## *NOTES AND COMMENTS*

# THE QUEST FOR PROGRESSIVE FAMILY CODE OF INDIA: APPRAISAL OF FACTORS, CHALLENGES AND THE WAY AHEAD


### Abstract

The paper is a reflection on the current discourse surrounding the branch of Family Laws of India, which is often seen as a controversial and sensitive subject of discussion. Last decade has witnessed some significant developments in the field of Family Law, be it in politics, administration of justice or at the governmental level, which principally includes a concern for Uniform Civil Code and gender just laws. The current Family Law is being perceived as somewhat regressive in nature and its continuation would jeopardize certain Constitutional mandates which will be highlighted in this paper. On many occasions it was felt to have a fair, gender friendly and a uniform family law amidst the diversity that exists. Hence, the paper will look forward to the possibility of new Family Code of India, various factors which are required to be addressed, different challenges that it will face and the opportunity that exists in the way of new Family Code of India.


## I Introduction

THE INDIAN culture is known for its diversity as to language, culture, religions, food and variety of customs and traditions preserved by the Indians since ages. These have become inherent part of the lives of the people who practice and cherish them on daily basis. Moreover, the religious identity of person in India is close to the human personality of the Indians and it reflects in their behavior regardless of their stature, strata and section of the society. Indians derive pride and follow them as way of their spiritual life. Importantly, it is to be noted here that in India religion and religious faith has not just influenced the deep rooted spiritual faculty of Indians but also the external behavior in the personal as well as their public life. The internal and the external self of the individuals so far as Religions and Religious beliefs are concerned, they are secured by Article 25 of the Constitution of India, 1950 as a fundamental right. It has been left to the individual to decide which faith they would like to profess. The Constitution of India, 1950 has assumed the secular[1] character and the State will neither have any official religion nor it will interfere in anybody's right to freedom of religion. Nevertheless, it is noteworthy to mentioned here that the right to freedom of religion is not blanket. Article 25, perhaps the only article which begins with the restriction first and then it stipulates the right. The Right to Freedom of Religion is spelled in the form of following three rights pertaining to the

1 *S.R. Bommai.* v. *Union of India (UOI),* AIR 1994 SC 1918.

religion and religious practices, Right to Practice Right to Profess and Right to Propagate.

In the context of the present paper, the first would be relevant to be considered and pondered upon given its reflection on the Family Law which is a branch of Personal Law in the country. The Supreme Court of India in the case of *Commissioner Hindu Religious Endowments (HRE), Madras* v. *Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [2] has aptly explained the contours of the 'right to practice' and clarified that it might not extend only to the inner belief an faith and it may go on to prescribe the way of worship, food habits and attire of the individual. The observations are as follows:[3]

> '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 protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion" in Art. 25.'

Before the subject matter of the paper is delved in detail, it to be mentioned here that the 'right to practice' is again not exhaustive and is limited to an inherent restriction put in this regard in the constitutional philosophy of the country and that is what the Supreme Court of India at the same time clarified that not all practices shall be included in article 25 and only those which are essential in nature to the religion will be a subject matter of the right under the said provision of the Indian Constitution.[4] Either the State will make a law and will regulate the same or the apex court of the country shall from time to time in a cause before them shall define the outlines of what essential to the religion and what is not. This background is extremely important to be discussed in the context of the present paper as the central issue of the paper can only be given justice by understanding this background on which certain crucial aspects of the family law are based. Now comes a question what connection the branch of family law has with the background disused above? How it is relevant from the point of view of just and fair Family Code which the title of the paper is

2 AIR 1954 SC 282.

3 *Id.*, para 17-18.

4 *Ibid.*

reflecting upon? How in this background the concern of 'Uniform Civil Code' becomes the relevant? These questions will certainly be there after having perused the background discussed above.

Here its important to understand the structure, historical perspective, the passage of family laws in the country during British regime and the post-Independence or post-Constitution era what is the regime of family laws in India, becomes a crucial subject matter of inquiry. During the colonial rule of the British, the people in India the legal framework, as a matter of policy, was not that different and the British regime enforced and continued practice of governing the personal affairs of Hindus and Muslims in accordance with their religious practices, especially for settling the disputes relating to various specified matters including family relations and succession.[5] The recognition of the religion based personal laws as the rules of decision in family law matters found a place in laws directly enacted for the country by the British Parliament and where any particular legislative enactment relating to the civil courts was silent or ambiguous regarding the enforceability of personal laws, the courts enforced the generally accepted legal position that family law disputes had to be settled in accordance with the religious laws of the parities.[6] This ushered the era of enforcing or reading the religious practices into the domain of personal affairs or family law matters in India and it is believed that this system of laws was legitimized by colonial rulers and despite there being a Constitution in place in the year 1950, India continued the system of law as recognized by the colonial rule which ran contrary to the clause of equality under the Constitution of India, 1950.[7]

The problem with this *scheme* of family law was, *firstly* it based on religion and *secondly,* most of them were gender discriminatory in nature which will be discussed in detail in this paper. This system continued even after commencement and enforcement of the Indian Constitution. However, it is to mentioned here with an emphasis that there had been no substantial changes that took place in the *scheme of family laws* in India and the pattern of getting governed by the religious norms continued despite the commencement of the Indian Constitution and its *guarantee of equality* and a constitutional objective of having a *uniform law* in the country in the matters of civil affairs (which includes personal laws or family law matters).[8] Given the diversity that exits in India it was felt even by the drafters of the Indian Constitution, including the principal architect, B.R. Ambedkar, that it would be difficult to impose Uniform Civil Code at this point of time and that would be step to be taken in future by having a

5 Poonam Pradhan Saxena*, Halsbury's Laws of India – Family Law-I*, 15 (LexisNexis Publication, 2nd edn, Vol. IX, 2014).

6 *Id.* at 16.

7 Indira Jaising (ed.) *Men's Laws Women's Lives* 3 (Women Unlimited Publication, 2005).

8 Constitution of India, Art. 44 reads: The State shall secure for its citizens, a Uniform Civil Code throughout the territory of India

consensus on the same of the people by the successive governments. They felt that the time is not suitable to introduce the same in the country.[9] This state of affair followed by the enactment of Hindu Code Bill for the Hindus, which was considered to be a step towards the reformation of the personal laws or family laws in the country, if not Uniform Civil Code. This approach reforming the family laws in India on the touchstones of the principles as enshrined in the Indian Constitution started taking place in the following ways:

i. Enactments by the Legislature by exercising its power under List-III, Schedule VII and Entry 5[10] and

ii. Judicial Review of Personal Laws by exercising the power and constitutional obligation imposed upon the Judiciary in India.[11]

There have been several ups and down in the branch of family law and on a number of occasions the concern for the Uniform Civil Code in the country was expressed by the judiciary through judicial pronouncements[12] which will be discussed in detail in this paper. These judicial pronouncements are testimony to the fact that the passage of the family laws post-Constitution has not be normal and number of times the branch was brought to the scrutiny through the lenses of the power of judicial review of the Supreme Court of India. The culmination of all these judicial pronouncements and the struggle to codify or reform the personal laws culminated into the step taken by the Law Commission of India[13] by inviting comments from the general public about the feasibility of the Uniform Civil Code. This has also initiated a debate in the political sphere of the country from across all the political parties being interested in the issue at hand. Not just in politics, even in the academic and in the public, there has been constant discussion on the topic.

Here come the central issue of the of the paper as to the need of progressive family laws in the country amidst the confusion or the controversy that exits in the existing set up of the family laws in the country. Mainly, the *progressive* aspect of family law is confined to twofold concerns that are to be addressed in the existing family laws:

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9 D. C. Manooja, "Constitutional Law Special Issue" 42 (2-4) *Journal of the Indian Law Institute*, (April-Dec. 2000), *available at*: https://www.jstor.org/stable/43953824 (last visited on July16, 2024)

10 The Central and State Legislature can on the subjects of: 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 subject to their personal laws.

11 Combined reading of Art. 13, 14, 15 and 25 of the Indian Constitution.

12 See for example: *Sarla Mudgal* v. *Union of India*, AIR 1995 SC 1531.

13 Law Commission of India, *available at*: https://lawcommissionofindia.nic.in/notice/uniform-civil-code-public-notice-2/ (last visited on July 16, 2024).

i. Addressing genders concerns in the archaic set up of family laws and

ii. Ensuring that these laws are just and fair in nature

In order to address the above mentioned concern that surrounds the family law in the country given the passage of the branch, it is important to examine following questions which the author of the paper feels must be framed and addressed in order to address the *quest* of progression in the family law.

i. Whether time has come to declare and enact Uniform Civil Code in the country?

ii. Whether variety of legal culture that exists in each personal law is at stake given the proposal of Uniform Civil Code being kept for consideration by the government?

iii. Whether progress in personal law or family law be ensured by ensuring Uniform Civil Code throughout the country?

iv. What are the hurdles and challenges that exists in the way of ensuring reformation in the family laws?

v. What are viable options that are available to the policy makers given the current legal dilemma that surrounds the branch of family law in the country?

## II Religious practices, cultural diversity and the pattern of family laws in India

The religious practices that are essential to persons following a particular in religion in India are no doubt included in the family laws in the country. In fact, it is important to note here that this was no due to the recognition of right to freedom of religion under Article 25 of the Constitution of India, 1950, as this state of affair, as discussed above, was being followed since from the colonial rule of British in India nor the Britishers have introduced these as part of their religion. The Colonial rule of British have simply legal recognized the practices as *'rule of governance'* in case of disputes arising out family matters.[14] Each religion in India had their own peculiar rules of governance, some of them being derived from their holy scriptures or some of them from the customs and usages. In India, majorly, Hindus, Christians, Muslims, Parsis, Buddhist, Jains, Sikhs and Jews are available across the country and have their own set up of religious norms governing family matters. For all practical purposes, Hindus, Jains, Buddhist and Sikhs are considered to be a part and parcel of the Hindu Religion as regards the matters pertaining to the Family Law and the law governing these matters is same with some slight variation in case of Sikhs. These communities follow their personal laws which are either derived from the scriptures or as codified the legislature giving enforcement to such scripture based family law. Further, as mentioned

14 *Collector of Madura* v. *Moottoo Ramalingam*, 1868 12 Moo IA 397.

above there is also scope for the *customs* and *usages* specific to each religion or religious practices could also be regarded as the family law of that religion on a given point or matter.

It would not be exaggeration to say over here and that is what the important finding of the author of this paper, that Article 25 of the Constitution of India which provides *right to practice* as important off shoot of the right to freedom of religion, constitutes an important source of family law in India, if not the chief source. No doubt the State is equally empowered to legislate on these matters as stated in List-III, Schedule-VII, Entry 5 and in fact, nowadays, the legislation serves as the most important source of family law given the history of enactment in regard to the family matters which will discuss in this part of the paper.

Each religion and religious practices that are present in India, are full of diversity in terms of the kind of society they come from, the cultural practices or traditions that they follow in the matters pertaining to the marriage, divorce, intestacy, succession, property or its ownership, minority and custody of children etc. Furthermore, laws governing them in these matters are also in the form several enactments and there is no *single code* as such which the policy makers are now looking for in the present time. A perusal of these would be important to understand the current pattern of family laws, which in turn would be important to explore different options and opportunities that are available to the policy makers.

**Hindus**

Hindu religion is a unique society in the world and perhaps the oldest religion in the world as it is being said originates in India. The Hindus include and comprises of different sects and different religions internally. These include, Hindus, Jains, Sikhs and Buddhist. Hindu Law is derived mainly from the religious scriptures such as *Dharmasastras*, *Dharamsutras*, *Vedas*, *Upanishad* and *Shrutis*[15] and *Smrities*[16] are basically sources of Hindu family law which were not in codified form and were brought in the codified form with substantial changes that were introduced by passing following enactments like, The Hindu Marriage Act, 1955, The Hindu Succession Act, 1956, The Hindu Adoption and Maintenance Act, 1956 and The Hindu Minority and Guardianship Act, 1956.

However, it is to be noted that the Hindu religious norms and practices which were not codified, were not just given the shape of codification by passing above legislations but a lot of changes were introduced while codifying the same. Finality was brought to the Hindu Law by passing above mentioned legislations which is otherwise known as 'Hindu Code Bill' in the quest of reformation of the Hindu Family Law and its

15 What was heard.

16 What was remembered .

religious practices governing family matters.[17] The area which is not yet touched upon, leaving aside some of the legislative[18] and judicial interventions,[19] is the Joint Hindu Property or Hindu Undivided Family[20] law. The HUF Law is still governed by the principles as recognized by the scripture based, un-codified Hindu Law. There are some unique features of Hindu Family Law which are not found in family laws of other religions. Hindus practice and recognize:

i. *Sapinda* relationship as restriction in certain matters[21]

ii. Legislative silence and social practice of child marriage amongst Hindus[22]

iii. Diversity in the mode of solemnization of Hindu marriage which differs from community to community

iv. Customary divorce[23]

v. Recognition to the customary marriages[24]

vi. Concept of Adoption being recognized only by the Hindu religion in the country amongst others

vii. Hindu Undivided Family and coparcenary status of Hindu sons and daughters in father's family

viii. Prohibition of "Inter-religious marriage"

The codification of Hindu Code Bill as it is popularly known for a term to represent above mentioned legislations, is a landmark step in a journey towards the Uniform Civil Code and is a major development in furtherance of the same. It has eradicated several gender discriminatory practices/provisions of Hindu Law contrary to the *letter* and *spirit* of the Constitution of India, 1950, discussed in the forthcoming part of this paper.

These are majorly important features or unique facets of the Hindu religious practices or customs or usages applicable to the Hindus in the matters of family. Further, the Hindu Family Law especially in the property ownership and management matters[25] is

17 John A. Banningan, The Hindu Code Bill, Far Eastern Survey, Institute of Pacific Relations. *Available at*: https://www.jstor.org/stable/3024109 (last visited on July 16, 2024).

18 The Hindu Succession (Amendment) Act, 2005.

19 *Sujata Sharma* v. *Manu Gupta*, CS(OS) 2011/2006-2015 High Court of Delhi.

20 Popular being referred as 'HUF'.

21 The Hindu Marriage Act, 1955, s.5.

22 *Id.*, s. 11 and 12.

23 *Id.*,s. 29(2)] .

24 *Id.,* s.7 .

25 *Surjit Lal Chhabda* v. *The Commissioner of Income Tax, Bombay,* MANU/SC/0266/1975.

divided into two schools of thought: *Mitakshara* and *Dayabhaga* the rules of which are contrast in nature. Some parts of the West Bengal and Odisha share the culture of Dayabhaga and rest of the country follows the norms prescribed by Mitakshara school of thought.[26] Furthermore, the Hindus in Goa are governed by the Portuguese Civil Code[27] which is the unique feature of the State of Goa and Hindus in Jammu and Kashmir are governed by separate laws.

**Muslims**

Family Law of Muslims in India is referred as the 'Muslim Personal Law' which is not codified in any legislative form. However, the Muslim Personal Law (Shariyat) Application Act, 1937 clarifies that in the event of any confusion or lack of clarity in personal affairs such as marriage, dissolution of marriage, succession of property *etc.*, it is the 'Muslim Personal Law' as deriving from various sources such as *Quran*, *Sunnah*, *Ijma*, and *Qayas* are to be followed. The Section 2 of the Act of 1937 clarifies the same. This section commences with a non-obstante clause, therefore, notwithstanding any custom or usage to the contrary, in respect to all the above said subjects the *rule of decision* shall be the *Shariyat.*[28] Further, customs or usages or family traditions or family rules, shall have no application in these matters. But, despite the statutory clarification made under the Muslim Personal Law (Shariyat) Application Act, 1937 in the form of above mentioned words, still we do not get any clarity as to what is Muslim Personal Law. It only states that the Muslim Personal Law *only* will prevail in the matters mentioned therein. So, we may have to trace the sources of Family Law of Muslims in order to understand from where it derives and what is the meaning of 'Muslim Personal Law'. Of course, the sources of law which we otherwise consider, such as acts of legislative organs, judicial precedents, customs and usages, Opinions of Experts[29] *etc.* are still possible in case of Muslim Family Law as well. However, in the context of Family Law, especially in the Indian context we see additional source of 'religious scriptures' as recognized in most of the religions. But one special thing Muslim Personal Law being that it is not completely based on the religious scriptures and it would be wrong to say that. According to the experts on the source and position of Muslim Personal Law, it is believed that the Muslim Personal Law as it stands today in India is not a divine law and is an admixture of *traditional principles* and divergent *legislative* provisions and there is little influence of the Quranic

26 Poonam Pradhan Saxena, *Family Law-II*, (LexisNexis Publication, 4th edn., 2018)

27 Which is a uniform law on the family matters in the State of Goa.

28 Justice S.D. Dave, *The Supreme Court, The High Courts and the Personal Laws of India* 338 (Thomson Reuters Publication 2019 edn.)

29 Edgar Bodenheimer, *Jurisprudence* 324 (Harvard University Press, Revised edn.,1969).

text.[30] The major chunk of the Muslim Personal Law remained in un-codified form and had been interpreted on number of occasions in wrong way.[31] The Muslim Personal Law and its principles as applicable in India, have often led to the social inequalities and result into instability of family life and as such it conflicts with the ideals of the equality jurisprudence as enshrined in the Constitution of India.[32]

The Muslims too have peculiar features that are exclusive available in Shariyat and have found place in the Muslim Personal Law. Some of the practices in Muslim Family Law have been criticized on a number of occasions and was also reviewed by the Judiciary on several occasions.[33] Ever since the commencement of the Constitution of India, 1950 there has always been a debate on the reformation of Muslim Personal Law in the public life. This is for the obvious reason that other communities, including the majority Hindu religion started accepting reformation of the family Law and the community was skeptical for codification of the Muslim Personal Law by the Legislature.[34] Further, even discussion of UCC or any plan of the government to enforce UCC was interpreted to mean an effort by the majority community to impose their law on Muslims. This kept way campaign of reforming Muslim Personal Law on secular lines, and from the perspective of gender justice.[35] Perhaps the debate of UCC and reformation of the Muslim Personal Law has taken a political shape and it is believed that unless political environment improves in the country, the reforms in Muslim Personal Law will have to wait.[36] Further, it was also found[37] that without consensus the best option would be to preserve the diversity of personal laws but at the same time ensure that personal laws do not contradict fundamental rights guaranteed under the Constitution of India.

**Christians**

According to Indian Christian Marriage Act, 1872, 'Christians' means persons professing the Christian religion and 'Indian Christians' include 'the Christian

30 Tahir Mahmood, *Progressive Codification of Muslim Personal Law, Islamic Law in Modern India*, (N M Tripathi Publisher, 1972).

31 *Shayara Bano* v. *Union of India*, AIR 2017 9 SCC 1 SC.

32 *Supra* note 29.

33 For example, *Md. Ahmed Khan* v. *Shah Bano Begum*, AIR 1985 SC 945, *Shamim Ara* v. *State of U.P.* (2002) 7 SCC 518 and *Shayra Banu* v. *Union of India,* AIR 2017 9 SCC 1 (SC).

34 Legislature can exercise its power under Entry 5, List-III, Schedule 7 of the Constitution of India on family law matters across all the communities.

35 S. P. Sathe, *Secularism and Judicial Activism*, Judicial Activism in India, 191 (Oxford University Press, 2nd (edn.) 2003)

36 *Id.* at 193.

37 Law Commission of India, "Consultation Paper on Reform of Family Law" 2018, *available at*: https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf (last visited on July 18, 2024).

descendants of natives of India converted to Christianity'. In respect of marriage, matrimonial causes and succession, Christians are governed by statutory law. They are:

(i) The Indian Christian Marriage Act, 1872

(ii) The (Indian) Divorce Act, 1869

(iii) The Indian Succession Act, 1956[38]

We do not see much presence of customs or usages, although there is no such prohibition for the custom in Christians in the India. The Christian Personal Law had been codified in nature since the British Colonial rule and same set of laws were continued even after the commencement of the Indian Constitution. The test of constitutionality in view of the constitutional objectives of gender justice and fair laws, also applies to the Christians and there were occasions, as discussed above, the Christian Personal Law was also brought under the scanner of the judicial review. The instances of the same will be discussed in the forthcoming parts of this paper. In terms of cultural differences, we come across in Christian Personal Law following two major differences specifically in addition to other:

(i) Inter-religious marriages are allowed

(ii) Child marriage: valid (with the consent of Guardian)

Despite the fact that the Christian Personal Law was and is in the codified form, it still had some gender unjust provisions in the law which were addressed both by the Judiciary[39] and the Legislature[40] after many years of the commencement of the Indian Constitution.

**Parsis**

Indian Parsis belong to Zoroastrian faith and in that sense in India, Parsi and Zoroastrian[41] are synonyms.[42] In modern India, Parsi law applies to the following three sets of persons: (i) persons who are descendants of the original Persian emigrants and are born of Zoroastrian parents, (ii) those persons whose father is (or was) a Parsi and mother an alien but admitted to Zoroastrian faith and (iii) Zoroastrians from Iran.

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

38 The Indian Succession Act, 1929 is made applicable to the Christians and Parsis when it being refused by the Hindus and Muslims

39 *Mary Roy* v. *State of Kerala*, AIR 1986 SC 1011.

40 The (Indian) Divorce (Amendment) Act, 2001

41 *See*: The History, "Zoroastrianism" *available at*: https://www.history.com/topics/religion/zoroastrianism (last visited on July 18, 2024).

42 The Parsi Marriage and Divorce Act, 1936, s. 2(7).

(i) Parsi Marriage and Divorce Act, 1936

(ii) Indian Succession Act, 1929

The most progressive and modern community *i.e.,* Parsi could not also keep the patriarchal influence in the Parsi Family Law, away. There were practices such as restriction[43] on a Parsi women to marry a non-Parsi despite there being a general and secular law applicable to all the Indian Citizens, namely, the Special Marriage Act, 1954.

**Territorial multiplicity of family law**

It would be wrong to say that the Family Law in India is divided only on the ground of religion or there is a multiplicity of laws in terms of divergent faith across the India. Diversity exists on the basis of territory also. Family Law also differs from territory to territory. Moreover, the state government is empowered in Entry 5 of List-III as mentioned above, to legislate on the family matters. This has in itself created diversity across the country and many states amend Central Statutes in Family Law suiting to their legal requirement and social conditions.[44] In some of the States and Union Territories, a different legal culture and different type of family law are applicable. Goa,[45] Puducherry,[46] Jammu and Kashmir[47] and in the North East part of India[48] different type of family laws in force as opposed to the mainstream Family Law based on the scriptures and legislations passed by State from time to time. Even the mainstream Hindu Law spread across the country excepting few parts of India is also divided on the basis of different school of thought and different practices that are followed in particular State. The Mitakshara school of thought in the context of Hindu Undivided Family is followed across the India except the parts of West Bengal and Odisha where Dayabhaga School of thought is followed in Hindu Law.[49] Even in the Mitakshara School there are sub-schools that are prevalent in various parts of India, such as Benaras School, Mithila School, Dravida School, and Maharashtra School.[50] Further, where in the entire parts of India the HUF or a Joint Family

43 Economic Times, *available at*: https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-to-revisit-ruling-on-parsi-girls-marrying-non-parsis/articleshow/53903229.cms (last visited on July 18, 2024).

44 For instance, the Hindu Marriage (Tamil Nadu Amendment) Act 1967.

45 The Portuguese Civil Code of 1867.

46 The French Civil Code, 1819.

47 Different Law for the different communities, for instance in case of Hindus, there is a separate Hindu Law and in case of Muslims, it is customary in nature.

48 Customary Laws in accordance with the special provisions made in the Constitution of India

49 *Supra* note 25.

50 *Supra* note 4 at 27-28.

System is followed, it has been abolished by the State of Kerala by passing a legislation namely, the Kerala Joint Family System (Abolition) Act, 1975.

**Diversity as to custom and usages**

Customs and Usages ordinarily speaking is source of any ordinary law, including Family Laws in the country and constitutes a prominent source of family law. Even internally in a particular Religion there exists diversity as to Customs and Usages and people and their practices differ from community to community and place to place.

Furthermore, there are family laws where Custom has enforced in the form of Statute and there are Laws which does not recognize it as a part of the system. For an instance Section 7 of the Hindu Marriage Act, 1955 enables Hindus to follow customary mode of performance of marriage, if any and Section 29 (2) of the same Act of 1955 recognizes the customary form of divorce which is extra-judicial divorce. The Muslim Personal Law (Shariyat) Application Act, 1937 does not provide any scope for the custom in personal law.[51] The Christian Family Law is completely statutory in nature and hence there seems to be no scope for the custom, however, there are instances[52] where customary practices were invoked in the areas not dealt with by the statutory law. For the tribal communities in India, to whom neither Hindu Law nor, in case they are non-Hindus, any other family law is applicable as they are governed by their customary practices which are protected by the provisions of the Indian Constitution.[53] All Hindu Law Acts of 1955-56 excludes the application of these Acts to tribal customs and usages and the provisions of the Indian Succession Act, 1925 empowers the state governments to exempt from its application any race, sect or tribe and many tribal communities have been granted such exemption.[54] Customs and Usages forming a rule of decision in case of family laws in India for settling the disputes are categories, especially in case of Hindu Laws as per the following:[55]

(i) Caste custom

(ii) Class customs and

(iii) Family customs

## III Legal complexities in the family laws of India – diversity v. uniformity: Current state of affair

After having perused the structure, nature, history and the scattered nature of the state of the family laws in India, it would become important here to highlight the

51 The Muslim Personal Law (Shariyat) Application Act, 1937., s. 2.

52 *Philips Alfred Malvin* v. *Y.J. Gonsalvis* AIR 1999 Ker 187.

53 For instance art.371A, art.371G etc.

54 *Supra* note 4 at 21.

55 *Id.* at 19.

complexities that exists in this regard. No doubt the multiplicity in the laws is otherwise not good in law and it leads to chaos and confusion, however, each community has been allowed by this unique system to be abide by the laws, the rationale of which is derived from the religion or religious practices which are essential to the religion and which are dealing with subject matters of the family law. So, where is the problem now, when each community is getting governed by their own family law and that too the practices which are specific to them? Moreover, in most of the cases, there have been a proper codification cum reformation of the laws, as in the case of Hindu Code Bill and its subsequent amendments.[56] As regards the *discrimination* that exists in the Family Laws of India, as citizens have been classified on the basis of *religion* as a ground which runs contrary to Article 15 (1) of the Constitution of India, 1950, it should not be seen as such. The presence of Article 44 of the Constitution of India, 1950 itself suggests that the framers of the Indian Constitution, probably wanted to continue with the arrangement of so-called discrimination till appropriate time comes for the enactment of UCC as they were that the then framework of personal law is more or less based on religion. This ideally is the case of *difference* in family laws and not discrimination in *stricto sensu* keeping in view Article 15 (1) of the Constitution of India. However, the framer of the Constitution of India especially, B.R. Ambedkar, K.M. Munshi, and Alladi Krishnaswami Ayyar argued vehemently in support of UCC for the country in the matters of family law.[57] But till date there has been no concrete step in furtherance of UCC[58] or for that matter reformation of the family laws. It is not that the UCC will be a mere assimilation or accumulation of various practices or ideas that are ideally followed in family laws matters and be made applicable to all the citizens across the country to all its citizens. It has a purpose, it has an idea or an ideal that it intends to carry in its application to the citizens. The idea is of the guarantee of principles enshrined in the Constitution of India such as, fairness and reasonableness,[59] gender just and gender neutral laws[60] to be made applicable to the people or citizens. Yet there are arguments in the open public debate as to feasibility of the Code which strives to scan everyone through the same lens. How in such a diverse country, full of different customary and religious practices and regional diversities, it is possible to have a UCC, questions are being posed.[61] On the contrary, there are arguments in favour of or in furtherance of the UCC as it ensures gender

56 The Hindu Succession (Amendments) Act, 2005

57 Arun Anand, "How Ambedkar, Munshi and Krishnaswamy Ayyar argued for Uniform Civil Code at Constituent Assembly", *The Print, available at*: https://theprint.in/india/how-ambedkar-munshi-krishnaswamy-ayyar-argued-for-uniform-civil-code-at-constituent-assembly/771945/ (last visited on July 26, 2024).

58 *Jordan Diengdeh* v. *S.S. Chopra*, AIR 1985 SC 935

59 *E.P. Royappa* v. *State of Tamil Nadu*, AIR 1974 SCC 555

60 *Md. Ahmed Khan* v. *Shaha Bano Begum*, 1985 SCR (3) 844

61 *The Outlook,* "Uniform Civil Code" (vol. LXIII, No. 18, June 11, 2023).

just family law throughout the country for the sake of clarity, fairness, and equality.[62] No doubt, the existing *framework* was and is filled with gender biases and prejudices whether in letter or in its spirit and naturally the concern of any ideal legal system, such as the case of India which is a Constitutional Democratic country with diversity, is to address gender concerns. Efforts have been at multiple levels, whether it is at the level of legal thinkers, or the State or the Judiciary or the legal fraternity to ensure the same in the family law, in the wake of constitutional guarantee of equality under Article 14 of the Constitution of India. In the upcoming chapter we will see how this concern has been addressed.

The complex of personal laws and its current state of affair with multiple and diverse objectives, has seen many ups and downs in its *dramatic* journey ever since the commencement of the Constitution of India in the year 1950. The flashing point of this journey is the case of *'Narsu Appa Mali'*[63] and the latest event or step in this regard being the recent judgment of the Supreme Court in the *Shayara Banu* case.[64] A lot has happened during this phase at the level of both Judiciary and Legislature. Different governments had different ideologies and that was reflecting in their actions.[65] The upcoming part of the paper will surely reflect the gray areas that existed in the earlier and the current framework of family laws. But in this entire debate of national level, one need to understand and appreciate as to what is required - diversity or uniformity? Any interference in the personal laws is also seen as the encroachment in the religion or religious practices, especially that is happening in the context of minority community who are afraid that their religion would be in danger of which even international press is taking cognizance of or closely observing the steps which will be taken in this regard.[66]

The complexities surrounding the family law framework in India could well be seen or appreciated through the respective role performed by the Legislature and the Judiciary in their own sphere.

**Legislative adrift**

In the backdrop of the above mentioned developments in the context of family laws and UCC, the legislative steps taken in this regard would be worth mentioning, thereby it helps us understand approach of State towards the UCC. The drafters performed their task and they threw the ball in the court of legislature to decide the 'appropriate

62 *Id.* at 21.

63 *State of Bombay* v. *Narsu Appa Mali*, 1951 Bom. HC 84.

64 *Shayara Bano* v. *Union of India*, AIR 2017 9 SCC 1 (SC).

65 The Frontline, "1985: Shah Bano Case" India@75 - At A Milestone (August 2023).

66 Sonia Sarkar, "Will Modi's Uniform Civil Code kill Indian 'secularism'?" Al Jazeera, *available at*: https://www.aljazeera.com/features/2023/8/17/will-a-uniform-civil-code-end-indian-secularism (last visited on July 27, 2024).

time' for UCC, there being no such time frame specified in the Constitution of India.[67] At the same time there is a constitutional obligation put on the State to respect fundamental rights especially article 14, 15 and 21 to be specified specially in this regard. So, even if the UCC was not mandate for the State to begin with, however, they were and they are bound by the Part-III of the Indian Constitution. There have been several legislations passed in the domain of Family Law ever since the commencement of the Constitution of India and many of them have been allowed to be continued to govern the family law matters. The once continued to be allowed were contrary to the provisions of the Indian Constitution[68] and the ones passed after the Constitution of India were bound to be in tune with the Indian Constitution. The first tiny step was to pass the 'Special Marriage Act, 1954' which was being said to be optional UCC[69] in the public domain and was passed to accord legal validity to the inter-faith or inter-religious marriages in India.

The major step taken by the Legislature in the way towards progression of family law, at the same time of looking the possibility of UCC, being the 'Hindu Code Bill' as mentioned above with the example of four principal legislations. This is step was to reform the majority community in the country that is the Hindu religion. Although there was stiff opposition[70] from the Hindus, finally it found its legislative path and made applicable to the Hindus in their family matters. The major thing about the UCC, that it took away and removed gender discriminatory practices that existed in the then Hindu Family Law.

But the notable thing here being that the State or the Legislature, despite being aware of the discrimination that existed in the Muslim Personal Law and some parts of the Christian and other family laws, did not interferer in the same and chose to codify and reform the Hindu family law. In fact, when the Supreme Court of India, in *Shaha Bano* case[71] gave judgment contrary to the Muslim Personal law by allowing access to the Muslim divorced wife under Section 125 of the Code of Criminal Procedure thereby to claim maintenance, the Legislature purportedly passed a legislation overturning the judgment, namely, the 'Muslim Women (Protection of Rights on

67 The Times of India, "No fixed time frame for Uniform Civil Code due to sensitivity and in-depth study - says Centre", *available at*: https://timesofindia.indiatimes.com/india/no-fixed-timeframe-for-uniform-civil-code-due-to-sensitivity-and-in-depth-study-says-centre/articleshow/85071803.cms?from=mdr (last visited on July 27, 2024).

68 *Md. Ahmed Khan* v. *Shaha Bano Begum*, 1985 SCR (3) 844.

69 Bar & Bench, "Choice based Uniform Civil Code under the Special Marriage Act", *available at*: https://www.barandbench.com/columns/choice-based-uniform-civil-code-in-special-marriage-act#:~:text= (last visited on July 26, 2024).

70 Banningan, John A. "The Hindu Code Bill." 21(17) *Far Eastern Survey* at 173–76. *JSTOR*, *available at*: https://doi.org/10.2307/3024109 (last visited on May 30, 2024).

71 *Ibid.*

Divorce) Act, 1986'. We see sudden change in the approach in the action of the legislature. This invited a lot of criticism from the civil society and the legal fraternity.[72]

Legislature has experienced pressure for decades to reform Family Law although it took steps in this regard with snail speed. The commitment of the successive governments could not be seen until the passing of three important legislations in this regard. *First*, 'the Hindu Succession (Amendment) Act, 2005 which was considered to be a revolutionary step in the quest of progressive family law in the country. It is to be noted here that this amendment was carried out in Section 6 the Hindu Succession Act, 1955 could not find its place in the original 'Hindu Code Bill' during 1955-56. This amendment basically, in addition to other things, gave Hindu daughters an equal coparcenery right to property in the HUF[73] of her father, by birth and from 2005.[74] Two things became instrumental in compelling Parliament to taken this step (i) the Law Commission of India Report[75] (ii) the social campaign and (iii) the State Amendments[76] before Parliament swung into action in this regard. *Second*, the Christian Marriage and Divorce (Amendment) Act, 2002 which gave effect to a judgment in the case of *Ammini E. J.* v. *Union of India*[77] wherein discriminatory divorce provision was struck down. The legislature amended the same and removed the *burden* from a Christian wife who had to prove two different grounds during divorce in certain case and similar burden was not imposed on a Christian husband. *Thirdly*, almost a similar case of legislative intervention in the form of new legislation to give enforcement to a historic and landmark judgment of the Supreme Court in *Shayara Bano* v. *Union of India*[78] wherein triple talaq was declared to be unconstitutional practice amongst Indian Muslims in Muslim Personal Law.[79] The law passed by the Legislature to give enforcement to the said judgment in practice, is the 'Muslim Women (Protection of Rights on Marriage) Act, 2018' and according to this law, it is an offence to declare

72 Mody, Nawaz B. "The Press in India: The Shah Bano Judgment and Its Aftermath." 27(8) *Asian Survey* 1987 at 935–53. *JSTOR*, https://doi.org/10.2307/2644865 (last visited on July 30, 2024).

73 *Prakash* v. *Phulvati*, 2015 INSC 793

74 Hindu Succession Act, 1956, s. 6.

75 Law Commission of India Report 174th Report, "Property Rights of Women- Proposed Hindu Law", *available at*: https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082470.pdf (last visited on May 30, 2024).

76 Andhra Pradesh (in 1985), Tamil Nadu (in 1989), Karnataka (in 1994) and Maharashtra (in 1994) See for details: *The Wire, available at:* https://thewire.in/law/hindu-succession-act-women-supreme-court (last visited on December 30, 2023)

77 AIR 1995 Ker 252 FB.

78 AIR 2017 9 SCC 1 (SC).

79 Herklotz, Tanja. "Shayara Bano versus Union of India and Others. The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice." *Law and Politics in Africa, Asia and Latin America* vol. 50(3), 2017 *, available at*: JSTOR, http://www.jstor.org/stable/26429244. (last visited on May 30, 2024).

*Talaq-ul-Biddat*. This is considered to be a major legislative development in the quest of progression of family law especially in the context of Muslim Personal Law. At the same time, the Act of 2018 is being criticized for bringing a criminal liability in the family law affair.[80] So, this shows that the approach of the State has not been uniform in nature and the state commitment is not flowing from the constitution mandate. It is either the public pressure or of the civil society or a judicial decision or politics involved in it, becoming a driving force for the same. The State or for that matter the Legislature, is competent enough in accordance with the Constitutional arrangement laid down in Schedule-7, List-III, Entry 5 to either codify the customary and scripture based family laws or to reform them. But the steps taken by the Legislature in this regard has not been constant nor there has been any attempt in furtherance of the UCC.

**Judicial see-saw**

The stance of Judiciary in this regard is also noteworthy and it opens up the discussion on the *stand of judiciary* in regard to the *problematic* aspects of personal laws in India. The judiciary, in particular the Supreme Court of India, has ample power of *judicial review* to review even personal laws / family laws if we see the Constitutional scheme as laid down in article 13, article 14, and article 15. However, like Legislature even Judiciary was skeptical to interfere in this regard and bring all discriminatory provisions of the family law to the scrutiny of the article 13. Article 13 empowers and enables the apex court to review such laws. The gist of article 13 is 'any law passed before or after the commencement of the Indian Constitution is contrary to any of the provisions of the Part-III of the Indian Constitution, the said law be declared by the judiciary as *ultra vires* the constitution. However, in the judicial pronouncement of *Narsu Appa Mali* judgment[81] in the year 1951, just one year after the commencement of the Indian Constitution completely changed the framework and the High Court of Bombay gave important ruling in this regard. The sum and substance of the High Court of Bombay judgment is that 'personal laws are not laws within the meaning of Article 13 of the Constitution of India'. The logic which they applied in the present case is of 'presence of article 44, itself suggests that even framers of the Indian Constitution were aware of the fact as to discriminatory nature of family laws and intended to continue the same till UCC is brought in the country.' This ruling of High Court of Bombay was taken as support in *Ahmedabad Women's Action Group* v. *Union of India*[82] wherein the plea was to declare certain parts of Muslim Law and Hindu Law as

80 Shraddha Chaudhary, Criminalisation without an object - critical reflections on the Muslim Women (Protection of Rights on Marriage) Act, 2018, 17(2) *Socio-Legal Law Review*, *available at*: https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1089&context=slr (last visited on May 30, 2024).

81 *State of Bombay* v. *Narsu Appa Mali*, 1951 Bom. HC 84.

82 AIR 1997 SC 3614.

unconstitutional. The Supreme Court although agreed in terms of laws being against certain provisions of Part-III of the Constitution of India, confirmed the ruling of *Narsu Appa Mali*[83] rejected the plea. The court was of the opinion that it is a matter of policy and only State is competent to take a call in this regard, however, the did court agreed that there is a need of UCC in the country to ensure that fundamental rights are not violated by the family laws in the country.[84] Despite this, court did come heavily on personal laws on a couple of occasions and revealed the discriminatory face of the family laws and scanned them through the lenses of Article 13 of the Constitution of India. In *Shaha Bano Begum*[85] case as mentioned above and which is one of the landmark rulings in the legal history of India, has for the first time after *Narsu Appa Mali* case, took a drastic stance and read down un-codified Muslim Personal Law prohibiting right of Muslim divorced wife to ask maintenance from husband after divorce and allowed her access to file a maintenance petition under a secular law namely, section 125 of Code of Criminal Procedure, 1973 wherein any women in India, irrespective of her religion can file an application for divorce. This path breaking judgment opened the debate of UCC in the country. Further, in *Sarla Mudgal* v. *Union of India,*[86] the apex had an occasion to deal with a question, whether a conversion by a Hindu to Islam just for the sake of marrying second time during the subsistence of the first one, is valid in law. The Supreme Court interpreted various provisions of law such as, Section 494 of IPC, the provisions of Hindu Marriage Act, 1955, un-codified Muslim Personal Law and Article 25 of the Indian Constitution which provides a right on any citizen to convert to any faith of his or her choice, and came to the conclusion that such conversion is fraudulent in nature. At the same of stating that, the apex court did expressed the need for UCC as personal laws or the loopholes in the personal laws are being misused by citizens as is happened in the present case.

At one point of time a thought was developed that while the courts in the country, that high courts have acted to reform the personal laws of the minorities[87] (other than Muslims) and the Supreme Court has also acted I respect of Christian Woman[88] and Hindu Woman[89] why it has not acted similarly in respect of Muslim Women?[90] However, it was also thought that the court did not want to undertake reform of the personal laws through judicial process because such reforms would need greater

83 *State of Bombay* v. *Narsu Appa Mali*, 1951 Bom. HC 84.

84 *Supra* note 81.

85 *Md. Ahmed Khan* v. *Shaha Bano Begum*, 1985 SCR (3) 844.

86 SCC 1995 (2) 635.

87 *Ammini E.J.* v. *Union of India*, AIR 1995 Ker. 252.

88 *Mary Roy* v. *State of Kerala*, AIR 1986 SC 1011.

89 *Githa Hariharan* v. *Reserve Bank of India*, (1999) 2 SCC 228.

90 *Supra* note 34 at 268.

social engineering, which is possible only when the legislative process is invoked and the reform can be invoked only when the reform is through interpretation of the law as was done in Shah Bano case[91]. It is only now we see some instances of *proactive* interference of the Judiciary in the matters pertaining to the cause of Muslim Women[92] in the recent time in addition to the *Shaha Bano* case.[93]

## IV Options, opportunities and challenges

The hotchpotch or the multiplicity that exists in galaxy of family law needs a certain approach to be followed both at the level of legislature and that of the judiciary. No doubt, the mandate provided in Article 13, 14, and 15 of Indian Constitution remains intact and obligatory in nature. But at the same time, it cannot be ignore the fact that family law that is emanating mostly from the religious practices[94] are also to be secured in terms of the mandate for the state under Article 25 of the Constitution of India. The passage of judicial practice and the legislative steps in this regard shows that religious *distinction* or *differences* that are carved out in the domain of family law on the basis purely of 'religion' may not be the serious concern in the quest of progressive family law but discrimination on the ground solely of 'gender' certain is. The alternative for so-called discrimination or distinction on the ground of religion is UCC which is future course of action but there is no alternative or there cannot be second thought or argument be placed to the discrimination on the ground solely of 'gender' in family laws. It has been observed through various instances above wherein the apex court have interfered on number of occasions in the interest of 'gender' concern and even state has also acted on couple of occasions for the same. But these steps have not eradicated or provided the exhaustive solution in this regard.

Recent step taken by the Law Commission of India by inviting comments from the general public and the stakeholders as to feasibility of UCC is noteworthy. It has once again opened up the discussion on UCC and that of the progression of family laws. Initially, the 21st Law Commission of India invited comments through questionnaire in 2016 and issued a Consultation paper in pursuant to the same and observed that "the UCC is neither necessary nor desirable at this stage.[95]" Given the intensity of the problem in hand, the Commission invited comments from all the stakeholders, afresh.[96] This added more to the problem as even today number of

91 *Ibid.*

92 *Shayara Bano* v. *Union of India*, AIR 2017 9 SCC 1 (SC).

93 *Md. Ahmed Khan* v. *Shaha Bano Begum*, 1985 SCR (3) 844.

94 Essential religious practices forming part of Article 25 of the Constitution of India, 1950.

95 Law Commission of India, "Consultation Paper on Reform of Family Law", *available at:* https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/09/2022092674.pdf (last visited on Dec. 30, 2023)

96 Law Commission of India, "Public Notice", *available at*: https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/06/2023061446.pdf (last visited on Dec. 30, 2023).

provisions run contrary to Chapter-III of the Indian Constitution. The practices like Polygamy, Halala in Muslim personal law, adequacy of property rights in Hindu[97] and Muslim family law family law and the *Karta*[98] status to a Hindu daughter, unilateral application of the Dissolution of Muslim Marriage Act, 1939 which burdens only a Muslim wife to have recourse to the judicial divorce[99] are some of the areas which require attention of the legal fraternity and the institutions of legal system.

The sentiments of people are normally attached to their religion and religious practices and since there is a connection between religious practices and family law matters, it would be now difficult to suddenly introduced UCC in the area for which people are now habitual. This would be a great challenge for the legal fraternity. The current government at centre is also inclined towards having a UCC and the Union Ministers are issuing statements in public that soon there will be a UCC.[100] If we have to face UCC, how will it look like. The government has not yet shared any draft of UCC despite its commitment towards it. The draft will help citizens, civil society and the legal fraternity to assure of feasibility of UCC. So many subject matters and so many communities, religions, caste, various regions and various states unifying under a similar 'Family Code' would be great challenge. How UCC will look like? Whether all communities accept it? What will happen to the tribal customs and practices? What will happen personal laws of territories where Portuguese Civil Code and French Civil Code are applicable? Whether Muslim Community whose majority part of the family law is un-codified, will accept the change? All these questions will have to be answered and clarified before introduction of UCC. There is already a sense of fear amongst the minority communities who are afraid of introduction of UCC, so how a confidence will be reposed in them, will be the great challenge in this regard. Hindu community itself has a lot of diversity in terms of solemnisation of marriage, rules for the succession of property are unique in both Hindu Law and Muslim Law. So, wiping them out or altering them suddenly would be difficult. Marriage, divorce, custody and Succession are so interlinked to each other, that it cannot even be thought to introduce UCC only in case of procedure for marriage and divorce. The option of 'optional' UCC in the form of the Special Marriage Act, 1954 was already provided to the citizens in 1954 but it did not alter the picture and people could not be cultured in the field UCC works. It remains an option for the persons in India as to marriage. It is not getting materialised, people are still opting to their personal laws. The failure

97 Especially in s. 15 and 16 being the scheme of succession in case of a Hindu female dying intestate.

98 Manage of Hindu Undivided Family.

99 whereas a Muslim Husband can still pronounce triple talaq in the form of *Talaq-ul-Sunnat*.

100 See, *available at:* https://indianexpress.com/article/india/india-others/centre-hints-its-willing-to-bring-in-uniform-civil-code/ (last visited on May 30, 2024).

of the Special Marriage Act, 1954 shows the apathy of the Indian Citizens to adopt UCC.

The second line of thinking in this regard is to reform and progress existing family laws, which are gender discriminatory, as has been mentioned above. There have been steps in ensuring gender neutral family laws but complete it could not be achieved. If the judiciary is skeptical to interfere in the same, subject of course to the occasion it needs to have in the form of litigation, the State may take a lead in identifying gender discriminatory laws and taking them down in the form of amendment. Till UCC comes, this seems to be the best option, as it may preserve the legal cultures of each community with slight modification in tune with the constitutional mandate.

## V Conclusion

Amidst the controversy and confusion that exists surrounding the family law, which is perhaps the only branch of the legal system in India which is looking forward to the legal reformation ever since the commencement of the Indian Constitution in 1950, it is undisputed that the constitutional mandate shall prevail and must be given enforcement to, by the institutions formed under the Constitution of India, such as Legislature and Judiciary. There has been failure of duty on the part of both the institutions in arriving at a precise solution to the problem. The law evolved in *Narsu Appa Mali* should no longer be considered as it runs contrary to the mandate of the constitution. If not UCC, why not State formulate a 'Family Law Commission' which should comprised of a team of experts as opposed to the Law Commission, in the quest for 'Family Code' or 'UCC'. The Law Commission of India regularly works on range of legal issues and legal problems across the legal field. But the problems surrounding family law are unique itself and they need not just urgent attention but extensive *expertise* and extensive *research work* to identify how the Family Code or UCC would look like or what exactly people are in requirement of. Meanwhile, the Family Law Commission may work on the existing exigency, namely, 'ensuring of gender just family laws' by identifying gender discriminatory provisions in the existing codified or un-codified family laws in the country and the Legislature may work on introducing said reforms, regardless of the fact whether it may run contrary to article 25 or not. In fact, article 25 is such that it has been made subjected to the restriction first, followed by the definition of the freedom. If it is to be given a number in the sequence of fundamental rights, perhaps it may have to be placed at the last. The Legislature must not hesitate in amending or modifying or altering family laws in the interest gender justice or fairness, till it decides the course of action for 'Family Code' or 'UCC'.

*Ashok P. Wadje*[*]

* Associate Professor of Law and Associate Dean, Maharashtra National Law University, Aurangabad.