CONTEMPORARY ISSUES AND CHALLENGES WITH REFERNCE TO UNIFORM CIVIL CODE IN INDIA

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

SUBMITTED BY

[SWATI SINGH]
[UNIVERSITY ROLL NO. 1220990032]
SCHOOL OF LEGAL STUDIES

UNDER THE GUIDANCE
OF

[DR. SANSKRITI SRIVASTAVA]
[ASSISTANT PROFESSOR]
SCHOOL OF LEGAL STUDIES

SESSION 2022-23

CERTIFICATE

This is to certify that the dissertation titled, "CONTEMPORARY ISSUES AND CHALLENGES WITH REFERENCE TO UNIFORM CIVIL CODE IN INDIA" is the work done by SWATI SINGH under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Law** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her/his success in life.

Date- 25.06.2023
Place-Lucknow

Dr. Sanskriti Srivastava
(Assistant Professor)

DECLARATION

Title of Dissertation **Contemporary Issues And Challenges With Reference To Uniform Civil Code**

I understand what plagiarism is and am aware of the University's policy in this regard.

I declare that

(a) This dissertation is submitted for assessment in partial fulfilment of the requirement for the award of degree of **Master of Laws.**

(b) I declare that this **DISSERTATION** is my original work. Wherever work from other source has been used i.e., words, data, arguments and ideas have been appropriately acknowledged.

(c) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.

(d) The work conforms to the guidelines for layout, content and style as set out in the Regulations and Guidelines.

Date : 25.06.2023

Place- Lucknow

Swati Singh
University Roll No. 1220990032
LL.M. (2022-23)
(CCL)

Acknowledgement

With my deepest appreciation, I would like to thank *Assistant Prof. Sanskriti Srivatsava* for providing me the opportunity to undertake a research project titled *"Contemporary Issues and Challenges with reference to Uniform Civil Code in India"* I would like to express my gratitude to her for providing me all the necessary help in completing my project. Without her help, it would have been difficult for me to complete the project on time, I would also to thank Babu Banarsi Das, University, Lucknow, for providing me an excellent environment which helped me in completing my project. I would also like to thank my classmates for assisting me, in one way or the other, for the success of this research project.

To my colleagues at Babu Banarsi Das University, Lucknow especially my faculty. I would like to expressmy sincere gratitude for their support throughout this journey.

I received support from several different sources to pursue this project. I would like to acknowledge all those authors of the books and articles, which I have read during this period.

I would also like to thank my friends, family and well-wishers who encouraged me and prayed for me ever since I begin my research work.

SWATI SINGH

Abbreviations

A.C.	: Appeal Cases
A.I.R.	: All India Reporter
A.J.C.L.	: Allahabad Journal of Company Law
A.L.J.	: Allahabad Law Journal
A.P.	: Andhra Pradesh (A.I.R.)
A.P.H.	: Ashish Publishing House
All.	: Allahabad
B.C.	: Before Christ
C.L.Q.	: Comparative Law Quarterly
Cal. W.N.	: Calcutta Weekly Notes
Cal.	: Calcutta
Ch., Chap.	: Chapter
Civ. L.J.	: Criminal Law Journal
Cr.P.C.	: Criminal Procedure Code
D.B.	: Division Bench
D.M.C.	: Divorce and Matrimonial Cases
e.g.	: Exampli Gratia
ed.	: Edition
F.B.	: Full Bench
Guj.	: Gujarat
H.C.	: High Court
H.L.R.	: High Court Reports
H.P.	: Himanchal Pradesh

I.A.	: Indian Appeals
i.e.	: That is
I.L.R.	: Indian Law Reports
Ibid.	: Ibidem
Id.	: Idem
J.	: Journal
J.I.L.I.	: Journal of Indian Law Institute
J.T.	: Judgment Today
Kant.	: Karnataka
Ker. L.T.	: Kerala Law Times
Ker.	: Kerala
Ltd.	: Limited
M.I.A.	: Moore's Indian Appeals
M.L.J.	: Madras Law Weekly
M.P.	: Madhya Pradesh
Mad.	: Madras
Mat. L.R.	: Matrimonial Law Reports
N.O.C.	: Note on Cases
Nag.	: Nagpur
Ori.	: Orissa
P.& H.	: Punjab Law Reports
P.C.	: Privy Council
p.pp.	: Page, pages
Pat.	: Patna

Pvt.	: Private
S.C.	: Supreme Court Cases
S.C.J.	: Supreme Court Journals
Sec.	: Section
U.C.C.	: Uniform Civil Code
U.P.	: Uttar Pradesh
U.S.	: United States
Viz.	: Videlicet
Vol.	: Volume
v.	: Versus
W.L.R.	: Weekly Law Reports

Table of Cases

Table of Content

Chapter 1: Introduction to Uniform Civil code

Introduction: The term 'Uniform Civil Code' is the proposal to replace the personal laws based on the sacred scripture, customs, traditions, and practices of every religious community in the country with a common set of rules governing every citizen. A society with stable norms is simply inconceivable without uniformity of the rules of conduct governing multiple relationships of members of united. That is why uniformity has been perpetually stressed as the *summum bonum*[1] of all the legal codes in past and at present. This uniformity of norms and rules of conduct of society has always been instrumental in checking disorder and chaos in society. No doubt, there have been phases of social disorder which at times reflected in the form of discriminatory rules governing different sections of society from total disruption. Early Indian societies demonstrated both uniform rules of social relationship and the norms which suffered from discrimination and prejudices. An efficacious fusion of the two had very often been affected to resolve the authoritative crisis.

India has been a multi-religious and multi-ethnic society for past centuries and yet it has the characteristic of maintaining unity in such diversities. But Indian history has also faced traces of religious, cultural, ethnic, and racial tensions and conflicts besides that harmony and peace. When the Englishmen entered in India as the superior and kingly authority to rule in India, undoubtedly, they influenced certain social norms of the Indians in general to overcome the traces of past rituals creating discrimination between the religions, race and castes through overbearing political and social attitudes, but such influences could not lessen the increasing religious and ethnic tensions. Ultimately, when the British domination came to an end in 1947 it left behind that tension in a stressed form which was product of their political formula for independence of Indian vis a vis *Divide And Rule Policy*. At the same time, India was politically divided into two independent countries, viz., Pakistan and India - a division based on the respect of the religion oriented political affairs. After this political division, Indian social setup and norms of the society were seen in the view of the newly adopted

[1] The supreme good from which all others are derived.

constitution of India through which concept of welfare state came to substitute the concept of police state. With the adoption and enforcement of the constitution in 1950, gave a start to a new era in the establishment of new social norms in which state has been declared as guarantor and guardian of the citizen. To arrest separatist tendencies born out of religious and ethnic tensions, the Indian union has been formed by the merger of different provinces and princely states. The concept of secularism has been adopted by giving freedom of religion to citizens and aliens as well, making the same subservient only to public order, morality, health and reasonable restrictions have been imposed on economic, financial, political or other secular activities which may be associated with religious practices. The whole constitutional spirit and secularism as it provided in the constitution of India can be clearly assessed based on the intention of constitution framers who were primarily reformers and secondarily constitutionalists. They were firmly committed and devoted to pull up the nation from its dark past and place it on a very safe and sound footing among the members of the healthy world community. Justice, liberty, democracy, equality and fraternity were declared as the goals to be achieved. The chapters of fundamental rights and directive principles of state policy were incorporated for fulfilment of those constitutional goals.

While stating to the nature of directive principles of state policy protected in chapter IV of the Constitution; Dr. Ambedkar[2] took pains to give clear cut explanation for the same in the characteristics that *"Surely it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of the assembly that in future both the legislature and the executive should not merely pay lip service to those principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country".*

Therefore, although, these directives given in Part 4 the constitution are not justifiable rights of the citizens, yet they are very significant in the government structure of the country. These directives impose a duty on State to take positive actions in certain directions to promote the welfare of the people and State and to achieve economic independence. The chapter on fundamental rights in part 3 of the constitution imposes certain restrictions on the State as against the individual citizen to promote the Welfare State of present independent India. Now the state shall not deny to any person equality before the law or equal protections of the laws and the state shall endeavour to promote

[2] Shiv Sahai Singh, Unification of Divorce Laws in India, p. 1 (Deep & Deep Publication, New Delhi, 1993).

the welfare of the people by securing and protecting, a social order in which justice-social, economic, and political shall reach all the institutions of nation as effective as possible. Equality in one way is uniformity. In addition, *Prof. Sarkar*[3] has expressed and observed that *"In a given welfare society social justice may require state intervention in the behaviour of an individual to maintain the social equilibrium"* Thus, to arrest the country's sufferings from a conglomeration of religion and sect, the framers of the constitution tried their best to preclude some of urgent social problems, by incorporating certain provisions.

Article 44 is one of them and it foresees the unification of civil law. This article lays down the following directive for the state that *"The state shall Endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India."* [4] By incorporating Article 44 and the concept of secularism in the constitutional law framers certainly opened the door for introducing uniformity despite their effort to protect certain measures of religious freedom of the citizens whenever possible. Articles 15, 16, 17, 25, 26, 27, 28, 29, 30, 290(a) and 325 of the constitution include in their scope the concept of secularism which is much different in way from the western notions of it. The concept of secularism is very hard to define because it varies from time to time and place to place. In its simple meaning, the concept of a secular state denotes the separation of religion, and politics as expressed in the functioning of the government.

MEANING OF UNIFORM CODE

'Uniform Civil Code' of India is a term referring to the concept of an overarching Civil Law[5] and the term 'Civil law' is a legal system inspired by Roman law, the primary feature of which is that laws are written into a collection, codified, and not regulated, as in common law, by judges. There are two types of laws that can be codified, i.e. Civil and criminal. The Criminal Laws were codified in India during Crown rule by enacting Indian Penal Code, Indian evidence Act and Code of Criminal procedure. But the principle of civil law has always been to provide all citizens with an accessible and

[3] Basu D.D., Commentary On The Constitution of India, Vol.2, S.C. Sarkar And Sons, Calcutta. Fourth Edition, (1962)
[4] The Constitution of India,1950
[5] Decipher Magazine, "Uniform civil code : The Challenges that Still Remain", available at: http://decipherias.com/currentaffairs/uniform-civil-code-the-challenges-that-still-remain/ (Visited on February 17, 2022).

written collection of the laws which are obligatory to all without discrimination. Since India is a secular State and maintaining uniform laws in matter of religion had become a tussle for the constitution framers. Besides, the term 'code' is a rule for converting a piece of information into another form or representation, not necessarily of the same type. It covers, organise, and arrange (laws and regulations) into a code; (b) to convert (a message, for example) into code; and Code a collection of laws, rules, or signals & a body of writings. Thus, uniform civil code administers the same set of secular civil laws to govern all people, even those belonging to different religions and regions.

MATTERS OF UNIFORM CIVIL CODE

It is important to note that the term civil code is used to cover the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption, and inheritance[6]. Certain subject matters of uniform civil code are as follow:

(a) Marriage, Divorce and Other matrimonial clauses.

(b)Succession (Inheritance),

(c) Guardianship,

(d)Maintenance,

(e) Adoption,

(f) Partition,

(g) Gifts and Wills,

(h)Religious institutions,

(i) Joint Family System; and matters of Charitable trust, etc.[7]

The demand for a uniform civil code essentially means unifying all these Personal laws, to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform

[6] Faizan Mustafa, "Why Legal Pluralism Matters", The Indian Express, November 16, 2015
[7] Ibid

code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde.[8]The power of these three words lies in their ability to evoke strong emotions and deeply held beliefs. For some, the words represent hope and progress, while for others they signify fear and uncertainty. The political implications of these words are significant, as they can determine the direction of a nation's policies and priorities. Socially, the words can create rifts between different groups within society, leading to tension and conflict. And religiously, the words may be interpreted differently by different faiths, further complicating their meaning and impact. This division is not just limited to politics, but extends to social and cultural spheres as well. Different communities have their own beliefs, customs and traditions which often clash with each other. The Uniform Civil Code (UCC) is a proposed legislation that seeks to bring all personal laws under one umbrella, irrespective of religion or community. While some argue that the UCC will promote gender equality and secularism, others believe that it will infringe upon the rights of minorities and undermine their cultural identity. This debate highlights the need for a nuanced understanding of the issues at hand and a willingness to engage in constructive dialogue. In order to find common ground amidst our differences, we must first acknowledge and respect each other's perspectives. We must also be open to learning about different cultures and traditions, while also recognizing the need for progressive reforms that promote equality and justice for all. Ultimately, it is only through mutual understanding and cooperation that we can build a society that is truly inclusive and equitable for all its citizens. Socially, the intelligentsia of the country, who analyze logically the pros and cons of the uniform civil code and the illiterate who have no opinion of their own and succumb to the political pressure are at opposite poles. And, religiously, there is a dangerous of widening the bitterness between the majority Hindusand the minority community mostly the Muslims.[9]

In India, the Supreme Court first directed the Parliament to frame a uniform civil code in the year 1985 in the case of ***Mohammad Ahmed Khan v. Shah Bano Begum***[10], popularly known as the Shah Bano case. In this concerned case, a penurious Muslim woman claimed for maintenance from her husband under *Section 125* of the Code of Criminal Procedure after she was given triple talaq by him. The Supreme Court held that the Muslim woman have a right to get maintenance from her husband under Section 125. The Court also held that Article 44 of the Constitution has remained a dead letter. The then Chief Justice of India Y.V. Chandrachud observed that "*A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies*"[11]

After this decision, nationwide discussions, meetings, and agitation were held. The then Rajiv Gandhi led Government overturned the Shah Bano case decision by way of *Muslim Women (Right to Protection on Divorce) Act, 1986*[12] which curtailed the right of a Muslim woman for maintenance under *Section 125* of the Code of Criminal Procedure. The explanation given for

[8] Akankahs Arora, "Uniform civil code : A Key for Integrating India", available at: http://modelgovernance.com/uniform-civil-code-a-key-for-integrating-india/ (Visited on February21, 2022)
[9] Gauri Kalkurni, "Uniform civil code", available at: http://www.legalserviceindia.com/articles/ucc.html (Visited on February 24, 2022)
[10] AIR 1985 SC 945; 1985 SCR (3) 844
[11] Supra note 9
[12] The Muslim Women (Protection of Rights on Divorce) Act, 1986 was a controversially named landmark legislation passed by the Parliament of India in 1986 to allegedly protect the rights of muslim women who have been divorced by, or have obtained divorce from , their husbands. According to the stated objects of the Act, when a Muslim divorced woman is unable to support herself after the iddah period that she must observe after the death of her spouse or after a divorce, during which she may not marry another man, the magistrate is empowered to make an order for payment of maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim law. But when a divorced woman has no such relatives, and does not have enough means to pay the maintenance, the magistrate would order the State Waqf Board to pay the maintenance. The liability of husband to pay the maintenance was thus restricted to the period of the iddah only.

implementing this Act was that the Supreme Court had merely made an observation for enacting the uniform civil code; not binding on the government or the Parliament and that there should be no interference with the personal laws unless the demand comes from within.

The second instance in which the Supreme Court again directed the government of ***Article 44*** was in the case of ***Sarla Mudgal v. Union of India***.[13] In this case, the question was whether a Hindu husband, married under the Hindu law, by embracing Islam, can solemnize second marriage The Court held that a Hindu marriage solemnized under the Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act, 1955. Conversion to Islam and Marrying again would not, by itself, dissolve the Hindu marriage under the Act. And, thus, a second marriage solemnized after converting to Islam would be an offence under *Section 494*[14] of the Indian Penal Code, 1860.

Justice Kuldip Singh also opined that Article 44[15] has to be retrieved from the cold storage where it is lying since 1949. The Hon'ble Justice referred to the codification of the Hindu personal law and held that "Where more than 80 percent of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, anymore, the introduction of the 'uniform civil code' for all the citizens in the territory of India"[16]

The Supreme Court's another reminder to the government of its Constitutional obligations to enact a uniform civil code came in July 2003[17] when a Christian priest knocked the doors of the Court challenging the Constitutional validity of *Section 118 of the Indian Succession Act*.[18] The priest from Kerala, John Vallamatton filed a writ petition in the year 1997 stating that Section 118 of the said Act was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purpose by will. The bench comprising of *Chief Justice of India V.N. Khare, Justice S.B. Sinha and Justice A.R. Lakshamanan* struck down the Section declaring it to be unconstitutional. Chief Justice Khare stated that *"We would like to State that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India It is a matter of*

[13] AIR 1995 SC 153.
[14] The Indian Penal Code, (45 of 1860), Section 494: Marrying again during the lifetime of husband or wife.
[15] The Constitution of India, Article 44 – Uniform civil code for the citizens: The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India
[16] Supra note 12
[17] John Vallamatton v. Union Of India, AIR 2003 SC 2902.
[18] The Indian Succession Act, 1925, Section 118: Bequest to Religious or Charitable Uses.

great regrets that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies".[19]

Thus, as seen above, the apex court has on several instances directed the government to realize the directive principle enshrined in our Constitution and the urgency to do so can be inferred from the same.

UNIFORM CIVIL CODE IN INDIAN SCENARIO

How full proof will be the uniform civil code? Will there be more abuse and less obedience of uniform civil code? Will uniform civil code have negative effect on the society? Such questions are bound to be raised after the implementation of the Uniform Civil Code. All laws are formulated to be obeyed, but they are abused. This does not mean that law should not be enacted. Similarly, there is a great possibility of the uniform civil code being abused, but this should not eschew the Parliament from enacting the Uniform Civil code; the social welfare and benefits resulting from the implementation of uniform civil code are far greater[20].

While explaining the reason for including Article 44 in the Directives Principles, it was observed that "When you want to consolidate a community, you have to take into consideration the benefits which may accrue to the whole community and not to the customs of a part of it. If you look at the countries in Europe, which have a Civil Code, everyone who goes there forms a part of the world and every minority must submit to that Civil Code. It is not felt to be tyrannical to the minorities."[21]

Some legal experts argue that progressive law is welcomed but a suitable atmosphere must be created in which all sections feel secure enough to sit together and cull out the most progressive of their personal laws. But this can be answered by an example of Hindu law. When the Hindu Code Bill, which covers Buddhist, Sikhs, Jains as well as different religious denominations of Hindus, was notified, there was a lot of protest. And the then Law Minister, Dr. Ambedkar, had said that for India's unity, the country needs a codified law. In a similar fashion, the

[19] Supra note 16
[20] A. N. Ansari, Uniform Civil Code, available at: http://www.welmun15.org/uploads/2/7/3/8/27386177/background_guide_for_the_all_india_political_party_meet.pdf (Visited on February 16, 2022).
[21] Dr. Ray, "Uniform Civil Code in India – The Need of the Hour", available at: http://worldhindunews.com/2014102234275/uniform-civil-code-in-india-the-need-of-thehour-dr-ray/ (Visited on February 24, 2022).

uniform civil code can be implemented, which will cover all the religions, whether major or minor, practiced in India and any person who comes to India has to abide by the Code.[22]

Not many know that a uniform civil code exists in the small state of Goa accepted by all communities. The Goa Civil Code collectively called Family Laws, was framed and enforced by the Portuguese colonial rulers through various legislations in the 19th and 20th centuries. After the liberation of Goa in 1961, the Indian State scrapped all the colonial laws and extended the central laws to the territory but made the exception of retaining the Family Laws because all the communities in Goa wanted it. The most significant provision in this law is the pre-nuptial Public Deed regarding the disposal of immovable and movable property in the event of divorce or death. During matrimony, both parents have a common right over the estate, but on dissolution, the property has to be divided equally; son and daughters have the equal right on the property. As the procedure involves compulsory registration of marriage, this effectively checks child and bigamous marriage.[23] The philosophy behind the Portuguese Civil Code was to strengthen the family as the backbone of society by inculcating a spirit of tolerance between husband and wife and providing for inbuilt safeguard against injustice by one spouse against the other.[24]

The rest of bigoted India. The section of the nation against the implementation of uniform civil code contends that in ideal times, in an ideal State, a uniform civil code would be an ideal safeguard of citizens' rights. But India has moved much further from ideal than when the Constitution was written 50 years ago.[25]

In Ancient India

In ancient time, the king was expected to encourage piety and virtue and also aid religious institutions. Government was not based on theocracy and considerable impartiality was practiced in the treatment as per the sect; irrespective of the sect which belonged to the king. However, the religious overtones of legal policy were very pronounced. The ancient Hindu state, like today's modern India State, was generally gave equal promotion to all religions. There was an intimate relationship between the Brahmin clergy and the Kshaktriya nobility. The Brahmain, Purohita occupied a prominent position at the court of Hindu king. The Purohita

[22] Supra note 19
[23] Supra note 12
[24] Ibid
[25] Ibid

also wielded considerable influence over the king through his role as the spiritual preceptor. [26] In the words of Donald Smith[27], "Various schools of thoughts propounded the doctrine of agnosticism,[28] atheism and materialism, Jainism, Buddhism and later Judaism, Christianity Zoroastrianism and Islam were permitted to propagate their teachings, build their place of worship and established their respective ways of life. The struggle for freedom of conscience in Europe and America, stretching over many centuries, has no counterpart in Indian history. From the earliest days this right seems never to have been denied in India." Further, it is expressed by the famous historian Max Weber[29] that "In India, it is an undoubted fact that, religions and philosophical thinkers were able to enjoy perfect, nearly absolute freedom for a long period. The freedom of thought in ancient India was as considerable to find no parallel in the west before the most recent age."[30]

In British India

This debate on Uniform civil code dates to the colonial period. The Lex Loci Report of October 1840 emphasized the importance and necessity of uniformity in codification of Indian law relating to crimes, evidence, contract etc., but it recommended that personal law of Hindus and Muslims should be kept outside such codification.[31]

In Hindu law there are two principal schools, Mitakshara and Dayabhaga. Mitakshara is again subdivided into four minor schools. Besides, the custom of sadachar also occupies important position. Attempts to reform Hindu law by legislative processes commenced during British period. Reforms such as The Caste Disability Removal Act, 1856, Hindu Widow Remarriage Act, 1856, the Hindu Inheritance (Removal of Disabilities) Act, 1928, the Hindu law of

[26] Sudheer Birodkar, Religious Tolerance and the Challenge of Secularism, available at: http://www.hindubooks.org/sudheer_birodkar/hindu_history/secularism.html (Visited on Mar 06, 2022)
[27] Donald Smith (1820-1914) was a Scottish born Canadian who became one of the British Empire's foremost builder and philanthropists. He became commissioner, governor and principal shareholder of the Hudson's Bay Company. He was president of the Bank of Montreal and with his first cousin, Lord Mount Stephen, co-founded the Canadian pacific railway. He was elected to the Legislative Assembly of Manitoba and afterwards represented Montreal in the Canadian House of Commons. He was Canadian High Commissioner to the United Kingdom from 1896 to 1914
[28] Doctrine of Agnosticism: Agnosticism, strictly speaking, the doctrine that humans cannot know of the existence of anything beyond the phenomena of their experience. The term has come to be equated in popular parlance with scepticism about religious questions in general and in particular with the rejection of traditional Christian beliefs under the impact of modern scientific thought; available at: http://www.britannica.com/topic/agnosticism (Visited on Mar 06, 2022)
[29] Karl Emil Maximilian 'Max Weber' (1864-1920) was a German sociologist, philosopher, jurist, and political economist whose ideas profoundly influenced social theory and social research. Weber is often, cited, with Emile Durkheim and Karl Marx, as among the three founder of sociology.
[30] Donald Smith, Legal History of India, 23 (Princeton University Press, 2011).
[31] John L. Esposito, Islam: The Straight Path, 37-67 (Oxford University Press, 1988).

Inheritance (Amendment) Act, 1929, the Hindu Gains of Learning Act, 1930, the Hindu Women's Right to Property Act, 1937, the Hindu Married Women's Right to separate Residence and Maintenance Act, 1946 were all enacted to give relief to those who are not content to abide by ancient Shasta's. The Hindu Law Committee was appointed in 1941 to look into a comprehensive legislation covering all Hindu laws. This committee ceased to function after some time due to war. It was revived in 1944 under the chairmanship of Sir B.N. Rau[32] and recommendations of Rau committee were given effect by a series of acts passes in 1955 and 1956, to regulate marriage succession, guardianship, and adoption. These were the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, finally the Hindu Adoption and Maintenance Act, 1956.[33]

Among Muslims there are Sunnis, Shias, Ismailia's, Boras, Khojas and unorthodox Ahmadivas. There are four different schools among Sunnis. There are also Kuchi Memons, who retain to some extent the private laws of the Hindus. Most of the legislations of were enacted mainly to override judicial decisions and to restore shariat law. The Wakf Validation Act was passed to override the decision of Privy Council. Several acts from the colonial period specifically exempted Muslims to avoid resistance from that community. The Indian Succession Act of 1925, which dealt with inheritance and succession, specifically exempted Muslims. Muslims had a complicated inheritance system based on the Quran. The original Indian inheritance law had been enacted in 1865 and had exempted Hindus as well. However, the act was ultimately applied to Hindus. The Special Marriage Act, 1872, which was essentially a secular civil marriage law, also exempted Muslims. Not all calls to exempt Muslims were accepted. The Indian Evidence Act, 1872 included section 112, which concerned the legitimacy of children. This section was later found to apply to Muslims, despite its inconsistency with Muslim law. Shariat Act, 1937 swept away any custom or usage contrary to the Shariat in all questions regarding succession, special property of females, marriages and dissolution of marriages, guardianship, gifts, trust properties, wakfs etc. Muslim Dissolution of Marriage Act, 1939 granted women the right to dissolution of marriage.[34]

In the case of Christians their Indian Christian Marriage Act was enacted. But this was not a comprehensive act. Personal Law of Parsis is partly codified but the machinery for dealing with divorce and other matrimonial reliefs are not proper. In spite of the above Constitutional

[32] Jayan, "U.C.C. based Indian Civil Code", (February 20, 2013).
[33] Supra note 29
[34] Supra Note 28

provisions and even after 60 years since the Constitution came into force, this Directive Principal, still remains to be implemented, and there is no endeavour by the government in this direction.[35] In fact, the Directive of Uniform civil code is consistent with the secular character of our state. As Basu Points out that "the Object of this article is to introduce a uniform personal law for the purpose of national consolidation. It proceeds on the assumption that there is no necessary connection between religion and personal laws in a civilized society.[36]

The personal laws came to be applied during the British rule in India. It may here be noted that the personal laws were applied as a matter of policy and not as a matter of religion. There were also some reforms and codification of them. For example, there was Legislation to prohibited practice of 'Sati' (1833) and practice of Child Marriage. There was also a law to permit widow remarriage (1856). There was Code of Civil Procedure (1861) and Code of Criminal Procedure (1861).There was enactments like Indian Succession Act (1865),Indian Divorce Act (1869), Special Marriage Act (1872),The Parsi Marriage and Divorce Act (1936), The Dissolution of Muslim Marriage Act (1939) etc. However, the British government by and large, followed the policy of non-interference in religious matters of the Indian people. Therefore, they generally applied the traditional laws of different communities.[37]

REVIEW OF LITERATURE

For the purpose of completing my thesis I have consulted various reference books, journals, news papers, religious books, bare Acts, commentaries, encyclopedias and dictionaries, articles etc. Apart from that various Internet websites and Constitution Assembly debates have also been consulted. The considerable part of my research work is Constitution Assembly debates itself as being the main guiding force for my research.

OBJECTIVES

(a) To know the Indian Legal System about Uniform Civil Code;

(b) To know the ways and means through which uniformity in legal system can be achieved;

(c) To know and find out that how the equal justice and opportunity could be provided to every citizen;

[35] Mrs. Pragati Varghese and etc. v. Cyril George Varghese & etc., AIR 1997 Bom. 349, 1997 (4) Bom CR 551.
[36] D. D. Basu, Commentary on the Constitution of India, 135 Vol.2 (2008).
[37] Ibid

(d) To suggest that how the conditions of women specially in the family matters can be improved;

(e) To make suggestions that how can every citizen reach on equal footing in front of law; and

(f) To suggest abolition unjust provisions against the theme of welfare state.

HYPOTHESIS

Preliminary examination of the data from various sources suggests the formulation of a clear hypothesis whether by conducting the studies concerning the need of uniform civil code is efficient in bringing uniformity in India.

METHODOLOGY

The present study is doctrinal and analytical with reference to existing legislations, judicial precedents and law reports as primary sources and legal and sociological literature as secondary sources. The study also involves an intense study of emerging trends of uniform civil code under Indian judicial system.

In order to study the relevance of uniform civil code under the Indian scenario, the present study has been divided into following chapters:

Chapter-1 is about 'Introduction' which briefly discussed about the concept of uniform civil code and introduced in nutshell historical background of 'uniform civil code'.

Chapter-2 deals Jurisprudence and evolution of Uniform Civil Code.

Chapter-3 deals with Multiculturism with respect to Uniformity in Civil laws of India.

Chapter-4 delas with the 'Reform in Minorities Personal Law.'

Chapter-5 deals with the Muslim personal Laws.

Chapter-6 deals with Uniform Civil Code in Goa.

Chapter-7 discussed in details Uniform Civil Code with respect to Fundamental Rights and Directives principles of State Policy. To know it deeply clear views of fundamentalist and activist so that evaluation can be done.

Chapter-8 relates to the Conclusion and Suggestion. This chapter along with the summarization of broad conclusion includes some suggestive measures of for achieving the object of research study.

Chapter-9 deals with Bibliography and References.

Chapter -2 Jurisprudence and Evolution of 'Uniform Civil Code'

Hindu, Muslim, and British legal systems[38] govern Indian society. The researcher attempted to analyse the evolution of these systems and explored the British influence. More importantly, the codification of laws and the enactment of other legislation, such as the Kazi Act of 1881, shed information on colonial rulers' endeavours in the area of legal development. It has been proven that when it comes to personal laws, Britishers left them alone, but judicial rulings influenced them. The current Indian society is a product of three diverse legal systems: Hindu, Muslim, and British. Hindu and Muslim personal rules are based on religious texts that date back thousands of years. Religion has governed practically every element of human existence, both public and private, from ancient times. All laws, including personal concerns, crime, evidence, procedure, contract, trade, and commerce, were guided by Rehgion. The scope of law's application has been narrowed to include just such parts of life as marriage, divorce, maintenance, minority, guardianship, adoption, succession, and inheritence. These personal laws were thought to be unchangeable and beyond governmental control. Many elements of Hindu and Muslim law have remained undisturbed by centuries of political vicissitudes and socio-economic upheavals from a historical perspective. Personal laws have been questioned as to whether or not they are protected under the Indian constitution's religious freedom clause.[39] The purpose of this chapter is to look at the historical context of the application of personal laws in India, as well as their immunity from state regulation. This chapter examines the problem's constitutional, legislative, and judicial perspectives. The chapter is broken into three sections, each covering a different period of Indian history: ancient, mediaeval, and British India.

Ancient Indian Personal Laws

The 'Vedas,' or revealed writings, which are said to have been divinely inspired, provide the fundamental ideas of Hindu law. The Vedic scriptures are said to have been spoken by God Brahma, the creator and first component of the Hindu Trinity. Early Hindus regarded them as infallible and supreme, same as later Christians regarded decay locks.

Sacred writings such as the Puranas, the two great epics, can also be found in ancient India. The moral foundation for Hindu law was formed on the Ramayana, Mahabharata, and Bhagvata Gita, which has been in ongoing use to this day. What is heard in the Vedas, also known as

[38] D.K. Srivastava, Religious Freedom in India, p. 213 (1982).
[39] See Articles 25 & 26 of the Constitution of India

Shruti, is also revealed text. The Vedas, like every other revealed literature, contains numerous titles of positive law. They believed that the Rishis, or ancient sages, had heard it and passed it down to the next generation[40]. Another type of scripture is called Smriti, which means "tradition" or "what is remembered." Smritis differ from Shrutis in that they are an indirect perception of heavenly precepts based on memory rather than a direct perception. These two sources are regarded as the foundations of Hindu law.

Hindu sages were the community's leaders in ancient times, and they were renowned for their sanctity as well as their great knowledge. They established the rules that served as the foundation for the organisation of society. They served as a code of ethics and morality, as well as governing social issues and political and government problems, in addition to their religious responsibilities. However, there was no separation between civil and religious and social regulations in these sages' early texts. It was only in later treatises that they were discussed individually. As a result, it appears that law and religion were intertwined and often indistinguishable in early communities. According to Sir H.S. Maine,

> *"There is no system of documented law from China to Peru that is not perceived to be entwined with religious rituals and observances when it first emerges into notice." Religion, morality, and a social awareness, according to Freud, are the three main components of what is highest in man[41]. The subject is divided into three sections in the Yajnavalkya Smriti: Acharya, Vyavahara, and Prayaschita. The second is concerned with civil law, whereas the first and last are concerned with religious observances and expiation."*

'Manu Smriti'[42] could potentially be included in this category. Manu is considered to be the first law giver or exponent. Manu's code is organised into twelve chapters, eight of which contain laws on various civil and criminal law topics. Other chapters cover religious sacraments and moral guidelines. Other treatises, such as Narad Smirti and Brihaspati Smriti, which are subsequent to the Manu Smriti and are entirely devoted to the topic of civil law, come into the third category.

The king did not have significant ability to meddle with the people's own laws under this ancient Indian legal system. In truth, the law was not sanctioned by any temporal authority;

[40] Supra note 1 at 213
[41] H.S. Maine, Early Law and Custom p. 5 (1883); H.S MainQ, Ancient Law, p. 16 (1861).
[42] U.C. Sarkar, Epoch in Hindu Legal History, Visheshvaranand Vedic Research Institute, p. 23 (1958).

rather, the sanction was self-contained. The sages created and enunciated the rule of law, which applied equally to the ruler and his subjects. He carried out orders but rarely, if ever, drafted legislation. "The king, of the king, was the law.' The king was powerless to overturn the statute. Indeed, upon his coronation, the king was compelled to swear that he would uphold the established laws and practises.[43]

However, it is argued that asserting that the Hindus regarded the law as an intrinsic element of their religion is an oversimplification. Although religion plays an important role in regulating and influencing people's behaviour, local customs and accepted practises have also gained legal status. [44]

Medieval India's Personal Laws

It is frequently argued that while "Muslim Scriptural" law was administered to Muslims by the Qazis during Muslim control in India, there was "No such assurance so far as litigation touching Hindus was concerned." It is also claimed that Warren Hastings "made regulations for the administration of justice for the native population without discrimination between Hindus and Mahomedans" in 1772, when he "made regulations for the administration of justice for the native population without discrimination between Hindus and Mahomedans." However, most Indian legal historians have proven that this is not the correct and real historical fact.

The jurisprudence of the Muslims serves as an example of perfect integration of law and religion. 'Law is region and religion is law' in Islam, according to James Bryce, with both being content in the divine revelation. 'Islamic philosophy is the most characteristic representation of the Islamic way of life, the essence and kernel of Islam itself,' J. Schacht says.

The term Islam is derived from the Arabic root "SLM," which denotes peace, purity, submission, and obedience, among other things. Islam implies surrender to God's will and obedience to his rules in the religious sense. There is a clear and strong link between the original and religious connotations of the word. True peace and permanent purity can only be found through surrender to GOD'S WILL and obedience to HIS LAW. The Qur'an contains the exact words of God that were revealed to the Prophet Mohammad. The Qur'an is a collection of addresses revealed by God on various occasions, beginning with the Prophet's (SAW) first call to the people to submit to God's religion and continuing until the Prophet's (SAW) task was

[43] A.S. Alteker, State and Government in Ancient India p. 100(1958).
[44] Salim Akhtar and Ahmad Naseem, Personal Laws and Uniform Civil Code, p. 3 (1998).

completed in the form of a fully organised, well-integrated, and patterned society with all of the basic institutions.

According to legend, the Koran is a transcription of a tablet kept in Heaven on which is written everything that has happened and will happen. From the beginning, Islamic law maintained a clear distinction between men and women.

(i) Huqullah (public law) and

(ii) Huququl Ebad (private law).

Criminal law and public administration were placed in the first category, while marriage, family ties, successions, and other matters were classified as private law. Whenever Muslims have been in power in mixed-population areas throughout history, they have imposed Islamic public law to all of their people, but Islamic private law has always been applied, if at all, to all Muslims. Non-Muslims were always and everywhere free to follow their own religious rules and practises in cases involving private law, and there was no compulsion on non-Muslims. This regulation has been followed as a matter of state policy since the outset (Siyasa Shariyah).

In actuality, Muslim monarchs did not always uphold Islamic private law, even for Muslims, let alone non-Muslims, in many regions. This helps to explain why many local practises persist in Muslim-dominated countries like Morocco and Indonesia. That is most likely why the British in India discovered many Muslim groups (converts from Hinduism) who continued to practise their indigenous customs and usages and decided not to modify them.[45]

In India, Muslim monarchs only used some components of Islamic public law, such as criminal law, which they found to be very similar to the country's own classical law. Despite the fact that their religious rules and customs relating to marriage, family, and succession were vastly different from Islamic laws, they never interfered with non-Muslim religious laws and customs. Despite their incompatibility with Islamic public law, they did not outlaw practises related to Sati and Dev Dasi rituals. How could they be expected to meddle with the Hindu religious law and traditions' other innocuous institutions? Eminent Arab travellers during the Medieval period have confirmed that Buddhist and Hindu religious laws were unaffected by Muslim authority. As a result, during Muslim rule, all non-Muslims were regulated by their own

[45] Tahir Mahmood, Uniform Civil Code, Fictions and Facts p. 43(1995).

conventional and customary laws in aspects of personal law. Grady writes, "Hindus, Hindus, Hindus, Hindus, Hindus, Hindus, Hindus, Hindus

"...enjoyed complete indulgence under the Mussalman government with regard to their religion's rites and ceremonies, as well as various privileges and immunities in matters of property - and in all other temporal concerns, Mussalman law gave the rule of decision, except where both parties were Hindus, in which case the point was referred to the judgement of the Pundits or Hindu lawyers."[46]

According to U.C. Sarkar, the Islamic civil court did not have jurisdiction over Hindus in areas of inheritance, marriage, and other such concerns. Non-Muslims were only subject to Islamic law if they were directly or indirectly associated with Muslims. As a result, Hindu-Muslim issues are often brought before a Muslim Kadi (or Kazi, religious judge under the Shariah). Another good example may be seen in criminal law, where Islamic precepts are applied equally to Muslims and non-Muslims. Tahir Mahmood puts it thus way:

"The public law of Islam was implemented as the law of the land by India's Muslim kings. However, when it came to private law, they only applied Islamic law to Muslims. As a result, the law of Islam as a personal law evolved in India, alongside the personal laws of Hindus, Buddhists, Jains, Sikhs, and others, all of which were completely respected by Muslim rulers." The Muslim rulers of India did, in fact, put Hindu religious law and customs on par with Muslim personal law.[47]

It is an undeniable historical fact that Hindu law attained its pinnacle of scholastic growth during the country's Muslim administration. "All law was formed from what is now known as Hindu religion and its injunctions and precepts as found in the Srutis and Smritis, including the Holy Vedas, Dharmashastras, and Dharmasutras, prior to what is now recognised as Muslim control in the country. The Manusmirti, Yagyavalkya Smriti, and Kautilya's Arthashastra were legal treatises built on Vedic and Dharmic foundations in their respective eras. Hindu law is the name given to the law established by these ancient Indian codes. After the arrival of Islam in India, the development of this legislation continued. The country's Muslim authorities did not meddle, and the procedure was left entirely free of official influence. Both Vijyaneswhara's Mitakshara (11th century) and Jimutavahan's Dayabhaga (12th century) were written after the

[46] Supra note 42 at 231
[47] Tahir Mahmood, Muslim Personal Law : Role of the State in the Subcontinent, pp. 1-2 (1977).

advent of Islam and were accepted and acted upon as veritable codes of Hindu law during the reigns of succeeding Muslim rulers (the latter in eastern India and the former in the rest of the country). South India created Devanna's Smriti Chandrika, the Dravida code of Hindu law, near the end of the 12th century A.D. Vivada Chintamani by Vachaspati Mishra and Mitramishra's Viramitrodaya by Mitramishra emerged in North India in the 15th and 17th centuries, respectively, the latter during Mughal rule. Western India saw the establishment of Nikhanata's Vyavharmayukha at the height of Mughal authority (17th century). All of these texts were legal codes from their respective eras, based on Hindu religious sources but adjusted to the needs of the period. This work eventually gave birth to Mitakshara's four sub schools (Madras, Mithila, Banaras, and Bombay). This huge expansion of Hindu law during India's so-called "Muslim rule" confirms the historical truth of the state's complete non-interference in the development of indigenous law at the time." Prof. M.P. Jain, a well-known legal historian of our day, writes about Mughal judicial systems in the following terms to affirm this attitude of exemption of personal law from the scope of the state:

"Due to the existence of village panchayats and the fact that civil cases among Hindus were determined by their own elders or Brahmins, few cases came before the Kazis. The Mughal government appears to have followed the practise of allowing Hindus to resolve their own cases as best they could."[48]

As a result, it is apparent that the Muslim king never interfered with non-Muslims' personal laws.

British India's Personal Laws

During Muslim administration, the criminal law was the only law that was substantially common to Hindus and Muslims, with the exception of the use of oaths and ordeals. With the fall of the Mughal Empire, Muslim rule came to an end. The Empire had already fallen to the point that governors of several provinces had effectively taken all power and had become independent officials as it neared its collapse. The Britishers, who had come to India as innocent traders, eventually turned out to be mercenaries and became the forerunners of British control in India at this point.[49]

[48] M.P. Jain, Outlines of Indian Legal History, p. 39 (1972).
[49] M.P. Jain, Outlines of Indian Legal History p. 5 (1981).

The birth of the British empire in India is a once-in-a-lifetime event in world history. Unlike many other empires, the massive edifice of this empire was built by a firm founded in England to further British commercial interests in foreign countries.

It was politically convenient for the British not to meddle with existing personal law in India during the British Raj in so far as it related to family and inheritance rights alone, as a matter of colonial policy. Because the East India Company's major goal was to engage in trade, commerce, and the exploitation of the country's natural riches, its primary concern was with trade and commerce law.

When the British seized control of India in 1757, they mostly followed the Muslim style of judicial administration. However, when they solidified their authority, they rewrote the criminal law altogether and developed their own system to deal with numerous civil law issues. Certain elements of Hindu and Muslim law were accorded legislative protection because they were thought to be strongly intertwined with the locality. During this time, the British in India pursued a policy of non-interference with their people' religious sensibilities. They believed that nothing could be wiser than to ensure, through legislation, that the Hindus and Muslims of India's private laws, which they hold sacred and a violation of which they would consider the most serious oppression, would not be superseded by a new system that they must have viewed as imposing a spirit of vigour and intolerance on them. Their attitudes regarding Hindu and Muslim laws also appear to reflect the original Christian notion of two distinct spheres of existence, temporal and spiritual, with the first under state authority and the second under Church administration.

The first evidence of this policy's acceptability may be seen in the Charter of George II, which was granted in 1753. The Charter of 1753 was primarily for Europeans, while Hindus and Muslims with their own conventions were left free to settle their problems themselves, lest their customs be disregarded, causing difficulty. The Indians were expressly exempted from the jurisdiction of the mayor’s court by the Charter Act of 1753, which required that such suits and disputes be decided by the Indians themselves unless both parties agreed to the court's jurisdiction. Throughout his time in government, Warren Hastings was a staunch supporter of the idea of applying personal laws to Hindus and Muslims. The Cornwalis Code of 1793 reaffirmed the Hastings Rule, which reserved 'the laws of Koran' to Muslims and 'the laws of Shastra' to Hindus. When the British arrived in the 17th century, the rule 'to each religious community its own particular law' was firmly entrenched in the country. It was most probably

not a gift from Warren Hastings, who arrived in Calcutta as Governor of the Calcutta Presidency under the rule of the British Overseas Usurpers over 150 years later. Warrent Hastings' Judicial Plan of 1772 called for the application of "Koranic law" to Mohammadans and "Shastra law" to Gentoos (Sec. 23). He was only ensuring that the legal position involving Hindu and Muslim laws, which had been in place in the country since the beginning of Muslim administration, would remain in force. He can't be claimed to have made any new rules by any stretch of the imagination. He did this to ensure that the tradition of Muslim rule, in which Hindu law applied to Hindus and Muslim law applied to Muslims, would not be altered. And, importantly, the British governor provided this promise solely to serve his masters' political interests, not as a gift to the people.

During the period of British rule over India, the British stance toward Hindu and Muslim legislation can be studied under the following headings:

1. Legislation stating that they are neutral towards Hindu and Muslim law.

2. Legislation aiming at upholding law and order, promoting good governance, and implementing social reforms in all communities.

3. Legislation pertaining to Hindu and Muslim law, as well as other issues.

4. Using judicial interpretation to interfere with Hindu and Muslim legislation.

As previously stated, British rule followed a policy of non-interference in Hindu and Muslim religious matters from the beginning. The Charter Act of 1753 freed Indians from the authority of mayor's courts and mandated that any issues be resolved by the Indians themselves, unless both parties agreed to the court's jurisdiction. Warren Hastings excused Muslims and Hindus in 1772, and it was decreed that concerns concerning Muslims and Hindus be decided according to the Koran and Shastra. When His Majesty's Court of Judicature, i.e. the Supreme Courts of Judicature at Calcutta, Madras, and Bombay, were formed in 1773, the rule requiring the application of Hindu laws to Hindus and Muslim laws to Muslims was expanded. The Act of Settlement, which was passed in 1781, added succession to Warren Hastings' list. Warren Hastings' rule of 1774 was reinstated by Lord Carnwallis in 1793. In this way, the British were generally supportive of Hastings' aim of protecting Hindu and Muslim law. An Act of 1797 and the Government of India Act of 1915 both included similar provisions. Courts in Madras and Bombay were guided by regulations passed in 1797, while the High Courts in Calcutta, Madras, and Bombay were guided by rules passed in 1915.

Although the British did not directly meddle with Hindu and Muslim personal laws, their court system had a significant impact on the development of these laws. The 1772 scheme placed English judges in charge of the administration of justice. Although the shift was unobtrusive, it did have the effect of moulding established concepts. In matters relating to Hindu and Muslim personal laws, English judges used to consult Pandits and Maulvis, but he was still a foreigner with a foreign background. He could only make his decision in accordance with what he believed to be the law; his main responsibility was to find a lawful solution. Judges' primary purpose in the pre-British system was to put an end to disputes brought before them, but when the administration of justice was transferred to the British, the doctrine of precedent, or stare decisis, was established.

As a result, the law that had previously existed in the form of scriptural works and treatises was now codified in the case law of these new courts. Hindu law was formed by commentaries and digests published by Hindu jurists prior to the arrival of the British court system. They were the ones who interpreted the Bible's laws. However, as the body of case law grew, this source began to dwindle.

The English judges made some erroneous decisions in the area of Muslim law. The Privy Council's decision in *Abul Fatah Vs Rassomoydhar Chaudhry*[50], which was contradictory to Islamic law principles relating to family waqfs, is a famous example of this. As a result of this ruling, the Mussalman Waqfs Validating Act was enacted in 1913 with the goal of restoring the status quo.

The so-called fonnula of "justice, equality, and good conscience" is another technique to infuse English concepts into Hindu and Muslim personal rules. This concept has survived the test of time and has been enshrined in a number of British statutes. In fact, as far as the Indian situation was concerned, justice, equality, and good conscience came to entail English law.

Three separate legal systems, originating in Hindu and Muslim religions, as well as the British system, have shaped Indian culture today. The Vedas and Puranas provided the foundation for Hindu law. Epics such as the Ramayana, Mahabharata, and Bhagwat Gita served as moral compass. Manu is regarded as the first lawgiver, and Manu Smiriti is regarded as the

[50] (1894)22. I, A, 76.

first law book. In ancient India, kings normally did not interfere with people's personal laws. The legal system included local norms and traditions.

Muslims were regulated by their own rules during Muslim dominion, but Hindus were free to follow their own customs, traditions, and laws. Despite the fact that Muslims were generally bound by the Qur'an and Islamic law, Muslim rulers did not strictly implement Islamic law in practise.

The colonial rulers did not meddle with the personal laws of citizens, such as Hindus and Muslims, during the British administration. Their primary goal was to trade with India and use its natural riches at first. They maintained the Muslim kings' judicial system. They eventually modified criminal law and infused their own system into civil laws after cementing their rule.

During their final years, Britishers attempted to codify personal laws. Although the First Law Commission was established in 1834, important legislative enactments, such as the Marriage Dissolution Act of 1866 and the Indian Divorce Act of 1869, were passed in the 1860s. On the advice of Sir Syed Ahmad Khan, the British established the Kazis Act 1881 to designate Kazis for Muslims. Several additional laws were enforced as well.

The entire history of personal laws demonstrates that they were influenced to some measure by the passage of time, and that Britishers gradually adopted their system while leaving personal laws unaltered.

Uniform Civil Code- Post Independence

Personal laws caught the attention of the Constituent Assembly, which debated the Uniform Civil Code vehemently on both sides. The Uniform Civil Code was discussed using Article 35. The majority of Hindus were in favour, but Muslims were adamantly opposed. According to B.R. Ambedkar, personal laws should not be messed with. The entire discussion was examined in the context of India's Constitution, and objective conclusions were reached.

The Constituent Assembly's Debates and the Uniform Civil Code

Soon after independence, the position of personal laws became entangled in the whirlpool of national politics. Progressive lawmakers' statements, dissenting views from their so-called conservative colleagues, apprehensions echoed by minorities' speakers, and stones and buckets hurled from the outside by laymen and lawmen roiled the topic on the floor of the Constituent Assembly for over two years. Throughout the constitution-making process, arguments in the Constituent Assembly revealed that the idea, relevance, and utility of the Uniform Civil Code

were questioned by the constitution-makers. Members of the Constituent Assembly who were Muslim resisted the plan with all their might. In this context, India, which is known for its religious, cultural, and linguistic variety, would be well-suited to the reasons for and pursuit of impartial evaluation of the Uniform Civil Code. The Constituent Assembly met for the first time in December 1946. However, immediately after India's independence from British imperialism, national politics engulfed the function and form of personal laws in the country's future legal system. The founders of the Constitution envisioned a sovereign, democratic republic founded on the ideals of justice, liberty, equality, and fraternity. In 1976, the terms "secularism" and "socialist" were added to the Preamble. Prior to its passage in 1950, our Constitution established fundamental rights, including the right to freedom of religion. Since then, there has been a lot of debate in the Constituent Assembly and on social media about personal legislation. The Constituent Assembly considered the advantages and disadvantages of personal laws even before the Constitution was enacted.[51]

I Attitudes of the antagonists

The Constituent Assembly debated the Uniform Civil Code under Article 35. Article 33 should have the following caveat, according to Mohammad Ismail of Madras: "Any organisation, sector, or community of people shall not be forced to give up its own personal law if it has one.

" One of the most important rights, he maintained, is the freedom to follow one's own personal norms. He stated that personal laws were an integral component of the people's way of life. Personal laws, he believed, were an important part of religion and society. Any interference with personal laws, he argued, would be tantamount to meddling with the entire way of life of those who had come after them from generation to generation. He stated that India was becoming a secular state and that nothing should be done to suppress people's religious and cultural views. He used precedents from Yugoslavia, the Kingdom of Serbs, Croats, and Slovenes, which were required by treaty obligations to provide for Muslims in minority in matters of family law and personal status:

[51] Zafar Ahmad, Personal Laws and Constitution of India : A Study in Contemporary Perspective with Special Reference to Dr. B.R. Ambedkar, p. 30 (unpublished, 1992).

"The Serbs, Croats, and Slovene States agree to grant to Mussalmans provisions suitable for regulating these matters in accordance with Mussalman usage in matters of family law and personal status."[52]

The civil code referenced in Article 35 does not cover family law or inheritance, according to Mahboob Ali Beg, but this should be addressed by a proviso to guarantee that the civil code covers property transactions, contracts, and other things covered by personal laws. He also claimed that secularism had no impact on the diversity of personal law.[53] A member of the Constituent Assembly, M.A. Ayyanger, came out and claimed it was a contract problem. The marriage contract was outlawed by the Holy Qur'an and the Prophet's Traditions, according to Ayyanger (SAW). He said that the Indian concept of secularism accorded equal respect and dignity to all religions. In a secular state like India, he stressed that varied populations must be permitted to practise their own religion and culture, as well as obey their own personal laws. B. Pocker Sahib, a Muslim member of the constituent Assembly, proposed the following proviso to Article 35 while supporting the motion.

"However, no organisation, sector, or community of people shall be obliged to give up its own personal law if it already has one."

He called attention to the following points:

(a) One of the 'secrets of the success' of the British rulers and the basis of their judicial administration was retention of personal laws;

(b) Article 35 should be referred to as a "tyrroneous clause" if it was intended to supersede the provisions of the various civil code laws ensuring the application of personal laws to cases of family law and inheritance, etc.; and

(c) no community favoured civil law uniformity.

The Constituent Assembly's authority to intervene with religious rules was questioned by Hindu and Muslim organisations. Article 35, as a result, was anti-religious liberty. "India is too huge a country with such a diverse population that it's nearly difficult to stamp them with one kind of anything,"[54] Hussain Imam concurred, saying,

[52] Mohd. Shabbir, "Muslim Personal Law, Uniform Civil Code, Judicial Activism : A Critique", XII Alig. L.J. 1997, p. 47.
[53] M.A. Beg Sahib Bahadur's Speech in the Constituent Assembly, Constituent Assembly Debates, Vol. Vll (1949), p. 543
[54] Constitution Assembly Debates, Vol. Vll, pp. 544-546.

"India is too big a country with such a diversified population that it's almost impossible to stamp them with one kind of anything." In the north, we are suffering extreme heat. Assam has received more rain than any other area in the earth..."

The Indian Constitution and Personal Laws

The Indian Constitution empowers the legislature to intervene in family matters that are governed by personal laws and the Common Civil Code. Since the Hindu Code was created to replace major elements of Hindu Law's customary law, the desire for a Common Civil Code on the one hand, and for the reform of Muslim Personal Law on the other, has gained popularity. The adoption of a uniform code is recommended for a number of reasons, including preventing communal rioting and speeding up the national integration process. A significant number of Muslims have expressed strong opposition to the Common Civil Code's replacement of Muslim law. Not all advocates of the reforms in India agree that Muslim family law should be replaced, and not all opponents are Muslim law experts. They don't present their case in a logical and sensible manner. As a result, genuine problems get lost in the shuffle of non-issues. In the prior part, we saw how the debate over the Uniform Civil Code developed. After significant controversy, Article 35 of the draught constitution (now Article 44) was included into the Indian Constitution. While supporting the inclusion of the proviso in the Uniform Civil Code, Chairman of the Drafting Committee Dr. Ambedkar cautioned the members not to read too much into Article 44. He further informed Muslim members that if the Uniform Civil Code were to be implemented, it would only apply to those who consented to be governed by it.

The Indian Constitution guarantees religious and cultural freedom to every Indian citizen. Article 25[55] states,

"All persons have an equal right to freedom of conscience and the ability to openly proclaim, practise, and disseminate religion".

Article 26[56] states that

"Every religious denomination or any section thereof shall have the right: (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion,"

[55] The Constitution of India, 1950
[56] Ibid.

while Article 29[57] states that

"Any sections of the citizens... having a distinct language, script, or culture of it sown shall have the right to conserve it".

When it comes to religion, it is a matter of faith and conscience. Religious beliefs and practises are ingrained in society and civilization. Belief, 'practise,' and 'propagation' are all covered by Muslim Personal Law, which is at the centre of Islamic religious beliefs. The religious and cultural freedoms guaranteed by Part III of the Constitution as fundamental rights apply to Muslims' personal law.

According to Article 372[58], the Indian Constitution ensures the execution of "all the legislation in existence in the territory of India immediately before" its inception. According to the Muslim Personal Law (Shariat) Application Act, 1937, "the law in force before the start of the Constitution of India."

(1) Subject to the other provisions of the Constitution and notwithstanding the repeal of the enactments referred to in article 395 by this Constitution, all law in force in the territory of India immediately before the commencement of this Constitution shall continue to be in force until altered, repealed, or amended by a competent Legislature or other competent authority.

(2) To bring the provisions of any law in force in India into compliance with the provisions of this Constitution, the President may, by order, make such adaptations and modifications to such law as may be necessary or expedient, whether by repeal or amendment, and provide that the law shall, as of the date specified in the order, have effect subject to the adaptations and modifications made, and any such adaptations and modifications shall be made in accordance with the provisions of this Constitution.

(3) Nothing in clause (2) shall be construed to:

(a) empower the President to adapt or modify any law three years after the Constitution's inception; or

(b) prevent any competent legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

Explanation I.

[57] Ibid.
[58] Ibid.

A law issued or adopted by a legislative or other competent body in the territory of India prior to the commencement of this Constitution that has not been repealed is included in the phrase "law in force" in this Article. It or parts of it may not be active at all or in certain regions at the moment.

According to the text and spirit of Article 372 of the Constitution, the Muslim Personal Law (Shariat) Application Act, 1937, which guarantees and controls the application of Muslim Personal Law, is the "law in force" as it is constituted by the competent legislative. Until now, the Act has been "altered, repealed, or amended by the competent legislative or other competent body," making it "law in force" or "living law," as described by Article 372 of the Constitution.[59]

The phrase "all the law enforce" is used in this article to refer to statutory, customary, and, it appears, personal laws. Article 372(1) is identical to section 292 of the Government of India Act, 1935, which accepted that "all statute in force" at the time continued to apply. The *Federal Court decided in United Provinces v. Atiqa* [60]that the word also embraced non-statutory laws like personal laws. Even after the Constitution was adopted, the High Courts of Rajasthan[61], Hyderabad[62], Calcutta[63], Madhya Pradesh[64], and Bombay[65] upheld the application of Article 372 to personal laws. In any case, this is the only place in the Constitution where personal laws are said to be recognised. If we don't apply it to personal laws, the Constitution will not recognise them.[66]

A variety of personal laws, both codified and uncodified, were applied to various faiths and ethnic groups at the time of the Constitution's establishment, in accordance with the Constitutional premise of continuity and change in pre-1950 laws. Article 372 of the Constitution gave all of these legislation, in their different versions, a statutory lease. It was not, however, a long-term lease. All of these acts extended the lease term until "further action," if any, was taken by a "competent authority." As stated in Article 372, this "further action" might take the shape of modification, repeal, alteration, or adaptation (1). Of course, the primary "competent authority" that might take such "action" would be Parliament or a state

[59] Ibid pp.23
[60] A.I.R. 1941 F.C. 16
[61] Panch Gunjar Kaur v. Amar Singh, AIR 1954 Raj. 100
[62] Moti Bai vs. Chanayya, AIR 1954 Hyd. 161.
[63] Naresh Bose vs. S.N. Deb, AIR 1956, Cal. 222
[64] Rao Moti Singh vs. Chandrabali, AIR 1956, M.R 212
[65] Atma Ram vs. State, AIR 1965 Bom. 9.
[66] Entry 6

legislature. An executive authority, on the other hand, might employ a delegated legislative power.

The question of whether the President of the Republic's authority of adaptation and modification of existing laws, as allowed by Article 373 (2), can be used by him also in the event of an uncodified law or custom, has caused some controversy. However, because the President did not exercise such authority during the three years following the Constitution's adoption, the issue is now largely irrelevant.

It's worth noting that all three divisions under Schedule VII of the Indian Constitution cover issues related to personal legislation. All matters in which parties in judicial proceedings were subject to their personal law immediately before the commencement of this Constitution; marriage and divorce; infants and minors; adoption; wills, integrity, and succession; joint family and partition; all matters in which parties in judicial proceedings were subject to their personal law immediately before the commencement of this Constitution.

(ii) Transfer of property other than agricultural land; registration of deeds and papers

This category includes charities and philanthropic institutions, benevolent and religious endowments, and religious institutions.

List II includes burial and burial sites, property rights (including agricultural property succession), and the administration of justice and court structure at the district level (which specifies the issues on which state legislatures can create law).[67]

"Pilgrimage to locations beyond India" is the only entry related to Muslim law in List I (which specifies topics for legislative action). Parliament can adopt legislation controlling Haj and Ziyarat under this clause.

As a result, virtually every issue that normally falls under the scope of personal law has been delegated to either the state Legislature or Parliament.

In post-independence India, personal laws became politicised. For two years, the Constituent Assembly heard passionate arguments in favour and against the Uniform Civil Code. In reality, the house was divided along communal lines in accordance with the Uniform Civil Code. Muslim community members were against it, but Hindus were ardent supporters.

[67] Entry 5

Under Article 35, the discussions proceeded, with Madras' Mohammad Ismail suggesting a change that would exclude any organisation or society from such restrictions. He cited Serbs, Croats, and others as examples of people who were assured to have their own set of rules. Some members, such as H.C. Majumdar, claimed that the amendments rendered Article 35 null and void. After the objections were upheld, Mohd. Ismail's revisions were overturned. Other politicians sought to amend the bill, but were unsuccessful despite strong pleads and arguments. Some Hindus held viewpoints that were diametrically opposite to Muslim viewpoints. Dr. B.R. Ambedkar, K.M. Munshi, and A.K. Iyer were among the most vociferous on the matter. "Do not read too much into Article 44," Dr. Ambedkar cautioned Muslim members, noting that the Uniform Civil Code would only apply if they agreed to it.

The Indian Constitution, without a doubt, empowers Parliament to develop a Uniform Civil Code. After the Hindu Code was implemented, the necessity for changes to Muslim Personal Laws and the Uniform Civil Code emerged. The Constitution allows for the modification or amendment of all laws, including personal laws. Personal laws, in reality, are within the control of Parliament and the legislature.

Under Entry 5 List III of the Seventh Schedule, as well as Article 372, the Constitution recognises the existence and continuation of personal laws.

Chapter 3: Multiculturism with respect to Uniformity in Civil laws of India

Dimensions of Personal Laws

(1) Diversities based on region and territory

It is a common misconception that different parts of Indian residents are controlled by distinct personal laws because they practise different religions, each of which has its own set of rules. Neither all followers of any religion are controlled by uniform law in India, nor are any personal laws uniformly applicable to all followers of the religion from which it is formed. The legislation varies from one region to the next and from one territory to the next, and it frequently applies differently in different situations.

The possibility for nationwide consistency anticipated in Article 44 is limited by the Constitution itself, which places legislation of personal laws, including family laws, under list III (concurrent Isit). As a result, both parliament and state legislatures can and have passed legislation in these areas. State legislatures frequently enhance parliamentary laws on family law issues with new provisions.[68]

The following is an example of the other dimension of variety in Family Laws:

I. The state of Jammu and Kashmir has its own set of family laws, both statutory and non-statutory, because of the provisions of the Constitutions that apply to it. The Sri Pratap Consolidation of Laws Acts of 1977 governs their application (B).

II. When Pondichery was annexed to India in 1954, local residents (Hindus, Muslims, Christians, and others) were given the option of following the old French Civil Code or the new Indian Civil Code (Applicable in region under the French Colonial Rule).

III. When Goa, Daman, and Diu were annexed by India in 1962, the Portuguese Civil Code of 1867 and its additional laws, which included the antiquated Hindu usages ordinances of 1880, were in effect across the province. After the establishment of the state of Goa, the situation remained unaltered.[69]

[68] See State Amendments of the Hindu Marrige Act 1955 (Uttar Pradesh, Tamil Nadu); of the Muslim Personal Law {Shariat) Application Act, 1937 (Andhra Pradesh, Kerala and Tamil Nadu); and of the Kazis Act 1880 (Mahrashtra).

[69] See Tahir Mehmood, "Matrimonial Laws in Goa, Daman and Diu : Need for Legislative Action" Islamic C.L.O, (1982), p. 93.

IV. Local customary law was safeguarded in Nagaland and Mizoram by a specific clause placed into the Constitution in 1962 by an amendment. The goal of this amendment was to maintain the local tribes' identities. Hindus, Muslims, and Christians in these and many more places are governed by personal laws that differ greatly from those that govern their co-religionists in other parts of India.

(2) Diversities based on specified group of persons

There are several groups of people who are considered exceptions to the ordinary Indian citizen by personal law enactments, and they are exempt from executive action through statutory law. This phenomena may be observed practically everywhere in the country, where specific groups of people are free from statute law in aspects of personal law. As a result, there are several complexities in the realm of personal law.

Under the Indian Succession Act of 1925, the government of each state has the authority to publish a gazette notification exempting any specific race or tribe in the state from the application of the Act on the grounds of "impossibility" or "inexpediency." The Christians of Coorg, several Christian Races in Assam, and many Christian Tribes in Bihar and Orissa have all benefited from this authority in the past.'

The Indian Constitution permitted the age-old custom of maintaining tribal and secterian rules to continue after independence, and two favoured groups were formed under the Constitution: "Scheduled Caste" and "Scheduled Tribe.[70]" The Scheduled Tribes have received unique exemptions from these two protected groups, but no such special exemption has been granted to any of the scheduled castes under any of the personal law statutes. As a result, each of the Scheduled tribes is completely unaffected by the four Hindu-law enactments of 1955-56. "Judicial confirmation of the inapplicability of several of these Acts to specific tribes non Assam, Bihar, and Orissa.'[71]

As a result, these Acts encompass nearly all aspects of family law and succession, and tribal practises in these areas are largely safeguarded. And, because some tribes are concentrated in specific parts of India, this formal continuation of their customs, which are in stark contrast to common law and practise, adds a new chapter to the geographical diversities in India's personal laws.'

[70] Hindu Marriage Act 1955, Sec. 2(2); Hindu Succession Act 1956; Sec. 2(2); Hindu Minority and Guardianship Act 1956, Sec. 3(2); Hindu Adoption and Maintenance Act 1956.
[71] Dasrath v. Guru AIR 1972 Ori 78 (Bathwates); Satish v. Bagram, AIR 1973 Gau. 76 (Borokarchris)

(c) Diversities based on customs usages

Going over the four Hindu-Law enactments from 1955-56 reveals an intriguing and significant feature of variety based on Hindu, Buddhist, Jains, and Sikh customary law. Specific requirements related to Hindu, Buddhist, Jains, and Sikh practises, which run opposite to general legislative laws, are fully protected by the terms of the relevant enactments.

(i) Those violating statutory rules relating to "sapinda" relationships and prohibited degrees in marriage; [72]

(ii) Customary marriage - rites replacing "Saptapad" [73]

(iii) Customary divorce; [74]

(iv) Custom of adopting major and married children are among the customs and customary institutions that have remained so protected.[75]

Each of the above-mentioned practises might be popular among Hindus in any "local region, tribe, community, group, or family." Despite the fact that the term "law" in Article 13 of the Constitution is particularly extended to custom and use having the "force of law," no court has ever frowned on this broad-based protection of diverse custom.

Not only does Hindu law recognise custom as an exception to the general norm, but practises that defy the general rule are also protected by other laws. For example, in the face of conflicting practises, the legislation pertaining to civil marriage did not contain any formal provision referring to the 'prohibited degrees.' After 9 years, however, the legislation was changed to preserve practises and usages that were in violation of the 'prohibited degrees' in marital norms. Under the amended law, customs have a larger role to play in prevailing and being recognised, as it is sufficient if it governs "at least one of the parties" to a marriage (unlike the Hindu Marriage Act, which considers the custom's supremacy in this regard only if it governs both parties to the marriage).

The Muslim Personal Law (Shariat) Application Act of 1937 also includes laws on custom and use as it relates to wills, legacies, and adoption. Despite the fact that these clauses are in violation of Islamic law, they were put into the Act for solely political purposes. In Pakistan, the Pakistan Muslim Personal Law (Shariat) Application Act, 1962, effectively eliminated such

[72] Hindu Marriage Act, 1955, sec. 5 clauses (iv) and (v)
[73] Id Sec. 7
[74] Id Sec. 29(2)
[75] Hindu Adoption and Maintenance Act 1956, Sec. 10, clauses (iii) and (iv)

a clause. As a result of the exception to the general rule, there is still a dyarch in the law applicable to Muslims in the primarily Muslim Union territory of Lakshadweep and the Malabar area of Kerala. In our nation, there is a great deal of variation in the area of personal legislation.

This diversity is founded on factors other than religion. Interterritorial and custom-based variety in the realm of personal law, with its origins in the distant past, could not be rushed in the debates over freedom.

Uniformity : An Erroneous Approach

Part IV of the Constitution contains Article 44, which outlines "Directive Principles of State Policy." Article 37, which comprises the following three points, is the most essential article that controls this section:

(1) No court has the authority to enforce the principles set out in Part IV.

(2) This principle will, nevertheless, be vital in the country's governance; and

(3) It will be the state's responsibility to adopt these principles in establishing laws.

Article 44 does not expressly request that the legislature adopt a civil code; rather, it outlines a concept that the state should follow when enacting civil legislation. 'Uniformity in civil laws' is the core premise of Article 44. When drafting laws pertaining to civil transactions, the state is expected to adopt these principles whenever, everywhere, and to the greatest extent practicable.[76]

The absence of a capital "C" in the words "Civil" and "code" in the constitutional expression "Uniform Civil Code" and the prefix "Uniform" - not found in any of the existing codes (IPC, CPC, CrPC) - very clearly establish that this expression does not refer to a single comprehensive law; it only prescribes a policy principle: that in reforming old and enacting new civil laws, the principle of uniformity should be observed as far as

What looks odd is that the interpretation or application of Article 44 on the internet, i.e., the application of the same legislation to all members of a certain group throughout India, is not discussed at all. Nobody demands that all Hindus in all regions of the nation be controlled by the same legislation under all situations. Nobody wants the Hindu customary law, which is still in effect, to be abolished. Until now, the personal law of religious-cum-cultural minorities has

[76] Tahir Mehmood, Uniform Civil Code : Fictions and Facts, p. 129(1995).

been the focus of law men and laymen interested in Article 44, particularly Muslim personal law, which the protogonists of uniformity aim to eliminate with a single stroke of legislation.

The Uniform Civil Code is a victim of certain myths and realities, and it is ironic that the interpretation and application of Article 44 of our Constitution are not being considered in their proper context. Both the legislature and the judiciary have made unfair attempts to view the entire matter from a 'majoritarian' perspective. Such attempts undermine the entire aim of Article 44, which is to ensure that personal laws are consistent.

India is a vast nation with many different laws and customs. Different cultures, regions, and geographical separation have resulted in these differences. There are also certain groups that receive special protection, such as tribal laws, which were permitted to remain even after the Indian Constitution was enacted. Aside from that, the Constitution established two favoured classes: "Scheduled Caste" and "Scheduled Tribe." We have a wide range of personal laws and practises that are as different as the languages, cultures, and geographical realities of our countries.

Because Article 44 does not direct the legislature to create a civil code, there is an erroneous search for a uniform civil code. It essentially comprises a notion for "Uniformity" in civil law.

When it comes to Muslim Personal Law, there is a lack of intellectual neutrality. The entrenched interests of individuals involved are reflected in media reports, scholarly analyses, and frequently politician's viewpoints. Frequently, Muslim Personal Law is seen as flawed and discriminatory.

The question is, what exactly does Article 44 require? It aspires to offer citizens of the country with civil law uniformity, but only for those who willingly accept and submit to its provisions. As a result, all it requires is a change from veriform to uniform.

Chapter-4 Reform in Minorities Personal Law

We can see from the preceding pages that the state has been hesitant to amend Muslim Islamic personal regulations. The same is true for other minority religion personal rules, such as those governing Christians and Parsis. It cannot be stated that the state's non-interference is due to the unchangeable character of these Personal rules because there has been almost no discussion regarding their religious or secular origins. Rather, the state's non-interference in these communities' Personal Laws is due to their "minority status." Their minority status is a major element in the state's choice to keep these Personal Laws unreformed. The state's approach to reforming Muslim personal law has been replicated in the case of other minority populations' personal laws. The researcher will explore attempted improvements in Christian and Parsi personal law on the following pages.

Reforms in Christian Personal Law

Christian personal law, like other forms of personal law, discriminates against women. Although Christians in India have a similar marriage and divorce law, there is a great deal of variation in their succession rules. In intimate affairs, Christian women, like women from other groups, have less rights than males. In contrast to other communities. The majority of Christian personal law is state-created. The old British government felt more secure in legislating for Christians than Muslims or Hindus, and this might be because they shared the Christian religion. There was no legislative effort to modify Christian Personal Law following the adoption of the Government of India Act, 1935. Despite preparing two reports[77] after independence, the administration did not immediately amend Christian Personal Law. In 1962[78], the government introduced the Christian Marriage and Matrimonial Causes Bill[79] in the Lok Sabha; there is no record of any debate on this bill, which lapsed in 1971, but it is widely assumed that the Christian Bishops were opposed to the proposed reforms, and the government complied with their wishes. Since then, there has been no legislative movement or state-led initiative to modify Christian personal law.

The Law Commission issued a new report in 1983 on Christian divorce grounds, but the government has failed to act on its recommendations. Although the government has been made aware of the need, at least by certain elements of the population, for modifying their Personal Law, there is no direct information accessible concerning the government's position on the

[77] Fifteenth and Ninetieth report of the Law Commission of India, 1960 and 1983
[78] Gazette of India, Extraordinary, Part 2, Section 2, June 22, 1962.
[79] Bill 62b of 1962

subject. The Joint Women's Programme (a part of the Christian Institute for the Study of Religion and Society in Bangalore) issued a memorandum to the Union Law Minister, signed by approximately ten thousand persons, requesting that legislation discriminatory against women be repealed.

Following that, the Joint Women's Programme was established, along with a representative group of Christian women from other women's organisations. In February 1986, the Fellowships of the Churches in Delhi delivered a memorandum to India's Prime Minister (4.ii.86). Since the modifications stated in the memorandum had been advocated throughout different meetings conducted by the joint women's programme, the memorandum claimed to reflect the views of a wide range of Christians.

In the matter of Mary Roy, the Supreme Court issued a landmark decision in 1986, declaring that the Indian Succession Act, 1925 supersedes the Travancore Christian Succession Act, 1916. As a result of this judgement, Syrian Christian women now have an equal portion of their father's property with their brothers. Under the Travencore Christian Succession Act, the daugther's part was only one-quarter of the son's share, up to a maximum of Rs. 5,000.[80]

The Supreme Court further decided that the Travancore Act became ineffective with the passage of Part B of the State Laws Act, 1951, and that the succession of property left by intestate Christian males during the previous 35 years is now in doubt. To put it another way, the decision was retroactive.

The Kerala government filed a review appeal, requesting that the judgment's retroactive impact be removed, but it was denied. The Christians' emotions were similar to those of the Muslims in the Shah Bano case. Kerala's Church establishment also began a coordinated campaign against the Supreme Court decision. In sermons, priests from the Roman Catholic, Jacobite, Church of South India, and Kananya Churches criticised the decision. Churchmen circulated pamphlets and organised meetings to mobilise Christian opinion against the judgement. On two consecutive Sundays, Church of South India pastors told young Christian males that they would continue to get what they had been receiving all along, notwithstanding the law. Bishop Abraham Marclemis of Kananya Church requested a new personal law for Christians. He said that the Supreme Court decision had put the Christian community in a financial bind, and that

[80] The daughter had a right to inherit the father's property if there was no son. In the presence of the sons of intestate, the daughter did not inherit anything. The provision for giving the daughter one quarter share or Rs. five thousand whichever is less, by way of stri-dhanam, which may be loosely translated into dowry.

the decision was on the verge of destroying India's entire Christian community. He was outspoken in his criticism of the decision, which stated that no property could be transferred without the agreement of a female. A new personal law for Christians was also desired by the Jacobite Church. The Church's resistance to the Travancore Succession Act being applied instead of the Indian Succession Act has no evident theological foundation. One of the reasons why the Churches were so vocal in their opposition to the ruling was that a portion of the 'Stridhanam' customarily went to the Church, and if the practise was stopped, the Churches would lose materially.[81]

Meanwhile, Professor P.J. Kurien, a prominent Christian Congress (I) member from Kerala, submitted a private members Bill in parliament. Significantly, the M.P. who introduced the bill represented a large constituency of wealthy Christian landowners[82]. The bill aimed to change the Supreme Court decision so that it would not have retroactive effect.

In this case, the religious officials' solidarity with males rather than women is a clear example of how religion is utilised to perpetuate male supremacy. Neither the Succession Law nor the Christian Divorce Law are pure Canon Law applications. Religious leaders continue to oppose any changes to the Indian Divorce Act, which is based on an obsolete English statute. Neither they nor the government can provide an explanation for this predicament[83]. Given the government's stance in reaction to the Muslim community's demand that the Shah Bano decision be overturned by legislation, it's not out of the question that the Kurient Bill will be enacted into law if there is enough agitation from Christian religious leaders. The importance of the state's willingness to recognise religious leaders as the community's exclusive spokespersons and to elevate religion Personal law over nonreligious civil law cannot be overstated. The state may be forced to comply with similar demands by other communities in the future, at the risk of seeming contradictory.

Reform in Parsi Personal Law

In 1923, the Parsi Central Association took up a reform movement in the area of Parsi Personal Law. A subcommittee was formed to provide recommendations for modifications. In 1927, a sub-committee called the Parsi Law Revision Sub-committee presented its findings. The Parsi

[81] Devadasan, E.D., Christian Law in India (1984).
[82] Mathew, G., "Negating Women's Equality", Hindustan Times, March 3, 1987, 1987
[83] A further difficulty faced by some Christians is that the state legal system does not recognise an annulment of marriage by the Church and vice versa. However, the Church refuses to marry a person who had obtained a Church dissolution of previous marrige but does not have a dissolution decree from the court.

Central Association distributed 500 copies of this report to Parsi Associations, Anjumans, delegates of the Parsi Chief Matrimonial Court, Parsi Jurists and Publicists across India, as well as Parsi Associations in China and Persia. This report was also published in the press, with some changes distributed for public comment. Twenty-five Parsi Associations attended a meeting held under the aegis of the Parsi Panchayat. Twenty-one organisations supported the revisions, but four organisations opposed them because they are "extremely conservative" in their beliefs and do not generally approve of changes that keep up with the times. In 1936, the Federal Assembly debated a bill to change the Parsi Marriage and Divorce Act of 1865. Sir Phiroze Sethna originally submitted this measure in the Council of State in 1934. In 1935, it was distributed for public comment, and a joint Select Committee was formed to study the measure. The Select Committee submitted its findings to the Council of State in 1935, and the measure was enacted on 13.iii.36. In April 1936, the measure was debated in the Federal Assembly.[84]

When it comes to the applicability of Parsi Personal Law, it covers Zoroastrians born to Zoroastrians, as well as children born to a Parsi father and a non-Parsi mother who have been accepted to the Zoroastrians. If a Parsi lady marries a non-Parsi, her children will not be considered Parsis. A Bombay High Court judgement[85] appears to be the basis for the differences in regulations regulating offspring of non-Parsi mothers and dads. In that situation, the presumption was that in a marriage between a Parsi lady and a non-Parsi man, the wife would have to embrace her husband's religious religion. It signifies that the children will be raised according to the father's faith. Thus, this discriminating definition of who is a Parsi is founded on the Bombay High Court's decision in the Sir Dinshaw Case, not on Zoroastrianism's theological precepts.

However, one of the community's priests is said to have said that a Parsi woman marrying a non-Parsi was committing adultery, and that the children born as a result of the union would be illegitimate.

Similarly, the Parsi Marriage and Divorce Act, 1936, and the Indian Succession Act, 1925, both of which apply to Parsis, are not even stated to be founded on Zoroastrianism's doctrines. As previously stated, changes to the Parsi Personal Law were made after consultation with members of the community, not just religious authorities. According to Anklesaria, Parsi

[84] Legislative Assembly Debates, iv, 1935, pp. 3246-247; Legislative Assembly Debates, v, 1936, pp. 4149-153.
[85] Sir Dinshaw M. Petit v. Sir Jamsetji Jijibhai, 1909(11) Bom. LRP 85

Personal Law is founded on Hindu norms and English Common Law standards. In the seventh century, Parsi immigrants arrived in India, and there is scant evidence of the legal system that ruled them at the time. For the management of their affairs, they adopted Hindu rituals and organisations such as the Panchayat, and priests had the last word in all religious matters[86]. However, Parsi Personal Law, like all other Personal Law, has long been regarded to be a religious law, and the community has been slow to propose changes. If the rules of Parsi Personal Law are considered as non-religious. Then there's no need to keep the policies that discriminate against women in place. One likely explanation for this situation is because Parsis are a religious minority, and the government is unwilling to intrude in their personal affairs.

The Indian government has made little effort to change the Parsi laws, which discriminate against women. A Parsi Marriage and Divorce Amendment Bill was tabled in the Rajya Sabha for the first time on November 24, 1986, and was passed by the Lok Sabha and subsequently the Rajya Sabha on 3.vii.87. It was signed by the President on 25.iii.88 and went into effect on 15.iv.88[87]. The Board of Trustees of the Bombay Parsi Panchayat started the process of modifying the Parsi Marriage and Divorce Act, 1936. It made suggestions to the government, which filed a bill to alter the Act in March 1988 and signed it into law. However, restrictions discriminating against women remain in place, and most of the revisions have been labelled as 'cosmetic in nature'[88] by Parsi lawyer Phiroze Vatul.

From the preceding debate, it is obvious that the state's approach toward personal law reform in majority and minority populations is not the same. In the case of the Hindu majority, the state amended its Personal Law, however the Hindu Personal Law still does not treat women equally to males. Hindu Personal Law reform was an essential requirement of the hour, which is why the state amended Hindu Personal Laws to some extent. However, in terms of minority

[86] Another instance where the priest and community members made an arguement about rules is described by paymaster (1954, pp. 104-5) where he says, "The mobeds (priests) and Behdins of Navasari held a meeting on 3rd of June this year to fix the rule of 'adoption'. It was decided as follows : The adopted son is the legal heir of the person adopting him, and should recieve all the properyt of his 'patron' in the event of the later's death. If any person other than the adopted son puts forward a claim on the dead man's property, he is guilty of an offence agaisnt the Anjuman. A man may lawfully adopt any person as his heir during his life time. It is not lawful, however, for his wife to adopt anyone after his death. If it is necessary to adopt an heir after death, such adoption must have the sanction of the Anjuman. The adopted son incurse the liabilities of his father and must pay all his debts. He must also perform all his necessary ceremonies for his 'dead' patron, and the wife of the dead man may if she like, live inthe house of the husband till death. A fine of Rs. 101 was fixed as penalty for any breach of these regulations.

[87] Gazette of India, Extraordinary, Part II, March 29, 1988, p. 1.

[88] Indian Express, June 7, 1988 quoted in Archna Parashar, Women and Family Law Reform in India, p. 194 (1992)' New Delhi.

faiths' personal laws, the state did not attempt to intervene in this area immediately after the split, assuming that doing so would harm religious minorities and alienate them from the majority. Another reason for the state's refusal to interfere in minority religious personal laws was that it did not want to give the impression of coercion in the matter of religious laws, and whenever the state attempted to interfere in the personal laws of minorities, the minorities were vehemently opposed. Archna Parashar responds to the state's stance by saying, "

"In the post-partition period, the national leader's particular attention for the Muslim minority was thus not founded on any constitutional premise. National leaders were not required by the constitution to treat minorities differently from the Hindu majority. If the state had accepted authority to change Hindu Personal Law, it might have done the same with Muslim and other faith personal laws. The decision not to alter the religious personal laws of minorities was most likely founded on the belief that, as a minority, it was simple to alienate them by creating the appearance of force in religious matters. As previously stated, the benefit of granting special status to Muslim and other minorities' religious personal laws was that the government was more likely to gain the assistance of Muslim religiopolitical leaders in its job of nation building."[89]

Except for Parsi law, personal laws of minorities have always been discriminating toward women. While the State altered Hindu laws, the same could not be done with Muslim laws since the policy was to reform them based on the desires of the group in question. As a result, the reform process is obviously centred on the community's minority status rather than the position of women. In terms of Parsi and Christian legislation, several attempts have been done.

Legislative Initiatives in the Field of Muslim Personal Law

Aside from the common notion, Muslims, like Hindus, have attempted to amend their rules on a regular basis. The Jamiat-ul-Ulema is a Muslim religious organisation. Only Ulema, according to Hind, may interpret Sharial. In comparison to their Hindu counterparts, the political elites represented by the Muslim League evaluated all such reform problems. Jamiat-ul-Ulema-iHind made the first effort in 1935 when it introduced the Shahat Application Bill in the Federal Assembly. Several inconsistencies were exposed during Assembly debates. On several issues, the Ulema and the Muslim League disagreed. The bill was sent to the Select

[89] Archana Parashar, Women and Family Law Reform in India, p. 96 (1992, New Delhi).

Committee. As a result, the Bill allowed for the acceptance of various non-Islamic practises. Despite Ulema protests, Khojas and Memons were allowed to continue their traditions. Although it did not succeed in establishing a uniform Islamic law, the enactment established the precedent for the future.

Dissolution of Muslim Marriages Act 1939

The IJlema's Dissolution of Muslim Marriages Act of 1939 was a positive attempt to improve women's status. According to the school of thinking, there were many procedures for women to dissolve their marriages. Women might be disbanded under Hanafi law if they converted to Islam. To put an end to the practise of conversion, the Ulema determined to make the process more efficient. In 1936, Muhammad Ahmad Kazmi submitted a bill in the Federal Legislative Assembly based on Maulana Ashraf Ali Thanvi's Al-Hilal-AI Najizalil halilalAl AJza. The Assembly accepted it in 1939 after a Select Committee's review. The final enactment of the Act displeased the Ulema, and they attempted but failed to stop it. Finally, it was passed and is now in effect, regardless of one's point of view. This attempt demonstrates how political and religious leaders took use of legislative possibilities to help their ladies.

The Special Marriage Act 1954

The government's objective in post-independence India was to bring all groups under one legislation. When the Special Marriage Act of 1954 was tabled in the Lok Sabha, Muslim MPs expressed concern, and Kazi Ahmad Hussain stated in the House that minorities must be heard and their petitions included before any changes are made. Finally, the Bill did not discriminate against any community and included everyone. The Muslim League expressed significant worry over the Special Marriage Act during a heated debate. Despite the Bill's passage, it was made plain that Parliament should not interfere with Shariat and that Parliamentary Acts should not encourage Muslims to abandon their faith. The Special Marriage Act was described as a secular piece of legislation.

Reforms in Other Minority Religious Personal Laws

Reforms to Parsi and Christian legislation were also implemented. Christians had a variety of succession rules, however their marriage and divorce laws were uniform. If public pressure grows after the Supreme Court's decision in Mary Roy's case in 1986 proved contentious, the government may modify Christian legislation in the future. Since 1923, Parsis have been working to reform their laws.

In summary, the state strives for gender equality, although its stance toward Hindus and minorities varies for a variety of reasons.

Muslim Minority Law has been discussed separately in Chapter 6.

Chapter 5: Muslim Minority Law

5.1 How to Reform Muslim Personal Law in India?

Although the injunctions put forth in the Ouran and the Sunnah cannot be modified by any human agent, in the event of ambiguity or the emergence of a new difficulty, recourse may be sought through IJma and Oiya.s, the two techniques of Ijtehad. Ijma is a group way of Ijtehad, whereas Oiyas is a solo endeavour.

To get to the heart of our debate, the Muslim Personal Law and the Uniform Civil Code. We must be clear that certain components of Islamic law are stated to be bringing difficulty to Muslims in general, and women in particular. It is also claimed that Islamic law discriminates against women. Let us look at some of the key areas where the issue is the most pressing and where reform is essential. The primary areas where reform is necessary are listed below.1.1

1. Polygamy
2. Triple Divorce
3. Inheritance and Succession

1. Polygamy is the practise of having many spouses.

Polygamy is maybe the most pressing issue of our day. According to Muslim personal law, Muslims have the freedom to contact up to four spouses at the same time. However, if we look into the Our'an and the history of Arabia, we can see that monogamy is the general rule and polygamy is an exception that is permitted in specific circumstances. This is clear from the wording of the Our'an itself, where this provision was given. Polygamy is addressed in the following verse:

1st "If you are afraid that you will not treat the (female) orphan wards under your charge fairly,
1. do not marry any of them;

2. but marry other women whom you like, two, three, or four; and

3. if you are afraid that you will not act equitably, then marry one only (from free women) or

4. from the female captives under your charge. This will make your dealings with others much easier.[90]

This text does not condone polygamy, which is a vital thing to keep in mind. It only allows polygamy under extremely severe conditions, such as being equal amongst the women. It is illegal to marry more than one wife if one cannot do justice between the spouses. This passage was revealed after the battle of 'Uhad,' when the Muslim community was left with a large number of orphans and widows.

As Abdullah Yusuf Ali points out in his translation of the Quran, "T "Their treatment was to be guided by the highest standards of humanity and equality. [91]

Although the occasion has passed, the principles have not "If we look at the history of Islam, we can see that before Islam, people typically lived in a time when fighting was the norm, with the result that the number of males was far lower than the number of women. Unfortunately, many ladies were abandoned to a life of poverty and misery. This situation contributed significantly to the institution of polygamy's survival. During the early period of Islamic history, this situation persisted. It is no secret that Muslims have been at war with an adversary intent on eradicating them. Women have lost their husbands and young children have lost their fathers. Islam allowed a man to have more than one wife in order to deal with such situations. There might be additional circumstances that force polygamy.

As a result, polygamy is a solution in Islam, rather than the norm. It has its benefits and drawbacks. Islam advises against the latter and permits the former only under rigorous conditions and limitations. Polygamy, like other permissibles, falls under the group of legal concepts inside (Ahkam) known as Mubahat (permissibles). If some lawful items are exploited and misused for nefarious aims, shattering the moral fabric of society, an Islamic state or a Muslim community, as the case may be, has every right to intervene in the situation by temporarily suspending it and imposing some limitations on its functioning. Other social and economic effects of polygamy may be properly considered in this context, considering the fast

[90] ayeed Ahmad Akbarabadi, "How to Effect Changes in Islamic Law", islamic Law in Modern India, Tahir Mahmood ed., p. 120 (1972)

[91] Support for this is found in the history relating to the legislative policies of Umar b. Khattab, the second Caliph. For instance, a Muslim is permitted to marry a Kilahiyya women, but when 'Umar came to know that this practice was gaining popularity in the community he came forward to ban it and said : "1 have no right to make an illegal thing legal or vice versa. But imagine what would happen to the maidens of Arabia.

expansion in the world's population. The interests of individuals who are truly in need of a second wife, on the other hand, must not be compromised.

2. Triple Divorce

Divorce in general, and triple divorce in particular, is another key area where Ijtchad is required. Allowing triple divorce in India is not in accordance with actual Islamic law, but the practise has found a home in India, where the majority of Muslims follow the Hanafi School of jurisprudence, for historical and legal reasons. There is no need to delve into the historical causes for triple divorce; yet, it is a well-known reality that the vast majority of Muslims in India regard triple divorce as their sole option for divorce owing to their ignorance. They abuse it on a regular basis, causing suffering for thousands of families, including their own.

Now we'll examine if Islam allows for any reforms or restrictions on triple divorce, as well as its resolution under Islamic law. Divorce, another Muhah (permitted thing), was regarded by Prophet as the most despicable of the permissible things (Abghad-Al-Mubahat). In this regard, the conduct of the unscrupulous in the Muslim community has proved detrimental to a solid social order, inflicting anguish to innocent women who have done nothing wrong. As a result, there is a need among some parts of the society to look at the Islamic law of divorce to see whether any adjustments may be made. There is plenty of room for Ijtehad in this situation as well. First and foremost, it is important to remember that the Our'an stipulates that in any conflicts between husband and wife that may result in a breach, two judges are to be recruited from the respective people of the two sides.[92]

These judges are expected to attempt to bring the parties together, failing which a divorce, or khula, would be the last option. This means that, while the husband is the one who must proclaim a divorce, he is bound by specific restrictions in exercising this privilege and is not free to do so at his leisure. Ali, the fourth Caliph, is said to have advised a husband who believed he had exclusive authority to divorce his wife that he would have to follow the ruling of the judges established under the verse mentioned above. The Prophet (SAW) is also said to have intervened in the subject, at times disallowing a divorce decreed by a husband and thereby restoring marital connections, and at other instances handling three divorces at the same time. This demonstrates that a legal authority has the authority to intervene in a divorce case. As a

[92] The Quran, IV : 35, 130.

result, Muslim jurists of any age will have the authority to revise or change the existing divorce rule in order to address a current situation.

Three considerations will be considered when considering a prospective reform in divorce law:

a. Whose divorce decree would be legally binding?

b. Under what conditions is a divorce lawful or invalid? and

c. What method for obtaining a divorce would be considered valid?

These issues have been fully examined in the works by our distinguished jurists. Their debates clearly provide up a lot of room for a Mujtahid in our day to use his own judgement and discretion when it comes to current divorce issues.[93]

In terms of a woman's right to divorce, this right is granted to her and is referred to as Khula[94]. When it comes to the dissolution of her marriage, this is the most essential prerogative a Muslim woman has. It's almost the same as a husband's right to dissolve his marriage through divorce. The sole distinction between a husband's right to divorce and a wife's right to divorce is that if the husband refuses to divorce the wife through Khula, she must go to the Oazi or the court, depending on the situation. Unfortunately, due to a court misreading of the Khula regulations, Muslim women in India do not have access to this entitlement. This gap in the law, which is causing hardship for thousands of Muslim women, could be filled by a Supreme Court ruling or a legislative amendment.

---

[93] ibid

[94] Khul'a : The literal meaning of Khul'a is to take off and to pull out. Khul'a means that the demand of talaq may be made on behalf of the woman from the man. Its one side is moral and the other is legal. Even as the Sharia'ah does not like the talaq on the moral side, it also does not like the khul'a, because the shari'ah's objective is one and the same place and notthe separation, and talacj or khul'a is valid only as the last remedy.

Thus, termination of marital relation by the husband in consideration for a return agreed upon by the parties is khul'a, whether it is through the word khul'a or by mubara 'at, or by the word talaq or any of its synonyms.

The basis of the khul'a is the following verse of the Quran:

"And it is not proper for you at the time of bidding her farewell that what you have given her you take it back from her. However, this form is an exception that the spouses may not be within the compartment of Allah's limits. In such a case if you feel that they will both not fear of remaining on the divine path, then there is no distress if a common bond is signed by them that the woman, by giving something to the husband, may obtain separation from him." (Baqarah 2:229)

If the matter of khul 'a may not be settled mutually and the matter may reach the court, then the court has the right to obtain the khul'a to keep the limits of Allah intact, by command and source.

In case of not obeying the order the court the example of Jahr (compulsion) is found in a decision of Hazrat Ali who had written in it to a voilent husband that "you will not be left as long as you may also be ready to accept the decision of the Hakimin as the woman has been."

3. Inheritance and Succession

The third most important aspect of Muslim Personal Law, which is frequently criticised by so-called enlightened and progressive Muslims and proponents of a Uniform Civil Code, is the role of women in property matters, as well as the exclusion of a grandson from his grandfather's property if the father predeceases. The issue of inheritance and shares is addressed in Our'an. If an alleged injustice is committed on the basis of a clear verdict in the Qur'an or the Sunnah, no Muslim (or, more accurately, no human agent) is authorised to make any changes. If any school has issued an inheritance rule based on Ijtehad, that rule can be changed by a later Ijtehad that meets all of the conditions of a legitimate Ijtehad[95].

To sum up the entire topic, no human agency has the authority to modify or amend any of the Our'an's explicit provisions or the Prophet's established practise (SAW). Every Muslim is obligated to believe in them and adhere to their rules. A Muslim is likewise not free to interpret the passages of the Qur'an and the traditions of the Prophet (SAW) in a way that contradicts the consensus of our forefathers. If the circumstances warrant it, the Muslim Personal Law may be amended within the bounds set by these Ulema. The following are some guidelines for proposed Muslim Personal Law reform in India.

1. Make a list of all the laws that cause complexities and difficulties and that need to be resolved.

2. If any of the laws listed above are specifically stated in the Quran and Sunnah, it is reasonable to assume that the difficulties and complications emerge only due to a lack of adequate comprehension and compliance, or that the society has to be morally toned up. However, if these rules do not run against the spirit of the Quran and Sunnah, the idea of submitting them to specific conditions and restrictions might be explored. In most Muslim nations, modifications have occurred in which one provision of any school of Islamic jurisprudence has been substituted by any other provision of any other school. In this regard, we should follow Shah Waliullah's advice, which is that, among the many opinions and verdicts, we should prefer that which is more in tune with the spirit of the Quran and the Sunnah, and which can solve the problems more satisfactorily.

[95] On 26 July, 2001 "A compendium of Islamic Laws", containing a section wise compilation of the rules of Shariat falling into the domain of Muslim Personal Law, has been prepared for and on behalf of the All India Muslim Personal Law Board. It is based on the most authentic principles of the Islamic Law.

Maulana Syed Hamid Ali has established the following approach in this regard:

"As a result, a committee of Ulema comprising diverse Muslim sects and organisations, as well as Muslim jurists, is urgently needed. This committee should be tasked with generating a draught, which will eventually lead to the final drafting after a thorough and open discussion"[96].

This draught will take on the status of a law code for Muslims to follow from an Islamic perspective, but it will have to be referred to Parliament due to the current state of affairs in the country, which requires every such code to receive the approval of the Parliament before it can be enforced by the law courts. It will take a lot of work to get the finalised document passed without any changes. However, any revisions should be sent back to the aforementioned committee of Muslim Ijma and jurists.[97]

Reforming Muslim Personal Law is a contentious subject, with supporters and opponents on both sides. To effectively handle the problem, numerous factors must be addressed, such as authority to make any change and the way in which that change is implemented, including the indicated regions. There was never an issue while Prophet Mohammad (SAW) was in charge. Following his death. Our'an and Sunnah were followed to the letter and spirit by the Caliphs. They used their intellect and judgement in this as well. During the Caliphate of Umar and Ali, Shariah law was changed multiple times. Several Imams interpreted various ideas according to their study in subsequent periods. In truth, all of these deviations and revisions were based on logic. The sources included Qiyas (Analogy), Istehsan (Equity), IJrf and Ada (Custom and Usage), and Masaleh-al-Mursaleh (Public Interest). As a result, Muslim Law underwent a protracted period of change. The only option to reform Islamic law is through ijtehad. Three elements of Muslim Personal Law in India need to be addressed for improvement. Polygamy, Triple Divorce, Succession, and Inheritance are all topics that come up in conversations. Polygamy is a solution sanctioned by Islam, not a convenience. A second wife can be taken in certain conditions. Because the procedure adopted in India is an innovation in Islamic law, triple divorce might be outlawed through the IJfehad process.

[96] On 26 July, 2001 "A compendium of Islamic Laws", containing a section wise compilation of the rules of Shariat falling into the domain of Muslim Personal Law, has been prepared for and on behalf of the All India Muslim Personal Law Board. It is based on the most authentic principles of the Islamic Law.
The compendium is available both in Urdu and English. The complete operative part of the compendium, running into 440 sections, has been translated by Professor Tahir Mahmood. The English translation has been arranged under five parts covering 34 chapters

[97] Maulana Syed Hamid Ali, "Changes in Muslim Personal Law: Scope and Procedure", Muslim Personal Law, in F.R. Faridi and M.N. Siddiqui, ed., p. 92 (1985

Inheritance has been explored extensively in Our'an, and it should continue to do so. Above all, change must come from inside, rather than from without.

Chapter 6: Uniform Civil Code in Goa

6.1 Uniform Civil Code in Goa

The words "uniform civil code" are made up of three words: "uniform," "civil," and "code." The term uniform refers to the fact that everyone is the same in all circumstances; the term civil comes from the Latin word 'civils,' which means citizen when applied as an adjective to the term 'law,' which refers to a citizen's right; and the term code comes from the Latin word 'codex,' which means book. As a result, it implies the concept that uniform rules apply to all citizens of India, regardless of caste, religion, birth, sex, or tribe.

A. India's personal laws:

There are many different types of family laws in India. The Christian marriage laws of 1872, the Indian separation statute of 1869, and the Indian advancement act of 1925 are all in place. The Jews have their own unaltered standard marriage legislation, which they administer through a progressive demonstration from 1925. Similarly, the Parsis, Hindus, and Muslims each have their own marriage and divorce laws, as well as their own independent succession laws. They have their own set of rules when it comes to personal matters. Statutory action has largely secularised and modernised Hindu law. Muslim law, on the other hand, remains unchanged and traditional. There is also a law called the Special Hindu Marriage Act of 1956, which is a secular code of marriage that allows two Indians, regardless of their religion, to marry. However, the law that should be applied depends entirely on the religion, so Muslim law is non-statutory and divided into several schools and sub schools. Similarly, Hindu schools are separated into several sub-schools. As a result, personal law today is a maze. It is critical to have a consistent civil code to create a uniform legislation. We must first comprehend what the unified civil code is.

The word "uniform civil code" is derived from the notion of "CIVIL LAW CODE." Which governs individuals from many communities, religions, and geographical places. This is essentially founded on the right of citizens to be subject to their own laws.

The key categories covered by the civil code are: Personal status of a person Rights related to property acquisition and administration Marriage, divorce, and child adoption

All these concepts are listed in the Indian constitution, which establishes the administration of a uniform civil code as a directive principle, although it is not applied in India. Different communities, such as Muslims, Christians, and others, reject the secular universal civil code. As a result, some localities advocate for a common civil code. The Bharatiya Janata Party, the Rashtriya Swayamsevak Sangh, and the Vishwa Hindu Parishad are the three major parties in India. In India, people who oppose this law are referred to as "secularists," while those who support it are referred to as "communalists."

The uniform civil code is a type of legislation that superseded personal law, which was based on the conventions of each religious group and had a common set of regulations controlling citizens. The obligation of the state in India is clearly forth in Article 44 of the directive principle ("the state should endeavour to establish for citizens a uniform civil code across the territory of India"). Apart from that, there was the problem of India's secularism. In the case of the SHAH BANO CASE in 1985, the topic became the most contentious in relation to this problem. As a result of this case, a debate over Muslim personal law arose. The SHARIA LAW is the foundation of Muslim personal law. The fundamental problem in this case was Bano's request for maintenance from her husband, which created a clash between secular and religious authorities over the subject of a unified civil law. He divorced Bano after 40 years of marriage, and he did it by uttering "Talaaq" three times. She was granted an inheritance by a local court, but the decision was overturned by the Supreme Court, and the uniform civil code came into effect as a result of the "maintenance of wives, children, and parents" provision under section 125 of the all India criminal code, which applied to all citizens regardless of religion. The matter quickly became into a national political issue. The Muslim Women (Right to Protection on Divorce) Act of 1986 takes effect as a result of this lawsuit. As a result, in a number of circumstances, such as:

In the case of *State of Bombay v. Narasu Appa Mali*[98], the court concludes that the founders of the Indian constitution did not intend to challenge the personal laws of a community via basic rights while evaluating the constitutionality of the Hindu bigamous marriage legislation of 1946.

Later, in the case of Ahmadabad Women Action Group v. Union of India, a writ petition was filed challenging personal Muslim laws that allow polygamy as violating articles 14 and 15 of the Indian constitution, but it was denied as a matter of state policy, which is beyond the

[98] A.I.R. (39) 1952 Bombay 84 [C. N. 16]

jurisdiction of the courts. In the case of P.E. Mathew v. Union of India, the Kerala high court ruled that Christian personal laws are not covered by basic rights.

The Supreme Court of India instructed the guidelines of Article 44 of the Indian Constitution in the case of Sarla Mudgal v. Union of India[99]. The question was raised as to whether a Hindu husband who married according to Hindu law and then converted to Islam can have a second marriage. The court ruled that a Hindu marriage can be dissolved under Hindu law provided certain conditions are met, as outlined in the Hindu Marriage Act of 1955. However, the Hindu marriage act was dissolved by converting to Islam and marrying, and a second marriage after converting to Islam is prohibited by Islamic law under section 494[5] of the Indian penal code.

The Supreme Court reminded the Indian government of its need to adopt a unified civil code in July 2003 [6] when a Christian priest challenged the constitutionality of section 118[7] of the Indian succession act. In 1997, John Vallamatton, a priest from Kerala, filed a writ suit in the Supreme Court, claiming that section 118 discriminated against Christians and put unjustified restrictions on the transfer of land for religious purposes. The court, which included justices V.N.Khare, S.B. Sinha, and A.R.Lakshamanan, found section 118 to be unconstitutional.

"Article 44 establishes consistency in state across the territory of India to fulfil the shared goal of a uniform civil code," Chief Justice Khare said. He expressed his disappointment that Article 44 is no longer in effect. The country's single civil code is still being developed by Parliament."

After considering all of these instances, the Supreme Court has decided that an unified civil court system should be created across India. The supreme court said that "a unified civil code will aid in national unification by removing divergent allegiance of laws resulting from clashing ideologies," but the parliament disagreed, believing that the time was never right to introduce a universal civil code in India. The state of Goa, on the other hand, gathers all religious communities under the canopy of a common law that is uniform civil law.

B. Goa's Uniform Civil Code

Goa is the only state in India with a universal civil code that applies to all citizens, regardless of religion, gender, or caste. Goa's family law is similar to that of the rest of the country. As a result, Goa is the only Indian state with a single civil code. In Goa, Hindus, Muslims, and Christians are all subject to the same marriage, divorce, and succession laws. When Goa

[99] (1995) 3 SCC 635

became a union territory in 1961, the Goa Daman and Diu administration act 1962 permitted the Portuguese civil code of 1867 to be applied to Goa, with the competent legislature having the authority to alter and abolish it.

Marriage in Goa is a contract between two persons of opposite sexes with the intention of living together and forming a lawful family, which is registered with the civil registrar's office. And the parties must follow the specific rules and regulations before they can live together and begin their lives together. However, there are some restrictions under which certain categories of people are prohibited from marrying, for example, any spouse convicted of committing or abetting the murder of another spouse is not permitted to marry.

Special Marriage Act 1954

This type of marriage statute allows two people of opposite sexes to marry civilly, regardless of their faith. This legislation flourished in India, allowing Indians to marry outside of their personal law conventions. This legislation applies across India, with the exception of Jammu & Kashmir, which has been granted special status under Article 370. His statute is nearly identical to the Hindu Marriage Act of 1955, which demonstrates how the law is secularised in its treatment of Hindus. All members of the Muslim community are required to marry under the special marriage statute. Polygamy was made illegal under this legislation, and the Indian succession statute would control the system of succession, as well as the divorce system. However, in Goa, there are several rules that must be observed when it comes to divorce. According to this act, Muslim community members who have registered their marriage in Goa are not allowed to take more than one wife, and during the marriage period, all property and wealth owned by the couple are divided equally between the spouses, with each spouse having a half-share of the property. If one spouse dies, the other spouse inherits half of the property. The remaining half of the land was split equally among the children.

(D) Secularism vs. the Uniform Civil Code

Amid the debate, we live in a secular state, and the Indian constitution's preamble declares that India is a "secular democratic republic." This indicates that there is no official religion, and that a secular state should not interfere with other people's religious practises or discriminate against them on the basis of their religion, which means that there should be no interference with other people's rights.

According to Justice Jeevan Reddy, in the case of S.R.Bommai v. Union of India[100], religion is a matter of each communities' beliefs, and to follow their own customs, a law cannot be merged with a uniform law, and secular activities can be governed by them with their own personal law.

The notion of "positive secularism" is popular in India. The notion focuses on the distinction between positive individual spiritualism and individual faith. Article 25 of the Indian constitution guarantees the right to freedom of religion, as well as the freedom to follow and practise one's own faith. This right, however, is always limited by the rights of public order, decency, peace, and order.

The uniform civil code is not anti-secular or anti-articles 25 and 26. Article 44[101] essentially states that religion, traditions, and personal laws can be overruled. Marriage, succession, and other issues relating to the state's secular nature. The goal of an unified civil code is to avoid interfering with people's customs and traditions. The fundamental goal is to provide equality to all Indian citizens.

The climate should be established in which all sections of society feel comfortable and sit together, and there will be no disturbances in the community, according to the reason why a standard civil code should be imposed in India. In this regard, law minister DR. Ambedkar stated that a codified law is necessary for the country's unity. Through the concept of a standard civil code, we may implement it across all religions, ensuring that every member of society abides by the law.

Family law refers to the civil code of Goa as a whole. The Portuguese colonial authorities shaped and enforced this. The most important outcome of this law is the creation of a pre-nuptial public deed for the disposition of property in the event of divorce or death. The backbone of Goa is the universal civil code.

A unified civil code should not be enforced in India, in my opinion. As implemented by the Goa government. The fundamental reason why a unified civil code should not be enforced is because India's family rules are based on religion and customary law. Everyone believes in their religion and customs, and they feel that whatever is said in their religion and in personal law is correct and should be followed in their society; nevertheless, some

[100] 182 (Supreme Court 1994)

[101] Supra Note 55

individuals believe their law, customs, and traditions are correct, while others may believe otherwise. It is a breach of basic right "as freedom of conscience, practise, and promotion of religion" provided by article 25[102] of the Indian constitution for any community that believes tradition or traditions are inappropriate. Everyone in India believes that his or her rituals are the finest, and no one wants to change them. The blending of religious practises leads to politics and a socially problematic scenario. Most of the population, whether Hindus, Christians, or Muslims, are unwilling to support secular laws that separate religion practises, and it is also ethically wrong to impose one group's customs on another. As a result, in my opinion, imposing a unified civil code in India should be avoided since it would result in riots and the violation of many people's fundamental rights.

The notion of a single civil code for all of India is seen as extremely beneficial in promoting national unity and integrity, as well as the motto "one citizen, one law." But this remained an issue since we live in a democratic nation where individuals of many castes reside and have their own set of laws. If we enforce a consistent legislation on all Indian citizens, It may impinge on a citizen's basic right, and some citizens may believe the law is correct, while others may believe the legislation is incorrect. For example, whereas more than marriage is forbidden under Hindu law, it is permissible under Muslim law, raising the issue of discrimination and violation of one's personal rights. As a result, we cannot enact laws that infringe on the rights of other members of the community.

[102] Supra Note 55

Chapter 7: Uniform Civil Code with respect to Fundamental Rights and Directives principles of State Policy

Part IV, Article 44 of the Constitution states, "The State should endeavour to give to the citizen a Uniform Civil Code across the territory of India."

According to Article 37 of the Constitution, the DPSP "shall not be implemented by any court." Nonetheless, they are "vital to the government of the country." This means that while our constitution encourages the adoption of a Uniform Civil Code in some form, it does not require it.

Other constitutional clauses pertaining to religious freedom and secularism include:

• Discrimination on the basis of religion, race, caste, sex, or birthplace is prohibited under Article 15.

• Article 25- Religious liberty, includes freedom of conscience and the free practise, spread, and profession of religion, subject to reasonable constraints based on public order, health, and mortality.

• Article 25 (2) governs secular activities such as social welfare and reform, as well as religious practises.

• The ability to organise and run religious institutions (Article 26).

• Article 27: The state is prohibited from levying a tax whose proceeds are used to favour a particular religion.

• Article 28 addresses the issue of religious instruction in educational institutions.

The 42nd Constitutional Amendment Act's preamble now includes the word "secularism." In the case of *S.R.Bommai v. Union of India*[103], the Supreme Court found secularism to be a basic component of the constitution.

According to Article 441[104] of the Indian Constitution, the government must make every effort to guarantee that citizens throughout the country enjoy the same civil status. The state is required to take steps to build a single civil code across India's territory, according to this article. Two objections were voiced in the Constituent Assembly to the creation of a uniform

[103] Supra Note 100

[104] It reads: Uniform Civil Code for the Citizens

civil application for all of India. It would be a breach of Article 25's fundamental right to religious freedom, as well as a tyranny against minorities. The first point in dispute is incorrect. The instruction in Article 44 does not impede on Article 25's[105] right to religious freedom. Article 25 clause (2)[106] specifically exempts secular activities related to religious practises from the religious freedom guarantee (1).[107]

"An additional argument has been made that implementing a civil code would be oppressive to minorities," said Shri K.M. Munshi, a member of the Constituent Assembly's drafting committee, in response to the second point. Is it oppressive in any way? In no mature Muslim country has a minority's personal law been judged sacrosanct enough to prevent the establishment of a civil code. Take, for example, Turkey or Egypt. No minority is authorised to have such rights in these countries. But I take it a step farther. When the Shariat Act of 1937 was passed, and when certain legislation was passed in the Central Legislature during the previous regime, the Khojas and Cutchi Memons were furious. They followed specific Hindu ceremonies after that, as they had for generations since their conversion. They didn't want to follow Shariat, but thanks to a bill passed by the Central Legislature, certain Muslim members who believed Shariat should apply to the entire community were able to make their case[108]. The Khojas and Cutchi Memons didn't have a choice but to surrender. What rights did minorities have back then? When seeking to bring a community together, it is vital to consider the benefits to the entire group rather than the customs of a part of it. As a result, labelling such work as tyranny of the majority is wrong. If you look at the countries in Europe that have a civil code, you'll discover that it applies to everyone from all over the world, including minorities. It is not seen as oppressive by the minority. The question is whether we will be able to integrate and unite our personal laws to the point that the entire country's way of life becomes unified and secular over time. We want to learn about religion through personal law, often known as "relationships," or the rights of parties to inherit and succession. What do these things have to do with religion, which I'm not sure what it is? [109]

[105] The Constitution of India, Article 25: Freedom of conscience and free profession, practice and propagation of religion
[106] It reads: Nothing in this article shall affect the operation of any existing law or prevent the State from making any law – (a) regulation or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
[107] It reads: Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion
[108] ibid
[109] ibid

Consider the disadvantages that will persist in the absence of a civil code. Take, for example, the Hindus. Mayukha law is followed in some parts of India, Mitkshara law in others, and Dayabhaga law in Bengal. Even Hindus have begun to build their own Hindu law in this way. Are we going to allow this disjointed legislation because it impacts personal law throughout the country? As a result, it is no longer only a minority problem; it now affects the majority as well[110]. I understand that Hindus are opposed to a uniform civil code. Personal law, like as inheritance and succession, is seen as an essential part of their religion. If this were the case, it would be impossible to guarantee women equality, for example. You have, however, previously approved a fundamental right to that effect, and you have an item here that prohibits sex discrimination. In Hindu law, you can find any level of discrimination against women, and if it is a component of Hindu religion or Hindu religious practise, you won't be able to pass a single rule elevating Hindu women to the position of males. As a result, there is no reason why India's entire territory should not have a civil code. Religion must be limited to those domains that legitimately relate to religion, and the rest of life must be managed, unified, and modified in such a way that we may quickly establish a strong and cohesive nation. The first and most important challenge we confront in this country is creating national unity. We feel that national unity has been attained. However, many - and significant - factors continue to pose serious threats to our national consolidation, and it is critical that we unite our entire lives, insofar as they are limited to secular spheres, so that we can say, "Well, we are not only because we say so, but also in effect; by the way we live, by our personal law, we are a strong and consolidated nation," as soon as possible. I submit that, if I may say so, the opposition is not well advised just on that basis. I hope our allies don't misunderstand this as an attempt to impose tyranny on a minority; the majority is far more oppressed.[111]

BEFORE THE LAW, THE UNDERLYING PRINCIPLE OF EQUALITY

Everyone living within India's borders has the right to equality, according to the Indian constitution. No one will be denied equality before the law or equal protection under the law as a result of this provision. The first expression, "equality before the law," declares that all people in India are equal before the law, implying that no one has a unique advantage over another. Its origins can be traced back to English common law. Everyone, regardless of status

[110] Gokulesh Sharma Human Rights and Social Justice, 151 (Deep & Deep Publication, New Delhi, 2007)
[111] M. P. Raju, Uniform Civil Code – A Mirage, 237 (Anamika Pub & Distributor, 2003).

or circumstance, is subject to the normal courts. There are no exceptions to the rule of law. Everyone has the right to sue, and everyone has the right to be sued.

Prof. Dicey defined legal equality in England as "any official, from the Prime Minister down to a constable or a tax collector, is under the same obligation as any other citizen for every act done without any legal justification as any other citizen." The second expression, equal protection of the laws, is a corollary of the first and is based on the 14th Amendment's last clause of the first section, which states that all persons within the territorial jurisdiction of the Union shall be afforded equal protection in the enjoyment of their rights and privileges without discrimination or favouritism. It has been suggested that "equal protection of the laws" is a pledge of protection or assurance of equal laws.[112]

As a result, Article 14 uses two terms to establish equitable treatment as an obligatory norm of government behaviour. The former declares that everyone is equal before the law, that no one is entitled to special treatment, and that all classes are equally subject to the nation's ordinary law; the latter presupposes that everyone is protected equally in the same position and under the same circumstances. There must be no prejudice in the privileges bestowed or the obligations imposed. The impact of negative content on positive content is unknown, and the Supreme Court has been obsessed with the positive aspect.

The Guiding Principle of Article 14

The guiding concept of the article is that all people and things in similar situations should be treated similarly in terms of privileges granted and obligations enforced. *"Equality before the law"* means that individuals who are treated similarly should receive equal treatment. As a result, discriminating between people in fundamentally identical situations or conditions is illegal. People who are subjected to varying conditions and circumstances do not receive unequal treatment. The rule is that things that are similar should be treated similarly, not that things that are unlike should be treated similarly. This piece isn't just for citizens; it's for everyone. The advantages of this essay will also apply to a corporation that is a legal entity.[113]

THE RIGHT TO FREEDOM OF RELIGION

Religious freedom, including freedom of conscience, practise, and promotion, is guaranteed by Article 25 of the Indian Constitution. As a result, (1) everyone has the same right to freedom

[112] Ibid pp.67
[113] Harish Chandra v. Union of India; Decided on December 06, 2007

of conscience and the freedom to freely profess, practise, and propagate religion, subject to public order, morality, and health, as well as the other provisions of this part; and (2) nothing in this article affects the operation of any existing law or prevents the state from making any law – (a) regulating or restricting any economic, financial, political, or other secular activity that may be associated with religion; and (b) regulating or restricting 130 According to its explanatory clause, the wearing and carrying of kirpans should be considered part of the Sikh religion's profession (1). According to explanation –II, the reference to Hindus in sub-clauses(b) of clause (2) shall be interpreted as referring to those who practise the Sikh, Jaina, or Buddhist religions, and the reference to Hindu religious institutions shall be construed accordingly.[114]

It is important to note that Articles 25 and 26 should be read together. Article 25 protects individual rights, as opposed to the rights of organised bodies, such as religious denominations or sections thereof, which are protected by Article 26. Both clauses protect religious ideas and beliefs, as well as religious practises like rites, observances, ceremonies, and worship styles. These articles encapsulate the notions of religious tolerance that have been a defining feature of Indian civilisation since the dawn of time, with any instances or times when this trait was lacking being a minor blip on the radar. Aside from that, they serve to emphasise Indian democracy's secular nature, which the founding fathers believed should be the constitution's very foundation?[115]

Everyone, not just Indian citizens, is protected by Article 25 (1), which guarantees freedom of conscience and the right to freely profess, practise, and disseminate religion. The right is subject to public order, health, and morality in all instances. Additional exceptions are grafted onto this privilege in clause (2) of the article. Clause (2), subclause (a), preserves the state's power to enact laws regulating or restricting any economic, financial, political, or secular activity that may be associated with religious practise, while clause (2), subclause (b), preserves the state's power to enact laws promoting social welfare and reform, even if they may conflict with religious practises.[116]

The right to have beliefs and doctrines concerning matters that are advantageous to one's spiritual well-being is known as conscience freedom. A person has the freedom to believe in

[114] Ibid pp.56
[115] Tarun Arora, "Secularism under the Constitutional Framework of India", available at: http://www.legalserviceindia.com/articles/ct.htm (Visited on April 23, 2022).
[116] Rev.Stainislaus v. State of Madhya Pradesh and Others, AIR 1975 MP 163.

any religious faith that exists in any place or group. He not only has the right to have whatever religious views his judgement or conscience approves of, but he also has the right to express his feelings in ways that his religion forbids. According to the text, he has the right to "profess, practise, and promote his faith."[117] To profess a religion, one must be able to freely and openly declare one's beliefs. "As much as faith or belief in specific doctrines, religious practises or performances of actions in advancement of religious conviction are as much a component of religion," he says. The protection of rituals and observances, as well as rites and modes of worship considered fundamental to a religion. What constitutes an essential aspect of a religion or religious practise must be determined by the courts based on a religion's theology and must include acts that the community considers to be part of its faith. He is permitted to promote religious ideas for the benefit of others once more. Whether the propagation is done by an individual or on behalf of a religion or institution, it makes no difference.[118]

Religious liberty, on the other hand, cannot be used to justify actions that are detrimental to public order, health, or morals. As a result, religious freedom is subject to "public order, health, and morals," according to Article 25. In *Ramji Lal Modi v. State of Uttar Pradesh*[119], the Supreme Court held that section 295-A of the Indian Penal Code[120] does not conflict with articles 25 and 26 of the Constitution because it imposes a restriction in the interest of public order, making punishable the deliberate and malicious intent to offend the religious feelings of any class of Indian citizens. While the ability to freely practise religion is protected, subject to the limits of public order, health, and morality, activities that are economic, commercial, or political in nature, even if they are tied to religious practise, do not receive the same protection. True, assessing whether an issue falls under basic religious practise or is simply a secular, commercial, or political action that has become associated with religion is not always straightforward[121]. In contrast, the Supreme Court has decided against relying on foreign authorities to determine what issues are covered by religion and which are not.[122]

[117] S. P. Mittal, etc. v. Union of India and Others, 1983 SCR (1) 729
[118] Prof. Dr. K. L. Bhatia, Legal Language and Legal Writing, 420 (Universal Law Publishing Co., New Delhi, 2010)
[119] AIR 1957 SC 620: 1957 SCR 860
[120] Indian Penal Code, 1860, Section 295-A: Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.
[121] Shahnaz N, "Uniform Civil Code: Whether a Directive to Promote Unity? Rhetoric and Reality", available at: http://www.omicsgroup.org/journals/uniform-civil-code-whether-a-directive-to-promoteunity-rhetoric-and-reality-2169-0170-1000156.php?aid=60343 (Visited on April 22, 2022).
[122] Namdhari Gurudwara v. Nakbinoo and Others, 5 (1969) DLT 592.

As previously noted, religious freedom under clause (1) is conditional on the state's ability to adopt social welfare and reform legislation. Because it fell under section 2, the Bombay High Court found that a law outlawing bigamous weddings did not infringe religious freedom. (b). Similarly, the provisions of the Hindu Marriage Act, 1956 are protected under Article 25 subclause (b). (2). This phrase could be used to defend the outlawing of harmful rites like 'Sati' and the 'Devdasi' system. However, because it did not fall within clause 2's exception, a law limiting the practise of excommunication in a certain community was ruled to be illegal (b). Furthermore, the second interpretation of Article 25 indicates that the term "Hindus" includes followers of the Sikh, Jaina, or Buddhist religions. The explanation is solely for the purpose of explaining article 25(2)(b). While Jains are not Hindus by faith, they are subject to the same laws as Hindus under various statutes.[123]

DIRECTIVE PRINCIPLE FOR STATE POLICY

The state is responsible for creating a social order in which social, economic, and political fairness are represented in all elements of national life, according to Article 37[124]. Wealth and its sources of production should not be concentrated in the hands of a few, but rather distributed to serve the common good, with enough food for all and equal remuneration for equal work. The state must make every effort to ensure employees' health and strength, as well as their right to employment, education, and support in times of need, as well as appropriate and humane working conditions, a living wage, a standard civil code, and free and compulsory education for children. Forming local panchayats, promoting the educational and economic interests of the poorer sectors of society, improving public health, organising agricultural and animal husbandry, separating the executive from the judiciary, and promoting international peace and security are all things that the state must do.[125]

The Directive Principles of State Policy found in Articles 37 to 51 of the Constitution share two characteristics[126]. To begin with, they are not enforceable in any court, therefore if a directive is broken, the injured party has no legal remedy. Second, they are fundamental to the

[123] Sastri Yagnapurushadji and others v. Muldas Brudards Vaishya and Others, AIR 1966 SC 1119
[124] It reads: Application of the Principles contained in this Part (Part IV – Directive Principle of State Policy, Articles 36-51).
[125] Ashutosh Kumar Mishra, Leading Cases of the Supreme Court of India, 825 (Discount Book Publisher, New Delhi, 2014).
[126] Kamaluddin Khan, "Directivve Principles for the establishment of the Welfare State".

country's governance, and it is the role of the state to adopt these principles while enacting legislation.[127]

Because the directives are unenforceable, any statute enacting them will be declared unconstitutional if it violates any of Part III's or the Constitution's general provisions[128]. Article 13(2) expressly specifies that the state may not enact legislation that restricts or limits the rights protected by Chapter III of the constitution, which enshrines the Fundamental Rights. The Directive Principles cannot override the state's fundamentally limited legislative capacity. It is necessary to give the Constitution a harmonious construction in order to implement the Directive Principles, but it must do so in such a way that its laws do not take away or abridge the Fundamental Rights, or the safeguarding provision of Chapter III will be nothing more than a "mere rope of sand.[129]" The Directive Principles must be consistent with the Fundamental Rights Chapter and work in harmony with it. Nonetheless, the court may not entirely disregard the Directive Principles of State Policy set forth in Part IV of the Constitution in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body, but rather should apply the principle of harmonious construction, attempting to give effect to both as much as possible, and (ii) the Directive Principles can be taken into account in construing ambiguous provisions of the Constitution.[130]

As a result, the Constitution's moral rights, which are codified in Part IV, are equally vital. The sole difference is that the moral rights enshrined in Part IV are not directly enforceable in a court of law as against the state by a citizen if the state fails to carry out its obligation, but they are fundamental to the country's administration and all of the state's organs. Everyone, including the judges, must follow those instructions. The Fundamental Rights themselves are mostly empty vessels into which each generation must pour its own content based on its own experiences. Restriction, abridgment, restriction, and even abrogation of these rights may be essential in situations not envisaged by the constitution's authors; their claim to primacy or priority is liable to be over-borne at times in the nation's history by the moral reasons stated in section –IV (Directive Principle of State Policy).[131]

[127] Ibid pp.34
[128] Minerva Mills Ltd. & Others v. Union of India and Others, AIR 1980 SC 1789
[129] Shailja Chander, Justice V. R. Krishna lyer on Fundamental Rights and Directive Principles, 65 (Deep and Deep Publication, New Delhi, 2015).
[130] Ibid pp.56
[131] Maddukuri Venkatarao and Others v. The State of Andhra Pradesh, AIR 1975 AP 315.

As a result of the foregoing examination of the uniform civil code, as well as other relevant articles of the Indian Constitution, it appears that Article 44's goal is to achieve India's integration by bringing all communities together on a common platform on issues that are currently governed by various personal laws but are not central to any religion. Despite the challenges, the global civil code is hoped to become a reality one day. It's also good to see that the need for a common civil code these days is founded on accusations of gender imbalance and harassment, rather than theological reasons. This new meaning of the term "civil code" broadens the scope of the debate while excluding religious factors and the associated social and political inclinations.

Notable Uniform Civil Code cases include:

• Narsu Appa Mali vs. Bombay State[132]

In a criminal case involving family problems, the Bombay High Court's Division Bench issued this ground-breaking decision. The judges on the bench were Chagla C.J. and Gajendragadkar J. The most important judges of the day have issued separate and concurrent verdicts in this case.

The following are the case's essential facts: Bigamous marriage was the subject of two criminal appeals, one criminal revision, and one criminal referral before the Bombay High Court's Division Bench.

A criminal appeal is No. 173 of 1951. The Bombay Prevention of Hindu Bigamous Marriages Act, 1946, was deemed unconstitutional by the Magistrate, First Class, who gave an acquittal decision. The government has appealed the order in question.

1951, 231st Criminal Appeal:

The Bombay Prevention of Hindu Bigamous Marriages Act, 1946, was deemed unconstitutional by the South Satara Session Judge, who acquitted the accused. In response to this order, the government filed this appeal.

In 1951, the case was designated as Criminal Reference No. 16. The Session Judge, South Satara, has been referred the Resident Magistrate, First Class, Miraj's judgement of conviction of accused No. 2 under section 5 of the Hindu Bigamous Marriages Act. Under Section 6 of

[132] A.I.R. (39) 1952 Bombay 84 [C. N. 16]

the Hindu Bigamous Marriages Act, Accused Nos. 3 and 4 were sentenced to one day of solitary confinement and a fine of Rs.50.

Criminal Revision No. 198 of 1951 application. This Court has received an application for reconsideration from the respondent.

As a result, the court received all four cases for a final hearing and ruling.

These two appeals, one application for revision, and one reference are all on the legality of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946.

In appeal No. 231 of 1951, the Session Judge of South Satra determined that the Act was invalid and acquitted the accused. The government has decided to appeal the acquittal decision. In appeal No. 173 of 1951, the magistrate, First Class, Kaira, took the same view, and the government has also appealed from his order of acquittal. In response to the appeal for revision, the Resident Magistrate, Mehsana, convicted the accused under section 5 of the Hindu Bigamous Marriages Act and sentenced him to six months in prison and a fine of Rs. 100.

An appeal was filed with the Learned Session Judge, Mehasana, however the learned Session Judge dismissed the case. The order of conviction passed by the Resident Magistrate, First Class, Miraj, convicting accused No. 2 under section 5 of the Hindu Bigamous Marriages Act and sentenced each of them to one day of rigorous imprisonment and a fine of Rs. 50 has been referred to the High Court by the Sessions Judge, South Satara.

The following issues were presented in this case:

Under this case, the validity of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, was in question. Articles 13(1), 14, 15, and 25 of the Indian Constitution are all violated.

As a result, the order is now in effect. The ratio in this example is:

The Bombay Hindu Bigamous Marriages Prevention Act (xxv [25] of 1946) was found constitutional. Personal law is not included by the term "law in effect" as used in Article 13 (1) of the Indian Constitution. The President of India does not have the authority to establish personal legislation under Article 372. Both territorially and communally, the state has the authority to manage personal concerns. Observation and criticism This landmark decision was handed down by the Bombay High Court's illustrious judges. This is a concurrent division bench decision. These rulings have clarified facts, issues, and legal issues, as well as a slew of other legal concerns. The reader will have a greater grasp of the facts, issues, and legal concepts

at issue in this case after reading both judgements. The learned Advocate respondent raised almost every argument in the matter. All of these issues were likewise carefully handled by the learned judges, who issued an outstanding order in the history of family law. The judges have made great conclusions in this instance. At the time of the verdict, judges maintained India's legal heritage. Judgments of the Privy Council and international courts As a result, the Court's decision gained legitimacy. The Court referred to Article 44. To show that there are several personal laws.

While reading the decision, it became evident that the decision's tone is not supportive of gender equality. If the court is not governed by the Universal Declaration of Human Rights or modern international legal norms. The world's situation changed considerably after World War II. During and after WWII, women's positions in Europe and the Western world. The decision would then be more balanced, based on the reasonable expectation of gender justice. As a result, the Bombay High Court issued a landmark decision in which the direct question of the Uniform Civil Code in personal law was not addressed. All of the legal issues raised, however, were directly related to the Uniform Civil Code.

• Mohhd. Ahmed Khan vs. Shah Bano Begum and others[133]

Introduction

A five-judge constitutional bench made the decision in this case. Y.V. Chandrachud C.J. delivered the bench's decision. This is the case of a divorced Muslim woman who is seeking support under Section 125 of the Code of Criminal Procedure. In Muslim law, divorced wives are not entitled to support after the Iddat period. The Supreme Court of India has ruled in favour of a Muslim divorced woman.

The case is summarised as follows:

The appellant, a lawyer by profession, married the respondent in 1932. This union resulted in the birth of three sons and two daughters. In 1975, the appellant evicted the respondent from the matrimonial home. The defendant filed a suit in the court of learned Judicial Magistrate (First Class), Indore, in April 1978, demanding Rs. 500 per month in maintenance under section 125 of the Cr. Code. On November 6, 1978, the appellant divorced the respondent by an Irrevocable Talak. He argued in response to the respondents' maintenance petition that she had ceased to be his wife as a result of his divorce, that he was therefore under no obligation to

[133] (1985) 2 SCC 55

provide maintenance for her, that he had already paid her maintenance at the rate of Rs. 200 per month for about two years, and that he had deposited a sum of Rs. 300 in the court as dower during the period of Iddat. The learned Magistrate directed the appellant to pay the respondent Rs. 25 per month in maintenance in August of 1979. The respondent alleged that the appellant's professional salary is roughly Rs. 60,000 per year. In response to a revisional motion filed by the respondent, the High Court of Madhya Pradesh increased the amount of maintenance to Rs. 179.20 per month in July 1980, and the husband filed a special leave case with the Supreme Court of India.

Issue In the case:

The issue in this case was whether a divorced Muslim woman is entitled to maintenance from her husband after the iddat period, as stated by the Criminal Procedure Code of 1973 sections 125 and 127.

Ratio

A Muslim woman is entitled to support under Section 125 of the Criminal Procedure Code.

Judgment

The Court looked into the section's legal history in order to interpret it in the case of section 125 of the Cr.P.C. The code of criminal procedure was launched by Sir James Fitz James Stephen in 1872, and he was mentioned. As a lawful member of the Viceroy's Council, describe the predecessor of Chapter IX of the Code, where 125 appears. As a technique of preventing or at the very least mitigating the consequences of vagrancy.

Section 488 of the Code of Criminal Procedure of 1898, which relates to section 125, deals with the intent to serve a social purpose.

The wife's support claim was based on the continuation of her married status under section 488 of the 1898 Code. As a result, the spouse could revoke the privilege by unilaterally divorcing her under Muslim Personal Law or obtaining a divorce judgement against her in another legal system. To alleviate this pain, the Joint Committee requested that the benefit of the maintenance provisions be extended to a divorced woman as long as she has not remarried after the divorce. As a result, a divorced Muslim woman who has never married is considered a "wife" for the purposes of section 125. Her statutory entitlement under that section is unaffected

by the provisions of personal law that apply to her. The respondent and intervener contended that a husband's obligation to support a divorced wife is only valid during the Iddat period.

Observation

I) This is a one-of-a-kind case involving the assistance of a Muslim woman under Section 125 of the Cr. P. C. The Supreme Court of India has read the Holy Quran in favour of a divorced Muslim lady.

II) It's a decision based on humanitarian principles. Humanitarian law now has a broader scope.

III) In India, the decision has sparked a lot of discussion. In the Muslim community, it sparked communal strife. Finally, in 1986, a new law was passed, the Muslim Women (Protection of Rights on Divorce) Act.

• Danial Latifi and Others vs. Union of India[134]

Introduction

The group writ petitions were filed in India's Supreme Court. The 1986 Muslim Women (Protection of Rights on Divorce) Act is being challenged in court as unconstitutional. Following the participation of interested parties in a hearing. The challenged law was upheld by the Supreme Court.

Brief facts of the case

A number of writ petitions were filed in front of the court by individuals and groups. Several sections of the disputed Act were found to be unlawful. The performance lasts only a few minutes. There are only seven sections in all. A five-judge Constitutional Bench was convened to decide the matter. Justice Rajendra Babu delivered the decision on behalf of the bench.

The challenged Act was only passed to overturn the ruling in Mohd. Ahmed Khan v. Shah Banu Begum (1985) 2 SCC 556. The following are the facts of the case: The husband challenged the decision of the Madhya Pradesh High Court ordering him to pay his divorced wife Rs. 179 per month, up from the magistrate's original award of Rs 25 per month. The ill and elderly lady was removed from her husband's home after 43 years of marriage.

The husband paid his wife $200 in maintenance every month for about two years. She filed a petition under Section 125 of the Cr. P.C. when the payments stopped. The husband promptly

[134] (2001) 7 SCC 740

ended the marriage by saying the triple talak. He then sought to have the petition dismissed on the grounds that she had received the amount due to her on divorce under the Muslim law that applied to the parties. He paid Rs 300 as deferred Maher and a further sum to settle arrears of maintenance and Maintenance for the iddat period, and he then sought to have the petition dismissed on the grounds that she had received the amount due to her on divorce under the Muslim law that applied to the parties. The wife had managed the married home for more than 40 years, had given birth to and raised five children, and was unable to work or support herself independently at that late stage of her life; remarriage was thus impossible. The divorced wife, who had shared his life for half a century and mothered his five children and was in desperate need of money, received Rs 200 a month from the husband, a successful Advocate with a monthly income of around Rs 5000.

If a Muslim lady had been divorced by her husband and paid her Maher, the court had to decide if Section 127(3) (b) Cr. P.C. would exempt the husband from his duties under Section 125 Cr. P.C. The court's five-judge panel emphasised that such proceedings are governed by the Code of Criminal Procedure, which takes precedence over the parties' personal law. If the terms of the Code conflict with an individual's rights and obligations, the former will prevail. According to the court, the Maher is neither an amount nor a component of maintenance. The court found that the divorced ladies had the right to seek support orders against their former spouses under Section 125 of the Indian Penal Code, and that such an application was not barred by Section (3)(b) of the Indian Penal Code. The Holy Quran was interpreted by the Supreme Court, resulting in a contentious verdict. As a result, the contested Act was overturned.

The following issues were raised:

1) The relevant Act is unconstitutional.

2) It is in violation of Articles 14, 15, and 21 of the Constitution.

3) Sections 3, 4, and 5 of the bill are unconstitutional.

4) It is incompatible with gender equality and secularism.

The ratio of the case

The Court found the Muslim Women (Protection of Rights on Divorce) Act of 1986 to be valid.

Following the hearing of the parties involved and the cases cited, such as Sha Bano, Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545, Maneka Gandhi v. Union of India (1978) 1 SCC 248 and other important cases, the court has reached the following conclusion:

1) A Muslim husband is accountable for making adequate and equitable provisions for his divorced wife's future, including her maintenance. The husband must offer such a reasonable and fair provision extending beyond the iddat term within the iddat period in accordance with Section 3(1)(a) of the Act.

2) Under Section 3(1)(a) of the Act, a Muslim woman husband's obligation to provide maintenance to his divorced wife is not limited to the iddat term.

3) A divorced Muslim woman who has not remarried and is unable to support herself after the iddat period may make a claim against her relatives, who are expected to assist her in proportion to the goods inherited from her children and parents, under Section 4 of the Act. If one of the relatives is unable to pay, the Magistrate may order that it be paid by the State Wakf Board established under the Act.

4) The provisions of the Act do not violate Articles 14, 15, and 21 of the Indian Constitution.

Commentary and Observation

In this case, the issues involved the universal civil code. The court denied the petitioner's request. It has not, however, removed a poor woman's right to vote. By assigning this task to the State WakfBoard, the challenged Act protected a divorced woman's entitlement to maintenance if her natal or married family members were unwilling to supply it. This one-of-a-kind clause protecting the rights of destitute women can't be found in any secular or personal law. It is thus Part IV of the Indian Constitution in letter and spirit.

Observation

I) In this case, the Supreme Court of India made the correct conclusion. The power of the Indian parliament to legislate on Muslim personal law has been confirmed.

II) Even after the iddat time has gone, the ruling upholds a Muslim woman's claim to maintenance from her husband or close relatives, as well as the State WakfBoard.

• Sarla Mudgal (Smt), President, Kalyani and Others vs. Union of India and Others[135]

This is an example of conflicting personal law. The Supreme Court has received applications under Article 32. There have been cases of bigamy where the spouse was converted to Islam to allow a second marriage to be legalized. The first wife filed a Writ to have the second marriage declared null and void, as well as to have Section 494 of the Indian Penal Code violated. The Supreme Court's Division Bench was assigned to the collection of cases. Concurrentbut supporting Judgment had been rendered by the Court.

The following are the case's essential facts:

Four petitions were submitted under Article 32 of the Indian Constitution. In Writ Petition No. 1079 of 1989, there were two petitioners. Petitioner 1 is the president of "KALYANI," a non-profit organisation dedicated to assisting low-income families and women in distress. There are two petitioners. On February 17, 1978, Meena Mathur married Jitender Mathur. There were three children born out of wedlock (two sons and a daughter). In early 1988, the petitioner was shocked to learn that her husband had married for the second time, to Sunita Narula @ Fathima. The marriage was solemnised when they converted to Islam and embraced the Muslim faith. The petitioner argues that her husband converted to Islam primarily to marry Sunita and dodge the penalties of Section 494 of the Indian Penal Code. Despite the fact that his first wife is still a Hindu, Jitender Mathur believes that because he converted to Islam, he is allowed to have four wives.

This was another writ petition that drew my attention. Sunita alias Fathima is the petitioner in Writ Petition No. 347 of 1990. She claims she and Jitender Mathur, who was previously married to Meena Mathur, converted to Islam and married after that. She became a mother and gave birth to a son. She also claims that after marrying her, Jitender Mathur gave an undertaking on 28-4-1988, under the influence of his first Hindu wife, that he had reverted to Hinduism and agreed to maintain his first wife, despite the fact that she was not being maintained by her husband and was not protected by either of the personal laws. She is not entitled to support after her divorce because she is not a legally married wife under Hindu or Muslim law.

Geeta Rani, Petitioner in Writ Petition No. 424 of 1992, married Pradeep Kumar according to Hindu rituals on November 13, 1988. Her partner mistreated her, according to the petition, and once gave her such a violent beating that her jawline was shattered. Pradeep Kumar had run

[135] (1995) 3 SCC 635

away with one Deepa and married her after converting to Islam, the petitioner learned in December 1991. According to the document, the conversion to Islam was solely for the purpose of facilitating the second marriage.

Sushmita Ghosh, the petitioner in Civil Writ Petition No. 509 of 1992, is another unhappy lady. She married G. C. Ghosh in Hindu rites on May 5, 1984. On April 20, 1992, her hubby informed her that he no longer wanted to live with her and that she should agree to a mutual consent divorce. The petitioner was taken aback and hoped that she was his lawfully wedded wife who wanted to live with him and that divorce would not be necessary. Finally, the petitioner's husband informed her that he had converted to Islam and was planning to marry Vinita Gupta in the near future. He had received a Quazi certificate dated 17-6-1992 verifying his acceptance of Islam. In the writ case, the petitioner also asked that her husband be prevented from marrying Vinita Gupta again.

In this case, the following issues are at stake:

I) Is it possible for a Hindu husband who is married under Hindu law to marry again by accepting Islam?

II) If the first marriage had not been legally dissolved, would such a marriage be valid qua the first wife, who is still a Hindu?

Is the apostate husband subject to prosecution under Indian Penal Code Section 494? (IPC).

Ratio

i) I After converting to Islam, a Hindu husband's second marriage would be null and void unless his first marriage had been formally cancelled;
ii) The second union, on the other hand, is null and void.
iii) An offence under Section 494 of the Indian Penal Code would be charged against the apostate husband. This is a decision taken simultaneously.

The decision of Justice Kuldip Singh is as follows:

The court has taken into account Hindu law. The Hindu Marriage Act strictly enforces monogamy. Only the grounds set forth in Section 13 of the Act can be used to dissolve a marriage performed under this Act. In that instance, couples who marry under the Act remain married even if the husband converts to Islam as a result of the Act, and neither spouse can marry again. Converting to Islam and remarrying would not be sufficient to end a Hindu

marriage under the Hindu Marriage Act on its own. In the same way that his first marriage to an apostate would be an illegal marriage qua his wife who married him under the Hindu Marriage Act and remains a Hindu, a second marriage by an apostate under the guise of conversion to Islam would be a violation of the Hindu Marriage Act, by which he would continue to be governed. Although a Hindu husband's marriage to a Hindu woman after accepting Islam is not strictly void under the Hindu Marriage Act because he is no longer a Hindu, the apostate's second marriage to a Hindu wife is in violation of the Hindu Marriage Act's stipulations and would thus be non existent.

Within the context of that definition, the term "void," as defined in Section 11 of the Hindu Marriage Act, has a limited meaning. However, the same word has a distinct meaning under Section 494 IPC and has been used in a broader context. Any marriage that is in violation of any law is void, according to the phrase used under Section 494 IPC. The existence of the prior marriage, which is not destroyed even by the husband's conversion, is the fundamental explanation for the voidness of the second marriage. As a result, a convert's second marriage would be void under Indian Penal Code Section 494, as it would be in violation of the Hindu Marriage Act. Any act that is in violation of the law's essential elements is automatically declared void.

The court went on to say that a spouse's behaviour should be judged on the basis of the rule of law, equity, and moral conscience. In the instance of a marriage disagreement "among Muslims," the "Muslim Personal Law" was or was not required to be the standard of adjudication. The court and the Judge must act in line with justice, equity, and good conscience in such cases. A Hindu spouse's second marriage after converting to Islam would also be null and void, subject to the penalties of Section 494 of the Indian Penal Code.

As a result, additional decisions are mentioned in this case, such as Mohd. Ahmed Khan v. Shah Bano Begum (1985) 2 SCC 556 and Jordan Diengdeh v. S.S. Chopra (1985) 3 SCC62.

Article 44 is based on the idea that there is no need for a relationship between religion and personal law in a civilised society. Religious freedom is protected by Article 25, but Article 44 tries to remove religion from social and personal legislation. The guarantees in Articles 25, 26, and 27 do not apply to marriage, succession, or other secular matters.

Concurrent Judgment

The following is Justice R.M. Sahai's concurring but favourable decision: Even now, the debating framework is the same as it was in the Constituent Assembly when members of the minority faction cried out loudly. According to the other side of the argument, if "non-implementation of the provisions contained in Article 44 amounts to grave failure of Indian democracy," then "logical probability appears to be that the code would cause dissatisfaction and disintegration rather than serve as a common umbrella to promote homogeneity and national solidarity."

He also stated that he does not believe that Article 44 and Articles 25 to 28 are incompatible. The right to religious liberty protects one's beliefs and faith. Article 44 is a social provision of legislation. The basic problem with these petitions is that many Hindus have converted to Islam only to evade the punishment of bigamy.

Commentary and Observation

As a result, the court has indicated its dissatisfaction with the government's approach to the Uniform Civil Code's development. This instance exemplified how religion is employed. The Court in each of these cases suppressed the wrongdoing and advanced the remedy in the interest of justice.

Observation

- The resolution of personal law disputes is not governed by any laws. As a result, people aren't aware of legal issues or how to deal with them. These types of difficulties should be addressed by a separate statute.
- A uniform civil code is a better alternative in these situations. As a result, the court has issued appropriate recommendations to the state about the creation of a Uniform Civil Code that will apply to all Indian inhabitants.

Chapter 8: Conclusion and suggestion

Without a doubt, reforming personal laws in many communities and enacting a Uniform Civil Code is a difficult endeavour. It's a contentious and delicate subject. The analysis is extremely challenging. The most troubling, and rather disappointing, aspect of the disagreement (Debate) is that it is largely political and sentimental, ill-informed, and hardly beneficial to making either party appreciate the other's point of view. In truth, there has been no genuine debate at all. In the English press, the protagonists voice their opinions, while the opponents respond in the Urdu press. The protagonists refer to the winds of change, the spirit of modernity, and the constitutional provisions relating to a Uniform Civil Code; their opponents, on the other hand, quote the Qur'an and Sunnah, emphasise the religious and cultural rights of minorities, and point to the long history of existing laws. Changed suggestions are rarely discussed in detail. Bad sociology, fiction statistics, and hearsay accounts of what has been happening in Muslim countries are glibly swallowed by a small group of modernists, while the masses and the Ulema are generally satisfied by cursory argument proposed by ostensibly awe-inspiring authority, which serves only their own complacency. Islamic injunctions such as the prohibition of polygamous marriages or the regulations governing divorce and inheritance are rarely presented in a way that is understandable to the residents of modern India. No one can deny that proponents of democracy brazenly tout legislation enacted by military dictators, and no one can deny that these reforms have a history and have evolved over time. There has been no comparative examination of Islamic provisions relating to marriage, divorce, inheritance, and other topics, as well as their 'modern' counterparts, so that an informed citizen can establish his own opinions.[136]

In truth, Muslim Personal Law is another name for Indian Muslims' cultural and social independence. It essentially means that Muslims are free to keep their cultural identity while adhering to Islamic Shariah in certain areas, and that codes of law would arbitrate in certain areas in accordance with Islamic laws. In practise, however, this liberty is restricted to divorce, inheritance, endowments, and other such things. These issues were generally decided considering Islamic law during the British rule, and the practise continues to this day.[137]

[136] F.R. Faridi and M.N. Siddiqui, ed. Muslim Personal Law, p. IV (1985)
[137] Maulana Mohd. Ishaq Sandelvi, Muslim Personal Law, F.R. Faridi and M.N. Siddiqui, ed. p. 16-17 (1973).

The distinction between 'Personal' and 'non-Personal' laws, which was not apparent in early India, became more apparent during Muslim rule, and this distinction was further solidified during the British Period because the British followed the policy of non-interference with native Indian religious sensibilities. They believed that nothing could be more prudent than ensuring that Hindus and Muslims are controlled by their separate 'personal laws' in matters of succession, inheritance, marriage, and so on. The Regulations of 1772 and 1793 spelled out this policy in no clear terms. During this time, legislative efforts in the domain of 'Personal Laws' were irregular and piecemeal, undertaken to meet a need here and a demand there. The majority of these were corrective and reformative measures, which were popular with the population.

The status of personal laws became caught in the swirl of national politics soon after independence. On this subject, there were heated debates in the Constituent Assembly, and despite the best efforts of the Muslim members, most of the members of the Constituent Assembly were unwilling to offer long-term constitutional protection to the variety of personal laws. Instead, they inserted Article 44 into the Constitution, which calls for the creation of a "Uniform Civil Code."

This provision, which requests the government to "seek to secure for the citizens a Uniform Civil Code throughout the territory of India," has been cited as a challenge or threat to the diversity of personal laws in India. This article has been used specifically against Muslim Personal Law, as though it is just this law that is preventing the creation of a "Uniform Civil Code." This legend is false.[138]

Based on the foregoing analysis, supporters of the Uniform Civil Code who think that without it, homogeneity is impossible, which is essential for India's unity and national integration, deserve significant consideration. It should not be forgotten that the Uniform Civil Code is one of the state's directive principles, among a slew of others. Because its application is not enforceable by a court of law, it simply has persuasive power rather than coercive authority."[139]

[138] Salim Aklitar and Alunad Naseem, Personal Law and Uniform Civil Code, p. 97 (1998

[139] The Directive Principle seeks to give certain direction to Legislature and government as to how and for what manner and for what purpose they are to excercise their power, however Article 37 of the Constitution states that these principles are not enforceable by the court of law. The Constitution makers taking the pragmatic view refrained from giving teeth to these principles.

The deep ingrained diversity of personal law, religion, language, culture, and tradition are the fundamental roadblocks to the Uniform Civil Code's application in India. People have opposed the Uniform Civil Code from the beginning because of the differences in family law between communities, tribal laws and customs, and people's view that the source of law and religion is the same and that faith, law, and religion are intermixed and interlaced. Article 44 of the Uniform Civil Code is one of several other guiding principles of state policy, whereas Articles 25, 26, and 29 of the Constitution, which deal with religious and cultural freedom, are fundamental rights that contradict with each other. In such a dispute, fundamental rights must take precedence over constitutionality.[140]

History shows that when the great Emperor Akbar introduced "Din-e-Ilahf" and Ashoka introduced "Dhamma" at the expense of the people's existing rules, it was counter-blasted.[141] Because the majority opinion claimed that personal laws were too closely associated with people's religion and culture, Mughals and British rulers of the Indian subcontinent retained the personal laws of Hindu and Muslim populations. On the question of codification, the British rule appointed numerous law commissions from time to time. Nonetheless, the British administration believed that, based on the commission's findings, personal laws could not be codified because doing so would amount to interfering with people's religious and cultural affairs.[142]

Some supporters of the Uniform Civil Code point to Muslim countries as examples of where certain modifications have occurred in areas that we in India refer to as Muslim Personal Law. They further claim that in the early days of Islam, the Caliphs and Imams engaged in certain legal activities and frequently modified the rules enacted by their forefathers. Changes in Shariah law were regularly adopted by the ancient jurists themselves, according to Islamic history. Many legal concepts established by their predecessors were overruled by Caliphs 'Umar' and 'Ali.' Imam 'Shaibani' had overturned certain of his master Imam 'Abu Hanifa's judgements; 'Ghazali' had departed from certain legal principles put down by Imam 'Shafei'; 'Shatebi' had departed from some of Imam 'Malik's viewpoints,' and so on.

[140] Mohd. Shabbir, Muslim Personal Law, Uniform Civil Code and Judicial activism : A critique, XII, ALIO L.G. 1997, p. 76.
[141] See Aftab Almiad, 'Uniform Civil Code and Constitution of India' (unpublished paper presented in All India Muslim Personal Law Board Conference on 11-13 Sept. 1995, Banglore).
[142] ibid

There was no 'Corpus Juris' with the Prophet of Islam. Neither the Qur'an nor the Sunnah had provided a comprehensive legal code. These Nasus had simply established the foundations of the law. During Prophet's lifetime, the formation of comprehensive legal norms was left to him. Following his death, the mission was taken over by the Caliphs, the Islamic state's administrative and ecclesiastical authorities, and then by jurists and interpreters of the revealed law. They added flesh and blood to the scriptural skeleton of the law through their judgments and fatwas.[143]

As a result, Muslim law has undergone a protracted period of development. With the spindle of legal interpretation or administration, the fabric of law was spun and rewoven. During this time of development, Islamic law was still a work in progress. If a subsequent jurist or interpreter overruled the law established by the predecessors during this period, it was considered a stride forward in the development of law. In this age of Islamic legal history, differences of opinion among Doctor of Law are part of the process of legal progress. All this legal activity was based only on the Prophet's (SAW) interpretation of the Qur'an's necessary regulations or those established by the Prophet (SAW) under Divine Authority. As a result of these legal activity, several schools of law emerged in various parts of the Muslim world, each founded on the same sources but with differing views on minor points. The principles of one or more schools of law were accepted in their entirety by diverse Islamic peoples in the later phases of Islamic history.[144]

According to Islamic legal doctrine, 'Allah' is the solitary lawgiver, and the Divine Will is the only basis for the legal fabric. Muslims see Shariah, the Islamic legal code, as unchangeable. The Shariah's Fundamental Principles are not subject to human revision. The doctrine of immutability states that what is immutable is the Shariah's 'grundnorm,' not any of its various interpretations. There are four Sunni law schools and three Shia law schools. These schools have their own legal system. Many legal ideas in one school differ dramatically from those in the other. In this circumstance, it is standard practise for an individual to adhere to one of the schools in its entirety and is not permitted to choose his own legal standards from various schools. Nonetheless, in Islamic Law, all schools have equal legal authority and sanctity. Judges, jurists, and legislatures may adopt the principles of any school of Islamic law that is not regionally prevalent because none of them has any

[143] Tahir Malimood, "Precedent for Law Reform -in Islamic History : Relevance for India", Muslim Personal Law F.R. Faridi and M.N. Siddiqui, ed., p. 164.
[144] ibid

superiority over others. With a few exceptions in particular Muslim nations that are frequently highlighted by proponents of Uniform Civil Code to achieve changes in Muslim Personal Law, the flexible nature of Islamic law was the basis of legislative reforms. We can fairly draw two conclusions from the preceding discussion:

1. Under the influence of any Western legislation, Muslim countries have not changed the principles of Islamic law.

2. They have not changed the essential rule of Islamic law since Islam's fundamental laws are inviolable. They are unaffected by any legislation enacted by humans. They've just replaced one rule of Islamic law with a rule from any other school of Islamic law.

Furthermore, any state that replaces Islamic law with secular law is committing a trespass. The action of the Supreme Court, which has repeatedly highlighted the subject of the Uniform Civil Code despite the fact that Article 44 of the Constitution is judicially unenforceable, is the most dangerous aspect of the entire matter. In three well-known instances, namely Shah Bano, Jorden Diengdeh, and Sarla Mudgal, the court expressed exceedingly uncalled for comments on the importance of enacting a Uniform Civil Code. The issue in these three instances was never the Uniform Civil Code; rather, under the guise of judicial activism, the Supreme Court inserted needless, unwarranted, obiter dictas that it could have easily avoided without impacting the ratio decidendi in the cases in question. In this approach, the Supreme Court accidentally handed provocative material to those who want to use Article 44 to impose personal laws on minorities. But, in the most recent case determined by the Supreme Court, the Ahmedabad Women's Action Group case, the position and ambiguities generated by Sarla Mudgal's case[145] were clarified. In this case, three writ petitions were brought under Article 32 of the Constitution, alleging that various provisions of several personal laws were unconstitutional. In this case, the court denied all of the petitions, citing its earlier findings that the issues implicated were questions of state policies with which the covert is normally unconcerned. The Supreme Court further stressed that its prior comments in Sarla Mudgal's case about the need of enacting a Uniform Civil Code were made on the spur of the moment. Thus, it is a positive ruling by the Supreme Court of India, in which the court correctly recognised the importance of using judicial restraint when dealing with sensitive issues such as the Uniform Civil Code. For

[145] Supra Note 135

the time being, this decision has placed the dispute on hold, but no one knows when it may resurface.

As a secular state, India must respect the people's personal law, which is an important and vital component of their religion, faith, culture, moral principles, and way of life. Personal laws should not be repealed or replaced as a means of achieving "social welfare and reform." It's worth noting that the British government in India made no attempt to repeal or amend the Personal Laws. This was not a brand-new policy adopted by the British. In truth, the policy of non-interference in religion and personal concerns dates back to the invasion of Sind by Mohammad Bin Qasim. Following the defeat of the local monarch, the Islamic empire granted locals the freedom to "worship their Gods" and "live in their houses in any manner they pleased." With a few exceptions, this policy of non-interference in personal and religious concerns was continued during the Sultanat period. The Mughal rulers also followed a policy of non-interference with Indian personal laws, largely due to the sanctity and sensitivity that personal laws are an integral part of religion, and that personal law practise establishes cultural identity as well. As a result, for political reasons, the Britishers did not interfere with Indian personal laws and left them alone.

Under Article 25 of the Constitution, Muslim Personal Law is constitutionally protected and exempted from outside influence. The rationale for this is that section 2 of the Muslim Personal Law (Shariai) Application Act, 1937 specifies that if the parties are Muslims, concerns concerning marriage dower, divorce, maintenance, custody, guardianship, and inheritence must be resolved in accordance with Shariat. Part III of the Indian Constitution is devoted to rights, with Articles 25, 26, 29, and 30 dealing with the freedom to profess and practise religion, as well as the establishment of educational institutions to maintain the cultural identity of India's minorities. Furthermore, because the Constitution's guiding principles are 'Equality before the law' and 'Equal protection of the laws,' as stated in Article 14, Muslim Personal Law, as a fundamental right of Muslims, is equally protected by the Constitution as other religious communities' personal laws.

Muslim Personal Law, as a fundamental right of Muslims, is protected by the Constitution in the same way that other religious communities' personal laws are.

1. It is an egregious example of Muslim appeasement. Males among them are permitted to marry four wives, hence doubling numbers, and producing an excessive population growth rate.

2. That Muslim division is exacerbated by the existence of separate personal laws.

3. That the Uniform Civil Code will promote national integration and bring Muslims into the mainstream of society.

4. A uniform civil code will contribute to communal cohesion and, as a result, all communities' lifestyles will be tinged in the same hue and tang.

5. That a code like this will improve women's dignity and standing in India.

6. Secularism will be strengthened by this code.

As a result, secular principles demand that the state apply uniform laws to all citizens, regardless of religion. Despite the fact that the notion that Muslim personal law causes excessive population increase is the weakest and has no scientific validity, it is this theory that has become part of Hindu legend. Polygamy is less common among Muslims than among non-Muslims, according to numerous polls undertaken by both government and non-government organisations. But it is their women in reproductive age groups who give birth to children, not their polygamous Muslim males. Monogamy tends to raise birth rate, whilst polygamy tends to lower it. Then it isn't accurate that Muslim women don't use birth control due of their faith. If some Muslims are resistant to family planning, it is due to their socioeconomic disadvantages, particularly female illiteracy, rather than to their faith.

The following justification implies arrogantly that Muslims are not part of the national mainstream and must be coerced into it. What exactly does it mean to be "in the national mainstream"? Despite cultural and physical invasions, Muslims have maintained their distinct identity and continue to live a life style that is naturally at odds with others due to their distinct philosophy of life and religion. According to the promoters of a Uniform Civil Code, it is this retention of individuality and independent carriage that equates to "not being in the national mainstream." The phrase 'national integration' is based on this incorporation into the national mainstream. What about the fact that the terms 'national integration' and 'mainstream' in the tenns are as ill-defined as they are vague? Will the existing softpush button rules lead to national integration or dissolution if each community's cherished individuality drifts away into some illusory national mainstream? Humans, unlike machines, can never be expected to relinquish their identity and laws without disrupting peace and harmony.

The following justification implies arrogantly that Muslims are not part of the national mainstream and must be coerced into it. What exactly does it mean to be "in the national mainstream"? Despite cultural and physical invasions, Muslims have maintained their distinct identity and continue to live a life style that is naturally at odds with others due to their distinct philosophy of life and religion. According to the promoters of a Uniform Civil Code, it is this retention of individuality and independent carriage that equates to "not being in the national mainstream." The phrase 'national integration' is based on this incorporation into the national mainstream. What about the fact that the terms 'national integration' and'mainstream' in the tenns are as ill-defined as they are vague? Will the existing softpush button rules lead to national integration or dissolution if each community's cherished individuality drifts away into some illusory national mainstream? Humans, unlike machines, can never be expected to relinquish their identity and laws without disrupting peace and harmony.

India is a secular country, yet it is also a pluralistic society with a rich cultural diversity. In cultural matters that necessitate a legal pluralism framework, democracy gives full play to pluralism.

However, cultural plurality and autonomy should not imply the right to deny women justice. Worry for gender equality is quite legitimate, but concern for uniformity is not. Muslim women, like Hindu women, face a variety of challenges as a result of their historical marginalisation and impotence. In some locations, Muslim women are more oppressed than Hindu women, while in others, Hindu women are more oppressed.

It is a frequent misconception - and a huge fiction - that only India's Muslims have personal law, and that it is this law alone that is preventing the implementation of the Constitution's "Uniform Civil Code" across the country. The examination in previous chapters of the thesis shows that our country has a variety of personal laws that apply to various communities. The following are the details:

i) Hindu Personal Law, which is partially codified but not fully codified (and hence applies to Buddhists, Jains, and Sikhs as well).

(ii) Hindu, Buddhist, Jains, and Sikh customary law is case law when it is protected by legislation.

(iii) Hindu and other tribal law;

(iv) Christian Personal Law, which is codified yet archaic in nature;

(iv) Parsi Personal Law, which is completely unreformed and uncoded;

(vii) Muslim Personal Law, which has been revised but is still essentially uncodified.

In general, promoters of the Uniform Civil Code portray the problem in such a way that it appears like minorities, particularly Muslims, will be forced to give up their personal laws. But, if Muslims, Christians, and Parsis all abruptly abandon their own law, what could be their replacement? The Special Marriage Act of 1954, the Indian Succession Act of 1925, and the Guardians and Wards Act of 1986 are all obvious examples. How could these minorities be expected to follow these laws if the dominant communities have not? If the goal is to impose Hindu law enactments from 1955-56 on minorities under the guise of a Uniform Civil Code, minorities, particularly Muslims, will not accept it. Because Muslims are a minority group, they are naturally sensitive, and they believe that the Uniform Civil Code is one of the tools used to destroy their religious and cultural identities. After the demolition of the Babri Mosque and the growth of communal forces in the country, this sense of vulnerability has grown exponentially.

Suggestions:

Following on from previous debates in this thesis' prior chapters, we propose the following solutions in the hopes of resolving the troubling problem of implementing a Uniform Civil Code across India's vast area. The following are some ideas:

(a) While the state may be hesitant to impose a Uniform Civil Code on a diverse population, the bare minimum it should do is provide the conditions that will allow people to have a progressive and broad-minded outlook.

Clearly, education may play a significant influence in this area. Spreading education among the uninformed masses is the solution to the problem. It is the government's responsibility to enhance the social, educational, and economic standards of the uninformed people, thereby making them aware of their rights and responsibilities.

(b) Because Muslims are the most backward among India's minorities, the long-term solution to the problem of Muslim Personal Law reform is to educate the Muslim masses. It is the responsibility of social workers, leaders, and the government to elevate the

'orthodoxy' social educational and economic standard. The Muslim intelligentia has a responsibility to educate the Muslim community about its rights and obligations.

(c) In order to gauge community sentiment, the government should hold a referendum in minority communities in which all adult men and women can vote. Before the referendum, the government should promote the referendum's relevance through the press, radio, television, the internet, and public forums attended by people of all political stripes.

(d) By explaining the contents and relevance of Article 44, the government must create a favourable environment for the Uniform Civil Code. It should take actions and devise ways to combat obscurantists who oppose the Uniform Civil Code's implementation. To ensure that 'Article 44' of the Constitution is implemented, a conservative segment of the citizenry must be educated about the importance of uniformity of legislation.

(e) The state should implement social transformation gradually and in phases, with the stages being territorial or community based.

(f) There are two possible courses of action in deciding what kind of code should be enacted: an optional Uniform Civil Code enacted to coexist with various religious personal laws, such as the Special Marriage Act of 1954 does with other religious marriage laws, or the other option of replacing existing religious-personal-laws with the Uniform Civil Code. The United States Constitution makes no mention of whether the Uniform Civil Code should be optional or mandatory. At first glance, the first alternative appears to be the most ideal, namely that the state creates a law that contains sex-equality, but if any individual does not wish to give up their religious personal law, they will continue to be ruled by it.

(g) An effort should be made to enact a model Uniform Civil Code that incorporates the finest aspects of all personal laws. It must be a synthesis of the positive aspects of our various personal laws. It should symbolise one that was drafted in dialogue with India's various communities and based on the philosophy of give and take.

(h) The vast majority of Muslims in India are plagued by fear and anxiety, which has led to a deep religious commitment among them. Engaging actively in the fundamental challenges of Muslim society would be a useful line of action for educated liberal Muslims to take.

i) Certain aspects of Islamic law, such as 'Triple-Divorce' and 'Khula,' do not reflect the proper Islamic perspective. In India, the notion of 'Khula' is misinterpreted, and Muslims believe that 'Triple Talaq' is the only way for the husband to dissolve the marriage. Within Islam, the idea of 'Khula' is essentially equivalent to a husband's power of divorce. If the 'Ulema' explains these two branches to Muslims and the government explains them to the press, television, and radio, the problem of 'Triple Divorce' may be greatly reduced.

(j) It is a common misconception that a Muslim wife cannot get 'Khula' without the approval of her husband. This erroneous concept is the outcome of a 19th-century Privy Council judgement. This can be addressed by the Parliament or by a Supreme Court judgement, putting significant authority in the hands of Muslim women.

(k) Minorities, particularly Muslims, must be assured that the government is on their side and does not want to push an alien law on them. The government must help alleviate Muslim feelings of uneasiness and unhappiness.

(l) The government should facilitate the reform of Muslim Personal Law through the Muslim community's prominent and recognised Ulema. The solution to the Muslim Personal Law dilemma should be sought inside Islamic law. There should be no attempt to go beyond the bounds provided by Islamic law, or Shariat.

(m) To assuage the fears of the minority, particularly Muslims, the state can repeal or treat "Article 44" of the Constitution as unworthy of being activated. It is envisaged that by removing this threat or perception of harm to Muslim identity, the enlightened portions of Muslims will make the necessary reforms.

(n) For the purpose of 'national unity' or national integration, the government should never try to impose a standard system of family laws on its population, particularly minorities. A move like this by the government would further alienate Muslims, who would see it as extending the Hindu majority's domination over them. This would incite discontent and insurrection among Muslims, as well as jeopardise 'national unity' and 'national integration.'

(o) Before implementing a Uniform Civil Code across India's territory, the government must take in mind the religious freedom granted by the Constitution's 'Article 25' and 'Article 26'.

The government must also consider the legitimacy and enforceability of 'Article 44,' as well as the link between Fundamental Rights and State Policy Directive Principles. The state must

recognise that in the event of a dispute between Fundamental Rights and the Directive Principles of the Indian Constitution, the former must take precedence.

The challenge of implementing 'Article 44' in India can be solved if the preceding procedures are taken sincerely and honestly.

Chapter 9: Bibliography/ References

Holy Books

1. MANU: Smrti, Ganga-Nath Jha, the law of Manu with the Bhasya of Medhatithi Published by the University of Calcutta 1921.

2. THE NARADASMRTI by RICHARD W. LARIERE, Dept. of South Asian Regional Studies, University of Pennsylvnia, PHILADELPHIA 1989.

3. The Meaning of THE GLORIOUS QUR'AN An explanatory translation Marmaduke Pickthall, publishers: Taj Company 3151, Turkman Gate DELHI.

4. THE HOLY BIBLE Published by THE GIDEONS INTERNATIONAL IN INDIA, 9-138/1. 1st Floor, Y.M.C.A. Secunderabad Pin- 500 003 Andhra Pradesh, India.

5. KAUTILIYA ARTHASASTRA (A LEGAL, CRITICAL AND ANALYTICAL STUDY) V.K. GUPTA BHARAT KALA PRAKASHAN DELHI (INDIA) Ed. 2004.

Indian Statutes

1. Criminal Procedure Code. 1973.
2. Constitution Assembly Debate,
3. Constitution of India.
4. Government of India Act, 1915.
5. Government of India Act, 1935.
6. Prevention of Domestic Violence Act, 2005.
7. Prohibition of Child Marriage Act, 2006.
8. Special Marriage Act, 1954.
9. The Anand Marriage Act, 19909.
10. The Criminal Procedure Code, 1998.
11. The Dissolution of Muslim Marriages Act, 1939.
12. The Guardian and Ward Act, 1890.
13. Hindu Code Bill Parliamentary Debate
14. The Hindu Adoption and Maintenance Act, 1956.
15. The Hindu Marriage Act, 1955.
16. The Hindu Minority and Guardianship Act, 1956.
17. The Hindu Succession Act, 1956.
18. The Indian Christian Marriage Act, 1872.

19. The Indian Divorce Act, 1869.
20. The Maintenance and Welfare of Parents and Senior Citizens Act 2007.
21. The Muslim Personal (Shariat) Application Act, 1937.
22. The Muslim Women (Protection of Rights on Divorce) Act, 1986.
23. The Special Marriage Act, 1872

Articles:

1. Decipher Magazine, "Uniform civil code : The Challenges that Still Remain", available at: http://decipherias.com/currentaffairs/uniform-civil-code-the-challenges-that-still-remain/ (Visited on February 17, 2022).
2. Akankahs Arora, "Uniform civil code : A Key for Integrating India", available at: http://modelgovernance.com/uniform-civil-code-a-key-for-integrating-india/ (Visited on February21, 2022)
3. Tarun Arora, "Secularism under the Constitutional Framework of India", available at: http://www.legalserviceindia.com/articles/ct.htm (Visited on April 23, 2022).
4. Shahnaz N, "Uniform Civil Code: Whether a Directive to Promote Unity? Rhetoric and Reality", available at: http://www.omicsgroup.org/journals/uniform-civil-code-whether-a-directive-to-promoteunity-rhetoric-and-reality-2169-0170-1000156.php?aid=60343 (Visited on April 22, 2022).