

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NOOF 2020
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

Verses

...Petitioner

1. Union of India
 Through the
 Secretary,
 Ministry of Home Affairs,
 North Block, New Delhi-110001,

2. Union of India
 Through the
 Secretary,

Ministry of Law & Justice (Legislative Department)
 Shastri Bhawan, New Delhi-110001,

3. Union of India
 Through the
 Secretary,

Ministry of Women and Child Development,
 Shastri Bhawan, New Delhi-110001,

.....Respondents

**PIL SEEKING GENDER NEUTRAL AND RELIGION NEUTRAL
 UNIFORM GROUNDS OF SUCCESSION & INHERITANCE FOR ALL INDIAN
 CITIZENS IN SPIRIT OF ARTICLES 14, 15, 21, 44 & INTERNATIONAL
 CONVENTION**

To,

THE HON'BLE CHIEF JUSTICE
 AND LORDSHIP'S COMPANION JUSTICES
 OF THE HON'BLE SUPREME COURT OF INDIA
 HUMBLE PETITION OF ABOVE-NAMED
 PETITIONER

THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing this writ petition as a PIL under Article 32 of the
 Constitution seeking 'gender neutral and religion neutral uniform

grounds of succession and inheritance' for all Indian citizens in spirit of the Articles 14, 15, 21, 44 and International Conventions.

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

4. The facts constituting cause of action accrued on 13.09.2019 when this Hon'ble Court in Jose Paulo Coutinho Case reiterated the need of uniform civil code by giving shining example of Goa but Centre has failed to provide even a gender neutral and religion neutral uniform grounds of succession & inheritance for all citizens in spirit of Articles 14, 15, 21, 44 & International Conventions. Neutrality & Uniformity in succession and inheritance is not only necessary to secure gender justice, gender equality & dignity of women but also essential to promote fraternity, unity and national integration, but, Centre has not taken any steps in this regard till date. Therefore, blatant form of discrimination that is the prejudice in the succession and inheritance on the basis of gender and religion is continuing.

5. The injury caused to the citizens is extremely large because gender biased and religion biased personal laws relating to succession and inheritance are not only against the constitutional ethos of gender justice & gender equality, guaranteed under Articles 14-15, but also against the dignity of women, which is important element of right life to life & liberty, guaranteed under Article 21 of the Constitution. However even after 73 years of independence & 70 year of becoming sovereign socialist secular democratic republic; Centre has failed to provide gender neutral and religion neutral uniform grounds of succession & inheritance in spirit of the Articles 14, 15, 21, 44 and international conventions. Existing personal laws are not only very complex and cumbersome but also against the goals of Preamble. Hindus Buddhists Sikhs and Jains are governed by the Hindu Succession Act, 1956 and Christians, Parsis and Jews are governed by the Indian Succession Act 1925. Similarly, Muslims are governed by the Shariat Act, in which the share of female heir is half of the male heirs. Moreover, existing personal laws relating to succession and inheritance are not only against constitutional ethos of gender justice, gender equality & dignity of women but also brazenly offend Articles 14, 15, 21 of the Constitution and International Conventions.

6. There is no civil, criminal or revenue litigation, involving petitioner, which has/could have legal nexus, with the issue involved in this PIL
7. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this PIL under Article 32. It is not guided for gain of any other individual person, institution or body.
8. Petitioner has not submitted any representation to the respondents because the issue involved is the interpretation of the Constitution.
9. There is no requirement to move government authority for relief sought in this PIL because despite repeated observations of this Hon'ble Court, Centre did nothing to make uniform civil laws in spirit of the Article 14, 15, 21, 44. There is no other remedy available except approaching this Court by way of this PIL under Article 32.
10. In Vishaka Case, [(1997) 6 SCC 241,] this Court unequivocally held that the content of basic rights contained in the Constitution must be informed by International Human Rights obligations. Accordingly, provisions of the Convention on the Elimination of All Forms of Discrimination Against Women [**CEDAW**], which India ratified in 1993, informs content of the Articles 14, 15, 21. It follows that the principles of gender justice gender equality and

dignity of women enshrined in CEDAW, apply in all forms in
Indian context.

11. Initially all affairs including crime, trade, contract, commerce were governed by the personal laws but gradually with rise of civilization, religious domination started contracting & pieces of legislation took its place. In all developed countries, personal laws are confined to marriage rituals only and dissolution of marriage and other secular activities: maintenance-alimony, adoption-guardianship, succession

- inheritance, marriage age and grounds of divorce are codified and uniform. On the other hand, even after 73 years of independence & 70 years of becoming socialist secular democratic republic and many observations by this Hon'ble Court, Centre has not enacted even a 'gender neutral and religion neutral uniform law of succession and inheritance' in spirit of the Articles 14, 15, 21, 44 and International Conventions. It is necessary to reiterate that Article 14 guarantees equality before the law and equal protection of laws and Article 15 prohibits the State from treating men and women differently unless it can show reasonable basis for the classification it has created. Similarly, Article 21 secures dignity of women and Article 16(1)(a) of the CEDAW specifically commands the States parties to take "*all appropriate measures to eliminate discrimination against women in all matters relating to inheritance and succession*

12. Succession & inheritance is the most crucial and pivotal affair and directly affects right to life, liberty and dignity, guaranteed under Article 21. Discriminatory grounds of succession & inheritance not only reinforce patriarchal stereotypical notions but also contravene principles of gender justice, gender equality and dignity of women guaranteed under Articles 14, 15 and 21 of the Constitution. The Apex Court in National Legal Services Authority [(2014) 5 SCC 438], Pravasi Bhalai Sangathan [(2014) 11 SCC 477] and Jeeja Ghosh Case [(2016) 7 SCC 761] has held that right to live with dignity implies right to not be perceived as unequal or inferior individual in society. In other words it implies right to equal social standing & perception. This Hon'ble Court in Joseph Shine Case [(2019) 3 SCC 39] observed that the law that treats women differently based on gender stereotypes causes direct affront to women's dignity and violates Articles 14, 15 & 21. Similarly, Article 5(a) of CEDAW obliges States parties to *“take all appropriate measures to modify social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”*

13.Implementing uniform grounds of succession and inheritance will strengthen constitutional ethos, as laid down in Part-III and IV of the Constitution of India and regarded as the heart and soul of the Constitution but due to State's inaction, even after 73 years of independence and 70 years of becoming sovereign socialist secular democratic republic, gender-religion biased personal laws still exist. Therefore, being protector of fundamental rights & custodian of the Constitution, this Hon'ble Court cannot be a mute spectator now. This Hon'ble Court has reiterated the need of uniform civil code in catena of judgments- Shah Bano, Sarla Mudgal, Jose Paulo Coutinho, ABC v. State NCT of Delhi, John Vallamattom, Ahmedabad Women Action Group & Jorden Diengdeh etc. The Court even once directed the government to file affidavit indicating steps taken to implement uniform civil code in spirit of the Article 44 while observing that "*successive governments have been wholly remiss in their duty to implementing the constitutional mandate under Article 44*". In Lily Thomas v. Union of India, the Apex Court taking affirmative move contended that "the desirability of uniform civil code can hardly be doubted". There have been many instances when this Hon'ble Court has given direction to the Law Commission to prepare reports.

14. There had been several legislative exercises to make Hindu law of succession, more equitable, just and reasonable. Hindu Women's Right to Property Act, 1937, puts widow of a coparcener in his place upon his death and thus entitles her to claim her share in the coparcenary and also ask for partition if she so wanted. The most significant change at the Central level was ushered by the Hindu Succession (Amendment) Act, 2005, by entitling the daughter of coparcener to become, by birth, a coparcener in her own right just as a son would have. Section 6 deals with devolution of interest of a Hindu in coparcenary property but what is really saddening is that there has been no attempt to make other similar personal laws rational in spirit of Articles 14, 15, 21 and international conventions.

15. Andhra Pradesh Tamil Nadu Karnataka Maharashtra made changes in the respective Hindu laws to give equal rights to daughters long before the Central law was made. The Central government adopted progressive approach of these States & amended 1956 Act in 2005. Thus, inheritance right of daughter in coparcenary property is now equally available to them but equal right in spirit of the Articles 14, 15, 21 & 44 will remain a distant dream till the legislature overhauls the succession scheme under the 1956 Act.

16. Gender gap in property ownership is the most important reasons for gender inequity. There is no logic behind providing separate succession & inheritance schemes on the basis of gender & religion. 2005 amendment Act which claims to be progressive with respect to coparcenary right, grossly overlooked the fact that the primary scheme of succession under 1956 Act is manifestly arbitrary. Testamentary succession among Hindus is dealt under section 30 of the Act, which reads: *“Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so [disposed of by him], in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus”*. It can be seen from the above that a Hindu is free to dispose of any property, be it self-acquired or undivided in a coparcenary. This further entails that widow or unmarried daughter or other dependants who have no means to sustain themselves may be deprived of their share by will and the entire property may be assigned to son or anyone that the testator may choose. This creates an inequitable situation & dependant with no means of sustenance might be left with naught for survival in such scenarios. This can also be looked & resolved by uniform law of succession-inheritance.

17.If Hindu male dies without writing will then his property will be divided between his legal heirs according to the Hindu succession Act, 1956. First it will go to the class-I heirs (There are 16 persons in the class-I heirs). If there is no person alive from the class-I heirs then the property goes to the class-II heirs. And if there is no person alive in the class-II heirs also then property will go to the agnates and cognates. Therefore, the provisions do not seem to be just and reasonable because in today's scenario, most of the families are not living together. Thus, there is no meaning of division of the dead person's property among 16 people. The person may not be living with the class-I heirs or those 16 people might refuse to take care of that person, so why should they inherit the property? Moreover, Hindu succession Act, 1956 also defines the succession of woman's property. If Hindu female died intestate then her property will first go to children and husband. If they are not available then it will go to the husband's legal heirs. It means it will be divided according to the class-I heirs and if the legal heirs of husband are not available then only the property will go to her parents. Thus, the provisions are not only obsolete, outdated and unable to serve the need of the day but also offend Article 14, 15, 21 & international conventions.

18. All the personal laws relating to succession & inheritance hold primitive concept and need to be rationalized and codified in spirit of the Articles 14, 15, 21, 44 & international conventions. In Muslim law, inheritance of property comes only after the death of a person and the child does not get this right from his birth itself. If the heir lives after the death of ancestor, he becomes legal heir and entitled to get share in property but if he does not survive then no such right of inheritance in property exist. Moreover, the quantum of the share of female heir is half of the male heir. A childless Muslim widow is entitled to one-fourth of the property of the deceased husband (after meeting his funeral and legal expenses and debts) but the widow who has children or grandchildren is entitled to one-eighth of the husband's property. If a Muslim man marries during an illness and subsequently dies of the medical condition without brief recovery or consummating the marriage, the widow has no right of inheritance. If ailing husband divorces & afterwards, he dies from that illness, widow's right of inheritance continues until she remarries. Thus, the provisions of succession & inheritance are not only manifestly arbitrary but also against the ethos of gender equality gender justice and dignity of women, guaranteed under the Articles 14, 15, 21.

19.In Muslim personal law entitles son double share than daughter.

Mother is entitled one-third share of deceased son's property if he dies without children but will get one-sixth share of deceased son having children. Thus, succession is based on orthodox mindset and patriarchal thinking and also against constitutional ethos of gender justice gender equality & dignity of women. Source of Shia-Sunni systems of inheritance is same but Sunnis accepted pre-Islamic system of agnate succession but Shias discarded it and adopted a new system. Until the person is died, nobody can claim property right merely because he is heir-apparent or heir-presumptive & law doesn't make distinction between movable-immovable properties. Concept of self-acquired and ancestral property also does not exist. The doctrine of partial partition does not apply as they hold the land as tenants-in-common and not as co-sharers or joint-tenants. The division is done by metes and bounds, where specific share of heirs is already determined by the law. The residue, after the payment of funeral expenses & debts etc. devolves on the heirs. It is desirable that in order to eliminate the obfuscation and demystify the esoteric inheritance laws, government should enact a gender neutral religion neutral law of succession and inheritance for every citizen.

20. Convention on the Elimination of All Forms of Discrimination

against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a Preamble and 30 Articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Convention defines discrimination against women as "*...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*"

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including: to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt the most appropriate law, prohibiting discrimination against women; to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and to ensure elimination of all acts of discrimination against

women by persons, organizations or enterprise. The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in public life including the right to vote and to stand for election as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit reports, at least every four years, on measures they have taken to comply with their treaty

obligations. India has signed and ratified CEDAW on 30.7.1980.

21. In *VISHAKA V. STATE OF RAJASTHAN* [(1997) 6 SCC 241] the Apex Court held that : *“In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19 and 21 and the safeguards against sexual harassment implicit therein. Any international*

convention not inconsistent with fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till Parliament enacts legislation to expressly provide measures needed to curb the evil.”(Para 15)

22. In Philippines, the law that governs the issues of inheritance is New Civil Code of the Philippines (NCC), not the Personal Law. “The NCC provides for compulsory heirs” or certain people to whom the testator is obligated to give legitimate share. In computing the legitimize, the remaining portion of the estate is called the “free” portion. The testator can give this portion to anyone. “[Legal or intestate succession](#)” refers to situations where person died without a last will; the share in inheritance is called “intestate share.”

“Extrajudicial settlement of estate” is a voluntary agreement among the heirs partitioning the estate, executed before a notary and published once a week for three weeks in newspaper of wide circulation. A sole heir claiming the whole estate can file an “Affidavit of adjudication by sole heir” with the Register of Deeds.

23.In Canada, the *Personal Property Security Act* is based on the ideals of the UCC and has been adopted in all provinces. PPSA is the

name given to each of the statutes passed by all [common law](#) provinces, as well as the territories, of Canada. They regulate the creation and registration of [security interests](#) in all [personal property](#) within their respective jurisdictions. Right to succession and inheritance that is hampered because of multiple personal laws.

24.Moreover, Goa is the shining example which has a uniform civil code. The Goa family law is the set of civil laws, originally the Portuguese Civil Code, continued to be implemented even after its annexation. Having uniform law of succession and inheritance based on values and ethos of equality justice fraternity and scientific temper, will strengthen constitution spirit and cherishes what our founding fathers thought for India. However, due to vote bank and appeasement politics, Centre has not taken apposite steps till date.

25. Article 14 guarantees equality before law & equal protection of laws and Article 15 prohibits discrimination on the basis of religion, race, caste, sex, place of birth and also enables State to make special provisions for women & children. Article 16 guarantees equality of opportunity to all and Article 21 guarantees life, liberty and dignity. Article 25 clarifies that freedom of conscience and right to profess, practice and propagate religion is subject to public order, morality & health & Article 37 states that directive principles are nevertheless fundamental in the governance of country. Article 38 directs to eliminate inequalities in status facilities opportunities & Article 39 directs to make policy for securing that men-women equally, have right to adequate means of livelihood. Art. 44 directs to implement a uniform civil code for all citizens & Article 45 directs to give early childhood care to children. Article 46 directs to promote economic interest of weaker sections and protect them from social injustice and exploitation and Article 47 directs to raise standard of living. Moreover, under Article 51A, State is obligated to promote harmony & brotherhood amongst the citizens transcending religious linguistic region diversities; renounce practice derogatory to women's dignity; develop scientific temper, humanism spirit of inquiry and reform.

26. Furthermore, on 26.11.1949, we have resolved to constitute a sovereign socialist secular democratic republic, and to secure its citizens: Justice, social economic and political; Liberty of thoughts, expression, belief, faith, worship; Equality of status & opportunity; and promote fraternity assuring dignity of individual and unity and integrity of the nation. But, despite above eloquent provisions, State has failed to provide 'uniform grounds of succession & inheritance'. Therefore, petitioner is seeking direction to the Centre to remove anomalies in the grounds of succession & inheritance & make them uniform for all without prejudice on the basis of religion race cast sex or place of birth in spirit of Articles 14, 15, 21, 44 & international conventions. Alternatively, being custodian of the Constitution and protector of basic rights, the Court may declare that discriminatory grounds of succession & inheritance are violative of Articles 14, 15, 21 and frame gender neutral religion neutral uniform grounds of succession & inheritance. Alternatively, the Court may direct the Law Commission of India to examine domestic and foreign laws of succession and inheritance and prepare a report on 'gender neutral & religion neutral uniform grounds of succession & inheritance' for all in spirit of the Articles 14, 15, 21, 44 & International Convention.

GENDER JUSTICE, GENDER EQUALITY & DIGNITY OF WOMEN

27. Madhu Kishwar v. State of Bihar [(1996) 5 SCC 125] Para 12:

*“Right to life as a fundamental right stands enshrined in the Constitution. Right to livelihood is born of it. In Olga Tellis v Bombay Municipal Corporation [(1985)3SCC545: AIR 1986 SC 180] the Court held **Para 20:** “Article 14 ensures equality of law and prohibits invidious discrimination. Arbitrariness or arbitrary exclusion are sworn enemies to equality. Article 15(1) prohibits gender discrimination. Article 15(3) lifts that rigour and permits the State to positively discriminate in favour of women to make special provision, to ameliorate their social, economic and political justice and accords them parity. Article 38 enjoins the State to promote the welfare of the people (obviously men and women alike) by securing social order in which justice — social, economic and political — shall inform of all the institutions of national life. Article 39(a) and (b) enjoin that the State policy should be to secure that men and women equally have the right to an adequate means of livelihood and the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Article 38(2) enjoins the State to minimize inequalities in income and to*

endeavour to eliminate inequalities in status, facilities, opportunities not only among individuals but also amongst groups of people. Article 46 accords special protection and enjoins the State to promote with special care the economic and educational interests of Scheduled Castes and Scheduled Tribes and other weaker sections and to protect them from social injustice and all forms of exploitation. The Preamble charters out the ship of the State to secure social, economic, political justice and equality of opportunity and of status and dignity of person to everyone.” **Para 22**“Article 1(1) assures right to development- an inalienable human right, by virtue of which every person and all people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. Article 6(1) obligates the State to observe all human rights and fundamental freedoms for all without any discrimination as to race, sex, language or religion... ..Appropriate economic and social reforms should be carried out with a view to eradicate all social injustice..” **Para 23:** “Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been reiterated by the

Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic, cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Vienna Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was ratified by the UNO on 18-12-1979. The Government of India who was an active participant to CEDAW ratified it on 19-6-1993 and acceded to CEDAW on 8-8-1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 thereof. Preamble of CEDAW reiterates that discrimination against women violates principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and

family and makes it more difficult for the full development of potentialities of women in service of their countries and of humanity ”**Para 24:** “Parliament has enacted the Protection of Human Rights Act, 1993. Section 2(d) defines human rights to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. Thereby principles embodied in CEDAW and the concomitant Right to Development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the Commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.”**Para 25:** “Article 5(a) of CEDAW on which Government of India expressed reservation does not stand in its way and in fact Article 2(f) denudes its effect and enjoins to implement Article 2(f) read with its obligation undertaken under Articles 3, 14 and 15 of the Convention vis-à-vis Articles 1, 3, 6 and 8 of the Declaration of Right to Development. Though the directive principles and fundamental rights provide matrix for development of human personality & elimination of discrimination, these convention

*add urgency and teeth for immediate implementation. It is, therefore, imperative for the State to eliminate obstacles, prohibit all gender- based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, State should by appropriate measures including legislation, modify law and abolish gender-based discrimination in existing laws, regulations, customs and practices which constitute discrimination against women.”***Para 26:** *“Article 15(3) of the Constitution positively protects such Acts or actions. Article 21 reinforces “right to life”. Equality, dignity of person and right to development are inherent rights in every human being. Life in its expanded horizon includes all that gives meaning to a person's life including culture, heritage and tradition with dignity of person. The fulfillment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and discrimination based on gender for human development. Women are entitled to enjoy economic, social, cultural and political rights without discrimination and on footing of equality. Equally, in order to effectuate fundamental duty to develop scientific temper, humanism and the spirit of enquiry and to strive*

towards excellence in all spheres of individual & collective activities as enjoined in Article 51-A(h) and (j) of the Constitution of India, not only facilities and opportunities are to be provided for, but also all forms of gender-based discrimination should be eliminated. It is a mandate to the State to do these acts. Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of person. Therefore, the State should create conditions and facilities conducive for women to realize the right to economic development including social and cultural rights.” **Para 37:** “The public policy and constitutional philosophy envisaged under Articles 38, 39, 46 and 15(1) and (3) and 14 is to accord social and economic democracy to women as assured in Preamble of the Constitution of India. They constitute the core foundation for economic empowerment and social justice to women for stability of political democracy. In other words, they frown upon gender discrimination and aim at elimination of obstacles to enjoy social economic political and cultural rights on equal footing. ...If law is to adapt itself to the needs of the changing society, it must be flexible and adaptable...”

28.VISHAKA V. STATE OF RAJASTHAN [(1997) 6 SCC 241]

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

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

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

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

done in this behalf” **Para 43:** “Instead of prohibiting women employment in bars altogether the State should focus on factoring in ways through which unequal consequences of sex differences can be eliminated. Its State's duty to ensure circumstance of safety which inspires confidence in women to discharge duty freely in accordance to the requirements of the profession they choose to follow. Any other policy inference (such as one embodied under Section 30) from societal conditions would be oppressive on women and against the privacy rights.” **Para 46:** “It is to be borne in mind that legislations with pronounced “protective discrimination” aims, such as this one, potentially serve as double-edged swords. Strict scrutiny test should be employed while assessing implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects. The impugned legislation suffers from incurable fixations of stereotype morality and conception of sexual role. The perspective thus arrived at is outmoded in content and stifling in means.”

30. Voluntary Health Association of Punjab [(2013)4SCC 1]

Para 19: “A woman has to be regarded as an equal partner in life of a man. It has to be borne in mind that she has also the equal role in

*the society i.e. thinking, participating, leadership. The legislature has brought present piece of legislation with intention to provide for prohibition of sex selection before or after conception and for regulation of prenatal diagnostic technique for purposes of detecting genetic abnormality metabolic disorders chromosomal abnormality or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female feticide. The purpose of the enactment can only be actualized and its object fruitfully realized when the authorities under the Act carry out their functions with devotion, dedication and commitment and further there is awakened awareness with regard to role of women in a society.”***Para 23** *“In Madhu Kishwar v. State of Bihar [(1996) 5 SCC 125] this Court had stated that women have suffered and are suffering discrimination in silence.”*28. ... *Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality & discrimination.”*

31. National Legal Services Authority [(2014) 5 SCC 438] Para 73:

“Article 21 is the heart and soul of the Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the

*basic fundamental rights and not even the State has authority to
violate or*

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

32. **PRAVASI BHALAI SANGATHAN [(2014) 11 SCC 477] Para 20:** "This Court has persistently held that our Constitution provides for separation of powers and the court merely applies the law that it

gets from legislature. Consequently, Anglo-Saxon legal tradition has insisted that the Judges should only reflect the law regardless of the anticipated consequences, considerations of fairness or public policy and the Judge is simply not authorized to legislate law. "If there is a law, Judges can certainly enforce it, but Judges cannot create a law and seek to enforce it." The court cannot rewrite, recast or reframe the legislation for very good reason that it has no power to legislate. The very power to legislate has not been conferred on the courts. However, of lately, judicial activism of the superior courts has raised public eyebrows time & again. Though judicial activism is regarded as active interpretation of existing provision with view of enhancing the utility of legislation for social betterment in accordance with the Constitution, courts under its garb have actively strived to achieve the constitutional aspirations of socio-economic justice. In many cases, this Court issued various guidelines/directions to prevent fraud upon statutes, or when it was found that certain beneficiary provisions were being misused by undeserving persons, depriving the legitimate claims of eligible persons..."**Para 22:** "...This Court has consistently clarified that the directions have been issued by the Court only when there has been a total vacuum in law i.e. complete

absence of active law to provide for the effective enforcement of a basic human right. In case there is inaction on the part of executive for whatsoever reason, the court has stepped in, in exercise of its constitutional obligations to enforce the law. In case of vacuum to deal with a particular situation the court may issue guidelines to provide absolution till such time as the legislature acts to perform its role by enacting proper legislation. Thus, direction can be issued in situation where will of elected legislature has not yet been expressed.

JUDGMENTS OF HON'BLE COURT ON UNIFORM CIVIL CODE

33. In Jose Paulo Coutinho v. Maria Luiza Valentina Pereira

[(2019) SCC ONLINE SC 1190], this Hon'ble Court again

reiterated the need of UCC. **Para 23.** *It is interesting to note that*

whereas the founders of the Constitution in Article 44 in Part IV

dealing with the principles of directive policy had hoped and

expected that the State shall endeavor to secure for the citizens a

Uniform Civil Code throughout the territories of India, till date no

action has been taken in this regard. Though Hindu laws were

codified in the year 1956 there has been no attempt to frame a

Uniform Civil code applicable to all citizens of the country despite

exhortations of this court in the case of Mohd. Ahmed Khan v Shah

Bano and Sarla Mudgal v. union

of India. **Para 24.** However, Goa is a shining example of an Indian State which has a uniform civil code applicable to all, regardless of religion except while protecting certain limited rights. It would also not be out of place to mention that with effect from 22.12.2016 certain portions of the Portuguese Civil Code have been repealed and replaced by the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 which, by and large, is in line with the Portuguese Civil Code. The salient features with regard to family properties are that a married couple jointly holds the ownership of all the assets owned before marriage or acquired after marriage by each spouse. Therefore, in case of divorce, each spouse is entitled to half share of the assets. The law, however, permits pre-nuptial agreements which may have a different system of division of assets. Another important aspect, as pointed out earlier, is that at least half of the property has to pass to the legal heirs as legitime. This in some ways akin to concept of coparcenaries in Hindu law. However, as far as Goa is concerned, this legitime will also apply to the self- acquired properties. Muslim men whose marriages are registered in Goa cannot practice polygamy. Further, even for followers of Islam there is no provision for verbal divorce.

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

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

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

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

36. John Vallamattom v. Union of India [(2003) 6 SCC 611]

Para 44 *Before I part with the case, I would like to state that Article 44 provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The aforesaid provision is based on the premise that there is no necessary connection between religious and personal law in a*

*civilized society. Article 25 of the Constitution confers freedom of
conscience and free*

profession, practice and propagation of religion. The aforesaid two provisions viz. Articles 25 and 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. It is no matter of doubt that marriage, succession and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and 26 is a suspect legislation, although it is doubtful whether the American doctrine of suspect legislation is followed in this country. In Sarla Mudgal v. Union of India, it was held that marriage, succession and like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing contradictions based on ideologies.

37. Lily Thomas v. Union of India (2000) 6 SCC 224, Para 65.

Besides deciding the question of law regarding the interpretation of Section 494 IPC, one of the Hon'ble Judges (Kuldip Singh, J.) after

referring to the observations made by this Court in Mohd. Ahmed Khan v. Shah Bano Begum requested the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and “endeavour to secure for the citizens a uniform civil code throughout the territory of India”. In that behalf direction was issued to the Government of India, Secretary, Ministry of Law & Justice to file an affidavit of a responsible officer indicating therein the steps taken and efforts made towards securing a uniform civil code for the citizens of India. On the question of a uniform civil code, R.M. Sahai, J. the other Hon'ble Judge constituting the Bench suggested some measures which could be undertaken by the Government to check the abuse of religion by unscrupulous persons, who under the cloak of conversion were found to be otherwise guilty of polygamy. It was observed that: “Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre.” It was further remarked: “The Government would be well advised to entrust the responsibility to the Law Commission which may in consultation with Minorities Commission examine the matter and bring about a comprehensive legislation in keeping with modern-day concept of human rights.”

38. Ahmedabad Women Action Group (1997)3SCC573 Para 10.

In Sarla Mudgal v. Union of India [(1995)3 SCC 635] Court observed: (SCC pp. 649-50, para 33) “Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal law of Hindus, such as relating to marriage, succession and the like have all a sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of the national unity and integration, some other communities would not, though the Constitution enjoins the establishment of a ‘common civil code’ for the whole of India.”

39. Md. Ahmed Khan v. Shah Bano Begum [(1985) 2 SCC 556]

“Dr Tahir Mahmood in his book Muslim Personal Law (1977 Edn., pp. 200-02), has made a powerful plea for framing a uniform Civil Code for all citizens of India. He says: “In pursuance of the

goal of secularism, the State must stop administering religion-based

personal laws.” He wants the lead to come from the majority community but, we should have thought that, lead or no lead, the State must act. It would be useful to quote the appeal made by the author to Muslim community; “Instead of wasting their energies in exerting theological political pressure in order to secure an immunity for their traditional personal law from state's legislative jurisdiction, the Muslims will do well to begin exploring and demonstrating how the true Islamic laws, purged of their time-worn and anachronistic interpretations, can enrich the common civil code of India.”

40. Ms. Jorden Diengdeh versus S.S. Chopra [(1985)3SCC 62]

Para 7 *Surely the time has now come for a complete reform of the law of marriage and makes a uniform law applicable to all people irrespective of religion or caste.*

DIRECTION TO LAW COMMISSION TO PREPARE REPORT

41. Gujarat Urja Vikas Nigam Ltd v. Essar Power [(2016) 9

SCC 103] Para 41. *We are, thus, of the view that in the first instance the Law Commission may look into the matter with the involvement of all the stakeholders. Para 43. The questions which may be examined by the Law Commission are: 43.1. Whether any changes in the statutory framework constituting various tribunals with regard to*

persons appointed, manner of appointment, duration of appointment, etc. is necessary in the light of the judgment of this Court in *Madras Bar Association [(2014)10SCC 1]* or on any other consideration from the point of view of strengthening the rule of law? **43.2.** Whether it is permissible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time?**43.3.** Whether direct statutory appeals to the Supreme Court bypassing the High Courts from the orders of Tribunal affects access to justice to litigants in remote areas of the country?**43.4.** Whether it is desirable to exclude jurisdiction of all courts in the absence of equally effective alternative mechanism for access to justice at grass root level as has been done in provisions of the TDSAT Act (Sections 14 and 15).**43.5.** Any other incidental or connected issue which may be appropriate. **Para**

44. We request the Law Commission to give its report as far as possible within one year. Thereafter matter may be examined by authorities concerned.

42. BCCI v. Bihar Cricket Association (2016)8SCC535 Para 93.

*We are not called upon in these proceedings to issue direction insofar as the above aspect is concerned. All that we need say is that since BCCI discharges public functions and since those functions are in the nature of a monopoly in hands of BCCI with tacit State and Centre approvals, the public at large has right to know/demand information as to the activities and functions of BCCI especially when it deals with funds collected in relation to those activities as a trustee of wherein the beneficiary happens to be the people of this country. As a possible first step in the direction in bringing BCCI under the RTI, we expect the Law Commission to examine the issue, make a suitable recommendation. Beyond that we do not consider it necessary to say anything at this stage. **Para 94.** So also the recommendation made by the Committee that betting should be legalised by law, involves the enactment of a law which is a matter that may be examined by the Law Commission and the Government for such action as it may consider necessary in the facts and circumstances of the case.*

43. Babloo Chauhan v Govt of Delhi [(2017) SCC DEL 12045]

“Para 11. Third issue concerns the possible legal remedies for victims of wrongful incarceration and malicious prosecution. The report of

Prof. Bajpai refers to the practice in United States of America and the United Kingdom. He points out that there are 32 states in the USA including District of Columbia (DC) which have enacted laws that provide monetary and non-monetary compensation to people wrongfully incarcerated. There are specific schemes in the UK and New Zealand in this regard.¹⁷ The Court, accordingly, requests Law Commission of India to undertake a comprehensive examination of the issue highlighted in paras 11 to 16 of this order and make its recommendation thereon to the Government of India.”

44. AP Pollution Control Board (2001)2 SCC 62 Para 73.

Inasmuch as most of the statutes dealing with environment are by Parliament, we would think that the Law Commission could kindly consider the question of review of the environmental laws and the need for constitution of Environmental Courts with experts in environmental law, in addition to judicial members, in the light of experience in other countries. Point 5 is decided accordingly.

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

Para 58 *In view of the above, we request the Law Commission to go into all relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date. We hope that the*

Government of India will consider taking further appropriate steps in the light of the report of the Law Commission within six months thereafter. The Central Government may file an appropriate affidavit in this regard within one month after expiry of one year.

46.Naresh Kumar Matta v DDA [2013SCC ONLINE DEL 2388]

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

47.Pravasi Bhalai Sangathan [(2014) 11 SCC 477] Para 2

However, in view of the fact that the Law Commission has undertaken the study as to whether the Election Commission should be conferred the power to derecognise a political party disqualifying it or its members, if a party or its members commit the offences referred to hereinabove, we request the Law Commission to also examine the issues raised herein thoroughly and also to consider, if it deems proper, defining the expression “hate speech” and make recommendations to Parliament to strengthen Election Commission to curb the menace of “hate speeches” irrespective of whenever made.

48. Summary Analysis of the Succession & Inheritance Laws

Grounds	Hindu	Muslim	Christian	Parsis
Codified Law	Yes	No	Yes	Yes
Women's right in ancestral property	Yes	No concept of ancestral property	No concept of ancestral property	No concept of ancestral property
Equal share of property to son & daughter	Yes	No	Yes	Yes
Permit to will anyone	Yes	No	Yes	Yes
Wife is entitled to equal share as of other heirs	Yes	No	No	No
Gender Neutral	No	No	No	No
Equal rights of Inheritance to widowed & widower	Yes	No	Yes	Yes
Governed By	Hindu Succession Act, 1956	Muslim Shariat Act, 1937	Indian Succession Act, 1925	Indian Succession Act, 1925

PRAYER

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

- a)** direct the respondents to take appropriate steps to remove the anomalies in the grounds of succession and inheritance and make them gender neutral, religion neutral and uniform for all citizens in spirit of the Articles 14, 15, 21, 44 and international conventions;
- b)** alternatively, being custodian of the Constitution and protector of fundamental rights, declare that the discriminatory grounds of succession and inheritance are violative of Articles 14, 15, 21 of the Constitution and frame gender neutral, religion neutral, uniform guidelines of succession and inheritance for all Indian citizens;
- c)** alternatively, direct the Law Commission of India to examine the Laws relating to succession & inheritance of the developed countries and International Conventions in this regard and prepare a report on 'uniform grounds of succession and inheritance' for all citizens in spirit of Articles 14, 15, 21, 44 of the Constitution within 3 months;
- d)** pass such other order(s)/direction(s) as the Court may deem fit & proper to secure gender justice gender equality & dignity of women. **19.09.2020**

(ASHWANI KUMAR DUBEY)

NEW DELHI

ADVOCAT FOR PETITIONER