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Chapter I

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Chapter I

Introduction, Significance and Scope

1.1. Introduction

Human life normally begins in family and ends in it. Family laws govern the individual and social life of the human beings. Family laws in India are mainly governed by religions and customs. It controls an individual as well as family life. Life of human being without family and society is unthinkable. Family means ‘A group consisting of one or two parents and their children’. This definition is about nucleus family. In Vedic literature, one does not have a term equivalent to Roman ‘Famila,’ Hindu Family in Vedic age was essentially a patriarchal family where father as the head of the family enjoyed vast power. The joint and undivided family is the normal condition of Hindu Society and undivided Hindu family is ordinarily joint not only is one in estate, but in food and worship.

Indian society is heterogeneous; it is divided on the basis of religion, caste, creed and region. Therefore the reflection of society is also found in family laws. The main Family Laws in India are Hindu law, Mohammaden law, Christian law, Parsi law and Tribal customary laws. The Constitution makers had a dream to uniform civil code in the field of family laws of India; after 67 years of republic of India it has not been able to implement a uniform civil code. Research has carried out on the manner of bringing uniform civil code in family laws of India.

1.2. Importance of Study

French Author Andre Gide: ‘Everything that needs to be said has been said already, but as no one listens, we must always begin again’. India is multicultural and multiethnic country. Every person belongs to his own religion, cast, sub-cast, creed, etc. Therefore every religious community is having their own personal law for example, Hindu law, Muslim law, Christian law, Parsi law,

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1 Oxford Advanced Learner’s Dictionary, 2000, p 455.
4 Fali S. Nariman, Say it again, The Indian Express, Tuesday, April 5, 2016, P. 10.
and Tribal’s customary laws. In personal matters there is nothing like ununiform Indian personal law. If anybody wants to marry outside his personal law or one wants to marry in non-religious form then those persons can marry within Special Marriage Act, 1954. It is civil marriage form. In such a case succession matters are governed according to Indian Succession Act, 1925. After marriage the concerned parties remain like Hindu, Muslim, Christian, and Parsi, or respective tribe, caste, Sub-caste- which they were before their marriage.\(^5\) Thus people are governed by similar rules of law. Sometimes the laws are conflicting in nature. Sometimes it causes hardship in day-to-day life of people. Itcauses injustice; to the needy person. Therefore there is need foruniform civil code. That may also reduce injustice especially to the needy person. It will remove injustice against the women. It will remove ignorance and provide gender justice.

**1.3. Reason for selecting the topic.**

This topic is debatable since Independence but till today this Country is failed to pass the Uniform Civil Code. Present days the movement repoliticization of religion are in full swing. It has pose direct threat to the secular character of Indian Constitution. The Religious Minorities are alleging; the religious Majority community is going to dictate their terms on the minority. The minority groups are consolidated to protect their religious rights. Apparently these two views are seems against one another. In reality they are two sides of same coin. This dilemma created hindrance in the way of family law reforms in general and Uniform Civil Code in particular. Therefore this topic has chosen for following reasons:

I) The topic of Uniform Civil Code is concern with every citizen of India.

Man is social animal. Family is the basic unit of society. Man is going to govern according to family laws. In family matters like marriage, divorce, maintenance, succession, adoption, custody of the child, will etc. traditional subject are going to govern. The new subject like domestic violence, surrogacy, and inter-country adoption also become important. Therefore this subject has chosen.

II) The family laws should change according to the Philosophy of the Constitution of India.

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Constitution has given right to the citizen of India of justice, liberty, equality and fraternity. For giving effect to these principles provisions are made in the fundamental rights, directive Principles of state policy, and fundamental duties. The paradox is this; these principles are not going to apply in family laws. Family laws are mostly patriarchal in nature therefore it causes gender discrimination. This topic has chosen to find out how to implement constitutional philosophy in family law.

III) It will make easy to resolve the Conflict of law.

World has became global village in 21st century. People are migrating one place to another. Foreign marriages are going to perform. If there will be matrimonial dispute then question arises which law shall apply to resolve the dispute. If there will be Uniform Civil Code such conflict can resolve easily. If there will be conflict of personal laws due to inter religious or inter caste marriages or conflict of local laws it is difficult to resolve such problem. This problem will solve after passing uniform civil code.

IV) Family law should change according to the changing circumstances

Population has continuously increasing after independence. Literacy rate have increased in the country. Women and backward classes have also become literate. They have occupied public post. They are enjoying the right of equality, liberty, fraternity and justice in public life. They are realizing difference between public and family life. Therefore there is demand of uniform civil code. So this topic has chosen.

V) In one country there shall be one law for governance of citizens.

In secular country religious personal laws are going to govern according to their respective community. There are religious laws like Hindu, Muslim, Christian, Parsi, Tribal Customary laws etc. These laws are not similar; sometimes those are contradictory to one another. It creates animosity in the communities. These laws are discriminatory in nature and gender biased. Therefore it is essential to pass Uniform Civil Code.

VI) Family law should upgrade at par with international law.
After Second World War all over the world; there is demand of protection of human rights. In matrimonial matters also there shall be protection of human rights. Therefore necessary changes are required to bring in family law. The international community comes forward cutting across the difference of religion and state for protection of human rights in family law.

1.4. Review of literature

Literature Review has been discussed under following heads:

(a) Relevant Legal and Constitutional History of India,
(b) Constitutional Assembly Debate,
(c) Personal laws passed in British India,
(d) Personal laws passed after Indian Independence,
(e) Provisions in Constitution,
(f) Scholar’s Opinion,
(g) Higher Judiciary’s Views on Personal laws,
(i) Holy Scripts,
(j) Comparison with other personal laws,
(k) International Conventions,
(l) Law journals, articles etc.

1.4.1. Relevant Legal and Constitutional History of India

Legal history is closely connected with constitutional history. Legal history in broad sense may include constitutional history. Constitutional history is concerned with developments in public law. Legal history is concerned with developments in private law and criminal law.  

1.4.1.1. Charter of 1726.

King George I issued this charter on the 24th September, 1726. It started a new evolution of judicial institutions in the three Presidency Towns of Calcutta, Madras and Bombay.

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Court was a Royal Court. Thus British Rule was made applicable in India. Appeal was filed before Privy Council in England. Thus it was established bridge between English and India legal systems.7

1.4.1.2. Warren Hastings’s Judicial Plan of 1772.

It was devised to Mofussil area of Bengal, Bihar and Orissa. The Province was divided into District; and district was treated as unit of administration. Mofussil Court was established at every district. The Mofussil Diwani Adalat was given jurisdiction of personal property, inheritance, marriage, caste, etc. In all suits regarding inheritance, marriage, caste and other religious usages and institutions, the laws of The Koran with regard to Mohammedans, and those of the Shastra with respect to the Hindus were to be applied. It meant the Hindu law for Hindus and the Mohammedan law for the Mohammedans.8

1.4.1.3. Development of Criminal Law: 1772-1860

The process of repealing and amending the Muslim Criminal law and supplementing the same with some new approach to criminal law, through government enacted regulations, started in the right earliest from the time of Lord Cornwallis in 1790. This process continued unabated till 1860, when the Indian Penal Code finally superseded whatever did remain of the traditional Muslim Criminal law by that time.9 Thus the British Government without any hesitation replaced the Mohammedan Criminal law to secular and modern Criminal law.

1.4.1.4. The Charter Act, 1833.

The provision of Law Commission was made in this Charter. Codification started in India. Lord Macaulay Chairman of First Law Commission expressed his views on codification in the following words; “We must know that respect must be paid to feelings generated by difference of religion, of nation and caste. Much, I am persuaded, may be done to assimilate the different systems of law without wounding those feelings. But whether we assimilate those systems or not, let us ascertain them, let us digest them. We propose no rash innovation; we wish to give no

8 Ibid. pp 57-58.
9 Ibid. p333.
shock to the prejudices of any part of our subjects. Our principle is simple this- uniformity where you can have it- diversity where you have it –but in all cases certainty”.  

Thus at first time codification started on all India basis. It started unification and integration of India.

1.4.1.5. The Queen’s Proclamation, 1858.

After first war of Independance 1857, on 1st November 1858 the Queen’s proclamation to the princes, chiefs and people of India. It says: firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, we disclaim like the right and the desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be in any ways favoured, none molested or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure. It further says that, We know, and respect, the feelings of attachment with which native of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State; and we will that generally, in framing and administering the law, due regard be paid to the ancient rights, usages, and customs of India.  

Thus it has given guarantee of equality and freedom of religion, usages, and customs.

1.4 .1.6. The Indian Council Act, 1909.

It is also known as Morley- Minto Reform. It is reform of divide and rule policy. It has given separate electorate to Muslim.  

It created wide gap between Hindu and Muslim communities. There was no change in personal laws.

1.4.1.7. The Government of India Act, 1915.

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Section 112. Law to be administered in cases of inheritance and succession.- The High Courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents and goods, and in matters of contract and dealing between party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject. It has given remedy to conflict of laws.

1.4.1.8. The Government of India Act, 1919.

This act is also known as Montagu –Chemsford Reform. It was given separate electorate to Sikhs, Anglo-Indians, and Indian Christians etc. Thus communalism was increased in India. It had not made any change in personal laws. But changed in the attitude of the people.


It gives Entries 6 and 7 as follows: ‘Marriage and divorce infants and minors, adoption’ and ‘will, intestacy and succession’. Section 292 also deals with personal law. It introduced federation in India. In division of Power the matrimonial laws inshrin in concurrent list.

1.4.1.10. The Indian Independence Act, 1947

This Act created India and Pakistan. India adopted her own constitution. Thereafter Indian Rule started in India.

1.4.2. Constitutional Assembly Debate

On the provision of Uniform Civil Code: In constitutional assembly there were two groups with apposite views. The Muslim members were apposing to the Uniform Civil Code; namely Mr.

Mohammad Ismail Sahib, Mr. Neziruddin Ahmed, Mahboob Ali Baig Sahib Bahadur, Pokar Sahib Bahadur, Mr. Hussain Imam. The supporters of Uniform Civil Code were Shri K. M. Munshi, Shri Alladi Krishnaswami Ayyar, and Dr. B. R. Ambedkar.¹⁶

1.4.3. Personal Laws Passed during British Rule

British rule was neutral in family laws. When people demanded social reforms then colonial government passed appropriate laws. Some important family laws passed by the British Government were as follows:

1.4.3.1. The Sati Regulation Act, XVII of 1829.

A Regulation for declaring the practice of sati or burning or burying alive of the widows of Hindus, was declared illegal. Section 1 stated: The practice of suttee, or of burning or burying alive the widows of Hindus, is revolting to the feelings of human nature; it is nowhere enjoined by the religion of the Hindus as an imperative duty. Section 2 declared Sati to be illegal and punishable by criminal court.¹⁷ After passing of this Act new problem of widow was arise in society; for tackling this problem new act was passed.

1.4.3.2. The Hindu Widows’ Remarriage Act, 1856. (Act 15 of 1856)

It was passed to remove all obstacles to the marriage of Hindu widows. Prior to this Act some section of the Hindus were not allow to widow remarriage. The widow marriage was prohibited and if the second marriage will be performed by the widow it was treated illegal and the children were held to be illegitimate and incapable of inheriting property. Thus this Act is steps forward for social reform and gender justice.¹⁸

1.4.3.3. The Age of Consent Act, 1860.

¹⁸ H.K. saharay, Family Law in India Eastern Law House Kolkata 2011 p 25
This Act was pertaining to child marriage and more specifically, violent sexual intercourse by adult men upon their child brides. Age of consent was fixed Minimum ten years. It means ten years as the minimum age at which consent to sexual intercourse could be given. Indian Penal Code also made provisions accordingly in 1861. In 1891 the age of consent was raised up to twelve yours.  

1.4.3.4. The Converts’ Marriage Dissolution Act, 1866.

The Converts’ Marriage Dissolution Act 1866 was passed to legalize, under circumstances the dissolution of marriages of converts to Christianity.

1.4.3.5. The Indian Divorce Act, 1869. (Act 4 of 1869)

2001 this Act has Renamed as; The Divorce Act, 1869.

The Main object of the Act 1869 is to amend the law of divorce of persons professing Christian religion and to confer upon certain Courts jurisdiction in matrimonial matters. The Act is based on the (English) Matrimonial Causes Act, 1859 and the Matrimonial Causes Act, 1860. This Act has amended several times. The last amendment was made in 2001. This Act amended for bringing uniformity in family law.

1.4.3.6. The Indian Christian Marriage Act, 1872. (15 of 1872)

This Act was passed to Consolidate and amend the law relating to solemnization of Christian Marriages in India. Thus terms and conditions of Solemnization of Christian marriages are given. Jurisdiction of competent court is also provided in this Act.

1.4.3.7. The Special Marriage Act, 1872.

This Act is Secular. It provided civil marriage before a Registrar of Marriage. It insists monogamy. The minimum age of marriage was 18 years for male and 14 years for female. The marriage under this Act was subjected under Indian Divorce Act, 1869, and the Indian

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20 H.K. saharay, Family Law in India Eastern Law House Kolkata 2011 p 244.
21 Ibid. p 229.
22 Ibid. P 219.
Succession Act, 1865. In the year 1923 it was amended and it was also applied to the Hindu, Buddhist, Sikh or Jain religion.\textsuperscript{23}

1.4.3.8. The Guardian and Ward Act, 1890.

The Guardian and Ward Act, 1890 was passed with a view to consolidating and amending the law relating to guardian and wards. The right of natural guardian to custody of child is not always absolute. Welfare of child is paramount importance while considering the grant of custody of child.\textsuperscript{24}

1.4.3.9. The Marriages Validation Act, 1892. (2 of 1892)

An Act to validate certain marriages solemnized under part VI of the Indian Christian Marriage Act, 1872. The marriage solemnized in between Indian Christian and other than the Indian Christian this can be validate through this Act.\textsuperscript{25}

1.4.3.10. The Criminal Procedure Code, 1898.

Chapter XXXVI: Of the Maintenance of Wives and Children. Section 488: Order for maintenance of Wives and children. According to this section a destitute wife or children can claim maintenance from the husband or father. This section was enacted to prevent vagrancy of destitute wife and keeping her body and soul intact. The wife and children can claim maintenance in the court of law.\textsuperscript{26} This provision is humanitarian in nature.

1.4.3.11. The Anand Marriage Act, 1909. (7 of 1909)

This Act has passed to declare Sikh customary marriage valid. The Sikh Marriage ceremony called Anand, which commonly known as AnandKaraj, was declared valid. The Anand Marriage

\textsuperscript{24}  H.K. Saharay, Family Law in India Eastern Law House Kolkata 2011 p 297.
\textsuperscript{25}  Marriage & Divorce Laws, Professional Book Publishers Delhi 2015, p 178.
\textsuperscript{26}  The Criminal Procedure Code, 1898. Section .488
(amendment) Act 2012; has inserted section 6. Registration of marriages.\(^{27}\) It is best example of combination of customary and modern principle of matrimonial law.

1.4.3.12. The Indian Succession Act, 1925. (39 of 1925)

This Act was passed to Consolidate the Law Applicable to Intestate and Testamentary Succession. Matters connected with domicile are treated in Pt II. But that is for the purpose of succession only.

1.4.3.13. The Parsi Marriage and Divorce Act, 1936. (3 of 1936)

The primary object of this Act was to amend the law relating to marriage and divorce among the Parsis. This Act has been amended by the Parsi Marriage and Divorce (Amendment) Act 1988 and the Marriage Laws (Amendment) Act 2001.\(^{28}\)

1.4.3.14. The Arya Marriage Validation Act, 1937. (19 of 1937)

This is very short Act. It validates the Arya Samajist marriages. Thus it validates inter-caste marriages. It is reformatory step in personal law.\(^{29}\)

1.4.3.15. The Muslim Personal Law (Shariat) Application Act, 1937. (26 of 1937)

All the Muslim Women Organizations condemned prior to the passing of the Muslim Personal Law (Shariat) Application Act 1937 that the customary law adversely affected their rights. They demand that the Muslim Personal Law (Shariat) should be made applicable to them. Thus, this Act was passed to apply to all Muslims, men and Women\(^{30}\).

1.4.3.16. The Dissolution of Muslim Marriages Act, 1939. (8 of 1939)

This Act was passed to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the

\(^{29}\) Marriage & Divorce Laws, Professional Book Publishers Delhi 2015, p 89.
\(^{30}\) H.K. Saharay, Family Law in India Eastern Law House Kolkata 2011 p 171
effect of the renunciation of Islam by a married Muslim woman on her marriage tie.\textsuperscript{31} Thus the Muslim woman got right to divorce from her husband.

1.4.3.17. The Child Marriage Restraint Act, 1929. (19 of 1929)

It is popularly known as the ‘Sarda Act’. The main object of the Act is to prevent child marriages. It is applicable to all citizens of the country irrespective of their religion. According to this Act child as a person who, if a female, has not completed fourteen years of age and if a male, has not completed eighteen years of age.\textsuperscript{32} Thus this Act is secular in nature.

Thus in British rule codification was made to a large extent in right direction which has brought change according to changing circumstances. The Main object was good governance. The approach was sympathetic and compassionate but certainly not human right.

1.4.3.18 Cultural Identity

The principle of Hindu law personal laws of Hindus, Buddhists, Jains and Sikhs, Tahir mahmood wrote on blurb page: despite the constitution’s call for a Uniform Civil Code the system of community-specific personal laws remains the order of the day of India. The codified personal law applicable under this conventional regime to four different religious communities, together having over 80% share in the country’s population, is inaccurately called Hindu law. \textsuperscript{33}

India is multicultural society. Therefore Cultural Identity has become very important in Uniform Civil Code. Jeffery Weeks defines Identity: Identity is about belonging, about what you have in common with some people and what differentiates you from others. At its most basic it gives you a sense of personal location, the stable core to your individuality. But it is also about your relationships, your complex involvement with others and in the modern world these have become ever more complex and confusing. Each of us live with a variety of potentially contradictory identities, which battle within us for allegiance: as men or women, black or white, straight or gay, able-bodied or disable, British or European etc. The list is potentially infinite, and so

\textsuperscript{31} Marriage & Divorce Laws, Professional Book Publishers Delhi 2015, p 183
\textsuperscript{33} Tahire mahmood, Principle of Hindu Laws of Hindus, Buddhists, Jains and Sikhs, Universal law Publishing Co. new Delhi, 2014 Ed. P.Blurb
therefore are our possible belongings. Which of them we focus, on, bring to the fore, identify with, and depend on a host of factors? At the center, however, are the values we share or wish to share with others.\textsuperscript{34}

On the basis of above definition, Identity can be classified as follows:

1) Biological Identity: it can classify Man and Woman.
2) Political Identity: Nation, it can shift after changing the boundaries of the nation.
3) Economic Identity: It can classify as Poor, Middle Class, and Rich.
4) Social Identity: Forward, Backward, Tribal and non-tribal.
5) Religious Identity: Hindu, Muslim, Christen etc.
6) Cultural Identity:-Western Culture, Indian Culture, Hindu Culture, etc.

The concept of simple and pure identity is not possible. The various aspects of differentiation in identity are such as ethnicity, race, culture, and economic, political, cultural, psychic, subjective etc. The Identity concept cannot be differentiating into discrete and pure strands.

Persons who those are opposing to Uniform Civil Code they are raising following queries:

1) It is direct interference in the Right to Religion.

In this regard Court has already cleared that the right of religious belief has protected and not the religious practices. Court has further cleared that family matters are secular in nature.

2) It is violation of cultural rights of the minority.

It is very ambiguous statement. In constitution cultural and educational rights are granted to learn the language and script not more than that. Therefore it is strengthening Indian culture.

3) It is hegemony of majority over minority.

There is no question of hegemony; gender just laws are going to frame under UCC.

In this case how a major act as a guardian of a minor the same feeling is underline in the concept of UCC.

4) Reform the personal law Instead of Passing UCC.

How it may reform it is not clear. Reform within the religious tenets; then it will not help much because it has its’ own limitation. It will not achieve goal of gender just law. Even then it will help up to some extent to give relief to a woman. Its best example is Muslim Women (Protection of rights on Divorce) Act, 1986.

1.4.3.19 Views on Multiculturalism

It is very true that at the time of Independence there was slogan of Unity in Diversity. After 1976 expressly accepted principle of SOCIALIST and SECULAR in Indian Constitution. Further it Accepted FRATERNITY assuring the dignity of the individual and the Unity and integrity of the Nation. Therefore the above constitutional amendment fully support to UCC.

Susan Moller Okin Comment on Multiculturalism is as follows:

Religious or cultural groups often are particularly concerned with “personal Law”- the law of marriage, divorce, child custody, division and control of family property, and inheritance. As a rule, then, the defense of “cultural Practices” is likely to have much greater impact on the lives of women and girls than on those of men and boys, since far more of women’s time and energy goes into preserving and maintaining the personal, familial, and reproductive side of life. The second most important connection between culture and gender is that most cultures have as one of their principal aims the control of women by men. Therefore multiculturalism is bad for women.  

Thus minority identity is patriarchal concept. It is not distinct concept, it supports directly or indirectly by the other identity groups like political, religious, cultural, social etc. It has very cleverly used by the rightist group of minority to create impediment in the concept of UCC. It has high jacked the issue of woman’s Identity and gender justice in family law of India in

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general and UCC in particular. Therefore society and government should think seriously in this matter and take positive steps towards supporting UCC.

1.4.4. Personal Laws passed after Indian Independence

After 1950 personal laws have change according to the changing times. Hindu personal law codified on secular principles. Nearly about 80% population is brought under Hindu law. Several secular laws have passed some important laws are as follows:

1.4.4.1. The Special Marriage Act, 1954 (43 of 1954)

This Act is applicable to all citizens irrespective of their caste, creed and religion. It has extra territorial application. This act used to apply in conflict of law. Any person can register their marriage under this act. Inter-Caste or Inter-Religious marriages can perform very easily. This Act provides marriage, divorce, Maintenance etc. This act is one step (or step) forward to uniform civil code. 36

1.4.4.2. The Hindu Marriage Act, 1955. (25 of 1955)

The Hindu code bill was not passed by the parliament. The bill splitted is the first installment to pass the Hindu codified statute. It has inclusive definition of Hindu. This Act has modern provisions of Marriage and divorce. It is substantial and procedural law. 37 It has brought uniformity in marriage and divorce in Hindus.

1.4.4.3. The Hindu Adoption and Maintenance Act, 1956. (78 of 1956)

This Act has been passed to amend and codify the law relating to adoptions and maintenance amongst Hindus. This is another installment of Hindu Code Bill. The Bill provides for adoption of boys as well as girls. The Hindu widow has given right of adoption. This Act is secular in nature. It is gender just law. 38

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36 H.K. Saharay, Family Law in India Eastern Law House Kolkata 2011 p 2
37 Ibid.,p 35.
1.4.4.4. The Hindu Succession Act, 1956. (30 of 1956)

The object of the Act was to amend and codify the law relating to intestate succession among Hindus. This is the third installment of the Hindu Code Bill. This Act has treated son and daughter at par. The Hindu women’s limited estate has abolished. Hindu female’s right of absolute ownership over property accepted.39

1.4.4.5. The Hindu Minority and Guardianship Act, 1956. (32 of 1956)

This is another installment of the Hindu Code and it deals with the law relating to minority and guardianship. Age of minority is fixed at 18 years. Guardians are classified in three classes, namely, - Natural guardian, testamentary guardian, and guardians appointed by a Court.40


It has passed with a view to validate certain proceedings under the Hindu Marriage Act 1955. Section 19 of the Hindu Marriage Act has conferred jurisdiction on the “District Court” as defined in section 3(4) of the said Act to entertain and determine the reliefs sought under the said Act. Some states were given power to the Additional District Judge. The Hindu Marriages (validation of Proceedings) Act 1960 has cleared the meaning of District Court, under section 2 (2): All Proceedings in which decrees and orders passed before the commencement of this Act by any of the following courts exercising jurisdiction under the Hindu Marriage Act shall be deemed to be valid in law as if such jurisdiction had been exercised by a District Court. The district court includes The Court of an Additional Judge, Additional District Judge, Joint District Judge, Assistant District Judge, Assistant Judge and any other Court, by whatever name called, not being lower in rank than the Court of a subordinate Judge.41

1.4.4.7. The Muslim Women (protection of Rights on Divorce) Act, 1986. (25 of 1986)

41Ibid p 90.
An Act has been passed to protect the rights of Muslim women who have been divorced or have obtained divorce from their husbands and to provide for matters connected therewith or incidental thereto. This Act is passed by the parliament after Shah Bano case. This Act provides maintenance to Muslim divorced wife. If the Husband and relatives fail to give maintenance then it is the responsibility of the State Wakf Board to pay maintenance to the wife. 

Thus the Muslim have accepted power of Indian Parliament to legislate law in Muslim Personal law.

Some important secular legislations passed by the parliament are as follows:

1.4.4.8. The Dowry Prohibition Act, 1961. (28 of 1961)

An Act has been passed to prohibit the giving or taking of dowry. The practice of dowry came into existence just to provide post marital security to bride. It has included presents, articles given to the bride in marriage, it should use for the benefit of wife. The main object of this Act is to prohibit the dowry system. It has made punishable offence.


This Act has passed to validate the foreign marriages. It gives procedure for performing marriage outside India. This act is applicable to Indian citizens. This Act is secular and it is more or less similar to the Special Marriage Act, 1954.


The relevant provisions for maintenance under Criminal Procedure Code 1973 are as follows;

Section 125 order for maintenance for wives, children and parents. Section 126 Jurisdiction and Procedure. Section 127 Alteration and Modification of the order. Section 128 enforcement of order. These provisions have proved highly beneficial to protect maintenance right of wife, women, children and parents.

Ibid. p 280.
Flevia Agnes, Family Law, Volume 2, Oxford University press-2011, p123.

The main object of the Family Court Act, 1984, is to curtail the delay in matrimonial proceedings. This court has status of District Court. In the appointment of Family Court Judges preference to woman Judges are given. This is Tribunal; it has having their won procedure. There is provision of Counselor who is trying to compromise the matter. These courts have been established at metropolitancities. Their work is satisfactory.\(^{46}\)


Self-immolation known as sati, by a woman after the death of her husband either on the pyre of her husband or separately was an ancient tradition in India among many Hindu Communities. Prohibiting this barbaric act, Sati Prevention Act has passed. This is Central legislation. This Act is divided into five parts and provides for inter alia, definitions, punishment, Special Courts, Power of Collector or District Magistrate to prevent sati.\(^{47}\) Thus lastly all India legislation passed by parliament.


The advancement of science and technology made possible to human being to diagnose the sex in a mother’s womb. People were misused it for terminating the female foetases. This Act regulated the technique of sex determination and prohibits it for misuse. Section 5 and 6 are dealing with prohibition and punishment.\(^{48}\)


The object of this act is to protect Human Rights of women. The Vienna Accord of 1994 and the Beijing Declaration and Platform for Action (1995) have acknowledged that domestic violence is an important human rights issue. The United Nations Committee on Convention on Elimination

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\(^{48}\) Ibid. pp 183.
of All Forms of Discrimination against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family. In response of above recommendations India has passed this Act.49


The Child Marriage Restrain Act 1929 did not declare child marriage to be void or invalid. There was growing demand for making the provisions of the Act more effective and the punishment thereunder more stringent so as to eradicate or effectively prevent the evil practice of solemnization of child marriages in the country. This will enhance the health of children and the status of women. This Act repealsthe earlier Act of 1929.50


This Act was passed with the view of simplifying the procedure making the relief available with less expense and providing for speedy disposal of the matter. This Act casts obligations on the persons who inherit the property of their aged relatives to maintain them. The provisions have also been made for setting up old age homes for providing maintenance to the indigent older persons and also for providing medical facilities to senior citizens.51

Thu after independence Indian parliament has passed important Acts in family matters. These Acts are steps towards uniform civil code.

1.4.5 Provision of Uniform Civil Code in Indian Constitution

The whole philosophy of Indian Constitution is in favour of Uniform Civil Code. The Preamble gives assurance to its citizens; Justice, Liberty, Equality and Fraternity.52 The Fundamental Rights Article 14. Equality before law.53 Article 15. Prohibition of discrimination on grounds of

50 Ibid. p 332.
51 Ibid. p 315.
53 Ibid. p 20.
religion, race, caste, sex or place of birth. Directive Principle of State policy is public policy of India. Directive Principles is non-justifiable. Article 44. Uniform civil code for the Citizens- the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. Fundamental Duties. Article 51A. Fundamental Duties – support to the uniform civil code. Art. 51A(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women. In the division of power in between center and state it mentioned in The Seventh Schedule, List III – Concurrent List, Entry 5. Marriage and divorce; infants and minors; adoption; wills; intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law. Thus Indian Constitution has full support to Uniform Civil Code.

1.4.6 Scholar’s Opinion on Uniform Civil Code

Constituent Assembly therewas two opposite groups the supporter were Dr. B. R. Ambedkar was an untouchable, Minoo Masani was a Parsi, Rajkumari Amrita Kaur was a Christian from Royal House of Patiala and Smt. Hansa Mehata was a Hindu. These persons were very much interested to add this Provision in Fundamental Rights but due to Majority opinion it has added in Directive Principles of State policy.

H. M. Seervai a Constitutional expert - According to him Uniform Civil Code is a Mirage. It is an illusion born of the desire; that the people of India would be one people if they had a common civil code. In India it is impossible to enact a uniform civil code.

D. D. Basu a Constitutional scholar stated that Uniform Civil Code is a Constitutional mandate. Constitution is the Fundamental law of land which is binding on all the citizens of India.

54 Ibid. p 30.
55 Ibid. p 104.
A. A. A. Fyzee expressed his views in his booklet: The Reform of Muslim Personal Law in India, as follows:

India is not *adearal-harb*, a country imimical to Islam, or a *daral-Islam*, an Islamic country; it is a neutral country *daral-hiyad*, where the laws are laid down according to state policy. Muslim personal law in India is a discrete body of law and custom, varying considerably from the rules of *Sharia* as expanded in the early classical text.

It is futile to argue that where a certain rule of law, as applied by the courts in India, needs a change we are interfering with an immutable rule of *Divin* law. Such an argument is generally used for personal, polemical or political ends, and not with any spiritual motives. Where the human conscience is moved to rank injustice it is for us, Muslims of India, to find a solution, and to bring our law into line with every other system of jurisprudence, giving justice to those to whom it is denied. 61

**Tahir Mahmood** according to him there shall be multifarious programme of educating the public and moulding the popular trend will have to be adopted; on uniform civil code. Government also gives grant to such programmes 62

**Rajkumari Agrawala** has expressed her view on uniform civil code. She said that uniform civil code is a formula not a salutation. It is a compromise between idealism and pragmatism. 63

**Dr. S. P. Sathe** differentiated between common civil code and uniform civil code. He has three ways to bring uniform civil code. 1) Formulate Uniform Civil Code and enforce it. 2) It should undertake selective reform of personal law, for example Marriage, Divorce, Adoption etc. 3) It make optional at beginning. 64

61 Edited by Tahir Mahmood, Famil Law and Socil Chang, N.M. Tripathi Private Limited Bombay.175. p 13
62 Ibid. p 107
63 Ibid.p 110.
Kiran Destha, according to her, there is no doubt the idea of uniform civil code is by and large, a child of independent India. It appears to be absolutely essential in the interest of the unification for building up one single nation with one single set of laws in the country.\(^{65}\)

Justice V R Krishna Iyer has expressed his views. Goa has a Uniform Civil Code while the rest of India does not. It is desirable for one nation to have one family Code.\(^{66}\)

Dr. Vasudha Dagamwar, in her interview she expresses her view on Uniform Civil Code. She said that India was having opportunity to frame uniform civil code in the early years from 1950-55 and second time during 1971-72, but it has not been done. Therefore it is better to legislate on particular topic separating for bringing uniformity for example Marriage Law, Divorce Law Adoption etc.\(^{67}\)

Justice M. H. Baig. He expressed his views on Uniform civil code that there shall be separation of religion from strictly social economic and legal matters. He desired a common civil code to be enacted in which all that was good in Muslim Personal Law would be incorporated.\(^{68}\)

V.M. Tarkunde feels that a good Civil Code would be a blend of all that is best in various personal laws and agreed to by a substantial number of people from each community or at least supported by enlightened members of each community. It is a matter of evolution, it cannot be imposed at one stroke. The first step should be to bring in line and update all personal laws, making them more modern and egalitarian. The dignity of the individual and equality of sex should be given due weight. As a beginning, a draft code be prepared and discussed publicly.\(^{69}\)

Thus Scholars are cautious about Uniform Civil Code. It is caught in community right and individual liberty. The person who opposed to uniform civil code is opposing due to their Identity problem or their own political or religious considerations. While civil code will be going to form for all people, it wills considerd welfare of the people. Tribal welfare should also consider at the time of framing the code. Inclusive, illustrative and comprehensive approach is

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\(^{67}\)Researcher has interview Dr. VasudhaDhagamwar on 6\(^{th}\) March 2011 at Pune.  
\(^{69}\)Ibid.P 130
required. Mass education should be made. Systematic programmes are required to hold so people will know the civil code.

1.4.7 Judicial Decisions on Uniform Civil Code.

There are several judgments given by the various High Courts including Supreme Court of India. Some important judgments are discussed in judicial approach to uniform civil code.

1.4.7.1 The State of Bombay V/S. Narsu Appa Mali\textsuperscript{70}

In this case The Hindu Prevention of Hindu Bigamous Marriage Act, 1946 was challenged on various grounds. It violates Art. 14, 15, 25, Art. 13 (1), and 372 (1), (2).

In this case the trial court has punished the respondent in the violation of the Hindu Prevention of Hindu bigamous Marriage Act, 1946. The appeal was filed before Bombay High Court. The High Court held that Article 13 and 372 are not applicable to personal law. Court has declared impugned Act is valid.

1.4.7.2 Makku Rawther’s Children; Asan Rawther and other V/S. Manahapara Charagil\textsuperscript{71}

The issue in this case was about Hiba or gift under Mohammedan Law. Gift can be made by oral agreements between the partied and the same are exempted for the registration under the Indian Registration Act, 1908. In this case gift was made and it was challenged on the ground that section 129 of the Transfer of Property Act. Which exclude the operation of Registration Act. It violate Art.14 and 15 and 13 of the Constitution of India. Justice V.R. Krishna Iyer delivered dynamic Judgment and observed: “Whatever might have been the Concept of the gift in section 129 of Transfer of Property Act. When it was originally enacted, its meaning has to be gathered today in the constitutional perspective of Article 14, 15, 25 and 44. The application of Muslim personal law to gift does not preclude the application of other laws which does not counter to the rule of Muslim law. A Muslim gift may be valid even without a registration deed; and may be

\textsuperscript{70} AIR 1952 Bombay 84.
\textsuperscript{71} AIR 1972 Ker. 72
invalid even with registered deed. The Important thing is that the old law must be turned up to the new law of the Constitution and sprit it of the times.

Thus the Court emphasized that personal laws in respect of gifts must be read in the light of Article 44 of the constitution.

1.4.7.3 Bhagwan Dutt V/S Smt. Kamala Devi.\(^{72}\)

The issue in this case was section 488 of Criminal Procedure Code 1898 and Section 23 of Hindu Adoption and maintenance which a wife can claim from her husband.

The main issue before the court was withers the earning and income of which should be taken into consideration while deciding a case in fever of wife who wants maintenance from her husband. In this Full Bench Judgment Court Observed: “Section 488 is intended to serve a social purpose and to prevent vagrancy and destitution and find out as to what is required by the wife to maintain a standard of living which is either luxurious nor penurious, but is modestly consistent of the wife for much moderate living can be fairly determined only if her separate income also is taken into account together with earnings of husband and his commitment

Section 488 is secular one. It is applicable to all section of the society. Section 23 of Hindu Adoption and Maintenance is applicable to Hindus only. Thus the scope of these actions is different.

1.4.7.4 Bai Tahira v/s. Ali Fissali\(^ {73}\)

This is maintenance case of Muslim wife against her husband. The brief fact of the case are that Bai Tahira had been divorced in 1962 and thereafter the defendant married to a second wife. In the compromise deed a flat and rupees 50,00 had been adjusted ad a mehar money and Iddat money. It was also mention in the deed that she has no further claim against her husband. In 1973 the Criminal Procedure Code was amended. Thereafter, Bai Tahira filed an application for maintenance under section 125 in the trial court in appeal against the decision of the Bombay High Court.

\(^{72}\) AIR 1975. SC.83
\(^{73}\) AIR 1980 SC 362.
In Full Bench Judgment Court held that a new statutory right was created as a projection of public policy. Neither the compromise deed nor the lump sum payment made by the husband; cannot release him from liability for maintenance of his wife until she has not married. Thus the court stress emphatically that the provision contained in chapter IX of Criminal Procedure Code read with Part IV of the Indian Constitution and Article 15(3) which provide for transforming the values with the changing time should be given universal application in India.

1.4.7.5 Dr. Abdur Rahim Undre V/S. Smt. Padma Abdur Rahim Undre

The issue before the court was whether the marriage performed in England under British Marriage Act, 1949. Can annulled under personal law by way of Talaq. The brief fact of the case are that the parties in the petition are citizen of India; Husband is Mohammedan and wife is Hindu. On 6th May 1966 they married in England under British Marriage Act 1949. Husband gave Talaq on 20th April 1978. Then the Husband filed case before the civil court Bombay, for injection to prohibiting wife to enter into the residential premises and declaration of divorce by Talak. The City Civil Court dismissed the case saying that the paradise Flat is the matrimonial home of the wife she can use that premises for residence. The marriage in England is a civil marriage so still is subsisting. Against the order of City Civil Court the Husband filed appeal before High Court, Bombay. The appeal was dismissed. Then Latter Patent Appeal was filed before Division Bench of Bombay High Court. It was admitted without giving interim relief. Against the order of the High Court Husband field Special leave Petition before Supreme Court of India. The Supreme Court directed to Bombay High Court to expedite the matter and decide within one month.

The issue before the court was if there will be more than one law applicable to the case which law shall apply. The Bombay High Court held that if two Acts are available for dealing the case then it should see which law is nearer to the marriage law. Court held that to the British Marriage Act 1949; the Indian Special Marriage Act, 1954 is closer. It is secular in nature; and the Interpretation is in tune of Article 44 of Indian Constitution. Further Court held that if two interpretations are possible regarding the provision of law then the law will have to be interpreted and applied in the perspective of part IV of the Indian Constitution. The benefit of reasonable doubt must go to the weaker section. In present case it should go to wife.

1.4.7.6 Moh. Ahmed Khan V/S. Shah Bano Begum and others\textsuperscript{75}

This is the case of Muslim wife’s maintenance under section 125 of Criminal Procedure Code, 1973. Supreme Court has confirmed the right of maintenance of Muslim women under Section 125 of Criminal Procedure Code. Thus Court rightly decided this case according to the philosophy of Indian Constitution.

1.4.7.7 Sarla Mudgal (Smt.), Prasident V/S.Union of India and others.\textsuperscript{76}

Three group petitions had decided. The brief facts of the cases were; The Hindu Husbands falls in the love of another woman and wanted to marry those woman so they empresses Mohammaden Religion and got married. The petitioner was challenged second marriage under Section 494 of Indian Penal Code. Court further held that the earlier marriage con not break automatically. The pious marriage is still subsisting. This is conflict of Personal law. Apex Court Expressedview that there is no necessary connection between religion and personal law in a civilized society. Article 25 guarantees religious freedom where as article 44 seek to divestreligion from social relations and personal law. Marriage, Succession and like matters of a secular character cannot be brought within the guarantee enshrined under article 25,26 and 27. Lastly Court has directed to the Union of India and prime minister of India to frame Uniform Civil Code.

1.4.7.8 Ahmadabad Women Association Group V/S.Union of India.\textsuperscript{77}

The public Interest Litigations were filed by the petitioner. Petitions were challenging discriminatory provision of personal laws. Supreme Court dismissed all those petitions saying that in these petitions gender inequality has highlighted, direct prayer of uniform civil code was not advanced. It is the policy matter therefore the remedy is lies somewhere and petition has filed before wrong forum.

1.4.7.9 Denial Latifi and other V/S. Union of India.\textsuperscript{78}

\textsuperscript{75}(1985) 2 SCC 556.
\textsuperscript{76}(1995) 3 SCC 635.
\textsuperscript{77}AIR 1997 SC 3614.
In this Group petition Constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged. It was challenged on the ground of Article 14 and 21; of Indian Constitution and 125 of the Criminal Procedure Code. The Supreme Court held that the impugned Act do not offend Article 14, 15 and 21 of the Constitution. The said Act declare valid.

1.4.7.10 John Vallamttom and another V/S. Union of India. 79

The Constitutional validity of Section 118 of Indian Succession Act, 1925; Was challenged on the ground it violates Article 372, 13, 14, 15 and Article 25, 26 of the Indian Constitution.“Section 118 Bequest to religious or charitable uses- No man having a nephew or nice or near relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months for its execution is some place provided by law for the safe custody of the will of living persons.” The Court has allowed the petition. It declared it is unconstitutional, violetive of section 14, 15, 13(1), and 372. Lastly Court expresses their wives, with great regret that Article 44 of the Constitution has not been given effect.

1.4.7.11 Smt. Seema V/S. Aswant Kumar. 80

Supreme Court has given direction to the states to make compulsory registration of the marriages. This is step toward uniform civil code.

Thus judiciary has given very good decisions in personal matters. It has reminded to the Government of India time and again to pass a Uniform Civil Code.

1.4.8 HolyScripts

Holy Scripts are very important source of family laws. Some Important sources are as follows

1.4.8.1 Hindu Law;

79 (2003) 6 SCC 611
80 AIR 2006 SC (SUPP) 1308
In Hindu law there is number of Holy Scriptures. The important are A) The Vedas and B) The Smrities.

A) The Vedas or Sruti:

Hindu Law is considered to be divine law a revealed law. This revelation is contained in sruti or Vedas. Sruti literally means what was heard. There are four Vedas viz, the Rig, the Yajur, the Sama and the Atharva, along with their respective Bharmanas. The Vedas are said to contain the voice of God. They are considered primary source of law. They are said to be the source of all knowledge. But it contains less principle of law.\textsuperscript{81}

B) The Smrities:

This is golden age of Hindu law. The word ‘Smriti’ literally means what has been remembered. The Smrities are said to be based on the memory of sages who were repositories of sacred law. The Smrities are divided into early Smrities and the latter Smrities. The former are called, the Dharmasutras, and the latter the Dharma shastras. Smrities are the main source of Hindu Law.\textsuperscript{82} Thus Holy books are main source of Hindu law.

1.4.8.2 The Holy Quran:

The historical value of the Quran is great. The’ Holy-Quran’ for the first time laid the principle of perfect democracy. The Quran is divided into 114 Chapters and 6666 verses. The verses of Quran are called Adyta and the Chapters are concerned with legal principles and nearly about 80 verses are concerned with marriage, dowry, divorce, etc. Thus it is source of Mohammedan law.\textsuperscript{83}

1.4.8.3 The Holy Bible:

\textsuperscript{81}Shailendrajain and Peeyushi Diwan, Dr. Paras Diwan on Hindu Law, Orient Publishing Company IInd Edi. 2002. P 63.
The Bible is the Holy Book of Christians. Family rules are not given in Bible. But some provisions are there. Those are: Christian Home relationship, Ephesians 5: 22-6:4 Wives submit to your own husbands as the Lord.\textsuperscript{84}

Marriage and Divorce. Matthew 19: 3-9 Bible has not allowed divorce, Husband and wife are one. They are inseparable.\textsuperscript{85}

Christians are not allowed Adultery. Proverbs 6: 23-33.\textsuperscript{86}

Thus The Holy Bible is not a book of legal system therefore it is pure matter of Creed. Therefore Christian family law is secular. It has changed according to changing times. It has equated to modern principle of law.

1.4.9 Comparative Study

Comparative study of Indian personal laws; with personal laws of other countries. Comparative study of various Islamic countries’ personal laws. Study of personal laws of western countries. World approach to Uniform Civil Code and gender justice.

1.4.10 Inter-National Conventions

Trends of family law Equalization of legal position of men and women. It abolished the position of the husband as a possessor of his wife; accompanying the recognition of the position of the woman as wife was corresponding move to give the woman as mother the same rights over her legitimate children as the father had traditionally possessed. The other has been the extent to which the law has withdrawn from seeking to pass Judgement on the misconduct of family members towards each other as a justification for making an order to settle their future legal positions and relationships. It shifted in emphasis from past fault to future needs, It further shift of attention from adults to child. At present Multi-disciplinary and specialist approaches to family problem are used. The final important gesture to note at this stage is the increasing significance of

\textsuperscript{84} The Holy Bible, New King James Version Published by The Gideons International India, Y. M. C. A. Secunderabad - 3 Andrea Pradsh, India. P 1148
\textsuperscript{85} Ibid. P 952
\textsuperscript{86} Ibid. P 648.
international law in the shaping of new thinking about families, and in new legislation regulating them. It can use for resolving dispute of conflict of law. \(^{87}\)

There are several International Conventions which are protecting Human Rights and gender justice. Some important international conventions and relevant provisions are as follows


The relevant portion of the charter. The UN Charter gives guarantee to save succeeding generation from the scourge of war and to reaffirm faith in fundamental human rights, in the dignity and worth of human persons, in the equal rights of men and women and of nations large or small, to promote social progress and better standard of life in larger freedom and for achieving these ends to employ international machinery for the promotion of the economic and social advancement of all people. \(^{88}\)

1.4.10.2 Universal Declaration of Human Rights, 1948

This is basic document on human right in the modern world. On the basis of it other documents have prepared by the world organizations. Article 16 of UDHR deals with freedom of marriage and form family. It further says that family is the natural and fundamental group unit of society and is entitled to protection by society and State. \(^{89}\)

1.4.10.3 International covenant on Civil and Political rights, 1966

Article 23 right to marry with free consent. Family is natural and fundamental unit of society. Article 24 right of child to become part of his family. \(^{90}\)

1.4.10.4 International Covenant on Economic, Social and Cultural Rights, 1966

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\(^{87}\) N V Lowe and G Douglas, Bromley's Family Law, oxford University Press, eleventh Ed. 2015, p 4 to 21

\(^{88}\) Ian Brownline and guy s. Goodwin-Gill, Basic Documents on Human Rights, Oxford University Press, 4\(^{th}\) Ed. 2002 p 2.

\(^{89}\) Ian Brownline and guy s. Goodwin-Gill, Basic Documents on Human Rights, Oxford University Press, 4\(^{th}\) Ed. 2002 P 21.

\(^{90}\) Ibid. p189
Article 10 Protection of family, education of children, Protection of mother and protection from economic exploitation. Article 11 Right to standard life to family.\(^\text{91}\)

**1.4.10.5 Convention on the Elimination of All Forms of Discrimination against women, 1979.**

Article 16 directed to the state to eliminate discrimination against women in marriage and family. \(^\text{92}\)

**1.4.10.6 Copenhagen Declaration on Social Development, 1995**

Text 3. It gave importance to family and their protection. Text 26 (h) Family is entitled to receive comprehensive protection and support. \(^\text{93}\)

**1.4.10.7 Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, 2003**

Article 3- right to dignity. Article 4- the right to life, integrity and security of the person. Article 5- elimination of harmful practices. Article 6- marriage. Article 7- separation, divorce Article 8- equal protection of law. Article 14- health and reproductive right. Article 20- widows rights. Article 21- right to inheritance. \(^\text{94}\)

Thus day by day progressive Charters are coming they are influencing to the family laws.

**1.5 Object of study**


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\(^\text{91}\) Ibid. P 175.

\(^\text{92}\) Ibid. p218, 219

\(^\text{93}\) Ibid. P 869, 874.

i) To find out the gender equality perspective in existing family law.
ii) To understand the uniform civil code in India.
iii) To suggest reforms to family law from uniform civil code perspective.

To achieve these objectives, following research questions are raised as framework of study:

1.6. Research Question

I) how is the position of family law in India with reference to gender equality? What are the issues and challenges?

II) What is the relationship of multiculturalism and gender equality with reference to family laws and uniform civil code?

III) What are the possible approaches to the uniform civil code debate in India?

While doing research of uniform civil code number of issues will come across those issues are required to deal very cautiously.

1.7. Research issues

i) How to bring uniformity in personal laws like; Marriage, Divorce, Inheritance, Maintenance, Adoption, Will etc.

ii) How to deal social issues in bringing uniformity in personal laws.

iii) How to deal economical issues in bringing uniformity in personal laws.

The compositestudy of all issues is required to do at the time of finding solutions to uniform civil code.

Considering above research questions, research issue scheme of Chapterization is as follows:

1.8. Chapterization

1.8.1. Chapter 1. Introduction, Significance and scope

Background of uniform civil code, concepts, Historical and other issues.
1.8.2. Chapter 2. Multi-Cultural Diversity in Family Laws of India: Consequent Effect on Gender Equality

Historical development of Family Law. Sources of Family law, to check gender equality issues in Marriage, Maintenance, Divorce, Custody of Child, Inheritance, Adoption, will, Domestic Violence, Family Court, and Conclusion.

1.8.3. Chapter 3. Approaches to Uniform Civil Code


1.8.4 Chapter 4. Uniform Civil Code: Judicial Response

Introduction. Selected cases referred. Ten landmark judgments have been analyzed. Conclusion.

1.8.5. Chapter 5. Analysis of Interview Data.

Introduction. Interview, Analysis of Interview data. Conclusion.


Conclusions, finding and suggestions

1.9. Research Methodology

Research methodology is doctrinal with historical approach. It has also used analytical and comparative approach wherever necessary. This research will give road map of the Uniform Civil Code.

1.10. Some Observations
Personal laws are patriarchal. They are gender biased.

Application of section 494 of Indian penal code 1860. Violation of concept of monogamy- If a Mahommadan wife marries in contravention of the rule – namely does not have more than one husband at the same time. She is liable to be punished under section 494 of the Indian Penal Code (1860) and the offspring of such a marriage is illegitimate and cannot be legitimated by any subsequent acknowledgement.  

Provision for remarriage of husband who has given talaq to his wife. If a husband has given valid talaq he is not allowed to remarry to the talak wife until she has been married to another man by a valid and operative contract, with whom she has cohabited had been either divorced from him or become his widow by his death. (This second husband is called a legaliser).

Islamic State of Hyderabad. Nizam State of Hyderabad in their Criminal Procedure Code made provision for Maintenance to wives and children irrespective of the religion to which they belong. It was similar to Section 488 of Criminal Procedure Code, 1898.

Professor Fyzee. Amendment of personal law- There never had been any real difficulty in amending such laws under the Constitution. He condemned polygamy as a practice that tended to make women feel insecure and frustrated. He also condemned that the children of a predeceased father could not inherit their grandfathers property. He condemned the community for denying the right of inheritance to Muslim women, even when the Koran had provided her the right. Professor Fyzee wanted parliament to amend Muslim personal law to remove these inequalities.

Professor S.P. Sathe stated that in the process of compiling all the provisions of the existing personal laws governing different religious communities, he has run into difficulty in extracting the religious from the non-religious components of these laws. “in some respects, even the recent changes in Hindu laws have failed to fully secularize laws, he mentioned citing an example, he

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96 Ibid. P 1579.
98 H. A. Gani, Reform of Muslim Personal Law, Deep & Deep Publications New Dehli, 1988 p 106
pointed out that though at the moment Law enables only Hindus to adopt a child as a son only if he does not have a son, or adopt a girl if he does not have a daughter. This law is inspired by a Hindu's religious need for a male child to facilitate his heavenly journey after death and not to enable a person to give expression to love and affection to a child not his own. The task now appears to be more difficult than I originally thought and all I can anticipate at the moment is that some plurality may have to be provided even in a Uniform Civil Code.  

Hindu Succession Act, 1956. The Schedule (See Section 8). Hairs in class I and Class II.

Father has included in Class II and mother has included in Class I hair. It is utter discrimination made against the father.  

All conflicts between the constitutional religious model and traditional religious models were inevitably resolved in terms of the categories and values of the constitutional model.

Uniform Civil Code of Goa. Here, Hindus are granted the customary right of polygamy, while Muslims are governed by the principle of monogamy. Neither nikah nor talaq is recognized and Muslim marriages and divorces are regulated by the code.

These are the things which strike to the researcher. Which will help to prepare gender just; uniform civil code.

1.11. Feminine Jurisprudence

Feminine jurisprudence, basically, deals with the thought that women should have political, social, sexual, and economic rights equal to those of men. It displayed feminist theory. The feminist theory is nothing but extending the ideas of feminism into theoretical, or philosophical ground. It aims to understand the nature of inequality and focuses on gender politics, power

99Ibid. p 131.
relations and sexuality. The most well-known types of feminism are: liberal feminism, Post-modern feminism, and radical feminism.¹⁰³

1.11.1. Liberal Feminist theory:

Liberal Feminist supports the political and legal commitments and reforms in order to bring equality of men and women in several aspects of life. They support gender equality. They do not demand special privileges for women.

1.11.2. Post Modern Feminist Theory:

The Post Modern Feminists central theme is maleness of law. They believe that gender is rhetoric construction. They believe gender is having multi-dimensional concern. They debate “woman” is a controversial category, complicated race, ethnicity, sexuality, and other facets of identity. Thus no single exits for single approach. It needs to deal the matter from sever perspectives.

1.11.3. Radical Feminist Theory:

It emphasizing the patriarchal roots of inequality between men and woman, or, more specifically, social dominance of women by men. Its main concern is a patriarchal relationship that exists in the society which presupposes the male controlled capitalization. It believes in total uprooting and reconstruction of society in order to achieve their goal. This theory believes that all men always benefit from the oppression of all women. It is similar to communist approach.

1.12. Gender Justice;

Gender Justice came into mind to address the socially constructed gender inequality. Generally, gender justice is an ending of and the provision of redress for, inequalitiess between women and men that results in women’s subordination to men. The core idea of gender justice is about realizing equality between women and men. Modern feminist science is based on the view that many differences between the sexes are based on socially constructed gender identities rather than biological differences.

than on biological sex differences. Thus gender justice aimed to struggle the difference developed culturally and socially not biologically.

Some scholars considered gender justice is a process. The additional element of gender justice is accountability. The social institution should be answerable and responsible. Because, they are established to render justice equally without discrimination. Therefore, if they fail to do so they should be responsible for their failure. The family, the community, religion and the state in general are responsible for historically developed gender inequality.¹⁰⁴

1.13. Conclusion

Thus this is first chapter which gives road map of research.

During British rule, family reforms were started on various community level. Those reforms were held on compassionate ground. Some reforms were also made on secular principals of law. After independence of India the constituent assambely invented the concept of Uniform Civil Code. On the philosophy of Uniform civil code family reforms were started they mainly adopted the human rights approach. After 70 years of independence till date we have not achieved the goal of uniform civil code in India.