CHAPTER VI

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In this part we will try to examine the efforts made to reform the personal laws in India. This discussion has been divided into two parts. In the first part the pre-independence history has been covered and in the second part the progress made in the post-constitutional period has been dealt. Here, we have dealt the contribution made by the legislature and executive wings of the State only since the contribution of the judiciary has been dealt in separate chapter, we have not touched judiciary here.

A. PROGRESS MADE BEFORE THE INDEPENDENCE

The history of personal laws in India tells that the process of codification started during the British period and it was the appropriate occasion to reform the personal laws. As we have seen the British rulers were more interested to maintain their political authority over India. That is why they adopted non-interference policy with regard to personal laws. The various Law Commissions appointed by British Government from time to time were of the view that personal laws ought not to be codified. The Second Law Commission which was appointed in 1853 was positively against the codification of the personal laws. It observed -

"But it is our opinion that no portion either of Mohanunedan Law or Hindu Law ought to be enacted as such in any form by a British legislation; such legislation, we think, might tend to obstruct rather than promote the gradual progress of
improvement in the state of population ....... Secondly, the Hindu Law and Mohammedan Law derive their authority respectively from Hindu and Mohammedan religion. It follows that British Legislature cannot make Mohammedan or Hindu religion; no, neither can it make Mohammedan law or Hindu law.....¹

The Fourth Law Commission which was appointed in 1882 was also not in favour of codification in the field of family law because in their view for a great mass of people such law was mingled with religion and it would be political sacrilege to touch it.

Many important Englishmen expressed the same view from time to time. Morely said:

'In considering the propriety of altering or abrogating Hindu or Mohammedan law, all preconceived notions of relative excellence of the English and the native systems of jurisprudence should be taken as secondary considerations; nor should it be called in question whether such systems are in themselves good or bad for it would never be forgotten that in the present state of society in India, they are undoubtedly the best adopted to the wants and prejudices of the people who form the great bulk of the population of the country..... .... Though we may not be bound by absolute treaty, we have virtually pledged ourselves to preserve them by repeated proclamations and enactments.² C.P. Ilbert also pointed out that one of the difficulties in the

² Ibid, 443.
codification of the personal laws of Hindus & Mohammedans arises from the natural sensitiveness of Hindus and Muslims about legislative interference with matters closely touching their religious usages and observances.

However, some changes had to be made in these systems by passing corrective and ameliorative legislation, mostly in response to strong public opinion in favour of those changes.

So far as changes in the Hindu family law are concerned, Britishers did not find much difficulty because of its being flexible and possessing an inherent capacity to grow. The changes in this law were introduced by judicial interpretations and legislations. Great attention was paid to ameliorating the social status and legal positions of Hindu Women. The writers of the Dharmashastras and the degenerate customs that established in the Hindu society under Muslim were responsible for making social position of Hindu Women weak and unequitable. A number of statutes were enacted to improve their conditions, in 1856, the Hindu Widow's Remarriage Act legalising remarriage of the Hindu widows was passed at the instance of a reformist section of the Hindus. Then came the Hindu Women's Right to Property Act, 1937, conferring on Hindu women better rights of property than they had previously. This Act made revolutionary changes in the area of Hindu law of joint family, coparcenary, partition, inheritance, etc. Similarly, in 1946, the Hindu Married Women's Right to Separate Residence and Maintenance Act was enacted enabling a Hindu Woman to claim separate residence and maintenance from her husband under certain circumstances mentioned in the Act even without dissolving the marriage. A few statutes were also enacted
to suppress some objectionable social practices existing in the society in the name of religious practices. Sati was one of them. Lord William Bentick took a strong step against it and abolished this inhuman practice. In 1929, Child Marriage Restraint Act was passed to discourage the practice of existing child-marriages. Britishers were not very much enthusiastic in improving the conditions of Hindu Women folk. But many reformers compelled them to appoint a committee under the Chairman-ship of Jagannadha Rao, J. in 1940 for examining the various steps which might be taken in this direction. The Committee submitted its report which was later on taken as a guide by the Govt. of India.

The attitude of non-interference adopted by the British administrators in the case of Hindu law reflected much more tenaciously in the case of Muslim law. Changes made in the Hindu law were far greater than those made in Muslim law. Only a few changes through legislation were made in Muslim law because of a wrong notion and misleading belief that Muslim law is totally opposed to changes and is entirely devoid of flexibility and dynamism. Muslim law as usual with other personal laws is subjected to two forces pulling in opposite directions. On the One hand there are conservative forces trying to keep Muslim law without any changes strictly in accordance with the Quran and the Hadith, and there are, on the other hand forces trying to modify the archaic law in accordance with the changing needs of the society.

Following are some of the important codifications, passed by the British Government which showed uniformity in Civil matters. The British Indian Government did pass a few laws which
governed family relationships irrespective of the religion of the partners to wit.-

(i) The Special Marriage Act. 1872
(ii) Married, Women's Property Act. 1874
(iii) Indian Minority Act. 1875
(iv) The Guardianship And Wards Act. 1890
(v) The Child Marriage Restraint Act, 1929

But these were the exceptions rather than the rule. Their policy was to legislate in the area of family law at the behest of the concerned community. This did not mean that the entire community had to ask for the reform. It was of a few but enlightened members of that community pressed for it. Otherwise, the Suttee Regulation of 1829 would never have been passed, nor the Hindu Widow's Remarriage Act, 1856.

However, the British were forced to adopt progressive approach to abolish certain ill effects of personal laws/religion. Consequently, the British passed few secular laws. Following are the list of the important personal laws passed by the British Government.

(A) **HINDU LAW:**

(i) Suttee Regulation, XXVII of 1829
(ii) Caste Disabilities Removal Act, 1850.
(iii) Hindu Widow's Remarriage Act, 1856.
(B) **MUSLIM LAW:**

(i) Muslim Personal Law (Shariat) Application Act, 1937.

(ii) Dissolution of Muslim Marriages Act, 1939.

(C) **PARSI LAW:**

Parsi Marriage & Divorce Act, 1936.

(D) **CHRISTIAN LAW:**

(i) Native Converts Marriage Dissolution Act, 1866.

(ii) Indian Divorce Act, 1869.

(iii) Indian Christian Marriage Act, 1872.

Muslim law, prior to the coming of the British to India, covered every field but subsequently the British introduced uniformity with respect to all spheres of law (except personal laws) and the Muslim had accepted it. As a refutation of the view that, Muslim personal law was immutable, ancient and uniform throughout the country, it may be noted that till 1935 the Muslims of N.W.E.P. followed the Hindu Law, the Shariat Act was applied to them only in 1939. Similarly, upto 1934 the Muslims in U. P., C.P. and Bombay were governed by Hindu law in matters of succession, the Shariat Act was applied to them only 1937. In North Malabar the Marumakkathayam law applied both to Hindus and Muslims. The Khojas and Cutchi Memons followed the Hindu customs and were highly dissatisfied when Shariat Act was applied to them.
The above mentioned secular laws were enacted by the British because of the pressure mounted by a few but vocal and enlightened social reformers. Otherwise, the British generally adopted the policy to enact the family laws at behalf of the concerned community.  

Here it may be said that though the policy of the British least concerned with the idea of UCC, but, the Government made a beginning to secularise the personal laws. This fact is important because in free India the Government has not been able to show the kind of courage shown by the British.

B. THE PROGRESS MADE IN FREE INDIA

As we know that uniform civil code as part of the Directive Principles is not a justiciable provision of the Constitution. We have seen earlier the reasons behind the whole idea of the Directive Principles and the compulsion of the founding fathers to put of UCC in the Directive Principles. Even in the Constituent  

3. The following are the list of legislations which were passed by the British Government in area of personal laws:

Hindu Law : Suttee Regulation, XXVII of 1829, Caste Disabilities Removal Act, 1850.
Hindu Widow's Remarriage Act, 1856.
The Hindu Gainful Employment Act, 1930.
Muslim Law : Muslim Personal Law (Shariat) Application Act, 1937.
Dissolution of Muslim Marriage Act, 1939.
Indian Divorce Act, 1869.
Indian Christian Marriage Act, 1872.
Assembly it was feared that nothing can be done if the State fails to achieve the Directive Principles. In response to such fears Dr. Ambedkar said that in a democracy the voters would assess the performance of the government at the time of election and teach a lesson if government fails to achieve the objectives stated in the Directive Principle.⁴

It is true that in free India the successive government at times have shown courage to implement few directive principle to woo the voters. However, even this factor has not played any positive role to bring. The UCC in India. In fact, the vote politics has become one of the major hurdle in the way of UCC.

In free India the UCC has been a rallying point for secular and progressive sections of the society. One of the earliest request to enact a UCC in free India came by a prominent muslim lawyer of Lucknow-Chaudhri Hyder Husein.⁵

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⁴ VII C.A.D. PP. 494-95.
⁵ "Sri Husein wrote- Living under the British rule for about two centuries we have come to consider it only natural for Hindus to be governed by Hindu Law and Muslims to be governed by Muslim Law, but it is wholly a medieval idea and has no place in the modern world. I would therefore strongly urge the necessity of having one single code to be named as the Indian Civil Code applicable to every body living within the territory of the Indian union irrespective of caste, creed or religious persuasions. This is the juristic solution to the communal problem. It appears to be absolutely essential in the interest of unification of the country for building up one single nation with one single set of laws in the country". Chaudhri Hyder Husein "A Unified Code for India". A.I.R. (Journal) Vol. 68, (1949) pp. 71-72.
At times the prominent judges like K.S. Hegde and P.B. Gajendragadkar have expressed the need to have a UCC in India.

As we know that the mandate of Art. 44 is not addressed to the legislature only, it uses the expression the 'state' which includes Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

The mandate of Art. 44 is that the State shall 'endeavour to secure' a UCC. It also means that the State shall not enact a UCC in a straigntway. But, as we have pointed out earlier that for enactment of UCC a clear mandate is not necessary at all and the Parliament have necessary power to do so under entry 5 of list III of the VII the schedule of the Indian Constitution. Our founding fathers intentionally used the expression 'endeavour' and 'secure' in the art.44 because they were alive with the practical difficulties to be faced by the future rulers. They hoped that both the legislature and the executive would educated the society for adoption of UCC and enforced it at the end of evolutionary period.

6. Justice Hedge has stated: "In the Constituent Assembly vested interests Hindu as well as Muslim had bitterly opposed the enactment of Article 44. But the founding fathers of the Constitution, in national interest, refused to bow to their pressure. There is no justification to adopt a different attitude now. See Tahir Mahmood (ed.), Islamic Law in Modern India, 1972, p.3.

7. Justice Gajendragadkar says: "(T)he non implementation of the provisions contained in Article 44 amounts to a grave failure of Indian democracy and the sooner we take suitable action in that behalf, the better". P.B. Gakemdragadkar, Secularism and the Constitution of India, (1971), P. 126.
In the light of this background let us examine the role and contribution of the legislature and executive to implement the Art. 44 of the Constitution of India.

In free India the successive governments made only few attempts to secularise the personal laws or to enact. However, the laws which have been to govern the government the family relations irrespective of the religion of the parties, are following-

1. The Special Marriage Act, 1954

2. The Hindu Code of 1955-56

3. The Dowry Prohibition Act, 1961

4. Medical Termination of Pregnancy Act, 1971

Apart from these enactments we will also examine the Indian Adoption Bill, 1976 and Criminal Procedure Code, 1973.

1. **The Special Marriage Act 1954**

Now we may analyse the potentials and contribution of the said legislations. The Special Marriage Act 1954 (which replaced the Act of 1872 of the same title) first time brought a secular code of marriage, divorce, and inheritance. Under this Act the marriage was monogamous and divorce was permitted on the progressive ground as mutual consent. for the purposes of succession the couples were governed by the Indian Succession Act, 1925. The Act enabled

8. By Hindu Code we mean the laws such as : The Hindu Marriage Act, 1955; Hindu Succession Act, 1956; The Hindu Minority and Guardianship Act, 1956 and the Hindu Adoption and the Maintenance Act, 1956.

9. The Indian Succession Act, 1925 was applied with varying exceptions to Jews, Parsis, Hindu, Muslim and Indian Christians. However in 1976 the Special Marriage Act was amended and Section 21A was in certained the effect was that the Hindus are now governed by Hindu Succession Act 1956.
any two Indians to marry irrespective of their religion. The Act of 1954 was an improvement on the old Act of 1872 in the sense that under the old Act it was necessary for the couples to renounce their religion, whereas the Act of 1954 made it possible for parties to marry without renouncing their religion. The Act of 1954 was optional and it was not imposed on the Indian citizens as a binding legislation.

As we have seen that Act of 1954 applied to all those who voluntarily chose to marry under it and that a uniform provision for succession was provided under the Indian Succession Act. But, to appease the few leaders of Hindus, the government amended the Act so that the two Hindu marrying under it would be governed by their own law of succession. This move of the government has been criticised by saying that 'without working towards a uniform civil code as enjoined by the constitution, the government is backtracking even in the sphere in which some uniformity had been achieved'.

2. **The Hindu Code of 1955-56**

It is a matter of fact that the Hindu personal laws have been subjected to progressive reform before the independence. That is why soon after adoption of the constitution the Indian Parliament continued the codification and reform of Hindu Personal Law. The government prepared a comprehensive code.


11. For detail treatment, see the chapter, Hindu Law Reform : The goal of Uniforming and Sex equality in A. Parashar, (1992), PP. 77-143.
The move of the government was opposed form many quarters by advancing various reasons. It was argued that instead of Hindu personal law only the government must bring a UCC applicable to all communities in India. It was pointed out that Art. 44 does not envisage the partial treatment and that move of the government was against the equality principle of the constitution.\(^{12}\)

On the other hand the supporters of the proposed Bill saw the move of the government as an important step to achieve a UCC. On behalf of the government it was said that members opposing the Bill and asking a UCC, were not making a demand on principle. Dr. Ambedkar saw the move of the opponents as a stalling tactic. The government took the stand that the Hindu Code Bill was the first step towards a UCC. The latter development tells that because of the strong opposition the proposed comprehensive Hindu Code Bill could only be passed in the form of various Acts.

If we analyse the developments relating to the Hindu Bill we find that though it was a right move to bring the reform in Hindu personal law, but, there was some substance in the opponents's arguments. The government defended its move by saying that other communities had not been consulted on the matter and that a secular State did not mean that it could flout with the sentiments of the people. In the Parliament the doubts were

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12. The Hindu Code Bill was opposed by the then President of India-Dr. Rajendra Prasad himself on the grounds that Art. 44 being applicable to all person in the territory of India should not be imposed on the Hindus alone and that the government who sponsored the Hindu Code Bill to replace the personal law of the Hindus had no mandate from the electorate in this behalf See Madhu Limaye, in Stateman, as quoted by D.D. Basu, in Uniform Civil for India, 1997, p.13.
expressed by the opponents of the Bill whether after the enactment of the bill the government would bother to enact a UCC. It is a matter of fact that the doubt expressed by the opponents have become a reality. The successive governments have failed to secularise the personal laws of other communities.

Thus Prior to 1956, Hindus were governed by property laws which had no coherence and varied from region to region and in some cases within the same region, from caste to caste.

The Mitakshara school of succession which was prevalent in most of north India, believed in the exclusive domain of male heirs.

In contrast, the Dayabhaga system did not recognise inheritance rights by birth and both sons and daughters did not have rights to the property during their father’s lifetime.

At the other extreme was the Marumakkattayam law, prevalent in Kerala which traced the lineage of succession through the female line.

Former P.M. Jawahar Lal Nehru campaigned the cause of women’s right to inherit property and despite the stiff resistance from orthodox sections of Hindus, the Hindu Succession Act was enacted and came into force on June 17, 1956.

Many changes were brought about that gave women greater rights but they were still denied the important coparcenary rights. Subsequently, many of the states enacted their own laws for division of ancestral property.
In what is known as the Kerala model, the concept of coparcenary was abolished and according to the Kerala Joint Family System (Abolition) Act, 1975, the heirs (male and female) do not acquire property by birth but only hold it as tenants as if a partition has taken place.

Andhra Pradesh (1986), Tamil Nadu (1989), Karnataka (1994) and Maharashtra (1994) also enacted laws, where daughters were granted 'coparcener' rights or a claim on ancestral property by birth as the sons. In 2000, the 174th report of the 15th Law Commission suggested amendment to correct the discrimination against women, and this report forms the basis of the bill which has now been cleared by the Union cabinet.\(^\text{13}\)

The Bill has been introduced in Rajya Shabha and discussion is going on: empowerment of women appears to be the talk of the town. First it was the Right to Information Act, then the Employment Guarantee Act and now much needed amendments to the Hindu Succession Act of 1956. It gives women equal rights in the inheritance of ancestral wealth, something reserved only for male heirs earlier. As the Act stands now, the woman is entitled to an equal share as her male siblings in her father's property but has no right to ancestral property. Perhaps the single biggest reason for the devaluation of women in our society is their perceived economic worthlessness and their inability to negotiate a better deal for themselves. The right to property eliminates, to some extent, both these hampering factors. According to renowned jurist Leila Seth, these amendments will discourage

\(^{13}\) The Times of India, New Delhi, December 18, 2004, PP. 14.
dowry. When men grow up in the knowledge that they cannot enjoy special privileges with regard to property rights, there is bound to be a change of mindset for the better. Since family law is on the concurrent list, five states have already done away with discriminatory clauses. The amendments reiterate the fundamental constitutional principle of equality before the law.14

Even in the pre-independence period the Court also emphasised for the unification of laws. In Robasa Khanum v. Khodadad Bomanji case, Justice Blagden observed:

"We have, therefore, this position - British India as a whole, is neither governed by Hindu, Mohammedan, Sikh, Parsi, Christian, Jewish or any other law except a law imposed by Great Britian under which Hindus, Mahommedans, Sikhs, Parsis and all others, enjoy equal rights and the utmost possible freedom of religious observance, consistent in every case with the rights of other people.15

It is significant that none of the organisations or bodies in the pre-independence period had suggested the need for a Uniform Civil Code. It may be said that the inspiration for a Uniform Civil Code probably came from the Hindu Law Drafts which was before the Legislative Assembly when the Constitution was being framed.

3. **Dowry Prohibition Act, 1961**

The Dowry Act, 1961 prohibits the monetary and other transactions in marriage for all the persons, irrespective of their

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religion. But, the Act especially exempts from its operation to system of Mehr (dower) under Muslim Law. The Dower is payable by the husband his bond to the wife as a gift at the time of marriage or is fixed to be paid to her in case of divorce. On the other hand dowry is a money are kind claimed by the husband side for marriage.

It is important to note that the Dowry Act, 1961 was one of the first law in its kinds, made and applied on secular lines. But, the commentator have proved its limitations to check the vice of dowry. This vice has acquired a dangerous proportion in not only in Hindus but also in the other communities as well.\textsuperscript{16} Though anti, dowry law has not been proved effective but such law is necessary because their absence would bring more difficulties for women. It is submitted that in order to check the vice of dowry among all Indians a true secular Act is required.

4. **Medical Termination of Pregnancy Act, 1971**

The problem of the unwanted pregnancy has been one of the important problem of the women.' There has been a controversy at the national and the international level relating to the termination to unwanted pregnancy. From women's side it has been argued that a women should have sole right to terminate

\textsuperscript{16} It has been pointed out that because of the exemption given to the Muslim Community in the name of Mehr the vice of dowry has become more acute among the Muslims for example a Muslim writer gives a more alarming picture that owing to the demand of employed bridegrooms for heavy dowry, many a muslim father is being constrained to give his three are four daughters in marriage to the same man See-Ananda Bazar dated 28/8/1995 as quoted in D.D. Basu, Uniform Civil Code for India, 1997, P. 38.
a pregnancy. On the other hand their claim has been contested by opponents. Here it may be pointed out that though such law has witnessed the several criticism and opposition in a modern country like America but, fortunately the Act of 1971 has not seen that kind of opposition in India. Though all the personal laws and religions decry abortion but this Act has not seen as an violation to the religion.

It is submitted that the Act which provides a reasonable choice to the women in matters of unwanted pregnancy, has been seen as an important step to look the social bices with the secular outlook. Moreover, social problems relating to the religion and custom can only be checked by having a secular legislation and laws should not be seen as an interference in the personal laws or religion.

In the foregoing discussion we have analysed the secular laws made in free India. However these laws cover a very limited sphere of personal relations. In order to secularise certain more spheres of relations few attempts have been made in free India. One such attempt was made with failure in the field of adoption. Now we may discuss the development relating to the Adoption Bill, 1976.

The Indian Adoption Bill (1976)

The Indian Adoption Bill was introduced to secularise the personal laws relating to adoption. The government saw this bill as first step to bring a UCC in India. The Bill sought to enable all Indians to adopt a child irrespective of religion of either.17

17. This account is based on the detail analysis of the Adoption Bill in V. Dhagmwas, "Towards the uniform civil code. 1989, PP. 8-18.
The adoption was to be irrevocable. Usually the bill faced strong protest from Muslim leaders. In order to evaluate the opposite views the Bill was referred to Joint Select Committee of the Parliament which held public hearings.

The Adoption Bill was welcomed by all except the two communities i.e. Muslim and Scheduled Tribes. The objections raised by the scheduled tribes were based on some practical problems and they sought that this Bill must provide the solution by giving few concession to the community. At the latter stage the schedule tribe community agreed to accept the Bill. However, with few exceptions the rest of the Muslim leaders opposed the Bill by arguing that the Bill was against Muslims Personal Law because it would allow Muslim to disobey the Quranic injunction against the adoption. It would disturb the law of inheritance by adding more persons to list of prohibited degree of relationship for marriage. It was alleged that the Bill was nothing but an attempt to imposed Hindu Law on the minorities.

In August 1976 the Joint Committee of the Parliament submitted its report and recommended the amended draft of the Bill. The draft provided that the Bill would not apply to Schedule Tribes unless notified in gazette in respect of specifically mentioned tribes in particular States. Clause 25(1) of the draft provided that from the date of commencement of the proposed Act. The Hindu adoptions and maintenance Act, in so far as it related to adoptions, would be repealed. Again clause 25(2) provided overriding effect to the Bill on any custom or usage relating to any community.
The three Muslim members of Joint Select Committee desired that the following new sub-clause should be added to clause
(1) "It shall not apply to persons governed by the Muslim law". The Joint Parliament Committee rejected proposed amendment
on following reasons:

1. The Bill was in the greater interest of children, and their
welfare transcended the religious or communal barriers;

2. It was an enabling legislation and did not compel Muslims
to adopt it.

3. It was not against the Quranic injunctions;

4. It was the first step towards a Uniform Civil Code.

The Adoption Bill could not become the law of the land because
of the dissolution of the Lok Sabha in March 1977. Subsequently,
a new Adoption Bill was introduced in the Lok Sabha in
December 1980. This Bill was substantially different from the old
Bill in the following manner:

1. It gave no exemption to Scheduled Tribes;

2. It exempted Muslims from its operation. S.3 (1) said, "No
adoption order shall be made in respect of a Muslim child
or for adoption by a Muslim of any child whether a Muslim
or not, under this Act".

The new Bill again generated the objections from the new
corners. Though this time no Joint Committee was entrusted with
the Bill but, reference was made to Minorities Commission to
examine the demands of a section of Parsi community for
exemption from the Bill. But once again the new Bill, like its predecessor, lapsed because of the dissolution of the Lok Sabha in 1984.

In the light of the above discussion it may be said that there was no need to exempt the Muslim community from the proposed Adoption Bill. Infact, the first Bill was only an enabling law and it forced no one to adopt a child.

Again the objection raised by the Muslim community was against the secular ideals. In the end, it may be submitted, a welfare law of the children should not be objected on religious grounds in India. The religion has played a negative role in the sense that it has checked the growth of progressive legislation and perpetuated the social evils.

**Article 44 of the Constitution of India and the Criminal Procedure Code**

An important effort to bring the spirit of UCC under Criminal Procedure Code was made in India. The present Criminal Procedure Code, 1973 replaced the old Criminal Procedure Code, 1898. The old code under its sections 488 inter alia, made provisions under which a wife who was unable to maintain herself could claim maintenance from husband who neglected to maintain her. The new Criminal Procedure Code 1973 included the said provision under Section 125 with some additions. During the debate on the new code the provision in the earlier code dealing with maintenance of destitute wives was disputed as it did not include a divorced wife for this purpose. The new code had defined wife to also cover the divorce wife.
The Muslim community objected to the inclusion of divorced wife in the definition of wife by saying that, this provision is against their personal laws. The law minister refuted all the objections of the Muslim members by saying that the provision relating to the wife had nothing to do with personal law as it was being done on humanitarian grounds. Subsequently the government changed its stand. In order to please the Muslim community the government brought an amendment. This amendment was incorporated through section 127 which provides that a maintenance order given by a magistrate may be cancelled if, according to the customary or personal law of a community, a some of money had been given to the wife before or after the divorce. This was mean to cover the Mehr (dower) which is supposed to paid to a muslim wife at the time of divorce. In this way the government abandoned a secular and progressive effort of gender-justice and ignored the mandate of article 44 of the Constitution.

So far courts in India are concerned, they interpreted section 125 of the Criminal Procedure so as to help the destitute wives including a muslim divorced wife. The famous Shah Bano case controversy was the result of such an interpretation. This case invited the strong objections and protest from the Muslim community and ultimately the government of India was forced to amend the section 125. The government was forced to brought the Muslim Womens (Protection of Rights on Divorce) 1986 and once again compromised with secular principle. The stand of the government has been severely criticised being against Article 44 and other ideals of Constitution.\(^{18}\)

\(^{18}\) For detail discussion of the Shah Bano Case controversy, see, the Infra Chapter
If we analyse the role of the Indian rulers we find that there has been no genuine effort to secularise the personal laws by bringing a UCC in India. Though at times the government tried to change the scenario but most of the time it failed to resist the pressure of the "fundamentalist sections of the various communities. Analysing the role of the government Prof. Tahir Mahmood has rightly stated:

"Of course, a government committed to democratic ways may not like to stifle the sentiments of any section of the electorate. But that excuse cannot absolve any government of its solemn constitutional duty to win the confidence of all the citizens and prepare them mentally, emotionally and psychologically, to gradually accept the social goals laid down for them by the constitution". 19

We may conclude our discussion by saying that in free India the successive government failed to face the pressure of orthodox sections of the Indian society. It is a pity that the Indian rulers failed to carry out the spirit of the Constitution and acted more on political considerations rather than ideals of the Constitution.