fundamental\\_rights.html](http://www.kkhsou.in/main/polscience/fundamental_rights.html) visited on 18.01.2015

<sup>5</sup> Introducing India by K. Ramakrishnan, Publications Division, Ministry of Information & Broadcasting, New Delhi (1982), P. 30

<sup>6</sup> Article 51 A of the Constitution of India

<sup>7</sup> To the Constitution of India

<sup>8</sup> <http://www.tribuneindia.com/2012/20120824/main2.htm> visited on 26.03.2015

<sup>9</sup> Article 25 (1) of the Constitution of India

<sup>10</sup> <http://www.gktoday.in/articles-25-28-and-right-to-freedom-of-religion-in-india/> visited on 27.03.2015

<sup>11</sup> Under the Constitution of India

social welfare and reform is higher than religious freedom. State can regulate the religious activities for welfare of the society.

Article 26 provides freedom to every religious group to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion and own and acquire movable or immovable property as per law. But state can impose restriction on this right on the grounds of public order, morality and health. It means no person can do such religious activities which affect the public order, morality and health. The constitutional provisions under Articles 25 & 26 secure to all persons freedom of religion and freedom to perform religious activities without any interference from other religious groups. Though religious freedom is secured by the Constitution of India but at the same time reforms in the field of personal laws are also required. The Personal laws of different religious communities and Statute laws treat the matter of adoption differently, which raise some questions i.e. whether the matter of adoption is the part of religion? Whether a childless couple can adopt such a child whose religion is not known? Whether, the childless couple of a religion can adopt a child of another religion? Whether benefits provided to the adoptive child of a religion shall be provided to the adoptive child of another religion even if it is against the personal laws of that religion? To clear all these points it is necessary to know about adoption laws applicable to different religions.

### **1.3 Adoption Laws applicable in India:**

Adoption can be the most beautiful solution not only for childless couples and single people but also for homeless children. It enables a parent-child relationship to be established between persons not biologically related. It is defined as a process by which people take a child not born to them and raises it as a member of their family. But for taking a child in adoption no general law is applicable in India. For the adoption both statutory and customary laws are applied according to the religious community. Personal laws are applicable for adoption by some religious communities and statutory law is applicable on Hindus. The adopted child is given the rights, privileges and duties of a child and heir by the adoptive family.<sup>12</sup> The rights of the adopted child are different in personal laws and statutory laws. They are different in different religions. The provisions which are for the benefits of the adoptive child must be same irrespective of the religion. It is the duty of the state to make uniform provisions governing adoption, which are for the benefit of the adopted children and adoptive parents.

#### **1.3.1 Codified Law on Adoption applicable on Hindus:**

The Hindu Adoptions & Maintenance Act, 1956 is there in India. It is apparent from the title of the Act that it is applicable only on the Hindu religious community which covers four communities i.e. Hindu, Jains, Buddhists and Sikhs. It is applicable in whole of India except State of Jammu and Kashmir. This Act applies:

- i) To any person who is Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj.
- ii) To any person who is a Buddhist, Jaina or Sikh by religion.<sup>13</sup>
- iii) To a child legitimate or illegitimate whose parents are Hindus, Buddhists, Jains or Sikhs;
- iv) A child legitimate or illegitimate one of whose parents are Hindus, Buddhists, Jains or Sikhs and has been so brought up;
- v) an abandoned child, legitimate or illegitimate of unknown parentage brought up as a Hindu, Buddhist, etc.; and

<sup>12</sup> <http://legal-dictionary.thefreedictionary.com/adoption> visited on 31.03.2015

<sup>13</sup> Section 2 (1) (a & b) of the Hindu Adoptions and Maintenance Act, 1956

vi) A convert to the Hindu, Buddhist, Jain or Sikh religion.<sup>14</sup>

Section 2 (1) (c)<sup>15</sup> provides that it applies to any other person who is not a Muslim, Christian, Parsi or Jew by religion. It is clear that this Act is not applicable on Muslims, Christians, Parsis or Jews by religion. After the commencement, adoption by Hindus is governed only by the provisions of this Act. On adoption, adoptee gets transplanted in adopting family with the same rights as that of a natural-born son. Adopted child becomes coparcener in Joint Hindu Family property after severing all his ties with natural family.<sup>16</sup> An adoptee can take only that property to his adoptive family from his natural family which is already vested in the adoptee prior to adoption by inheritance or by partition in the natural family or as sole surviving coparcener as he becomes its absolute owner. Clause (b) of the proviso to section 12 cannot be attracted when the property has not been vested in him and is still a fluctuating coparcener property.<sup>17</sup> This Act provides that a married male with the consent of his wife or an unmarried male or female can adopt a child<sup>18</sup> but if a male has to adopt a daughter or a female has to adopt a son then the adoptive father or mother must be atleast twenty one years older than the person to be adopted.<sup>19</sup> Under this Act, for proving valid adoption, actual giving and taking ceremony is necessary.<sup>20</sup> The adoptive mother if marries after the adoption such adoption will not be invalidated.<sup>21</sup> The adoptee under this Act must be Hindu. The adoptee needs also to be unmarried; however, if a particular custom or usage applicable to the parties permits then the adoptee can be married. The child must not have completed the age of fifteen years, unless again if a particular custom or usage applicable to the parties permits. The adoptive parents (father or mother) are not entitled to give adoptive child in adoption.<sup>22</sup> Section 13 of the Act provides that subject to any agreement to the contrary an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or by will. Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.<sup>23</sup> No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.<sup>24</sup> This Act also provides the provisions to restrain trafficking of children. No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward, which is prohibited by this Act.<sup>25</sup> If any person receives or agrees to receive or gives or agrees to give any payment for adoption shall be punishable with imprisonment which may extend to six months, or with fine, or with both.<sup>26</sup> Hence, this Act provides the wide range of rules and regulations which are no doubt beneficial for the adoptive parents and adoptee children but it is only applicable on Hindus.

<sup>14</sup> [http://en.wikipedia.org/wiki/Hindu\\_Adoptions\\_and\\_Maintenance\\_Act\\_\(1956\)](http://en.wikipedia.org/wiki/Hindu_Adoptions_and_Maintenance_Act_(1956)) visited on 31.3.2015

<sup>15</sup> The Hindu Adoptions and Maintenance Act, 1956

<sup>16</sup> <http://www.vakilno1.com/bareacts/hinduadoptionsact/hinduadoptionsact.html> visited on 01.04.2015

<sup>17</sup> Devgonda Raygonda Patil vs Shamgonda Raygonda Patil, AIR 1992 Bom 189

<sup>18</sup> Section 7, Hindu Adoptions & Maintenance Act, 1956

<sup>19</sup> L.Rs. vs Shrirang Narayan Kanse, AIR 2006 Bom 123

<sup>20</sup> M. Gurudas vs Rasaranjan, AIR 2006 SC 3275

<sup>21</sup> Narinderjit Kaur vs Union of India, AIR 1997 P&H 280

<sup>22</sup> the expression "father" and "mother" under section 9 (1) of the Hindu Adoption and Maintenance Act, 1956 do not include an adoptive father and an adoptive mother.

<sup>23</sup> Section 14(4), Hindu Adoption and Maintenance Act, 1956

<sup>24</sup> Section 15, Hindu Adoption and Maintenance Act, 1956

<sup>25</sup> Section 17 (1), Hindu Adoption and Maintenance Act, 1956

<sup>26</sup> Section 17 (2), Hindu Adoption and Maintenance Act, 1956

### 1.3.2 No Codified law of Adoption for Non-Hindus:

For the Non-Hindus there is no codified law on adoption like that for Hindus i.e. Hindu Adoption and Maintenance Act, 1956. The Non-Hindu category covers Muslim, Christian, Parsi and Jew religions. Personal laws of Muslims, Christians, Parsis and Jews do not recognise complete adoption.<sup>27</sup>

The Muslim personal inheritance law does not treat the adopted child at par with the biological child and according to Muslim law, adoptee could not inherit the property of adoptive parents.<sup>28</sup> Islamic law provides 'Kafala' system, under this, a child is placed under a 'Kafil' who provides for the well-being of the child, including financial support. A 'Kafil' is legally allowed to take care of the child, although the child remains the true descendant of his biological parents and not that of the 'adoptive' parents.<sup>29</sup> The system, known as Kafala, is also recognized by the United Nation's Convention on the Rights of the Child in cases where a child is temporarily or permanently deprived of his or her family environment.<sup>30</sup> Muslim Law takes into account the concept of acknowledgement. The Lordships were of opinion that an acknowledgment of mere sonship was not sufficient; that the question was not whether the person concerned was acknowledged to be the son of the acknowledger, but whether the father, by acknowledgment, had given him the status of a legitimate son.<sup>31</sup> A Muslim never acknowledges another's child as his own and the child is considered to be the direct descendent by legitimate means. If an adoption takes place, then an adopted child retains his or her own biological family name (surname) and does not change his or her name to match that of the adoptive family.<sup>32</sup> The Muslim Personal Law (Shariat) Application Act, 1937, is applicable on Muslims. Section 2 of this Act says about the application of personal law to Muslims. It does not cover the adoption but it does not prohibit adoption. Hence, adoption may be there in Mohammaden communities, if there is custom prevailing.

The Christian Law does not prohibit adoption. On the introduction of 'Adoption of Children Bill' in the Rajya Sabha, Danial Latifi had written an article 'Adoption on Muslim Law'. He observed that the Holy Quran has placed two restrictions on adoption or, more precisely, on the effects of adoption and the second Lineage. The learned Lawyer has quoted the relevant text from the Quran which may be reproduced as under, "Ud'uhum li abaibhim hua aqsatu 'inda' Allahi fa in lam ta 'lamu abauhum". (Call adopted sons by the names of their father: that is more just in the sight of God, unless you do not know their fathers). This article was contributed for the purpose of suggestion that possibly there is no total ban on adoption and by bringing in some amendments it could be brought in conformity to what is contained in the Holy Qur'an.<sup>33</sup> In *Philips Alfred Malvin vs Y.J. Gonsalvis And Ors.*<sup>34</sup>, the defendants contended that the suit is not maintainable, that the plaintiff is not the adopted son of deceased George Correa, that George Correa never adopted him as his son, that Christian Law has never recognised adoption and hence the plaintiff has no right over the plaint schedule property. In this case, the High Court held that the learned Subordinate Judge went wrong in holding that unless adoption is recognised either by personal law, custom or by Canon Law, the first respondent cannot claim right over the plaint schedule

<sup>27</sup> <http://www.adoptionindia.nic.in/gwaact.htm> visited on 01.04.2015

<sup>28</sup> [http://www.livemint.com/Politics/3mOuc3wMjppjDG2qx60B8PK/The-religious-contours-of-adoption-in-India.html?utm\\_source=copy](http://www.livemint.com/Politics/3mOuc3wMjppjDG2qx60B8PK/The-religious-contours-of-adoption-in-India.html?utm_source=copy) visited on 3.4.2015

<sup>29</sup> <http://indianexpress.com/article/india/india-others/children-adopted-by-muslims-on-a-par-with-biological-child-sc/> visited on 03.04.2015

<sup>30</sup> <http://blogs.wsj.com/indiarealtime/2014/03/19/why-muslims-still-cant-adopt-in-india/> visited on 3.4.2015

<sup>31</sup> *Muhammad Allahdad Khan and Anr. vs Muhammad Ismail Khan And Ors.* (1886) ILR 8 All 234

<sup>32</sup> <http://www.lawteacher.net/free-law-essays/family-law/adoption-in-hindu-law-and-muslim-law-law-essay.php> visited on 04.04.2015

<sup>33</sup> *In the Matter of Manuel Theodore vs Unknown* on 27 October, 1999, 2000 (2) Bom. CR 244

<sup>34</sup> AIR 1999 Ker 187

property, as the adoption itself is invalid in the eye of law. Simply because there is no separate statute providing adoption, it cannot be said that the adoption made by Correa couple is invalid. Since the adopted son gets all the rights of a natural born child, he is entitled to inherit the assets of George Correa couple.

As there is no codified law of adoption for non-Hindus, if childless couples of such religious communities wish to adopt a child, they have to approach the court under the Guardians and Wards Act, 1890 for taking child under foster care or it can be said that the adopting couples of such communities can become only guardian. But under this Act legal connection between the child and the parents ends as and when the child attains majority. In other words there is no statutory provision of adoption in these religions. "Guardian" under the Act means a person having the care of the person of a minor or of his property or of both his person and property.<sup>35</sup> The term guardian is used both by Hindus as well as Muslims and has nothing to do with their respective religions. A Muslim mother too can apply under section 25 of the Act for the custody of her child when the child is removed from her custody by the father who is the natural guardian like a Hindu mother can. A Muslim mother also has a right of Hizanat under the Mohammedan law.<sup>36</sup> Welfare of the minor child is of paramount consideration in the appointment of a guardian. The term guardian has to be taken in its widest possible sense. It has to be measured not only in terms of financial and physical comfort but also should include moral and ethical welfare of the child. Welfare of the child depends on facts and circumstances of each particular case.<sup>37</sup> For the welfare of the children who have no family to be brought up, provision of adoption should be there in all religious communities.

The Apex Court in *Lakshmi Kant Pandey vs Union of India*<sup>38</sup> observed that children are "supremely important national asset" and the future well being of the nation depends on how its children grow and develop. The Court then quoted Milton for the following, "Child shows the man as morning shows the day." This is why there is a growing realization in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life with full appreciation and realization of the role which they have to play in the nation building process without which the nation cannot develop and attain real prosperity, because a large segment of the society would then be left out of the developmental process. This consciousness is reflected in the provisions enacted in the Constitution by enacting Clause (3) of Article 15 which enables the State to make special provisions inter alia for children. The right of a child cannot be confused with the personal law of any section of our pluralistic society. Adoption is not to be treated as an act by a State to force a child on unwilling parents. On the contrary it is a voluntary act on the part of eligible persons to provide comfort, love and security to the abandoned and homeless children. No religion, can deny family love to these children of God. Religions preach peace and brotherhood. How can there be brotherhood if you will not treat a section of your citizens as brothers. Children are the living embodiment of God. In them you find the manifestation of God in all its forms. In the smile of the child you see beauty of creation.<sup>39</sup> In India there is no common law for adoption applicable to all religious communities. It is the violation of Article 14 and Article 21 of the Constitution. It cannot be said that state cannot make a uniform law of adoption. Hence, there is also a possibility of uniformity in adoption laws.

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<sup>35</sup> Section 4 (1) of the Guardian and Wards Act, 1890

<sup>36</sup> *Abdul Karim vs Akhtari Bibi*, AIR 1988 Ori 276

<sup>37</sup> *Bimla Devi vs Subhash Chandra Yadav*, AIR 1992 Pat 76

<sup>38</sup> AIR 1984 SC 469

<sup>39</sup> *In the Matter of Manuel Theodore vs Unknown* on 27 October, 1999, 2000 (2) Bom. CR 244

### 1.5 Prospectus of Uniform Civil Code in Adoption Laws:

Article 14 of our Constitution ensures equality before law to all citizens. It provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. There is prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. But children adopted by different religious communities can not exercise equal rights. It is the violation of Article 14 and in the absence of codified law a person other than Hindu can become only a guardian. It is the duty of the state to ensure equality before law to all citizens irrespective of personal laws or religious community. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Every person has a right to life which includes right to live with dignity. In the case of *M/s. Shantistar Builders vs Narayan Khimalal Totame and others*,<sup>40</sup> the apex court observed that “the right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation which would allow him to grow in every aspect physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fireproof accommodation.”

A learned Single Judge of the Kerala High Court in the case of *Philips Allred Malvin vs Y.J. Gonsalvis and others*,<sup>41</sup> has held that the right of the couple to adopt a son is a constitutional right guaranteed under Article 21 as the right to life includes those things which make life meaningful. The Court considered Canon Law as applicable to various denominations of Christians as also Mohammedan Law which recognised adoption if there is custom prevailing amongst the Mohammedan community. It is in that context that the Court held that the right of a couple to adopt a son is a constitutional right guaranteed under Article 21.

In *Manuel Theodore D’Souza case*<sup>42</sup>, the Bombay High Court had held that the fundamental right to life of an orphaned, abandoned, destitute or similarly situated child includes the right to be adopted by willing parent/parents and to have a home, a name and a nationality. The right to be adopted, therefore, is an enforceable civil right which is justiciable in a Civil Court.

Moreover Article 13 (1) of the Constitution provides that all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with or in derogation of the fundamental rights, shall, to the extent of such inconsistency, be void. Therefore, a custom which violates Articles 14 or 21 will be void to that extent. It means personal laws cannot restrict the right of an adoptee or adopting parents.

Article 39(f)<sup>43</sup> provides that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 44 of the constitution provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. So, it is the obligation of the state to bring uniformity in adoption laws for all religions.

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<sup>40</sup> AIR 1990 SC 630

<sup>41</sup> AIR 1999 Ker 187

<sup>42</sup> 2000 (2) Bom. CR 244

<sup>43</sup> The Constitution (Forty-second Amendment) Act, 1976 with effect from 3rd January, 1977

The International Conventions also demand the state to provide laws relating to alternative care irrespective of religion. The Convention on the Rights of the Child was adopted and ratified by India on 20th November, 1989. The Preamble to this covenant has referred to various other declarations and conventions in regard to the child. This convention provides that a child, temporarily or permanently deprived of his or her family environment or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. States parties shall in accordance with their national laws ensure alternative care for such a child.<sup>44</sup> No doubt, it is the responsibility of the state to provide uniformity in law of adoption. The same has also been tried by the state. Here, the only existing legislation on adoption is the Hindu Adoption and Maintenance Act, 1956. If a non-Hindu wishes to adopt a child he can only resort to the provisions of the Guardians & Wards Act, 1890. As a result of canvassing by child welfare groups, the Joint Select Committee of Parliament approved the Adoption of Children Bill of 1972 which was introduced in Parliament in 1978 but later withdrawn. A modified bill known as Adoption of Children Act, 1980 was introduced which excluded Muslims. However, nothing came out of the same. In fact on the initiative of the Christian Community of India, a Bill was forwarded known as Christian Adoption and Maintenance Act, 1995. It had the support of the Catholic Bishops' Conference of India as also of the various other Christian denominations throughout the country. However, nothing has emerged inspite of the readiness of Christian community in the country to accept the bill on Adoption & Maintenance. The Maharashtra Legislative Assembly introduced a bill on 9th August, 1995 known as "Maharashtra Adoption Act, 1995". The Act was made applicable to every person adopting a child in the State irrespective of the person's religion, caste and creed. The Bill sought to displace the Hindu Adoption and Maintenance Act, 1956 in the State of Maharashtra. Section 27 of the bill, is a saving provision whereby on coming into force of the Maharashtra Adoption Act the provisions of Hindu Adoption and Maintenance Act, 1956 will cease to have effect in the State of Maharashtra. In the Statement of Objects and Reasons it is set out that the Legislation was enacted to give effect to Articles 32 and 44 of the Constitution. The Bill is pending assent of the President of India.<sup>45</sup> But still law of adoption is not provided to all religious communities. The Apex Court in *Smt Sarla Mudgal vs Union of India*<sup>46</sup>, wherein the learned Judge speaking for the Bench has observed that "One wonders how long will it take for the Government of the day to implement the mandate of the framers of the Constitution under Article 44 of the Constitution of India. The traditional Hindu law, personal law of the Hindus governing inheritance, succession and marriage was given go-bye as back as 1955-56 by codifying the same. There is no justification whatsoever in delaying indefinitely the introduction of a uniform personal law in the country."

The above discussion clearly proves that there is prospectus of uniform civil law in the matter of adoption. The things are more cleared in *Shabnam Hashmi vs Union of India & Ors* decided on 19.02.2014. The Supreme Court in Hashmi's case states that any person can adopt a child under the Juvenile Justice (Care and Protection of Children) Act 2000, irrespective of the religion he or she follows and even if the personal laws of the particular religion does not permit it. The Court also held that personal beliefs and faiths though must be honoured, cannot dictate the operation of the provisions of an enabling statute. The Act provides the rehabilitation and reintegration of the children who are orphaned, abandoned, neglected and abused. The Act does not make any distinction on the ground of religion of adopting parents and adoptee. So, the court is also in favour of providing uniformity in law of adoption. It is not much difficult for the state to

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<sup>44</sup> Article 20 (1 &2) of the Convention on the Rights of the Child

<sup>45</sup> *In the Matter of Manuel Theodore vs Unknown* on 27 October, 1999, 2000 (2) Bom. CR 244

<sup>46</sup> 1995 AIR 1531, 1995 SCC (3) 635

provide statutory adoption laws for all the religious communities. But political will to eradicate the bad custom from personal laws of all the religious communities is mandatory.

#### **1.6 Conclusion and Suggestion:**

Uniformity in adoption laws is not only desirable but also necessary. No doubt, the constitutional provisions reveal that India is a secular state and persons of different religious communities can be its citizens. But it cannot be meant that state cannot make laws for social welfare and reform for different religious communities particularly in adoption. Religion does not supersede the duty of a State. It is the duty of a state to act in social welfare and reformation irrespective of religion, caste and creed. Constitution itself empowers the State to act for social welfare and reform. The adopted child cannot have the status of adopting family's biological children under the Guardians & Wards Act, 1890. There are a number of abandoned and orphaned children. They have right to be adopted and they seek fundamental right to equality before law and right to life. The Hindu Adoption and Maintenance Act, 1956 is applicable on Hindu religion. But under this Act a Hindu, Sikh, Jain or Buddhist couple can not adopt a child of non-Hindu religion. This is discrimination with the children of different communities on the basis of Hindu and Non-Hindu for the purpose of adoption. Lakshmi Kant Pandey is the high water mark in the development of the rights of the child. If an Indian child can be given to foreign adoptive parents irrespective of their religion, does the same child not have the right to be adopted in a home under Indian skies.

But it is never late to introduce reforms. State can provide common civil law on adoption for all religious groups. Moreover, in Goa the Goa Civil Code or the Goa Family Law is applicable and if it is possible in Goa then why the same cannot in other parts of the country.

**Succinctly, it can be said that there is prospectus of uniform civil code in adoption laws in India. But it is the strong will of the legislature which is required to make a uniform civil code in adoption laws.**