

MULTIPLICITY OF FAMILY LAWS IN INDIA AND A QUEST FOR UNIFORM CIVIL CODE

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INTRODUCTION

Family Law is a set of laws that governs the interpersonal relationship of persons related to each other by Consanguinity, Marriage, and Affinity. It governs and regulates subjects or areas of the personal sphere such as: Marriage, Divorce, Maintenance, Succession, Minority & Guardianship etc. In India, there are multiple family laws and these laws are governing personal relationships / domestic relationships. The set of Family laws is diverse, and it originates mainly from religious scriptures, despite the fact that most of the family laws in India have now been codified in the form of Statutes. With the passage of time, these norms were given statutory recognition with several enactments in the area of Marriage, Divorce, Maintenance, Inheritance & Succession, Guardianship, and Custody matters. Various Religions in India have their own family laws. There are five prominent religions in India, to be noted in this connection:

1. Hinduism²
2. Islam
3. Christian
4. Parsi and
5. Jews

Although, most of the communities in India have their separate family laws depending on their religion that does not necessarily mean that they are purely religious in nature or based completely on religion. It is also not necessary that the person must be an ardent follower of a particular religion. A person may be an atheist, but he/she is having no choice but to be

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² It includes original/born/converted Hindus, Buddhist, Sikh, and Jains.

governed by religion-based family laws. So, in India one cannot claim or declare that he/she is not governed by the family law of his/her religion. Even by conversion to another faith/religion, they will still be governed by the family law of that Religion wherein the person has converted. Having said that, there is an option where such persons may subject themselves to the general law of marriage not based on religion. That is the Special Marriage Act, 1955³. It is not just in relation to the marriage subject but also in case of succession. Succession to the property of persons who marry under the said Act and their off-springs, would be governed by the provisions of the Indian Succession Act, 1925.⁴ The difficulty arises when a person claims to be an atheist and does not practically follow any particular religion. So, the question in this context is, what is the personal law, that is applicable to such a person. Unless a person formally declares, it becomes difficult for the court to decide the religion of that person. This issue has been discussed in detail hereinafter, as *determination of religion* of a person, is the very foundation of family laws in India.⁵ Family laws are applicable to persons in India depending on what religion they belong to and what territory they are resident of.⁶ Since the Family Law is a part of the personal sphere of the persons and the foundation of the said branch is to be seen in the religious practices, it is to be considered to be a branch of 'Personal Law' in India governing matters such as marriage, divorce, matrimonial affairs, inheritance and succession, and adoption⁷.

The importance of personal laws can be seen by their very nature, composition, and personas, and relations to which it is being applied. Personal laws occupy a unique position in today's age, and it plays a vital role in keeping society in the civil bounds. There are few areas in some communities, which are yet to be given a legislative shape. It is actually the political environment hampering the reform in a few personal laws of the country.⁸

³ Also, Foreign Marriage Act, 1969

⁴ Except where two Hindus are marrying under Special Marriage Act, 1955, where there is statutory exemption is given to them under Section 21A of the said Act. As a result of this, such Hindu couple is still subject to the provisions of Hindu Succession Act, 1956.

⁵ Juristic opinion of Prof. Poonam Pradhan Saxena, Family Law expert in India and Vice Chancellor, National Law University, Jodhpur

⁶ Id.

⁷ S.P. Sathe, *Judicial Activism in India*, 191 (Oxford University Press 2002).

⁸ Id at 193.

ROOTS OF PERSONAL LAW AND FAMILY LAWS IN INDIA:

To trace the sources of personal law or the family laws based on the religion, one might resort to the traditional means of identifying the sources of law such as ‘Legislation’, ‘Judicial Precedents’, ‘Customs and Usages’ and ‘Juristic Writings’. However, the thing is a slight variation when it comes to the ‘Personal Laws’, of course, these are also the main sources of personal laws. But ‘religious scriptures’ or ‘religious norms’ being the foundation of the existing personal laws, it adds to the conventional list of sources of laws. Religious Norms reflected in the Personal Laws or in the Family Laws are the identities of a person of a particular religion. These norms form an essential part of the ‘practice’ of the religion and the ‘Freedom of Religion’ and ‘right to practice religion’ forms a fundamental right of a citizen⁹. It is to be noted here that the Hon’ble Supreme Court of India, in ***Commissioner Hindu Religious Endowments (HRE), Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt***¹⁰ discussed the point i.e. *doctrine of essentiality* and clarified that a particular practice under Article 25 to be protected as a fundamental right must form an essential part of the religion and while answering the questions such as ‘What is an essential part of the religion’, ‘what is protected under Article 25’, and ‘What rituals & ceremonies can be protected as an essential practice under Article 25’, observed the following:

“A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it will not be correct to say that religion is nothing else but a doctrine or belief.....it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress.....The guarantee under the Constitution of India not only protects the freedom of religious opinion but it also protects also acts done in pursuance of religion and this is made clear by the use of the expression "practice of religion" in Art. 25”

So, it is clear that the family laws based on the religion or the religious scriptures or its norms could well be said to have derived from the Article 25 of the Constitution of India, being an essential part of the religion and the same is coming to be discussed by the Apex Court of the country in various cases which will be discussed in the upcoming part of the paper.

⁹ INDIA CONST. art. 25.

¹⁰ [1954] AIR SC 282.

Further, in addition to the 'right to practice' under Article 25 of the Constitution of India, Seventh Schedule, List-III, Entry 5¹¹, the Central Legislature and the State Legislature can legislate on the subject such as 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 the Constitution of India subject to their personal laws. So, it becomes evident that the State (both Central and State legislature) is competent to legislate on the subject of 'family law'. It does also mean, that they can take steps in furtherance of the Uniform Civil Code out of combined reading of Article 44 and Seventh Schedule, List-III, Entry 5. However, the legislative path ever since the commencement of the Constitution of India has been inclined in favor of the codification of religion based on family laws in India. The Hindu Code Bill is the major evidence of the approach and continuation of personal laws *as it is* after the commencement of the Constitution of India in other religions such as Muslims, Parsis, and Christians. The Hindu Code Bill brought out revolutionary changes in the way Hindu Personal Law was seen and it brought reformation in the form of bringing laws at par with the gender justice concern and concerns of equality and fairness in the law under the Indian Constitution. Such reformation in the form of the Hindu Code Bill was seen in the backdrop of and as a step-in furtherance of constitutional commitments. A committee which was constituted and led by B.N. Rau appealed for the opinions and insights on the reformation of the Hindu Personal Law and presented a draft and a Select Committee, chaired by B.R. Ambedkar examined the draft¹². Later it came to be called the "Hindu Code Bill" inclusive of the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoption and Maintenance Act, 1956. Below mentioned are the drastic changes that the Hindu Code Bill brought in the legislation of Hindu Personal Law keeping in view the Constitutional commitments¹³:

- Hindu marriages became a dissoluble marriage¹⁴
- Free consent became an important ingredient of marriage.
- Women and Men were granted the right of divorce and remarriage.

¹¹ Concurrent List (List of subjects wherein both Central and State Legislature can enact).

¹² FLAVIA AGNES, FAMILY LAWS AND CONSTITUTIONAL CLAIMS 18, (Oxford University Press, 2011).

¹³ Id.

¹⁴ Provision for divorce was introduced.

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- Hindu marriages became monogamous.
- Equal inheritance rights were granted to daughters in the separate / self-acquired property of their father.
- A large number of female relatives became Class I heirs - mothers, widows, daughters, wives of a pre-deceased son, grandson, and great-grandson.
- A widow could not be divested of the inherited property upon remarriage. The property inherited by her became her absolute property.
- Mother was deemed natural guardian of the child, after father.
- Women acquired a right to appoint a guardian.
- Girls could be taken into adoption (earlier only boys could be taken into adoption).
- Consent of the wife became mandatory for adoption.
- Right of Separate Residence and Maintenance to wives/widows introduced.

However, similar reformation or overhauling of the personal laws could not be done for the Muslim communities and the Legislature chose to reform the personal law of the majority community instead. Muslim law continues to be governed by the Muslim Personal Law which is based on the “Shariaya”, and it was clarified in the Muslim Personal Law (Shariyat Application) Act, 1938 a pre-Constitution of India, 1950 enactment which is continuing not just post-Constitution of India, 1950 but till today. The Muslim Personal Law is based completely on the ‘religious scriptures’ principally the same being the ‘Quran’ which is a holy text in case of Muslims and a major of the Muslim Personal Law¹⁵. Of course, post-constitution, there have been a couple of attempts to intervene in the uncodified Muslim Personal law, but those steps were in fact, in furtherance of ‘continuation’ of Muslim Personal Law only and it did not see the reformation which is required to be there like Hindu Code Bill. Even in the case of Christians and Parsis their pre-Constitution of India, 1950 Statutes continued to be made applicable to them with no changes or modifications.

However, in the midst of the *continuation* of existing, religion-based personal laws and reformations in the Hindu Personal Law in the form of the Hindu Code Bill, an option was

¹⁵ TAHIR MAHMOOD AND SAIF MAHMOOD (Eds), MUSLIM LAW IN INDIA AND ABROAD (Universal Law Publishing Co. Pvt. Ltd. 2012).

provided to the persons who would not like to be governed by their religion-based personal laws in the form of 'Special Marriage Act, 1954'. The Social Marriage Act, of 1954 is a progressive piece of legislation that was meant to be a secular and optional code.

The scheme of the Special Marriage Act, 1954 is such that if any person in India would not want to be governed by their religion-based personal law, they can marry the person of his / her choice in accordance with the provisions of the Special Marriage Act, 1954 and thereby they can alter the application of other personal laws such as inheritance and succession which are incidental to the subject matter of marriage and divorce. This was the unique system made to provide a choice to such persons in place of the Uniform Civil Code. There are scholarly opinions that it is an optional Uniform Civil Code or a step-in furtherance of the Uniform Civil Code or an alternative to the Uniform Civil Code till the State takes steps in furtherance of Article 44 of the Indian Constitution. This Act helps them in overcoming the constraints posed by their own personal laws and is called the civilian of marriage and the marriage under the Act of 1954 is "civil marriage". The marriage of two persons belonging to two different religions or between persons of a similar religion could alter the application of family law of their religion¹⁶. The applicable law in case of marriage under the Special Marriage Act, 1954 for divorce and matrimonial remedies would be the Special Marriage Act, 1954 and for inheritance and succession, it is the Indian Succession Act, 1925. Further, in case one of the parties to the marriage is a Hindu and the other party to the marriage is non-Hindu, it results in severance of status of that Hindu spouse from the Hindu Joint Family or Hindu Undivided Family (HUF) and that spouse will no longer be called as the member of the HUF¹⁷. Similarly, the Act of 1954 also permits two persons who are already married in accordance with their personal law to *register* their marriage under the Special Marriage Act, 1954 before a Marriage Officer under the Act of 1954,¹⁸ and thereby they may alter their personal laws to be governed by another set of family law as mentioned above. Even in such cases, Section 19, 20, 21, and 21A will have a similar effect.

However, when both the parties to the marriage are Hindus, then severance, as given in Section 19, will no longer happen and even the succession to the property or inheritance of the property of the Hindu couple would be in accordance with the Hindu Succession Act, 1956 and not in accordance with the Indian Succession Act, 1925.¹⁹ Although the Act of 1954 is hailed

¹⁶ Special Marriage Act, 1954, Sec 21.

¹⁷ Marriage Act, 1954, Sec 19.

¹⁸ Special Marriage Act, 1954, Sec 15.

¹⁹ Special Marriage Act, 1954, Sec 21 A.

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as being a secular law or an optional civil code, it also has the tendency to favor the religion or to have its application by putting a savings clause under Section 21A for a particular religion.

In the backdrop of this, it becomes pertinent to take an overview of the existing framework of the (religion-based) family laws in India applicable to the parties.

THE FRAMEWORK OF REGIME OF FAMILY LAWS IN INDIA:

In the backdrop of the *continuation* Pre-Constitution of India, 1950 family laws based on the religion or religious scriptures, the authority of the State to legislate on the subjects of marriage, maintenance, succession, or inheritance, and the non-existence of the Uniform Civil Code in the country, it becomes matter immense importance to know and see the structure of the *existing* family law, which is the outcome of a) religious scriptures²⁰ and b) codifications under Seventh Schedule, List-III, Entry-5 of the Constitution of India²¹

HINDU PERSONAL LAW (FAMILY LAW):

1. Hindu Marriage Act, 1955 (for marriage and divorce in the case of Hindus)
2. Hindu Succession Act, 1956 (for succession or inheritance to the or of a Hindu in case of death of either male or female Hindu)
3. Hindu Adoption and Maintenance Act, 1956 (for provision of adoption of a child and maintenance to the Women, Parents, and children)
4. Hindu Minority and Guardianship Act, 1956 (for custody issues and for the legal and natural guardianship of a child below 18 years of age)
5. Un-codified Hindu Undivided Family Law / Joint Hindu Family Law

As far as HUF Law is concerned in the case of Hindus, there are some schools of thought, prescribing rules pertaining to Hindu Undivided Family Institution, which is very unique in the world. The Dayabhaga school of Hindu law prevails in Bengal, Assam, Tripura, and Manipur. In the rest of India, it is the Mitakshara school that prevails. The Mitakshara school is further sub-divided into four sub-schools, viz., the Mithila, the Benares, the Maharashtra or Bombay, and the Dravida or the South India school, which, broadly speaking prevails in their respective jurisdictions. The peculiarity of schools of Hindu law is that if a Hindu governed by a particular school migrates to another region, he would continue to be

²⁰ Pre-Constitution of India, 1950 (family laws).

²¹ Post-Constitution of India, 1950 (family laws).

governed by his own school unless he gives it up and adopts the law of the place where he has settled. These schools have still relevance in respect of un-codified Hindu Law, particularly joint family and partition.

MUSLIM PERSONAL LAW:

Quran is a paramount source of Islamic law and Muslim jurists have to extract law from it. But in doing so, they need to take into account other sources as well. Quran, in itself, is not a book of law like an enacted Code legislated by Parliament i.e., Indian Penal Code, the Indian Contract Act, etc. Its verses are not Sections of a Code. As a divine policy, Quran does not contain 'law' in the strict sense of the term. 'Law' has, in fact, been deliberately concealed by God himself within the legally imprecise and sometimes ambiguous sacred texts. 'Law' in Islam is to be extracted from the sources of Islamic Law. Quran is not law, but the source of law. This extraction is human activity and is called 'ijtihad', which means 'endeavor' or 'self-exertion'. In fact, Sharia is based on Divine instructions called 'Wahi'. Law, on the other hand, does rely on human reason or human speculations called 'Aql'. Other than Quran and Sunna, all other sources of Islamic law are based on human reasoning such as Ijma (consensus amongst learned), Qiyas (analogical deductions), and Istihsan (juristic preference), Istislah (public interest), and ijtihad (juristic reasoning). Thus, jurists discover 'law' in Islam.²²

Also as described by Prof. Paras Diwan and Prof. Jaswal²³, as opposed to Hindu personal law, in respect of Muslims, the schools have no territorial or regional connotation in the sense in they have in relation to Hindus. The Hanafi school (one of the four schools of the Sunni sect) covers a vast majority of Muslims all over India. Most of the Shias are governed by the Ithna Ashari school. Ismailis who constitute the smallest minority group of Muslims and who are mostly found in western India are governed by the Ismaili school. Muslims belonging to Shaikh school are mostly found in southern India. Mention may also be made of the three commercial communities of Muslims, the Khojas, the Bohras, and the Cutchi Memons who before the Shariat Act, 1937 were governed by their own customs and in some matters by Hindu law. After the year 1937, it is not so. The former two belong to the Shite Ismaili sect and the last belongs to Sunnite Hanafi School. The Khojas still retain the option of being governed by customary law, but others have lost the option by accepting the application of

²² LIVE LAW NEWS NETWORK, available at <http://www.livelaw.in/favour-uniform-civil-code-piecemeal-manner-interview-nalsar-vc-prof-faizan-mustafa/>

²³ Paras Diwan and Prof. Jaswal, *Family Law*, available at <http://14.139.60.114:8080/jspui/bitstream/123456789/738/23/Family%20Law.pdf>

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Muslim law. The Mopilla Muslims of Kerala was another Muslim community, which was at one time governed by customary law. They still retain the customary law of tarvad.

Following is the list of existing codifications in the case of Muslim personal law/family law:

1. The Muslim Personal Law (Shariat) Application Act, 1937 (A statute that clarifies the source of Muslim Personal Law)
2. The Dissolution of Muslim Marriage Act, 1939 (a provision for divorce is made for Muslim female spouse)
3. The Muslim Women (Protection of Rights on Divorce) Act, 1986 (enacted after the aftermath of *Md. Ahmed Khan vs. Shaha Bano Begum*²⁴ 1986 landmark judgment by the Supreme Court of India allowing Muslim divorced wife to claim maintenance under Section 125 of the Code of Criminal Procedure).
4. The Muslim Women (Protection of Rights on Marriage) Act, 2019 (enacted after the landmark judgment of the Supreme Court of India in *Shayara Bano vs. Union of India and others*²⁵ which is considered a revolutionary judgment for Muslim women who had imposed with irreversible triple talaq by the Muslim men which got penalized in the present Statute by the Parliament).

CHRISTIAN PERSONAL LAW:

According to the Indian Christian Marriage Act, 1872, 'Christians' means persons professing the Christian religion, and 'Indian Christians' include 'the Christian descendants of natives of India converted to Christianity'. In respect of marriage, matrimonial causes, and succession, Christians are governed by statutory law. They are:

1. The Indian Christian Marriage Act, 1872
2. The Indian Divorce Act, 1869
3. The Indian Succession Act, 1956

PARSI PERSONAL LAW:

Indian Parsis belong to Zoroastrian faith and in that sense in India, Parsi and Zoroastrian are synonyms. In modern India, Parsi law applies to the following three sets of persons²⁶: (a)

²⁴ (AIR 1985 SC 945)

²⁵ (2017) 9 SCC 1

²⁶ Paras Diwan and Prof. Jaswal, *Family Law*, available at <http://14.139.60.114:8080/jspui/bitstream/123456789/738/23/Family%20Law.pdf>

persons who are descendants of the original Persian emigrants and are born of Zoroastrian parents, (b) those persons whose father is (or was) a Parsi and mother an alien but admitted to Zoroastrian faith and (c) Zoroastrians from Iran

In respect of marriage, matrimonial causes, and succession, Parsis are governed by statutory laws. They are:

1. Parsi Marriage and Divorce Act, 1936 and
2. Indian Succession Act, 1929.

PERSONAL LAW OF JEWS:

For the family laws of Jews, there is no codified law in India. They are governed by their religious laws. The Jewish Law was written down in the first five books of the Old Testament often together called Torah (Genesis, Exodus, Leviticus, Numbers, and Deuteronomy). The modern Jewish law is an adaptation of the Mosaic and Talmudic law. That is a collaboration of divine and evolved law²⁷.

PERSONAL LAW AND UNIFORM CIVIL CODE VIS-A-VIS THE CONSTITUTION OF INDIA, 1950:

Now, post the commencement of the Constitution of India, 1950 the discussion started if the personal laws based on the religion is to be continued and when the Constitution of India was made, many members of the Constituent Assembly were concerned about the national integration, however, the scars of the partition of India brought some barriers in the line of having a uniform family law for the citizens. It was thought that a uniform law and abolition of different personal laws based on religion would bring people closer²⁸. So, the vision of national integration by the framers of the Indian Constitution through the instrumentality of uniform family law could not be brought into reality and as a result, we see the addition of 'Uniform Civil Code' as one of the goals to be achieved in governance by the State under Article 44 of the Indian Constitution. Article 44 of the Indian Constitution runs as follows:

'The State shall endeavor to secure a Uniform Civil Code for the citizens throughout the territory of India.'

²⁷ Jewish Law of Marriage & Divorce In India, IPLEADERS, available at <https://blog.ipleaders.in/Jewish-Law-Marriage-Divorce/>.

²⁸ S.P. SATHE, JUDICIAL ACTIVISM IN INDIA, 191 (Oxford University Press 2002).

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The Uniform Civil Code was seen through the lenses of ‘secularism’, the idea of ‘national integration, and the ‘gender justice’, as the majority of the religions were unjust towards women before the commencement of the Indian Constitution. Especially, after the commencement of the Indian Constitution, there is a complete overhaul of the Hindu personal law so far as family affairs are concerned. There are Constitutional mechanisms ensured under Article 25 and legislative steps which were taken in the form of the ‘Hindu Code Bill²⁹’ after the commencement of the Indian Constitution. The Christian³⁰ and Parsi laws³¹ were already codified during the British regime and the codification brought somewhat rationality and reasonability to the laws governing Christians and Parsis in India. However, the Muslim Personal Law was, and even to date is far from the codification and is being considered to be unjust towards the women. The Uniform Civil Code was seen as a solution for this not just the multiplicity of family laws as a problem but the concern such as gender issues, reasonability, and rationality in the laws governing family affairs.

The Uniform Civil Code was also spoken of as being a test of secularism by rationalists who emphasized that religion should be irrelevant in social and public life. However, a campaign for the Uniform Civil Code with emphasis on uniformity was interpreted as an effort by the majority community to impose their law on Muslims and this resulted in the weakening of the secular forces among the Muslims who wanted the reform of Muslim Personal Law from the perspective of gender justice.

Further, the concern of the Uniform Civil Code was addressed in Article 44 which is one of “Directives” to the State and an “Objectives” to be achieved whenever appropriate time comes³². It has become a dead letter and the State has not taken any initiative in furtherance of the Uniform Civil Code and its implementation throughout the country³³. The then ruling party in governance also made it clear that the right time has not come to bring into force the Uniform Civil Code as the time is not ripe yet to push through³⁴. In addition to the political spectrum, at

²⁹ Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Adoption and Maintenance Act, 1956, Hindu Minority And Guardianship Act, 1956.

³⁰ Indian Christian Marriage Act, 1872 Indian Succession Act, 1925, (Indian) Divorce Act, 1869, the Guardians and Wards Act, 1890.

³¹ Parsi Marriage and Divorce Act, 1936, Indian Succession Act, 1925, the Guardians and Wards Act, 1890.

³² Ahmedabad Women’s Action Group vs. Union of India AIR 1997 SC 3614.

³³ Shabbeer Ahmed and Shabeer Ahmed, *Uniform Civil Code (Article 44 of the Constitution) A Dead Letter*, IJPS 67, No. 3 (JULY - SEPT., 2006), p. 547, <https://www.jstor.org/stable/41856241?seq=3>.

³⁴ Id.

the judicial level too similar observation was made out in the case of *State of Bombay vs. Narsu Appa Mali*³⁵, the Bombay High Court in this case ruled that:

- Personal laws are not ‘laws in force under Article 13 of the Constitution as they are based on religious precepts and customary practices; and
- The principles enshrined in Part III of the Constitution cannot be applied to the personal laws.

The observation made by the Bombay High Court in the present case had impacted the way the Uniform Civil Code was seen. Moreover, the branch of “Personal Law” received the silent license to operate validly despite several contentions being there in the family law. These issues have time and again come into the limelight of court and the courts in the country have dealt with them considering the Constitutional obligation of the Courts in the country to protect the basic rights or the fundamental rights of the citizens, especially, the concern of gender justice. Despite the Bombay High Court approach in the above-mentioned case, the Courts have time and again tested the “Personal Law” on the touchstones of the Fundamental Rights in the Constitution of India. On all such occasions, the Judiciary reminded the State of its obligation under Article 44 of the Constitution of India i.e., the Uniform Civil Code throughout the country.

The first such dynamism on the part of the Judiciary came to the light in the case of *Md. Ahmed Khan vs. Shaha Bano Begum*³⁶ wherein the Supreme Court of India restored the right of maintenance of a divorced Muslim Wife under Section 125 of the Code of Criminal Procedure, 1973. A Muslim divorced wife by virtue of Muslim Personal Law which restricted her right to claim maintenance after divorce³⁷. Whereas in other personal laws, a divorced woman could legitimately claim her right under Section 125 of the Code of Criminal Procedure. The apex court felt the need for enforcement of Article 44 owing to the several gender issues that existed in the personal laws. The judgment led to the enactment of a separate law for Muslim Woman on post-divorce maintenance, namely, the Muslim Women (Protection of Rights on Divorce) Act, 1986. However, the Act of 1986 failed to come to comply with the terms of equality and is considered to be flawed legislation. Although the Act of 1986 is flawed

³⁵ ILR 1951 Bom 775.

³⁶ AIR 1985 SC 945.

³⁷ INDIRA JAISING (ED.) GENDER JUSTICE, MEN’S LAWS WOMEN’S LIVES A CONSTITUTIONAL PERSPECTIVE ON RELIGION, COMMON LAW AND CULTURE IN SOUTH ASIA, 7 (Women Unlimited 2005).

legislation on some counts, it did utilize existing practices and structures present in Islam to grant maintenance to women³⁸.

Further, the Supreme Court of India in *Sarla Mudgal vs. Union of India*³⁹ and *Lily Thomas vs. Union of India*⁴⁰ came heavily on the fraudulent conversions by non-Muslims to the Muslim faith with the intent to remarry with Muslim women in accordance with the tenets of Muslim marriage and declared such marriages as invalid and would amount to Bigamy despite the conversion being a matter of fundamental right. In these cases, too, the apex court of India expressed the need for Uniform Civil Code and directed the States to take steps in furtherance of Article 44 of the Indian Constitution.

Surprisingly, in *Ahmedabad Women's Action Group vs. Union of India*⁴¹, although the Supreme Court of India directed the State to take steps in furtherance of Article 44 of the Indian Constitution, it did not consider the request made by the Petitioners in the case to declare certain parts of Family Law in some religions as unconstitutional. Supreme Court of India felt and observed that 'personal laws are a matter of State policies with which Court do not have any concern'⁴².

It is evident from the judicial pronouncements that the Judiciary has been concerned with the Uniform Civil Code time and again and has been directing the States with respect to their Constitutional obligation under Article 44. However, these observations have never been taken seriously by the State and there has been no attempt to the furtherance of Article 44. Having said that the Supreme Court of India did not turn a blind eye toward arbitrariness and unreasonableness that exists in some of the personal laws and has been testing them on the touchstones of the fundamental right in Part-III of the Indian Constitution through the judicial lenses. The courts in the country have used the doctrine of judicial review which enables the Apex Court and High Courts to make sure fundamental rights are not violated by any law of the country, as they are bound to become active in such cases of legislative transgression⁴³.

Be it *Shaha Bano Begum*⁴⁴ judgment, or *Githa Hariharan v. Reserve Bank of India*⁴⁵ to review discriminatory guardianship law in case of Hindus or *Mary Roy v. State of*

³⁸ Id.

³⁹ AIR 1995 SC 1531.

⁴⁰ AIR 87 2000 SC 1650.

⁴¹ AIR 1997 SC 3614.

⁴² Id.

⁴³ S.P. SATHE, JUDICIAL ACTIVISM IN INDIA, 30 (Oxford University Press 2002).

⁴⁴ (AIR 1985 SC 945).

⁴⁵ SCC 1999 2 228.

*Kerala*⁴⁶ to review discriminatory inheritance laws in case of Christians, or the recent Supreme Court pronouncement in *Shayara Bano vs. Union of India and others*⁴⁷, declaring the irrevocable instant triple talaq as invalid in Muslim Law, the Judiciary have time and again proved that the Courts cannot ignore the blatant violations of fundamental rights ensured in Part III of the Indian Constitution and such personal laws would not sustain. This approach of the judiciary is taking care of the Constitutional goals hidden under Article 44 of the Indian Constitution till the Uniform Civil Code becomes the reality.

Moreover, recently, the Law Commission of India conducted a survey by publishing a Circular (Appeal) and a Questionnaire⁴⁸ with respect to the Uniform Civil Code, and on the basis of empirical study, it has come to the conclusion that the people or the system is not yet ready to go for Uniform Civil Code under Article 44 of the India Constitution⁴⁹. However, we also see some movements⁵⁰ in the existing Central Government in furtherance of the Uniform Civil Code (Article 44) which is the main agenda of the governance of the existing government in the center.

CONCLUSION:

The constitutional goal of secularism, gender justice, integrity, and brotherhood hidden in the philosophy of the concept of Uniform Civil Code Article 44 of the Indian Constitution could not see the light of the day. Of course, the multicultural system is a unique feature of the Indian Society, but it should not have entered the domain of the *family law system* which is often considered to be a civil affair. The continuation of religion-based norms in family affairs or personal affairs is eroding or compromising the foundations of secularism, gender justice, unity and interiority of India, and a sense of brotherhood amongst the citizens. However, the courts in the country although could do nothing substantial in terms of Article 44, it definitely came to the rescue of the fundamental rights whenever they are threatened by the existing personal laws. It seems the present approach of reviewing the multiple family laws codified on the basis of religion would continue in near future.

⁴⁶ AIR 1986 SC 1011.

⁴⁷ (2017) 9 SCC 1.

⁴⁸ Appeal dated 7th October, 2016 by the Chairman of the Law Commission of India.

⁴⁹ *Uniform Civil Code Neither Necessary Nor Desirable At This Stage*, Law Commission Of India, THE BAR AND BENCH, <https://www.barandbench.com/news/uniform-civil-code-law-commission-india> (Last visited May 5th, 2022).

⁵⁰ *Govt Likely To Refer Uniform Civil Code Issue To LAW PANEL*, THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/india/govt-likely-to-refer-uniform-civil-code-issue-to-law-panel/articleshow/89332232.cms> (Last visited May 1st, 2022).