CHAPTER - II

CONCEPTUAL ANALYSIS AND HISTORICAL BACKGROUND OF THE UNIFORM CIVIL CODE
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A. The Concept and Meaning of the UCC:

The expression 'Uniform Civil Code' (UCC) consists of three terms - 'Uniform', 'Civil' and 'Code'. The word uniform refers to the form of a thing. The Constitution of India in its Article - 44 uses the expression 'Uniform' instead of the 'Common', but, generally these two terms have been used as synonym in the discussions relating to the said provision. The few commentators have pointed out that although the term 'Uniform' is very often confused as a synonym for the term 'Common' yet uniform is different word in the sense that former means one and the same in all circumstances whatsoever, and the latter refers to same in similar conditions. We have used the both terms as synonym.

The term 'Civil' is a very elastic expression and is used in number of sense: This word is derived from the Latin word 'Civils' meaning a citizen.¹ When it is used as an adjective to the term 'law', it means pertaining to the private rights and remedies of a citizen, as distinguished from criminal, political etc.²

The expression 'Civil law' has its predecessor in the 'jus civil' of the Roman law in which it acquired various meaning in the
course of time, none of them, however, covers what in English juristic terminology is called Civil law.\textsuperscript{3}

Thus, the expression 'Civil law' which is derived from its Latin equivalent - 'jus civil', refers to the municipal law of a state. It refers to body of private law but does not include public or international law. It is also used in contradiction of the criminal law.\textsuperscript{4}

The term 'Civil law' is used in the sense of family-related law, besides, it has other components viz-contracts, compensation etc., as well.

The word 'Code' is derived from the Latin word 'codex' which means, a book.\textsuperscript{5} The study of the history of law codes in Europe shows that a code was not only commonly used of various ancient bodies of legal rules, it also frequently applied to the bodies of law known as Barbarian or Germanic laws and to the collections of maritime customs and usages widely accepted throughout Europe.\textsuperscript{6}

From 18th to 20th centuries in Europe, the term 'Code' come to be applied to a more or less comprehensive systematic statement in written form of major bodies of law, such as the civil law or the criminal law of a particular country, superseding the mixture of custom, decision and bits of legislation which had previously applied.\textsuperscript{7} Thus, in European countries which have codified

\begin{itemize}
\item 6. The Oxford companion to law (1980) 236.
\item 7. Ibid., 236.
\end{itemize}
their law, the 'Civil Code' contains the legislation which governs the civil relations of the citizensinterse, but excluding subjects dealt within special codes, such as commerce, procedure and crime.

In modern times a 'Code' is used in the sense of a comprehensive work of legislation regulating an entire province of law or a large portion of law provided that it is arranged systematically and based on uniform principles. It refer to a collection and compilation in logical and concise form of all the general statutes which may be incorporated in a 'Code' under title expressing purpose to enact code.

It appears from the foregoing discussion that the expression 'Civil Code' means a law relating to civil matters, to put it precisely a 'Civil Code' is an enactment of a branch of law directed not to a partial but to a total codification of civil legislation.

When the term 'Civil Code' is read in conjunction with the adjective 'Uniform' it connotes a code which shall be uniformly applicable to all citizens irrespective of their religion, race, sex, caste and creed.

(B) THE CONTENT OF THE UCC:

So far content of the 'Civil Code' is concerned, opinions, however, differ as to whether personal law also comes within the purview of a civil code. In this regard States' practices are different and conflicting. Thus, in Western European countries which have codified their laws, the 'Civil Code' contains the legislation which

governs the civil relation of the citizensinterse, but excluding subjects dealt within special codes, such as commerce, procedure and crime. It covers inter-alia citizenship, marriage, divorce, contract, sale, partition, exchange, mortgage, succession, wrongs and so on.\textsuperscript{10} Turning to the approach of Islamic countries, we find that family relations are governed by their personal laws, which are based on the holy book Quran. But, contrary to general belief muslim personal law is not sacrosanct and immutable. As a matter of fact, there are many Islamic countries like Syria, Tunisia, Morocco, Pakistan, Iran, the Islamic Republics of former Soviet Union which have modified and codified their personal laws with a view to moulding them to modern social requirements.

On the other hand in former Soviet Union family law was not considered a part of civil law. Rather, the Soviet laws viewed it as an independent and separate branch of law.\textsuperscript{11}

Following the Soviet-Pattern many Eastern European Countries also distinguished 'family relations' from the 'property relations'. For example, Poland before its democratic transition had two different codes - Polish Family Code and Polish Civil Code, which were enacted separately in 1969, although enforced on the same date.\textsuperscript{12}

Thus the expression 'Civil Code' suggests a great deal of private law, substantive as well as adjective, such as contract, torts,

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  \item \textsuperscript{10} Encyclopedia Britanica, Vol.-5 (1959) 743.
  \item \textsuperscript{11} Nikolat, Malein Civil Law and the protection of personal rights in the U.S.S.R. (1985), 172.
  \item \textsuperscript{12} Lasok, D. The Polish Code of family code, 14, I.C.L.Q. (1965), 1022.
\end{itemize}
evidence, property etc. But the expression 'Civil Code' is wide enough to include law relating to Civil matters ranging from marriage, divorce, inheritance and such other matters as are governed by personal laws.

In INDIA the expression 'Civil Code' is used in a very specific sense, meaning thereby a code of law regulating, civil matters including marriage, divorce, inheritance and those other subjects which are at present governed by different personal laws and the expression, 'uniform civil code' has a reference to enacting a uniform family law intended to replace the different personal laws governing Hindus, Muslims, Christians, Parsis and Jews in matrimonial and other related matters.

Thus, the concept of 'Uniform Civil Code' is confined to having a 'Uniform Family Code' for members of all communities living in the country, not merely for the sake of uniformity but also for securing social justice to weaker sections in different communities in the spheres of marriage, divorce, custody, adoption and inheritance.

It is relevant here to recall that before Independence Hindus were governed by their own personal laws, but after Independence a large part of traditional Hindu laws was codified in 1955. In sharp contrast till today Muslims in family relations are governed by the Shariat based personal laws.

As will be evident from the discussion of the Constituent Assembly Debates the matter was fiercely debated and discussed in great detail by the founding fathers of the Constitution and there was a consensus that personal laws are the part and parcel
of a single Uniform Civil Code. Although the minority (Muslims) spokesmen 13 advanced several arguments, to establish that personal laws are beyond the reach of a civil code. The crux of their arguments was that the laws regulating the minority community in family relations are primarily based upon their religion, they are immutable and are not subject to re-interpretation for various reasons and that the same cannot be made a subject matter of a 'Civil Code'. But, the majority 14 in Constituent Assembly did not accept this view because in their view religion could not and should not be made just an excuse for the continuance of diversified personal laws.

Then, there are two different views about the contents of a 'Civil Code', the first school takes the view that all civil relations are covered by it, while the other school maintains that the law relating to marriage, divorce and inheritance largely are excepted from a 'Civil Code'.

In India various systems of 'personal law' prevail. The Hindu system is based on the ancient Sanskrit texts of Dharamashastras. It was modified in some respect by legislation. The Muslim system is based on Quran and other texts. This is also modified to a certain extent by a few laws. There are matrimonial laws of the Christians and Parsees and the Indian Succession Act, 1925 lays down the law of succession for all Indians except the Hindus and the Muslims. India has accepted the ideal of a secular state. Hence

it is necessary to replace the various systems of personal law by a Uniform Civil Code.

The diversities in the spheres of personal laws are so great and some of the rules are so unfair, inequitable and humiliating that there is considerable scope and every necessity to bring uniformity as also to give a feeling to every members that he or she enjoys equality of social status irrespective of race, religion, caste or sex. It is very pertinent to refer to the opinion of Prof. Tahir Md. he says: In my opinion the only way out is the codification of Muslim law. The thinking of successive governments has been either a uniform civil code or status quo. What we desperately need is a code of Muslim law. For that a process has to be started. And the process has been suggested by the Supreme Court-entrust the work to the Law Commission which should work in consultation with the National Minorities Commission. There is an enlightened opinion within the community and it should be enough to arm the government to bring in legislation. The power is there under the Constitution, what is required is the will to start the process.\(^{15}\)

RELEVANCE AND JUSTIFICATIONS OF UNIFORM CIVIL CODE IN INDIA.

The Uniform Civil Code is very much relevant and has also become the need of the day in the communally surcharged atmosphere of our country. It may be a strong tool in curbing the virus of communalism in our country. Fundamentalism is

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the root cause of communal discard and because of this the idea of having a Uniform Civil Code for our country is resented by fundamentalists. However, the fact remains, as has been vividly pointed out by Mr. Justice Tulzapurkar:

"In the context of fighting the poison of communalism, the relevance of a Uniform Civil Code cannot be disputed, in fact it will provide a juristic solution to the communal problem by striking at its root cause, Nay, it will foster secular forces so essential in achieving Social Justice and common nationality".\(^{16}\)

Unlike the U.S.A. we do not have the double citizenship. Our Constitution ensures us a single citizenship, and the concept of single citizenship demands that all the citizens should be governed by one single set of civil laws. Thus, Article 44 of the Constitution becomes very much important and relevant in the present socio and political context of our country. The Supreme Court request, through the Prime Minister of India to make the Uniform Civil Code for all the citizens of our country in Sarla Mudgal's Case,\(^{17}\) is also the manifestation of this hard reality.

The Uniform Civil Code has become relevant in today's context of our country for achieving the following goals -

(i) National Consolidation and Integration

To integrate an extremely fragmented society, the founding fathers, in their wisdom, provided for a directive to the State under Article 44 of the Constitution that it shall "endeavour to secure

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for the citizens a uniform civil code throughout the territory of India.

Such a Uniform Civil Code shall be uniformly applicable to all citizens irrespective of religion, race, caste and sex.

A single law is essential for national integration. For almost a century Indian citizens have been governed by uniform laws in all other areas like transfer, contract, civil and criminal procedure, penal code and so on. This is even more "uniform" than the U.S. where every state has its own laws. It was argued that if this uniformity has not led to national integration, would a Uniform Civil Code make any difference? The issue of national integration goes beyond uniformity to equality. If equality becomes the basis, the cause of national integration would be better served.

However the Constitution - makers insisted the inclusion of Uniform Civil Code in the Directive Principles of Stale Policy because they had reasoned that national integration and unity and secularism demanded it. In their view the justification for the inclusion of the Uniform Civil Code was, inter-alia, that it would contribute to the secular idea and facilitate the unity of India which was otherwise hampered by a diversity of social practices and personal laws based on religion.

As we have seen the non-muslim founding fathers of the Constitution thought that a Uniform Civil Code was necessary for our national unity and for secularism.

There are, of-course, two views of the matter. Some academics would also disagrees as is Prof. Paras Diwan, who feels that -
The Uniform Civil Code has nothing to do with 'Indianisation' or national integration or interfering with the religion of one community or the other. It is simply a question of equal facility of laws to all sections of our people .... All people of India in all matters .... except the matter coming under protective discrimination should be governed by one set of laws.¹⁸

A Uniform Civil Code is not just an instrumentality to achieve national integration or national unity. It is a different matter that incidentally it may help in the achievement of integration or national unity.¹⁹ Our Supreme Court also underlined the importance of Uniform Civil Code. In the famous Shah Bano Case, Chandrachud, C.J., observed:

"...A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the state which is charged with the duty of securing a Uniform Civil Code for the Citizens of the Country and unquestionably it has the legislative competence to do so."²⁰


¹⁹. At the time of debate on Article 44 of the Constitution some such sentiments were expressed on the floor of the Constituent Assembly. K.M. Munshi Said: 'Our first problem and the most important problem is to produce national unity. But there are many factors-and important factors-which still after serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is Judicial Approach.

In Sarla Mudgal Case, Justice R.M. Sahai, observed:

"Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. But religious practices, violative of human rights and dignity and sacredotal suffocation of essentially civil and material freedoms, are not autonomy but oppression'. Therefore a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity". 21 In this Case Justice Kuldip Singh also observed:

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India" is an unequivocal mandate under Article 44 of the Constitution of India which seeks to introduce a uniform personal law - a 'decisive step towards national consolidation." 22

Thus, the Supreme Court judgement in Sarla Mudgal proceeded on the presumption that a Uniform Civil Code would enhance the unity of the country.

In any country of the world, national integration is just as vital a process as it is painstaking and difficult. It is by no means a problem unique to India. The forces that splinter a country can be many - religion, regionalism, language, race, cultural diversities, political ideology and a variety of vested interests.

In any country many of the distressful problems are embedded in history - both recent & remote. If we want to move

22. Ibid., 1532.
forward towards a goal of national integration, we have to come to grips with the problems we have inherited from our past.

It is in this Context that we should scrutinise a Uniform Civil Code for India. We should follow the Directive Principles of State Policy enshrined in our Constitution. When majority of our citizens have already been brought under the codified personal law in the form of the Hindu Marriage Act and Hindu Succession Act etc., there is no justification to keep in abeyance the Uniform Civil Code, for all citizens of this County. Religion and personal law are two different things. No community should remain isolated on the basis of religion. All communities should come forward and contribute to the national integration.

(ii) As a Safeguard against Political Domination

Uniform Civil Code as a safeguard against political domination by means of minority fundamentalism, as a harbringer of genuine democracy, and means of preventing encouragement to communalism in order to achieve their political ends..

(iii) Clarity, Simplicity and Intelligibility of the Personal Laws

Uniform Civil Code will ultimately lead to simplification and modernisation of personal laws. The simplicity, accessibility and intelligibility are the stock arguments in favour of the Uniform Civil Code. Clarity consistency constancy and confluence, are the internal morility of law and should be made the part of every legal systems.
(iv) Linkage of Justice and Equality

Ancient Indian tradition of Equality as contained in a hymn of Rigveda says:

All Human beings are equal. The king should have the same regard for his subjects that a mother has for her sons.

Secularism Justice, Liberty, Equality and Fraternity are all inseparable from one another. So are clarity & security. No one of them can stand without the others. Justice without equality or fraternity is meaningless.

The cornerstone of a democratic society is equality. Everything that characterises a democracy flows from this notion of equality. Without equality there can be no justice, just as without justice there can be no equality. True justice cannot be based on unjust laws though it has possible to have a law-abiding society even with the most unjust laws. Just laws are a pre requisite for a democratic, just and orderly society. The concept of justice also changes with the dynamics of the age. Laws evolved and deemed sacred in primitive times should not continue if they do not satisfy the conditionalities of the doctrine of equality.

Different personal laws create distinct systems of justice for separate groups on the basis of their race, religion, caste: creed and sex.

Recognition of equality and justice in the Preamble and reinforced by the right to equality guaranteed under Articles 14,15,16 etc. is the unique feature of our constitution.
Personal laws are not law under Article 13, and therefore don't have to conform to fundamental rights and the equality doctrine enshrined in Article 14. But, if personal laws were tested against the doctrine of equality under law and due process, a large number of them would be found to be unjust, arbitrary, and unconstitutional.

Article 14 mandates equality before the law which, it read with Article 44, would make the framing of a Uniform Civil Code not only a guideline for the state but would make it compulsory to frame such a code. The provision of Art 14 mean that a Muslim woman cannot be unequal as compared with her Hindu counterpart in the matter of maintenance, alimony and marital rights. As a result of codification of Hindu-laws Hindu women are better protected than their Muslims and Christians counterpart.

In Sarla Mudgal's case 23 on the basis of violation of the rules of natural justice, a second marriage after conversion to Islam declared void. This shows that Court led emphasis on the doctrine of equality. In Shah Bano's Case 24 Court also led emphasis on this doctrine.

23. Ibid., 1537.

The Court observed: "..... the second marriage of an apostate-husband would be in violation of the rules of natural justice. Assuming that a Hindu husband has a right to embrace Islam as his religion, he has no right under the Act to marry again without getting his earlier marriage under the Act dissolved. The second marriage after conversion to Islam would, thus, be in violation of the rules of natural justice and as such would be void".

It should be clearly understood that a Uniform Civil Code is one of the finest manifestations of civilised behaviour. No single community has a monopoly of ethical values. We all need those values and we have to strive together. We don't want to be compartmentalised, we want to be unified under a rational, fair, humane umbrella.

(v) Removal of Gender - Bias and Iniquitous and Inegalitarian Provisions in Personal Laws

(vi) Improvement in Women's Position

The Uniform Civil Code has been a demand of the women's movement from pre-independence days. Women's struggle for equality is intrinsically secular and it is a cardinal principle of that struggle that barriers to achieving equality erected in the name of religion, caste, custom or tradition have to be dismantled. But what is the best way to go above it? Is the slogan for an immediate common Civil Code in the Interests of Indian Women?

In a just society the liberties of equal citizenship are taken as settled, the rights secured by justice are not subjected to political bargaining or to the calculus of social interests.

The absence of a Uniform Civil Code hurts the interests of Indian Women in the following ways:

(a) It permits the gender-bias:

All the personal laws are pro-male and anti-female. Inequality between men & women in matters of marriage and divorce & succession exists in many personal laws which gives a bigger share to the men.
What Indian Women need are gender-just laws in areas of crucial concern to them which go beyond the framework determined either by laws based on religious belief or even existing secular laws. Gender justice and the fulfilment of Constitutional guarantees of equality need not necessarily be linked to an umbrella legislation. In fact within the present legal framework an umbrella legislation could well be counter-productive.

The concept of a Uniform Civil Code has two aspects: Uniformity between communities (Hindus, Muslims, Sikhs, Christians, Scheduled Tribes etc. all being governed by one law) as well as uniformity within communities (between men & women). A gender-just code would have to take into account both aspects; otherwise it could end up as a code for the uniformity of male privilege.

The Supreme Court has also accepted that due to the absence of a Uniform Civil Code, the women have not found right equal to men and this is the direct violation of the provisions of Art 15 of the Constitution.25

(b) **Womens are the worst victims of multiplicity of personal laws:**

In practice also, it is women of the majority community who are the worst victims of atrocities and discrimination including in those areas which the reformed Hindu laws were supposed to

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—By clause (1) of Art. 15 the state is prohibited to discriminate between citizens on grounds only of religion, race, caste, sex place of birth of any of them.
have liberated from them. This includes the question of bigamy. The incidence of bigamy is most among Scheduled Tribes, followed by Buddhists, then by Hindus, the lowest percentage is of Muslim men. Thus, neither in practice nor in the example of law can Hindu laws form the basis for a Uniform Code.

Where women's rights are concerned, there are no laws which are unexceptionable. There may be laws which are comparatively better but these are still based on inequality between men & women and cannot form the basis for an umbrella legislation. For instance, which existing law of which community or even the secular law would form the basis for equal laws on inheritance. Muslim women may have enhanced right in this area compared to Hindu women under the Mitakshara system, but still not equal with men. Another example is the increasing incidence of desertion. In such cases there is no law to ensure that the property accumulated by the couple after marriage would be properties of both.

Conversion cases shows that the women are the worst victims.

In Sarla Mudgal case, Justice R.M. Sahai observed:

"Ours is a Secular democratic Republic. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. But religions practices violative of human rights and dignity and sacredotal suffocation of essentially Civil and material freedoms are not autonomy but oppression."

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An umbrella legislation at this stage would therefore amount to building a skyscraper on meagre plinth of a cottage. It would require the complete overhauling of all existing laws to meet the ends of justice.

A Uniform Civil Code is not in complete accord with any religion. It does not seek the predominance of any one religion. Religion has absolutely nothing to do with it. It's out and out an instrument of social progress. A Uniform Civil Code calls for a modern outlook in keeping with our present day needs fairplay, gender equality and progressive thought.

**Opposition to Uniform Civil Code:**

Mainly the objections to the enactment of a Uniform Civil Code have all along been raised by the largest minority community in the country, the Muslim community. Not merely the formulation of a Uniform family Code is objected to but the orthodox Muslim public opinion, the Moulavis and Ulemas as well as some intellectuals have vociferously opposed any change or reform in their personal law.

The opposition to the Code and to any change in their personal law is projected -

(a) in the name of religion under Article 25 of the Constitution,

(b) in the name of culture under Article 29 of the Constitution, and

(c) its immutability being ordained by God and the Prophet.
Each one of these grounds of objection can be demonstrably shown to be irrational, fallacious or invalid and, therefore, unsustainable.

The opposition based on religion runs thus - Article 25 guarantees freedom of conscience and the right to profess, practise and propagate religion and since the Muslim personal law is an inseparable and integral part of their religion any tampering with that law will necessarily mean interference in their religion which is prohibited by the Constitution. But while putting forth such argument two vital things are ignored:

(i) that though traditionally religion has socio religious aspects, religion properly understood is and must be confined to individuals faith and beliefs and his personal relations with the Almighty and must be divorced from social aspects or practices that affect people in general in their social intercourse and

(ii) that sub-article (2) of Article 25 expressly saves

(a) laws concerning secular activity which may be associated with religious practice as also

(b) laws providing for social welfare and reform, from the operation of sub-article (1), and it is indisputable that changes in personal laws with a view to bring about social welfare and reform fall within the scope of sub-article (2) It will thus be realised that the objection based on religion is groundless. To put the matter beyond doubt there is need either to define the expression 'religion' or to judicially
interpret it confining it to individual's faith, beliefs and his personal relations with the Almighty or the creator or whatever be the super power or entity, for purposes of Article 25. It must be emphasised that constitution has guaranteed the right to religion and not the right to personal laws.

Most European Countries have a common Civil Code, and everyone including the minorities are subject to the same sets of laws. No exceptions are made and no protests are raised. Common laws in civil matters are not considered tyrannical by the minority communities. Though we have given ourselves a secular image and swear by composite culture, some groups at heart are still sectarian and separatist, which do not only create imbalance and acrimony, but also bodes ill for the future of the nation. In our country every citizen enjoys the freedom to profess his religion and there is no question of curtailting that freedom. The trouble arises when any proposal to introduce reform measures is met with opposition in the name of religion and any attempt to raise the respectability of women; who form almost 50 percent of India's population, is dubbed as attack on a particular religion. Many countries of the World, including some Islamic nations, have accepted progressive measures impinging on the status of women, but any move in this regard in India is misconstrued as interference in the religious beliefs and practices of the Muslims. It is irrespective of the fact that certain enlightened and intellectual elements in that community have been pleading for change and have been stressing the advantages of Uniform Civil Code. Thus Prof. Tahir Mahmood stresses the need to "Act Now" in this context. (Times of India, New Delhi, January 10, 2005, P.14).
The second objection based on culture is that Article 29 guarantees to every section of the Citizens of India the right to conserve its language, script or culture and the argument runs that the Muslim personal law is an essential part of their culture. In fact it is claimed to be a precious symbol of the cultural identity of Indian Muslims and conservation of their culture requires preservation of their law and changes in that law will affect the identity of their culture. The argument is based on fallacious reasoning. True, the concept of culture has not been judicially defined, but historians, sociologists and art critics have variously defined it. Some have defined it narrowly while others have defined it widely so as to include the whole way of life of a community and so understood, it would include law within its compass, but the culture of any community never remains static, it invariably responds to changing conditions and changing forces of social existence and shapes itself accordingly and therefore assuming that such a wider definition of culture includes law within its fold, the conservation of culture would not mean keeping intact every element of it how so ever obsolete, decadent or unjust it might have become. On the otherhand, adopting Muslim law to changed conditions and circumstances of modern life must ensure for the preservation of Muslim culture. Though strictly unnecessary, to make things abundantly clear, a proviso to Article 29(1) could be inserted stating that nothing contained in sub-article (1) shall affect the operation of any existing law or prevent the state from making any law providing for social welfare or reform.

The third objection to any change in the Muslim personal law based on its immutability is highly irrational. There is nothing divine about any personal law and to say that Muslim
personal law is immutable because it is ordained by God and the Prophet sounds medieval. In refutation all that is required to be pointed out is the way in which Muslim personal law has undergone a sea change in other Muslim countries. For instance, Polygamy has been completely prohibited in Tunisia (section 18 of Tunisian Law of Personal Status) and Turkey Article 74 of Turkish Civil Code, 1926) while it has been curbed in Syria, Morrocco, Egypt, Jordan, Iran and Pakistan by making it permissible subject to certain conditions such as obtaining of permission from third agency like the Court In Arbitration Council before taking a second wife. " Similarly the right of a Muslim husband to give unilateral talaq has also been curbed in all these countries. Leaving aside other Muslim countries, even in India the passing of the Dissolution of Muslim Marriages Act, 1939, furnishing Muslim women with certain grounds of divorce which were not available to them till then speaks volumes against the claim of immutability about their personal law.

While most of those who oppose a Common Civil Code do so on the grounds that this is not the time to introduce it as the Muslim community is not ready for It, a theological argument has also been advanced-these laws are God-given and therefore cannot be tampered with the rationality of such an argument and of the persons who advance them donot deserve any serious attention in this age.

They are also of the view that the people who currently are the vanguard of the movement for the enforcement of a Uniform Civil Code primarily belong to the right wing political parties with the avowed policy of establishing a majority hegemony with the
slogan of "One Nation One Culture", and it will impose personal laws and practices of the majority community on the minorities.

Another important argument of the opponents of a Uniform Civil Code is that while the Hindus are governed by diverse Shastras and largely by customs, other religious communities like the Christians, Muslims and Parsis are children of one monolithic religion with one prophet and one holy book and the laws laid down are 'Immutable' for them. Thus where as laws as applicable to Hindus may vary according to the prevalent customs, laws relating to Muslims, Parsis, Christians, etc. are same and unchangeable everywhere. Votaries of tribal rights are also opposed to the idea of a Uniform Civil Code as they fear that the tribal who essentially follow customary laws in matters relating to family, succession, inheritance, etc., will be 'Sanskritized' by being brought under the wide sweep of the 'Hindu' society. They maintain that this would be nothing short of a death blow to their distinct culture and way of life. Thus, it is argued that instead of a law that browbeats all the communities towards establishment of Uniform monoculture, there should be a plurality of laws, applicable to distinctive groups of people which will be consistent with catholic cultural ethos of this country.

Mr. Mohammed Ismail Saheb said:

"..........the right to follow personal law is part of the way of life of those people who are following such laws, it is part of their religion and part of their culture. If any thing is done affecting the personal laws. it will be tantamount to interference with the
way of life of those people who have been observing these laws for generations and ages.\textsuperscript{27}

\textbf{B. Pocker Sahib said:}

it is a tyrannous provision which ought no to be tolerated and let it not be taken that I am only voicing forth the feeling of the Musalmans. In saying this, I am voicing forth the feeling of ever so many sections in this country who feel that it would be really tyrannous to interfere with the religious practices, and with the religious laws, by which they are governed now.\textsuperscript{28}

Other Muslim members such as Shri Nizaruddin Ahmed, Shri Mahboob All Baig had similar reasons. But their objections were effectively met and answered by the proponents of a Uniform Civil Code like K.M. Munshi, Sir Alladi Krishna Swami Aiyyar and Dr. Ambedkar Munshi held that the provision neither infringed the Fundamental Right in Article 19 nor was it tyrannical to the minorities. He argued that under Article 19, which was adopted by the Constituent Assembly earlier, it was permissible for Parliament to make laws if a religious practice followed covered a secular activity or fell within the field of social reform or social welfare; that even if the Article relating to Uniform Civil Code was not there, Parliament could enact a Civil Code.

Mr. K.M. Munshi said: -------- religion must be restricted to spheres that legitimately appertain to religion and the rest of the life must be regulated unified and modified in such a manner

\textsuperscript{27} Constituent Assembly Debates, Vol.-VII, 540.
\textsuperscript{28} Ibid., 545.
that we may evolve as early as possible a strong and consolidated nation".  

Alluding to the arguments based on religion and culture Mr. Munshi said: "The point, however, is this whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession".  

Citing the instances of Turkey and Egypt Munshi contended that in no advanced Muslim Country the personal law of each minority had been recognised as sacrosanct as to prevent the enactment of a Civil Code.  

He drew attention to the fact that when the Shariat Act was passed in the old Central legislature, the Khojas and Cutchi Memons were highly dissatisfied for they followed Hindu customs and did not want to conform to the Shariat but the Muslims had carried their point. Even in European Countries which had a common civil code every minority had to submit to it. When it was required to consolidate a community he contended one has to take into consideration the benefits which may accrue to the whole community and not to the customs of a part of it.  

Alladi Krishnaswamy Aiyar pointed out that if progress was to be made there was no use clinging to the past and that social

29. Ibid., 547-48.
30. Ibid.
laws should change to suit changing conditions. He held that Civil Code encompassed every department and to substantive this point he said that Muslim law prior to the coming of the British covered every field but subsequently the British introduced uniformity in criminal law, contracts, procedures, property and that the Muslim accepted them. In all countries of Europe there was onset of personal laws and even the law of succession was unified.

People were governed by the law of the place in very many respects, he said and added that the enactment of a Uniform Civil Code would not jeopardise Muslim religion. In Muslim law marriage was a civil contract and the idea of sacrament did not enter into the concept of marriage though it incidence might be governed by Koran. Besides, he added, that the attempt at unification of the practice in respect of marriage, inheritance etc., being an extension of the idea of the Uniform Civil Code already in existence, no apprehension need be entertained that religious tenets and beliefs of people would not be respected.

Ambedkar also spoke at some length on this matter. He pointed out: We have in this country a Uniform Civil Code of laws covering almost every aspect of human relationship. We have a Uniform Code complete Criminal Code...... We have the law of transfer of property which deals with property relations and which is operative throughout the Country I can cite innumerable enactments which would prove that this country has practically a Civil Code Uniform in its content and applicable to the whole of the country. 31

31. Ibid., 540-542.
Dr. Ambedkar said that Muslim law is not immutable and Uniform through out the whole of India. Dr. Ambedkar further alleged the fears of the minorities by saying that Article 44 merely proposes that the State "shall endeavour" to implement a Uniform Civil Code. It does not say, he added, "that after the code is framed, the state shall enforce it upon all its citizens of merely because they are citizens. It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply to only those who made a declaration that they are prepared to be bound by it. Thus, in the beginning it would be purely voluntary." 32

In other words, in the Constituent Assembly, Muslim Members tried their best to get an assurance that their personal law would be exempt from the operation of the draft article 35, but that demand was negatived so that for any one now to oppose this Directive Principle on grounds of religion or preservation of culture or immutability of his personal law would be tantamount to demanding an amendment of the Constitution. There is nothing wrong in such a demand but till it is conceded it would be disingenious to oppose the implementation of Article 44 by relying upon the self same rejected grounds.

The first traditional objection is misconceived because the directive in Article 44 does not infringe upon the religious practices as stated in Article 25 (2) that this clause specifically saves secular activities dissociated with religious practices from the guarantee of religious freedom.

32. Ibid.
The second traditional objection would be valid if the laws of one community were made incumbent on the rest. However, if a common set of laws for inheritance, marriage, divorce, custody, adoption and guardianship were to be framed with a special emphasis and gender equality which neither resembled any existing personal law nor sought to impose any one personal law on the rest, it would be simply be a common and secular civil code. Such a common and secular civil code, while not interfering with any of the rituals and practices of the various religious and caste groups, would seek to merely legitimise the larger precepts of laws that are being made secular.

Thus, in the light of the emergent human rights and feminist jurisprudence the personal laws should be purged of all the biases against women and be rationalised keeping in mind the requirements of a modern society.

The real reason behind Muslim opposition to a Uniform Civil Code in INDIA is not legal but political, which has been thus summarised by a Muslim journalist.33

"-----Indian Muslims resent being a minority and still dream of spreading their faith through out India at least of ruling India Muslims have always believed that they are a state within state and a society within society. Their idea of representation based on this claim and therefore they run contrary to the concept of a democratic society itself ...... This explains their resistance to a change in their personal law."

Not being a political the author has little intention to dabble in politics in this juristic work, but it would be permissible for a student of Constitutional History to say that any such prepartition dream of the ruling India or the Muslims living in India as a state within state must have vanished with the partition of India on the basis of religion, to curve out a, homeland for the Muslims' and the subsequent adoption by Pakistan and Bangladesh on either wing of India as 'Islamic' States.

Muslims in India, who still contend that matters relating to marriage, succession or the like essentially appertain to 'religion' and they are included in the freedom of religion guaranteed by Article 25 of the Constitution of India, should read the Motilal Nehru Memorial lecture on the 'Impact of secularism on life and law', by Beg C.J., a former C.J. of India, whose opinion should count both on questions of Muslim law and the Constitution of India. In these lectures, he has comprehensively discussed all aspects of the matter and emphatically rejected the aforesaid contention. His conclusions are -

[i] Questions of personal law, such as marriage or succession, are not matters of religion.

[ii] It is urged on principle that It would be unjust to have a common personal law for people belonging to different religions, it would be against reason, for a rule of succession which is just in a Hindu or Sikh family could hardly be unjust in another family simply because they profess a different religion.

Beg, C.J., maintains that the very provision in the Hindu Succession Act, 1956 that it applied to Buddhists, Jains and Sikhs but not to Muslims, Christians, Parsis and Jews, is in consistent with the Directive Principle laid down in Art. 44 of the Constitution of India.

One wonders how long more will it take these religious minorities to realise that (a) India is their Matribhumi, (b) India cannot survive against foreign aggression unless she is strong enough. (c) India, composed of heterogeneous races, religions and language can never be strong until every citizen sincerely believes that he belongs to a brotherhood and a unified 'nation', which is envisaged by the Preamble of our constitution.

So far concept of 'Civil Code' in India is concerned, the contrary views were expressed even in the Constituent Assembly itself. The Constituent Assembly debate dated 23rd Nov., 1948 shows that while debating on the draft Article 35 (now article 44) relating to the UCC one of the member Mahboob Ali Baig Sahib Bahadur, who opposed the proposed idea, argued that the words 'Civil Code' do not cover strictly personal law of the citizens.

According to him the civil code covers the laws relating to Property, Contract, Evidence etc. And thus, the law as observed by a particular religious community is not covered by Article 35. He further submitted that those members who saw even personal law of a citizen within the expression code-"are over-looking the very important fact of the personal law being so much dear and near to certain religious communities. As far as the Musalmans
are concerned, their laws of succession, inheritance marriage and divorce are completely dependent upon their religion.\textsuperscript{35}

In order to save the personal laws Sri Mahboob Ali Baig proposed to add a proviso to the draft Article 35 to the effect that: "provided that nothing and this Article shall affect the personal law of the citizen".

But, during Constituent Assembly debate itself; most of the members did not accept the said argument. In this connection Shri K.M. Munshi pointed out:

"This attitude of mind perpetuated under the British rule, that personal law is part of religion, has been fostered by the British and by British Courts we must, therefore, outgrow it. If I may just remind the honourable member who spoke last of a particular incident from fereshta which comes to my mind. Allauddin Khilji made several changes which offended against the Shariat, though he was the first ruler to establish Muslim Sultanate here. The Kazi of Delhi objected to some of his reforms, and his reply was - "I am an ignorant man and I am ruling this country in its best interests. I am sure, looking at my ignorance and my good intentions, The almighty will forgive me, when he finds that I have not acted according to the Shariat". If Allauddin could not, much less can a modern government accept the proposition that religious rights cover personal law or several other

\textsuperscript{35} VII, C.A.D., at P. 543.
matters which we have been unfortunately trained to consider as part of our religion”.\textsuperscript{36}

Supporting the submission made by Shri Munshi, Shri Alladi Krishnaswami Ayyar also clarified the meaning of the civil code. According to him "a civil code ... runs into every department of civil relations, to the law contract, to the law property, to the law succession, to the law of marriage and similar matters”.\textsuperscript{37}

In the light of the Constituent Assembly debate we may conclude that in Indian context the expression 'Civil Code' is used in a very specific sense, meaning thereby a code of law regulating civil matters including marriage, divorce, inheritance and also other subjects which are at present governed by different personal laws and the expression, 'Uniform Civil Code' has a reference to enacting a uniform civil law intended to replace the different personal laws governing Hindus, Muslims, Christians, Parsis and Jews in matrimonials and other related matters.

**C. HISTORICAL DEVELOPMENT OF PERSONAL LAW SYSTEM IN INDIA:**

The history of Indian legal development tells us that after establishing the political authority in India the British attempted to bring a systematic and progressive legal system. In this connection various schemes for administration of justice in different parts of India were enforced. Consequently the judicial systems of Mughals and others were gradually replaced with courts constituted by the

\textsuperscript{36} VII, C.A.D., at P. 548.
\textsuperscript{37} Id, 549.
British. Here the British faced a problem that which law should be applied in different kind of cases by the courts.

The pre British legal system was based mainly on religious laws and civil, criminal, commercial as well as procedural laws were all based on religion. The courts of the Mughals applied Islamic law relating to crimes, evidence, procedure whereas the ancient Indian laws and custom were applied by the courts in those places where the rulers were not Muslims. In this way the law or custom of one or other religion formed the Rule of Decision in every case.

The law based on religion was seen complicated and unprogressive by the British. That is why they decided to reform the law and legal system. In this connection the religion based criminal laws of India were reformed gradually and the secular criminal code came into existence. Similarly the Evidence Act and the Civil Procedure Code were enacted. So for the civil code is concerned the British could not enact the secular laws for all purposes because of the political compulsions. In fact, the British did not want to infuriate the religious societies by imposing secular civil law for all purposes.

The British were aware of the possibility of political repercussions and therefore refrained from enacting comprehensive civil code on the line of the penal and procedure code. It may be pointed out that British replaced religion and custom, only in non personal civil areas which were not regarded by the religious societies as vital to the religion as the personal civil matters. That is why subsequently the British came forward with piecemeal legislations. They enacted Contract Act, 1872 and Transfer
of Property Act, 1882. In regard to other subjects in civil matters the British adopted cautious approach. We have seen that the British had no intention to completely exclude the civil matters from their plan for law reform, wherein it was clarified that the religious or customary law would form Rules of Decision, subject to the future civil legislation. Consequently, in course of time a trichotoinous scheme of Rules of Decision was enforced in various parts of British India.

The Rules of Decision to adhered by the court under the scheme were:

(a) Custom and usage,
(b) Religious civil law,
(c) Law enforced by the British rulers.

Law enforced by the rulers would include, regulations, enactments. Obviously, there was possibility of conflict among the three Rules of Decision which were to be adopted by the courts.

Under the said scheme of Rules of Decision there was no uniformity, in case of difference between the first two rules. However, the laws made by the British rulers were kept supreme over the first two Rules of Decision. Here, it appears that ordinarily the British accepted the said scheme of Rules of Decision but, at same time they reserved their right to legislate in preference to the customary and religions laws. This scheme of Rules of Decision was gradually implemented in civil courts at different levels in various parts of the country.
If we see the history of relationship between the personal laws and the civil code we find that it was the Warren Hasting's Judicial Plan of 1772 under which the personal laws were given recognition. According to Prof. Tahir Mahmood this was the first authoritative "policy declaration" by the British rulers in regard to the religious laws of the Hindus and Muslims.\textsuperscript{38}

In the various successive schemes almost same policy was adopted by the British rulers, but at same time, certain modifications were also adopted and the effect was that the trichotomy of Rules of Decision in regard to case involving family relation, personal status and the like was thus fully established, in the lower civil courts almost all over the country by virtue of the clauses contained in the charters of various High Court, directing them to apply in the appeal cases the "law which the lower courts ought to have applied".

The trichotomous system as reinforced in the reorganised lower civil courts got automatic recognition in the High Courts as well. The order of preference between the three Rules of Decision in cases of conflict, was now in all certainty:

(a) legislation by the state
(b) custom and usage and
(c) personal laws\textsuperscript{39}

\textsuperscript{38} Tahir Mahmood, 'Muslim personal law-role of the state in the subcontinent 1977, P.6.

\textsuperscript{39} Supra note 15 at P. 15.
If we survey the constitutional development before the Government of India Act, 1915 we find that there was nothing restraining the Government in British India from making laws in the areas traditionally regulated by personal laws.

The Government of India Act, 1915, which consolidated all prior laws relating to the Government of India, laid down that the legislature would, have power to make laws:

(i) For all persons, for all courts, and for all places and things within British India,

(ii) For all native Indian subjects, and

(iii) For repealing or altering any laws which for the time being were enforce in any part of British India or apply to persons for whom the Indian legislature had power to make laws.

Under this Act it was made clear that the personal laws of any community were not placed out of the scope of the Act, moreover none of the constitutional documents brought after the Act of 1915 effected any change in the situation. The Minto-Morley as well as Montague-Chemhsford reforms also adopted the same policy relating to the personal law visa-vis power of the state to make laws. The legislative entries in the Government of India Act, 1935, included almost all matters traditionally regulated by the personal law.

The constitutional history tells us that a comprehensive codification of personal laws were generally not favoured by the British rulers. The first Law Commission set up under the Charter
Act of 1833 had expressed hope that in near future the codes of Hindu and Muslim law would be prepared.

But the Second Law Commission, appointed under the Charter Act of 1853 Plainly rejected the idea of codification. The fourth Law Commission too recommended against the codification of personal laws at that stage.\(^{40}\)

Thus, in British India no attempt was made to prepare comprehensive code of either Hindu or Muslim law. It appears that the legislative power relating to personal laws was used to bring piecemeal reform rather than to bring a civil code replacing the personal laws of the various communities.

D. ORIGIN OF THE IDEA OF A UNIFORM CIVIL CODE IN INDIA:

The idea of UCC was introduced into the national political debate in 1940 when a demand for such a code was made by the National Planning Committee appointed by the Congress.\(^{41}\) The sub-committee for the 'Women's Role in a Planned Economy' was specifically directed to study the role women' would play in the future independent India, and it presented its report to the National Planning Committee in August, 1940. The report advocated for the enactment of a UCC. It envisaged the proposed UCC to be an optional code to begin with, which could gradually replace the different personal laws followed by various religious

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40. See, generally chapter 'codification of law' in M.P. Jain, Outlines of Indian legal history, 4th edi; 1990 PP. 461-514.

41. This account is based on the work : A Parashar, women and family law reform in India, 1992, PP. 230-235.
communities. This recommendation was endorsed by the National Planning Committee with one Muslim member opposing the idea of a UCC. However, other resolutions by the sub-committee and the National Planning Committee indicated that the members of these committees did not think that the enactment of a UCC was a feasible idea. By 1940 a few leaders of the All India Women's Conference were also demanding the enactment of a UCC. However, the Charter of Women's Right prepared by the All India Women's Conference mentioned right of women to have reforms made in personal laws but did not extend the claim to UCC.

E. THE CONSTITUENT ASSEMBLY AND THE UNIFORM CIVIL CODE:

The directive to enact a UCC in the Constitution was included as a result of the efforts of Minoo Masani, as a member of the sub-committee, on Fundamental Right, he moved on 28 March 1947, that the state should be made responsible to enact a UCC in order to break down the barriers between various communities.42

Minoo Masani, Hansa Mehta, Rajkumari Amrit Kaur, and Ambedkar voted in favour of the inclusion of the clause on the UCC, but the majority of the sub-committee voted against its inclusion on the grounds that it was beyond the scope of Fundamental Rights. However, when it was decided that the rights were to be divided into justiciable Fundamental Rights and non-justiciable Directive Principles, the sub-committee agreed to

make the enactment of the UCC a Directive Principle.\textsuperscript{43} No doubt it was mainly to calm Muslim fears that the sub-committee on Fundamental Right did not make the UCC clause justiciable. This is evidenced by a letter written by Masani, Hansa Mehta and Rajkumari Amrit Kaur to the advisory committee of the Constituent Assembly in July 1947, asking the Chairman to reconsider putting the clause on UCC in the list of Fundamental Right. They asked for this reconsideration in view of the decision to partition of the country 'and the keen desire that is now felt for a more homogeneous and closely knit Indian nation'. However, this suggestion was not accepted and the UCC was made a Directive Principle in the draft of the Constitution.

It is a matter of common knowledge for a student of the Constitution of India that a provision of the Constitution cannot be properly studied without its historical background and the historical Constituent Assembly Debate is one of the important legal source for constitutional provisions.\textsuperscript{44} It is, therefore, necessary for us to go into the details of the debate relating to UCC.

\textsuperscript{43} Minutes of the meeting of the meeting of the sub-committee on fundamental right, 30 March 1947, ibid, PP. 134-136.

\textsuperscript{44} The constitutional history of India tells us that before 1947 the real power and control over the Indian administration was exercised by the representatives of the British government and Indian Participation in the governmental process was minimal. There, thus, rose a demand for independence which resulted the setting of a constituent assembly for drafting a constitution for a free India. The constituent assembly which had been elected for undivided India and held its first meeting on the 9th December 1946, reassembled on the 14th August 1947, after partition as the sovereign constituent assembly for the dominion of India. The constituent assembly after three year's hard labour finalised and adopted the constitution of India on November 26, 1949.
It was the Constituent Assembly in which the idea of UCC was legally mooted in India. The Sub-Committee on Fundamental Right had included UCC as one of the Directive Principles of State Policy clause 39 of the Draft Directive Principles of State Policy read: "The State shall endeavour to secure for the citizens a uniform civil code".

After the deliberations, the Sub-Committee on Fundamental Right decided to recommend that though UCC was highly desirable but it shall be applicable entirely on voluntary basis.\(^{45}\)

But this recommendation was not unanimous and three members of the Sub-Committee namely Minoo Masani, Rajkumar Amrit Kaur, and Hansa Mehta recorded their dissent. They went on to say:

"We are not satisfied with the acceptance of a uniform civil code as on ultimate social objective set out in clause 39 as determined by the majority of the Sub-Committee. One of the factors that has kept India back from advancing to nationhood has been the existence of the personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are, of the view that a UCC should be guaranteed to the Indian people within a period of life five to ten years in the same manner as the right to free and compulsory primary education

has been guaranteed by clause 23 within ten years. We, therefore, suggest that the advisory committee might transfer the clause regarding a UCC from part II to part I after making suitable modification in it".46

When the UCC was debated in the Constituent Assembly, Art. 35 (as clause 39 was renumbered) was strongly opposed by members of the Muslim Community, Shri Mohammed Ismail Sahib, Shri Pocker Bahadur Sahib, Shri Mahboob Ali Baig Sahib Bahadur, all from Madras; Shri Naziruddin Ahmed from West Bengal, Shri Hussain from Bihar, pleaded for amendments in Art 35. Shri Mohammed Ismail Sahib wanted to add a proviso to article 35 that:

"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law".47

He argued that the right of people to follow their own personal law was among the Fundamental Right. It is part of their religion and part of their culture and if any thing is done affecting the personal law, it would be interference with their way of life and religion. He said that "purpose of UCC is to secure harmony through uniformity and it can only be achieved when people are allowed to follow their own personal law."

The second suggestion for amendment came from Shri Naziruddin Ahmed who wanted to add the following proviso to Art. 35:

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46. Ibid. at 177.
"provided that the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the union legislature may determine by law".

By moving the above amendment Shri Ahmed pointed out that Art. 35 may clash with Art. 19 of the Draft Constitution which provides Fundamental Right to religion. According to him Art. 19 provides a positive provision which is justiciable and any person may approach the court for its enforcement. On the other hand by Art. 35 the state has been given some amount of latitude which may enable it to ignore the right relating to religion.

He submitted that the Art. 35 is likely to encourage the State to break the guarantees given in Art. 19. He pointed out that during the 175 years of British rule, though certain uniform civil law were partly clashed with personal law but they never interfered with law relating to marriage and inheritance. He finally submitted that though the goal should be towards a UCC but it should be 'gradual and with the consent of the people concerned. He added that 'we should proceed not in haste but with caution, with experience, with statesmanship and with sympathy'.

During the debate another amendment to Article 35 was proposed by Shri Mahboob Ali Baig Sahib Bahadur who wanted to add a proviso as following:

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"provided that nothing in this article shall affect the personal law of the citizens".

He argued that in case of some communities their personal law depends entirely upon their religious tenets.49 He added that even in secular state the citizens belonging to different communities must have the freedom to practice their religion.

Another Muslim member Shri B. Pocker Sahib Bahadur who supported the motion moved by Shri Mohamed Ismail sahib and proposed to add a different proviso as following:

"provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law".

In support of his amendments, he pointed out that even the majority divided on the uniform civil code and even if the majority community is in favour of it, it has to be condemned and it ought not to be allowed because in a democracy it is the duty of the majority to secure the sacred right of every minority.

Another member Shri HUSSAIN Imam also supported the contention made by Muslim members and pointed out that for a big country like India having diversified population, the UCC is not feasible. He felt that "it is all right and a very desirable thing to have a uniform law but at very distance date. For that we should first await the coming of that event. Apart of this our country are very backward look at the Assam tribes; what is their condition? Can you have the same kind of law for them as you

have for the advanced people of Bombay? Sir, I feel that it is all right and a very desirable thing to have a uniform law, but at a very distant date". 50

In the Constituent Assembly few member came in support of UCC and we may refer their argument which is still relevant today. While countering the opposite arguments Shri K.M. Munshi argued that article 35 is not against article 19 because under article 19 the state may regulate secular activities or may bring social reform or social welfare. According to him the whole object of this article is that as and when the Parliament thinks proper an attempt may be made to unify the personal law of the country. He further argued that the UCC is not tyrannical because nowhere in advanced Muslim countries personal law of minority has been recognised as so sacrosanct as to prevent the enactment of civil code.

He also emphasised that when you want to consolidate a community, you have to take into consideration the benefit which may accrue to the whole community and not to the customs of a part of it. It is not, therefore, Correct to say that such an Act is tyranny of the majority.

Shri Munshi cited the example of some European countries. He reminded that: "we are in a stage where we must unify and consolidate the nation by every means without interfering with religious practices. If, however, the religious practices in the past have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that

these matters are not religious, they are purely matters for secular legislation. This is what emphasised by this article." 51

Shri Munshi also pointed out very important aspect of the problem relating to the gender-justice. According to him if personal law are allowed to continue the status of women may not be improved because the personal laws are biased to the women. Since under the Constitution we have guaranteed right to equality therefore, the unequal personal laws cannot continue. Therefore, there is no reason why there should not be a civil code in India. He also reminded that our first and most important problem, is to ensure national unity and the same can be achieved when we are governed by the similar laws. In this connection he mentioned that the personal law is not part of religion. After Shri K.M. Munshi the second important speech in favour of UCC was made by Shri Alladi Krishnaswami Ayyar who saw UCC as a progressive system which may include all the good aspects of various personal laws.

Again one of the most important speech relating to the UCC was made by Dr. B.R. Ambedker who supported the line taken by Shri Munshi and Shri Ayyar. He refuted the argument of Shri M. Hussain Imam who had questioned the viability of UCC for a big and divorce country like India. Here, Dr. Ambedker opposed that argument for the simple reason that India had already one law covering almost every aspect of human relationship. He reminded that except the marriage and succession. The India were governed by the uniform law in case of criminal law, procedure law, property law, etc. He emphasised the fact that in India we had

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already uniform laws in most of the human relationships. Dr. Ambedker then rejected the argument that the muslim personal law was immutable and uniform through whole of India. He reminded the members that unto 1935 the North, West Frontier province was not subjected to the Shariat law, it followed the Hindu Law in matter of succession and it was 1939 that the Central legislature had to come to abrogate the application of the Hindu law to the Muslim of the North West Frontier province and to apply the Shariat law to them. In this connection he put some more example as existed in other parts of India. Dr. Ambedker observed that if in the process of making UCC some good aspect of Hindu Law are incorporated in it, it would not be open to any Muslim to say that the framers of Civil Code had done great violence to the sentiments of the Muslim community.\footnote{Vol. VII, C.A.D., at 551.}

It appears from the speech of Dr. Ambedker that he strongly favoured the UCC for India but, at the same time he wanted to remove the fear psycosis of the Muslim members relating to the UCC. And here Dr. Ambedker came with an assurance. He said:

"(A)rticle 35 which merely proposes that the state shall endeavour to secure a civil code for the citizens of the country. It does not say that after the code is framed the state shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the code shall apply only to those who make a declarations that they are prepared to
be bound by it, so that in the initial stage the application of the code may be purely voluntary.\textsuperscript{53}

In the last leg of his speech Dr. Ambedker reminded that his suggestion was not novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North West Frontier Province and in case of Uniform Civil Code it would be perfectly possible for Parliament to introduce a provision of that sort, so that fear of Muslim members might be removed. In light of these facts Dr. Ambedker saw no substance in the proposed amendments of the Muslim members and he opposed the same.

In the end of the debate Article 35 was carried without any amendments, and it was latter renumbered as Article 44, and read:

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

\textsuperscript{53} Vol. VII, C.A.D., at 551.