CHAPTER-I
INTRODUCTION

In today’s society we commonly see two types of marriages arranged marriage and love marriage, which would be dependent upon an individual’s choice, nevertheless an opinion can be formed that many arranged marriages stay together longer then love marriages. Its generally that arrange marriages are not primarily based on love and are usually done for the benefit of both the families and the very thought of disappointment and creating unhappy moments for both the families ensures that the marriages would last even if they are not satisfied in their relationships. Unlike in the love marriages the priority is of pleasing your partner and not other people associated with the marital union of two individuals hence it is easy for a couple in love marriage to end their marital union.

An arranged marriage is usually done with the consent of the partners involved. Many arranged marriages involve two strangers or two people to get to know each other briefly before choosing to accept the partner chosen and/or accepted by their families. Love marriages are generally acts of love that one human being feels for another, wanting to spend their whole life together and committed to one another. Love marriages are full of emotions and thoughts of a beautiful passionate future with their other half but this is no guarantee of success. An arranged marriage can be categorized as a love-less marriage in the beginning, but also with a strong feeling of care and respect. Love may come after a period of time. Arranged marriages means getting to know their spouse better after the wedding, a love marriage has two people who already know and love one another.

**Definition of Marriage:**

**General Definition:**
The state of being united to a person of the opposite sex as husband or wife in a consensual and contractual relationship recognized by law.

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*Conditions under Hindu Marriage Act, 1955: Section 5*
“A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely”:-

(i) “neither party has a spouse living at the time of the marriage”

(ii) “at the time of the marriage, neither party”-

(a) “is incapable of giving a valid consent to it in consequence of unsoundness of mind; or”

(b) “though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or”

(c) “has been subject to recurrent attacks of insanity or epilepsy;”

(iii) “the bridegroom has completed the age of 21 [twenty-one years] and the bride the age of 18 [eighteen years] at the time of the marriage;”

(iv) “the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;”

(v) “the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.”

**Conditions under Mohammedan Law**

The three essentials of a Muslim marriage are:

1. Proposal and acceptance
2. Capacity to contract marriage
3. Absence of any impediment

There should be a proposal (ijab) and an acceptance (qubul) of the proposal, both of which was to be expressed at one meeting and in presence of two male or two female witnesses. Under the *Mohammedan* law, every Muslim who is of sound mind and who has attained puberty, has the capacity to marry. A Muslim becomes competent to marry or to enter into a contract of marriage when, being of sound mind, he or she attains puberty, even if he or she is under 18 years of age. Under the Hanafi law, puberty in a minor is presumed to have been attained on completion of the 15^{th} year. In the case of Shia female, the age of puberty begins with menstruation.
The third essential of a Muslim marriage is that there should be no impediment or prohibition to the marriage of the parties. Such impediments are of two kinds:

1. **Absolute** that is those which prohibit a marriage and render it void (batil)
   
   a. Polyandry
   
   b. Consanguinity
   
   c. Affinity
   
   d. Fosterage

2. **Relative** that is those which do not impose an absolute prohibition so that a marriage contracted in spite of them is merely invalid are irregular (fasid) but not void.

**Conditions under Christian Marriage Act, 1872 : Section 4 & 5**

Every marriage between persons, one or both of whom is or are a Christian, or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

Marriages may be solemnized in India—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;

(3) by any Minister of Religion licensed under this Act to solemnize marriages;

(4) by or in the presence of, a Marriage Registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between Indian Christians.

**Conditions under Parsi Marriage And Divorce Act, 1936**

Section 2(6) : “marriage” means a marriage between Parsis whether contracted before or after the commencement of this Act;

Section 3: Requisites to validity of Parsi marriages.
(1) No marriage shall be valid if-
(a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule 1; or
(b) such marriage is not solemnized according to the Parsi form of ceremony called" Ashirvad" by a priest in the presence of two Parsi witnesses other than such priest; or
(c) in the case of any parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty- one years of age, and if a female, has not completed eighteen years of age.

Conditions under Special Marriage Act, 1954: Section 4
Conditions relating to solemnization of special marriage.-
Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled namely:
(a) Neither party has a spouse living:
(b) neither party-
   (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind, or
   (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
   (iii) has been subject to recurrent attacks of insanity or epilepsy;
(c) the male has completed the age of twenty-one years and the female the age of eighteen years;
(d) the parties are not within the degrees of prohibited relationship; and
(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.
**History Casteism in India:**

The word caste is derived from the Spanish and Portuguese cultures where “Casta” means lineage or race. Also it is said to be derived from the Latin word “Castus” meaning pure. The Spanish were the first to use caste, but in India we have got it from the Portuguese somewhere in the 15th Century. - Casteism is prevalent in India even in the mythological era when we were ruled by lord Rama and the spelling “caste” is seen in the academics from about 1800 year.

A caste is a social aggregation having two attributes: (1) participation is restricted to those who are conceived of parts and incorporates all persons so conceived; (2) the parts are illegal by a relentless social law to wed outside the assembly. Every one of such aggregations has an unique name by which it is called. Numerous of such modest totals are assembled together under a normal name, while these bigger aggregations are yet subdivisions of gatherings still bigger which have autonomous names.

Let's consider an example

Here in this case the Maratha Brahmin is the main caste and the rest are the subcastes.

This hierarchy is introduced on various principles. And it would not be incorrect to state that two crore Hindus are so much divided and subdivided giving rise to the castes who can’t marry outside fifteen families. On the other hand, there are some castes where division and subdivision has not been carried to its finest extent which can boast of fifty lakhs. All these castes and subcastes, roughly about 3000, contribute to the Hindu Society. There is no inter-caste marriage, and very little of social intercourse is possible in its true sense. The main uniting tie
between these sharply separated figures is a sure measure of normal custom, and normal dialect for various them and for each of the a normal religion which comprises in being educates of the Brahmins.

It is believed in Hindus that all men in the world are classified into four castes:

![Caste System Diagram]

In the above order as mentioned where in the Brahmans is the highest and the sudhras are the lowest in ranking. All other castes are produced by intermarriage either with pure or the mixed. These differences in the castes are innate and cannot be wiped out or hidden.

**The ancient perspective:**

In the ancient customs women were considered as the property of men – father, brothers, husband or son – because of the belief that men had to be superior to women in the society and that women had to BE protected against gender violence such as rape, kidnap and slavery, which were more frequent in the primitive society. Because of the subordinate status of women, several men who didn't care of women enjoyed the this social sanction and committed violence such as blowing of varying intensity, burning, sexual abuse and rape, insults, humiliations, coercion, blackmail, economic and emotional threats and control over speech and action to dominate women. Therefore, the social evils such as Sati, casteisability, slave trade, sale of wife, infanticide, child marriage, child sexual abuse, child prostitution, child labour, dowry
harassment, sexual harassment at work and eve teasing were so intense in the society. The British Government had abolished several gender violence against women by enacting suitable laws.

In the primitive society in which widow remarriage was not sanctioned but widower was allowed to remarry, the widow was forced to burn herself on the funeral pyre of her deceased husband or was buried alive along with a goat and the pyre. Even girls below 16 and pregnant women were not exempted from this self sacrifice. This self-immolation by widows was the popular Sati which was very common among the people of the Bengal Presidency. Having seen his sister-in-law who was forced to commit Sati after death of her husband in 1812, the social reformer Raja Rammohan Roy started a campaign to fight against Sati in Bengal. It is worth to note that there were 7941 Sati incidents within the duration of 1913-1928, which accounted the average of 507-567 incidents per year, and was ten times higher than that in other provinces of the British India. Since Raja Rammohan Roy urged William Bentinck, who was the Governor-General of India at that time, to declare Sati as an illegal practice liable to severe punishment, on the Government side facts regarding the Sati cases and their feedbacks were collected from army officers, judges and superintendents of police of all the provinces under British India and the Regulation No. XVII of December1829, also known as Sati Abolition Act 1929, which declared that practice of Sati is illegal and punishable under criminal courts, was passed to suppress this inhumane crime in the society. Though this act was initially enacted for the Bengal Presidency, it was implemented in all the presidencies according to the Charter Act of 1797, which implied that the acts passed by the Governor –General is applicable to all the territories of British India, due to the occurrence of similar situations there too. Madras Presidency was not an exemption to the practice of Sati and therein it was popularly called Udakattaieral: the widows of Anuppan caste in Tirunelveli, Madurai and Coimbatore district had committed Sati by burying themselves along with a live goat for several decades; widows of Dhasari caste had committed Sati in Vizagapatanam district, Ananthapur and North Arcot districts; widows of Nambuthiris in the Malabar region, which was once the part of Madras Presidency, had a tendency to throw her marriage ornaments and cloths on the funeral pyre, which may probably the symbol of Sati practice18; Mysore census Report, 1891, reveals that many men belonged to Lambadi caste died in a war between two groups in Punganur and Palmaneer in North Arcot district but two of their
wives committed Sati and worshipped as Sakti Goddess; and the widows of Perike women frequently had committed Sati on the death of their husbands in ancient times and their names have been respected by most people even today. Because of the enforcement of this act, sati was almost abolished in Madras Presidency, which was witnessed by the census 1901, 1911 and 1921 that didn't hold a place for Sati.

Remarriage was once unused to widows of upper caste Hindus because of the credence that it is the duty of a woman to go after her husband and that remarriage is a sin that excludes the woman from the heaven. While the Barama Samaj debated the question of widow remarriage among the Brahmans, Pt. Ishwar Chandra Vidya Sagar (1820-91), who confirmed the occurrence of widow marriage in vedic text, sent a petition signed by 987 person to the Governor-General of India urging for legislative action. What was its consequence was the Hindu-remarriage Act (Act XV of 1856) which legalized marriage of widows and declared issues from such marriage as legitimate.31 Whereupon remarriage of young widows, who had no children, gradually became a tradition in the society in Bengal and Madras residencies, but widows who had children were led an ascetic life by wearing restrictive dresses, eating pitiable meals and denying social and religious festivals even in the early 1901s.32 The section 2 of the Hindu Marriage act, 1856, legalized the inheritance of the property of her deceased husband to re-married widows, if she already had children from her first husband, whereas if she had no child from her first husband, the re-married woman had lost all the rights on the properties of her deceased husband.33 Thus this law legalized the widow remarriage and at the same time resolved the problems associated with remarriage of once married women.

Some social reformers in Bengal felt that most of the widowhood was due to child marriage and stressed the Governor-General to restrict child marriage by legislation, so that the Native Remarriage Act II, 1872, which fixed the marriage age for girls at 14 and for boys at 18, was enacted by the Government as a way to dispose the early widowhood of women.44 This act was implemented in the Madras Presidency alsoMadras Presidency, the marriages for girls were most often performed at the age of 12 years as fixed by Special Marriage Bill, 1891. According to the census 1891, nearly 5% of Brahmin girls and one per cent of other girls in Madras Presidency got married at or below the age of 10 years and 3.3% of the girls became widows within 14-15
years. In 1927, early marriage of high Caste Hindu girls was hotly debated in the second session of the Legislative Assembly because of the reason that Catherine Mayo in her book entitled “Mother India” had exploited the sexual habit of Hindus by asserting that husbands most often raped their sexually immature wives in the name of Hindu Customs and also correlating prostitution with the Hindu religious practice. As a consequence, the law makers in the Legislative Assembly felt that Mayo's conclusions would not be condemned unless they passed a Bill relating to child marriage restriction. The Child Marriage Restraining Act, 1929, (19 of 1929) fixed the marriage age for girls at 18 and for boys at 21, and punished males who married girls at the age of 18 years or younger and the parents who compelled the minor girls to marry a male of higher ages. This law brought forth some satisfactions to the social reformers who intended to dispose the problems of child marriage in the society.

**Todays Scenario on Casteism in India:**
After independence, Indian Constitution guaranteed equal status and the fundamental rights to all the classes of the people. Practice of untouchability was officially declared as a serious crime, punishable with severe penalties. Provisions were made to identify and protect the lower castes from exploitation and the ill treatment. The physical castesim to some extent has been reduced in urban India but rural India still has a glimpse of the castesim. There is still an existence of communal groupism which still makes intercaste marriages difficult for the couples who opt for a intercaste love marriage.

**Intercaste marriages in India**
Marriage may be in the same caste or it may be inter caste. Marriages within the same caste mean that both boy and the girl belong to the same community. Intercaste marriage means girl and boy are from different castes where one member belongs to lower caste. Inter-caste marriage is legal in India. Such marriages are sanctioned by the Special Marriage Act 1954 and are also permitted under The Hindu Marriage Act 1955. But still in India number of inter caste marriages is very less. India is a country where caste and religion rules not democracy. I am sure if survey is done Majority Indians will agree that we need more inter caste marriages but in reality they will never allow their own kids to marry inter caste girl. Today also Indian society does not accept such couples who marry inter caste. Society including family
members punish them. Society ostracizes and discriminates against couples in inter-caste marriages. Honor Killing is nothing but a punishment to boy and girl for marrying intercaste. We need a law which will give death punishment to every person who attends the Khap Panchayats which gives order to kill the boy and girl and kill them. Intercaste marriages are often crippled with unique challenges that are actually associated with maintaining barriers. Experts claim that it is a natural tendency of people to create barriers in their minds and also around them. With a lot of globalisation and increase in academic facilities, there's nice amendment within the views of individuals. As modernization has affected each section of society, lay caste marriages have additionally received acceptance from the individuals in urban and fashionable societies. There has been wide amendment within the social state of affairs. folks and relatives of the lovers are turning out with a lot of open minds with wide acceptance of marriages outside their own castes. however in some regions that lack exposure to the education and fashionable society culture, things have remained unchanged. There area unit still oppositions by the members of various castes if they encounter any incident of lay caste wedding. These societies want some amendment of views so young hearts may unite and live mirthfully. an honest relation desires understanding and devotion from boy and lady to blossom. If there area unit malpractices like class structure, then there'll be unhealthy matrimonial relations that increase the speed of divorces and mutual misunderstandings.

**The Law for the Intercaste Marriages in India**

Endogamy is preferred because of excessive pride in the caste and want to maintain a difference from the other prevalent castes. This feeling is also coupled with the desire of keeping the blood pure when the increasing number of people claim to be in the upper layer of the castes.

But what would happen when two people from different castes/religions fall in love and what to marry, for eg: a muslim and hindu marriage, a Christian and hindu marriage, a parsi and a hindu marriage. The constitution’s framers anticipated this issue and provided for their provisions in the fundamental rights backed up by the Special Marriage Act.
The Special Marriage Act, 1954 replaced the old Act III, 1872 with the three major objectives:

1. To provide a special form of marriage in certain cases,
2. to provide for registration of certain marriages and,
3. to provide for divorce.

When foreigners want to marry an Indian, or there is an intercaste marriage within Indians, this is the only act that comes to their rescue. With the changing scenario of the country, women liberalization, and the change in society has made it necessary to laws to adapt with the change.

**Procedures of the Special Marriage Act**

The parties to the intended marriage have to give a notice to the Marriage Officer in whose jurisdiction at least one of the parties has resided for not less than 30 days prior to the date of notice. It should be affixed at some conspicuous place in his office. If either of the parties is residing in the area of another Marriage Officer, a copy of the notice should be sent to him for similar publication. The marriage may be solemnized after the expiry of one month from the date of publication of the notice, if no objections are received. If any objections are received, the Marriage Officer has to enquire into them and take a decision either to solemnize the marriage or to refuse it. Registration will be done after solemnization of the marriage.

Any marriage already celebrated can also be registered under the Special Marriage Act after giving a public notice of 30 days, subject to conditions. However, as stated above, the bridegroom and the bride must have completed 21 years and 18 years of age respectively.
The Constitution of India is the biggest constitution of the world incorporating the best of all the constitutions amongst the world. The framers of the constitution were aware of the casteism and the religious beliefs followed from the age old times where untouchability was practised. Hence the Art. 15, 17, 18, 25 were framed which abolished untouchability and punished the people practising untouchability. The 42\textsuperscript{nd} amendment of the Constitution was made to include words “Soverign, Socialist, Secular, Democratic Republic” in the Preamble.

By the landmark Judgment of
The preamble was considered as the part of the Constitution and an amendment to the Constitution was a power conferred within the Constitution under Art. 368.

Secularism is the Solution:

In India Secularism has always meant Equal respect for all faiths and religions “Sarva Dharma Sambhav” as it has been called for the ages and practiced and propagated by the great savants and saints and rules throughout the history. The moment we start discrimination on religious lines, the entire concept of the “Secular State” will be damaged. The British rule brought with it a process of secularization of Indian Social and cultural life, a tendency that gradually became stronger with the development of communications, growth of towns and cities, increased spatial mobility and the spread of education.

The two world wars, and Mahatma Gandhi’s civil disobedience campaign, both of which socially and politically mobilized the masses, also contributed to increased secularism. And with independence there began a deepening as well as broadening of the secularisation process as witnessed in such measures as the declaration of India as the secular state, the constitutional recognition of the equality of all citizens before the law, the introduction of universal adult suffrage, and the undertaking of the program of planned development.

The fundamental rights in the Constitution of India, including those concerning religion, were prompted by concern for the liberty, dignity, and well-being of the individual. Even the freedom of religion was guaranteed in this secular state not out of concern for religions, generally, much less, for any particular religion, but solely and unmistakably out of concern for the individual, as an aspect of the general scheme of his liberty, and as incidental to his well-being.
This principle of giving primacy to the individual, placing him before and above religion, and recognizing freedom of religion and of religious denominations as incidental only to his well-being and to a general scheme of his liberty is a distinguishing feature of Indian secularism; conjointly with the principles of tolerance and equality, also incorporated side by side, it embodies our constitutional philosophy regarding religion. All these three elements of the constitutional philosophy are enshrined in articles 25 and 26 of the Constitution.

**Uniform Civil Code : Article 44 of the Indian Constitution**

Art. 44 requires the state to strive to secure for its citizens the Uniform civil code throughout India. An objection was taken

**Some Articles:**

Article 44 of requires the state to strive to secure for the citizens the uniform civil code throughout India. An objection was taken to this provision in the constituent Assembly by several Muslim members who apprehended that their personal law might be abrogated. This objection was met by pointing out

1. That India had already achieved uniformity of law over a vast area
2. That though there was diversity in personal laws there was nothing sacrosanct about them
3. The secular activities such as inheritance covered by personal law should be separated from religion
4. That a uniform law applicable to all would promote national unity
5. That no legislature would forcibly amend any personal law in future if people were opposed to it.

In connection, reference may also be made to the discussion under article 25 which guarantees freedom of conscience and profession, practice and propagation of religion. However, secular activity associated with religious practice is exempted from this guarantee.

It could therefore possibly be argued that personal laws pertain to secular activities and hence fall within the regulatory power of the state.
The codification of Muslim law still remains a sensitive matter though enlightened Muslim opinion appears to favour such a step. It is necessary that law be divorced from religion.

Not much progress has so far been made towards achieving the ideal of a uniform civil code which still remains a distant dream. The only tangible step taken in this notion has been the codification and secularisation of hindu law. Reviewing the various laws prevailing in the area of marriage in India, the supreme court has said in

Miss Jordan Diengdeh V/s S.S.Chopra (AIR 1985 SC 934)

“the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform”

Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of the legislature in these matters to provide for a uniform code of marriage and divorce.

The ruling of supreme court in

Mohd. Ahmad Khan V/s Shah Bano Begum (AIR 1985 SC 945,954)

was held “Muslim husband is liable to pay maintenance to the divorced wife beyond iddat period. The orthodox Muslim opinion has characterised this ruling as Anti-Shariat while liberal opinion accepts this ruling as progressive.

The court has regretted that article 44 remained “dead letter”. The court has emphasized “a common civic order will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.” The court appreciate the difficulties involved in bringing persons of different faiths and persuations on a common platform, but, nevertheless, the court has said “a beginning has to be made if the constitution is to have any meaning”

With the enactment of uniform code, secularism will be strengthened, much of the present day separation and dividedness between various religious groups in the country will disappear and India will emerge as a much more cohesive and integrated nation.
The uniform civil code should apply to all men and women of all communities. The UCC cannot provide for any option, exception of exemption for any class or section of people, or any community are any minority based on race are any religion only. If the UCC does not apply to all persons of all communities, it can neither be common nor uniform, what to say compulsory. If it is made optional it will not be uniform. Its application cannot be made conditional on adoption by any community at its option. This must mean a community veto. No community can be veto its application. If the UCC is not applied to the persons professing Islamic faith until the Muslim community opts for it, the constitutional directive shall be observed only in its breach.

The resistance to common law of uniform codes mainly from the religious minorities particularly the Muslims, and small section of the Sikhs beside the tribal communities which very appropriately want to preserve their distinct culture and customs.

If delayed any more the U.C.C. objective must have been last for all time. The uniformity condition must insist that there is no communal / groups option on ground of religion only. The provisions for extension and application must be very carefully articulated and meticulously drafted, as there must determine the uniform voluntary and / or compulsory character of the code. At the same time, the constitutional protection given to the scheduled tribes inhabiting with the limits of autonomous certain tribal areas of the North – east India should be maintained unimpaired.

The U.C.C. is already much too delayed. The opportune moment for it was, of course, in the fifties when Mr. Ambedkar protested over piecemeal legislation of Hindu Code. If it was a possibility now in, end of ninth decade (1998). If it is delayed any more it is likely to be a real impossibility in the future. What is the need of the hour is the recognition of the Supremacy of the parliament, and much needed legislative will. The secular authority of the state must prevail over all those who have high stakes in communal electoral politics of disintegration and subversion of the institution of national life.
From the political point of view in 1996 elections there was no clear verdict to any one party in lok-sabha and there was coalition Government of 13 political parties [Sayyukt Aghadi] supported from outside by national congress. This Government was formed as a “Purely Secular one” against the Bhartiya Janata Party (Through largest single) but having election manifesto of Uniform Civil Code.”

Due to withdrawal of support by congress on jain Commission Report (Rajiv Gandhi assination case) to sanyukta Morcha, there were re – elections in March 98. The results are same as 1996 means no single party having majority in parliament.

Hence the activities are on by largest single party to form Government in Central with the condition of other parties. But these other parties are against many issues in Menifesto including “Uniform Civil Code.”

**Indian case law:**

“Recently, the Supreme Court of India again called a UCC. The Supreme Court first directed the Parliament to frame a UCC in the Year 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum, popularly known as the Shah Bano case. In this case, a penurious Muslim woman claimed for maintenance from her husband under section 125 of the code of Criminal Procedure after she was given triple talaq from him. The Supreme Court held the Muslim woman have a right to get maintenance from her husband under Section 125. The court also held that Article 44 of the Constitution has remained a dead letter. The then Chief Justice of India Y.V. Chandrachud observed that”,

“A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies”

“After this decision, nationwide discussions, meetings, and agitation were held. The then Rajiv Gandhi led Government overturned the Shah Bano case decision by way of Muslim women [Right to Protection on Divorce] Act, 1986 which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of Criminal Procedure. The explanation given for implementing this Act was that the Supreme Court had merely made an observation for enacting
the UCC, not binding on the government or the Parliament and that there should be no interference with personal laws unless the demand comes from within.”

“The second instance in which the Supreme Court again directed the Government of article 44 was in the case of Sarla Mudgal v. Union of India. In this case, the question was whether a Hindu husband, married under Hindu Law, by embracing Islam, can solemnise second marriage. The court held that a Hindu marriage solemnised under the Hindu Law can only be dissolved on any of the grounds specified under the Hindu Marriage Act, 1955. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act. And, thus, a second marriage solemnised after converting Islam would be an offence under Section 494[5] of the Indian Penal Code.”

Justice Kuldip Singh also opined that Article 44 has to retrieved from the cold storage where it is lying since 1949. The Hon’ble Justice referred to the codification of the Hindu personal law and held,

“Where more than 80 percent of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of the ‘uniform civil code’ for all the citizens in the territory of India.”

“The Supreme Court’s latest reminder to the government of its the constitutional obligations to enact a UCC came in July 2003 when a Christian priest knocked the doors of the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act. The priest from kerala, John Vallamatton filed a writ petition in the year 1997 stating that Section 118 of the said Act was discriminatory against the Christians as it impose unreasonable restrictions on their donation of property for religious or charitable purpose by will. The bench comprising of Chief Justice of India V.N. Khare, Justice S.B. Sinha and Justice A.R. Lakshamanan struck down the Section declaring it to be unconstitutional. Chief Justice Khare stated that”

“We would like to state that Article 44 provides that the states shall endeavour to secure for all citizens a uniform civil code throughout the territory of India. It is a matter of great regrets that article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.”