CHAPTER - III

CONSTITUTIONAL PROVISIONS AND THE UNIFORM CIVIL CODE
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There are several provisions in the Indian Constitution which are directly or indirectly related to the UCC. The UCC may be discussed under the three important heads namely: The Fundamental Rights, The Directive Principles of The State Policy and The Fundamental Duties.

(A) UNIFORM CIVIL CODE AND FUNDAMENTAL RIGHTS:

One of the important problems for enacting the UCC has been the relationship between the constitution and various religious personal laws. Here the important task is to resolve the conflict between the power of the state to enact a UCC and the fundamental Right of the people to exercise their right to freedom of conscience including the right to be governed by their religious personal laws. The provisions of the Constitution of India in this regard are ambiguous and the conduct of the State to reform the religious personal laws has been inconsistent. Since there has been no substantial contribution of legislature, therefore we may discuss the judicial pronouncement on the status of religious law and their relation with the Constitution.

We may discuss first the relationship between the Constitution and religious personal laws. The important issue that need to be clarified is whether part III of the Constitution governs religious personal laws, and if so whether religious personal laws
that provide less equal rights to women discriminate on the basis of sex, violate the Constitution. In this connection it may be asked whether, fundamental right to religion can have precedence over the fundamental right of equality. Here we will argue that the founding fathers had not envisaged religious personal law as 'extra' Constitutional laws and the Judicial decision that put religious personal laws beyond the control of fundamental right chapter of the Constitution, have ignored the ill effect of such approach. In this connection it may be pointed out that because all religious laws more or less contain discriminatory provision, the State at times compromises the rights of women when it chooses to safeguard the religious personal laws.

In view of this ill result we will argue that the State is obliged to initiate the process to enact a UCC. Again, if the Constitutional guarantee of equality is to be realised, the most suitable way of doing it is to break the connection between religion and personal law.

**THE RELATIONSHIP BETWEEN THE PERSONAL LAW AND THE CONSTITUTION OF INDIA:**

The Constitution of India guarantees the right to equality and also prohibits the States from discriminating on grounds of religion or sex etc.\(^1\) However, the existing religious personal laws have the effect that the men and women of different communities have different rights with regard to the same areas like marriage, divorce and succession. Moreover, men and women of

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\(^1\) See Art. 14 and 15 of the Constitution of India.
the same community also have different rights in many personal areas and women in most of the cases, have fewer rights. The Continuance of religious personal laws even after the commencement of the Constitution of India raises doubts whether these laws are governed by the Constitution at all. This controversy has arisen partly because Constitution does not directly mention the religious personal laws. The only mention of religious personal laws is made in entry 5, Legislative list III, of Schedule VII, although Article 44 can be read to indirectly imply the existence of various religious personal laws.

The Constitutional development shows that except the Hindu personal law the legislature has not modified any religious personal laws to make them in tune with the Constitution. Again, even though Art, 13 provides that the laws inconsistent with Part III shall become void, at times, the Indian courts have ruled that the religious personal laws are not governed by part III of the Constitution i.e., Fundamental Right Chapter.

On the relationship between religious personal laws and the Constitution the starting pronouncements came from the Bombay High Court in case of State of Bombay v Narasu Appa Mali.\(^3\)

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2. The IIIrd list is titled the concurrent list and enumerates the subjects on which the Union and the States can simultaneously legislate. Entry 5 read: 'marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint Family and partition; all matters in respect of which parties in judicial proceeding were immediately before the commencement of the Constitution subject to their personal laws.'

3. AIR 1952 Bombay 84.
In this case the defendant was prosecuted under the Bombay prevention of Hindu Bigamous marriage Act, 1946. He argued that the said Act was unconstitutional because the provisions of Hindu and Muslim law, which allowed polygamy for males but not for women, violated Article 14 and 15 of the Constitution.

In this case the Bombay High Court had to determine whether the personal law of Hindus and Muslims were 'laws in force' within the meaning of Articles 13(1) and 372(1) of the Constitution. If personal laws were covered by the term 'laws in force', then in order to survive after adoption of the Constitution, the same must comply with the provision of Part III of the Constitution. The Bombay High Court held that the personal laws do not cover by the expression 'law in force' and thereby do not become void at the commencement of the Constitution even if they conflict with part

4. Article 13(a)- All laws in force in the territory of India immediately before the commencement of this Constitution in so far as they are inconsistent with the provisions of this part, shall to the extent of such inconsistency, be void.

Article 372 (1) - For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amedment) Act, 1956, into accord with the provisions of this Constitutions as amended by that act, the President may by order made before the first day of November, 1957, make such adoptations and modifications of the law, whether by way of repeal or amendment as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order have effect subject to the adoptations and modifications so made, and any such adoption or modification shall not be questioned in any Court of law.

(2) Nothing in clause 91) shall be deemed to prevent a competent legislature or other competent authority from repealing or amending any law adopted or modified by the President under the said clause.
III of the constitution. The division bench of the Court presented the several reasons for its conclusion, Firstly, Article 44, indirectly recognized the existence of different personal laws and permits their Continuation. Until a UCC is enacted the Court pointed out that the Constitution empowers the legislature to reform these personal laws under Entry 5 of the Concurrent List. Secondly, the specific mention of personal law in Entry 5 indicates that Constitution makers treated it as a distinct category and if personal law was to be included in the phrase 'law in force' of Art 13(1) it would have been intentional.

In the similar case before the Madras High Court the petitioner challenged the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949. It was contended that the Act by prohibiting polygamy amongst Hindus only and leaving Muslim men free, denied Hindu men equality before the law. Moreover, the Act restricted the Hindu males right to profess, practice and propagate religion. The Madras High Court in *Sriniwasa Aiyar v Saraswathi Ammal* 5 did not specifically decide whether the expression 'law in force' in Article 13(1) includes personal laws. The Court ruled that even assuming that the said expression does include personal laws, the Act does not violate Articles 15 which prohibits any discrimination on the grounds of religion, caste, sex etc.

On this issue the another judicial dictum came from Supreme Court in the case of *Krishna Singh v Mathura Ahir*. 6

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5. AIR 1952 Mad. 193.
In this case, the Supreme Court held that Part III of the Constitution does not cover the personal laws of the parties. However, in this case the Supreme Court failed to support its dictum with reasons.

It may be the pointed out that except the Bombay High Court in Narasu Appa Mali case, no Court has given a reasoned decision as to why personal laws that violate Part III of the Constitution should not be declared void. However, the reasons provided by the Bombay High Court, does not appear valid.  

Number of Supreme Court decisions including the said High Court decision, held that the term 'law in force' in Article 372 (1) and in Article 13 (1) includes statutory, non-statutory, written and unwritten, customary, common, state made or judge made laws, even though the definition of the phrase only refers to statutory laws.  

Although none of the referred decisions deal specifically with personal laws it will be difficult hold that personal laws form a different categories from all those mentioned categories.

The other ground of the Bombay High Court decision in Narasu case that the presence of Article 44 implies the existence of different codes of personal laws and their continued validity, even after the commencement of the constitution, places undue reliance on Article

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8. The definition of law in force is not exhaustive—Sant Ram V. Labh Singh AIR 1964 SC 314 at 316; State of Andhra Pradesh AIR 1953 Cal 263; Baijanath V. Rannath AIR 1951 HP 32.
44. In fact, it is Article 372 which is intended to provide for the continuance of all pre-consitution laws. Article 44 forms a part of the Directive Principles and simply enjoins the State to enact a UCC. It can at best be said support the provision in Article 372 but can not of it self suffice to provide for the continuation of personal law. Even if it is accepted that the presence of Article 44 does imply the continuance of persona laws in the interim period, it does not by any means imply that such personal laws are not required to conform to the provisions of part III of the constitution.9 Again, the fact that personal laws are mentioned as a subject of legislation but not specifically mentioned in Article 13 does not prove that the Constitution makers treated personal laws as a special category. There are many other topics, legislation mentioned in the Lists of the VII th Schedule which find no specific mention in the expression "laws in force" in Article 13. No claim has been made that these topics are not governed by the constitution because they are not specifically referred in Article 13.10

The interpretation put forward by the Bombay High Court is also contrary to the action of the parliament which reformed and codified the Hindu personal law. The overriding clause in each Hindu law Act provides that all texts, rules or interpretations of Hindu law and all customs and usages forming part of that law, shall have no effect with respect to matters dealt with by the Act. Yet, the reasoning of the Bombay High Court leads to the

10. Ibid at 209.
anomalous conclusion that only a portion of personal law are not recognised by the constitution.

The Bombay High Court decision, is therefore untenable. In understanding this decision it has to be in view that the two judges went to extreme lengths to declare personal law to beyond the scope of part III of the Constitution because they wanted to save the Bombay prevention of Bigamy Act from being declared void.

The impugned Act had the commendable aims of abolishing the anachronistic practice of polygamy and of providing that at least Hindu men and women should have equal right with respect to each other. Thus the judges were very conscious of this social reform purpose of the Act, It is evident from their comment that ideally it was desirable to prohibit polygamy for all communities, but if the government for some reason was unable to do so, it was not a valid reason to strike down the provision prohibiting polygamy for Hindus.¹¹ Both the judges Chagla and Gajendragadkar were known in as progressive thinkers in this case they showed themselves to be in agreement with the political leaders that the ills of society needed to be remedied by the State.

The main significance of the decision of the Bombay High Court lies in the intention of the judges to further the cause of social reform rather than to maintain anachronistic practices under various personal laws.¹²

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¹¹ State V. Narasu Appa Mali AIR 1952 Bom. 84 at PP. 93-94.
¹² A Parashar, at P. 212.
Therefore, despite some judicial dicta to the contrary, we may argue that personal laws do not form a special category of laws that is not governed by Part III of the Constitution. The Constituent Assembly debates substantiate this view.  

Although, the Constitution is silent about the power of the State to reform' various religious personal laws in order to make them conform to the constitution. ' Except the provision of Article 25 (2) (b)' the inclusion of Article 44 gives an indirect but sufficiently clear indication of the authority of the State. Article 44 implies that a UCC is a desirable goal and it also implies that the State will at some time remove various discriminatory religious personal law to achieve the Constitutional objectives.

**RIGHT TO FREEDOM OF RELIGION: WHETHER A BAR TO REFORM OF PERSONAL LAWS:**

Under the Indian Constitution there has been certain conflicting interests, one of such areas of conflict has been between the goal of UCC under Article 44 and freedom of religion. The history of Constitutional development of UCC shows that if there has been any single most important hurdle in the way of UCC, it has been the religious freedom as guaranteed in the Constitution. Under this right it has been claimed that people of India have Constitutional right to retain their personal laws. Since the claim to retain the personal laws has been related to the interpretation of freedom of religions therefore, the judicial pronouncements relating to the scope of freedom of religion is

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13. For detail discussion see, Supra PP. 19-27.
relevant here. Again, since the Constitutional provisions of freedom of religion have been used by both proponents and opponents of the UCC, therefore, the real scope of these provisions has become important. In our discussion we will try to examine the scope of the said Constitutional provisions and the judicial decisions thereof. In this connection we will also try to refer the Constituent Assembly debate which will help to determine whether the Constitution makers intended the right to freedom of religion to prevent State intervention with regard to the reform of the personal laws.

Articles 25 to 28 provide certain rights relating to freedom of religion not only to the citizens but all persons in India. Article 25 directed to the individual.\textsuperscript{14} Article 26 guarantees certain right to the religious denominations.\textsuperscript{15}

\begin{enumerate}
\item Article 25- Freedom of conscience and free profession, practice and propagation of religion:
\begin{enumerate}
\item Subject to public order, morality and health and to other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
\item Nothing is this Article shall affect the operation of any existing law or prevent the State from making any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
\item providing for social welfare and refore or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
\end{enumerate}
\item Art 26- Freedom to manage religious affairs: subject to public order, morality and health, every religious denomination or any section thereof shall have right.
\begin{enumerate}
\item to establish and maintain institutions for religious and charitable purposes;
\item to manage own affairs in matters of religious;
\item to own and acquire movable and immovable property; and
\item to administer such property in accordance with law.
\end{enumerate}
\end{enumerate}
The language of these two Articles makes it clear that freedom of religion is not an absolute right. Their exercise is to subject to the maintenance of public order etc. It is interesting to note that, under the Constitution the term 'religion' has not been defined but the Courts have given it an expansive meaning. However, there has been some ambiguity with regard to the true scope of the this article. Again a religion may not only lay down a code of ethical rules for its followers to accept but may also prescribe rituals ceremonies and modes of worship which are regarded as an integral part of the religion. So for scope of the freedom of religion is concerned, the Court in India have adopted the technique of dividing religious practices in to those which are essential and those which are non-essential. The Courts have declared that protection against State intervention is only available for the essential practices of religion. In other words the non-essential practices may be subjected to the State intervention. The initial occasion to discuss the scope of article 25 and 26 was found by the supreme in Shirur Mutt\(^\text{16}\) which may be regarded a foundation case on this issue. In this case Supreme Court held that presence of Article 26 (b) which ensures to every denomination the right to manage its own affairs in matters of religion, indicates that not all matters connected with a religion are essentially religious. The Supreme Court's division of religious matters into essential and non-essential matters is useful because it defines the areas in which the State and religion have respective supremacy. In this case Supreme Court provided a broad definition to freedom of religion

\(^{16}\) Commissioner of Hindu religions Endowments Madras V. Sri Lakshmindra Tristha Swamisa of Sri Shirwimutt, 1954, SCR 1005.
and held that what constitutes an essential part of religion has to as certained primarily with reference to the doctrines of the religion itself. Therefore, if the tenets of any religion prescribe certain practices or rituals they may form an essential part of that religion. And it is not open to an outside authority to question the decision of the religious denomination as to what ceremonies and rites form an essential part of the religion.

The broad interpretation of the right of religious denominations was bound to come into conflict with the powers of the State to regulate certain aspects of religious personal laws. In the case of *Ram Prasad v. State of Uttar Pradesh*. The Court was asked to determine the Constitutional validity of a service rule which required a government employee to seek permission of the government before entering into a polygamous marriage. This rule was challenged by a Hindu petitioner as infringing his right under Article 25. And it came to the conclusion that the permission for polygamy could not be regarded as forming an integral part of religion.

The Supreme Court had occasion to consider Article 26 again in *Durgah Committee, Ajmer v. Syed Hussain AII*. In this case Supreme Court opined that only those practices which are regarded by the religion as an integral part of the religion should be protected under Article 26. Otherwise even secular practices could become the subject of a claim for protection under Article 26.

17. AIR 1961 All 334.
This view point was further explained in *Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay.*\(^{19}\) The Supreme Court expressly Stated that whether a religious practice is an essential part of religion, is an objective question which has to be determined by the Court. In a subsequent case Supreme Court observed that if an obviously secular practice was claimed to constitute on essential part of any religion, the Court would be justified in rejecting that claim.\(^{20}\)

Subsequently ,in *S.P. Mittal* \(^{21}\) and *Bijoea Immanual.*\(^{22}\) The Supreme Court has taken the same approach.

The judicial approach, relating to the scope of freedom of religion as well as power of State intervention in to religious freedom, tells that the Supreme Court has sought to demarcate the area for legitimate State intervention while at the same time tried to safeguard the religious freedom. Over the period of time the Supreme Court came to accept that neither the individual nor the religious denominations could be given a free hand to decide what activities formed an essential part of the religion. Although this view has been disputed by one noted Constitutional lawyer.\(^{23}\) it is consistent with the welfare and social-reformer State as envisaged in the constitution. Our Constitution does not give an unfettered religious freedom because this freedom is subject to other fundamental rights as well as State's gulatory power.

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Though the Supreme Court has stated the principles regarding the scope freedom religion, there has been recurring doubt whether religious personal laws form an essential part of religion. This Constitutional controversy centers on the relationship between Article 25 (2) (b) and 26 (b). In other words, if a practice forms an essential part of religion and is protected by Article 26 (b), does Article 25 (2) (b) still give the State a right to alter?

In our previous discussion we have seen that the Bombay and Madras High Court have held that prohibition on polygamy is covered by Article 25 (2) (b).24 The Allahabad High Court also held that even if bigamy was considered to be an integral part of any religion, a law prohibiting it would be protected under Article 25 (2) (b).25

In this connection applying the rule of harmonious interpretation the Supreme Court has held that it Article 26 (b) is considered to have an overriding effect the scope of Article 25 (2) (b) is curtailed. And if Article 26 (b) is read as subject to the Article 25 (2) then both Articles can have a wider scope.26 The effect of Devaru case decision is that social reform measures can be undertaken even with regard to what are claimed to be the

26. Sri Venkataramana Devaru V. The State of Mysore AIR 1958 SC 255 at p. 268; In this case the Supreme Court was not referring the reform of religious personal laws. The Court opinion came with regard to the right of a religious group to restrict the entry of certain section of Hindus in to their Temples.
essentials of a religion. However, in the subsequent case of Sardar Syedna, the Supreme Court took a different stand. In this case the Court explained that intention of Art 25 (2) (b) is to cover only those laws which as not contravene the essentials of a religion, and a law which infringes this right can not be permitted in the name of social reform because such action would place a religion out of existence.

A direct consequence of Sardar Syedna judgment is that religion was given overriding authority over the State's regulatory power. This decision has the, potential to curtail the 'authority of the State' to reform the religious personal law. As yet there is no authoritative judgement from the Supreme Court that the subject matter of personal laws does not constitute an essential or integral part of any religion. The legislature has not provided a clear indication whether the claims of various religious communities are to be final in this regard. In this connection it has been pointed out that the implications of the Supreme Court judgement for women are that if the Courts in future accept that the laws which given women fewer right than men, constitute an essential part of a particular religion, then, even social reform measures cannot be enacted to modify such laws.


28. In Sardar Syedna case a divided Supreme Court held a statute prohibiting excommunication on religious grounds can not be consider as promoting social welfare or reform under Article 25(2) (b) and the impugned action excommunication was regarded as the part of the management "It own affairs in matters of religion. However, the judgement has been severely criticied by Prof. P.K. Tripathi and Prof. Derrett on the ground that it preferes the denominational right over the individual freedom under Article 25.

We may submit that the result of the Syedna case is inconsistent with the very purpose of Article 25 (2) (b), I which acts as an exception to the freedom of religion. And the perusal of the Constituent Assembly debates confirms this fact.

We may conclude this discussion by saying that our founding fathers wanted to abolish the ill practices associated with the various religions and, therefore, they provided necessary power to the State under Article 25 (2) (a) and (b). But, our Courts, at times have given freedom of religion overriding effect upon Art. 25(2) (a) and (b) and this has strengthened the hands of religious leaders. The Courts must see ill effects of such interpretation and help the legislature and the executive to achieve secular ideals along with equality and gender-justice. In this connection the personal laws of the communities must also be interpreted in the light of the said ideals so that Indian society may be prepared to adopt a UCC.

B) UNIFORM CIVIL CODE AS A DIRECTIVE PRINCIPLES OF THE STATE POLICY:

As we know that part - IV (Art. 37 to 51) contains certain principles which have been described as the active obligation of the State. The Directive Principles of the State Policy of the Constitution possess two characteristics. Firstly, they are not inforceable in any court and, therefore, if Directive is not obeyed or implemented by the State, its obedience or implementation can not be secured through judicial proceeding. Secondly, they are 'fundamental in the governance of the country' and it shall be the 'duty' of State to apply these principles in making laws. The expression "laws must be construed in a generic sense and
should include all normative exercise of power including the decision making.\textsuperscript{30}

Art 44 is one of the important Directive Principles which is directly related to the UCC and it says: "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the Territory of India".

Since Art. 44 is the only provision of the constitution on the basis of which we can talk about the unification of family laws, therefore, there has been much controversy about the real meaning, message and scope of this Article.

Article 44 of the Constitution does not direct any law making body to enact a Uniform Civil Code straightway. It only says that the State shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India. The cautiously selected wording of the Article is extremely important. Every word of it needs deepest attention.

As we have pointed out that there has been controversy as to the real scope of Art. 44. The opposite views have been expressed by the various commentators.

In relation to Art. 44 the following questions have been raised:

a. Is endeavouring to secure something the same as directly enacting a law?

b. What is the meaning and scope of a Civil code? What is conveyed by the expression uniform?

\textsuperscript{30} V.N. Shukla's Constitution of India by M.P. Singh, 9th Edi, 1994 at P.-298.
c. Are "Uniform" and "Common" interchangeable words?

d. What is the significance of the clause throughout the territory of India in Article 44?

e. Is the Uniform Civil Code to be compulsory applicable to all citizens of India?

The above are the important question which need proper consideration while interpreting Art. 44. There has been problem as to how to determine the meaning and scope of expression "Civil Code" as used in Art. 44 in the Constitution. The word "Code" is used in many different sense. It may be in single comprehensive statute e.g. Indian Penal Code. But it may also refer to a body of several statute dealing with same subject. It is in this latter sense that we used the term Hindu Code, by which we mean the four Hindu Law statutes enacted during 1955, 56.

Again it may be pointed out that the term "Uniform" is not equal or similar, to the term "Common". Therefore a question arises that what are infact requirements of uniform in respects of a 'Civil Code' does the constitution talk of a strict and rigid uniformity of Family Law. All the questions are indeed important in the interest of a smooth implementations of Art. 44 of the Constitution.

The principle of Art. 44 is basically related to the unification of civil laws. The State is expected to apply this principle while making laws relating to civil matters. Ordinarily, the principle of uniformity, to be applied in making civil laws, is fundamental in the governance of the country, but if the state can not apply this principle whether a court can enforce this principle. Infact this
constitution, it appears, leaves it entirely to the wisdom of the State when or now it can apply the principle of uniformity in making civil laws.

Again it may be mentioned that the word 'State' in part-III of the Constitution, as per its definition, contained in Art. 12, include Government and legislature but does not include the judiciary.

It may be also pointed out that Art. 44 cannot be read in its own context only, infact it may be interpreted in the light of the other provision of the Constitution. Therefore, the demands of the Art. 44 and modalities with implementation both are to be determined in the light of the provisions of part-III of the Constitution i.e. Fundamental Right.

So for the relationship between the Directive Principle of The State policy, and the Fundamental Right is concerned, there has been changing interpretations. In the beginning of the Constitution this problem came before the courts of India. The Supreme Court took the view that the Directive Principle cannot be given preference over the Fundamental Right.³¹

But this interpretation was diluted subsequently and the Supreme Court saw harmony between the Fundamental Right and the Directive Principle.³² Latter in C.B. Boarding and Lodging

³¹ State of Madras v. Champakam Dorairajan AIR 1951, 226. The Court held that 'the Directive principle of the State policy have to conform to and run as subsidiary to the Chapter of Fundamental Right' because the latter enforceable in the Court while the former are not.
v State of Mysore\textsuperscript{33}, the court held that it does not see any "Conflict on the whole between the provision contained in part III and part IV and that 'they are complementary and supplementary to each other'.\textsuperscript{34} Finally, in Minerva Mills Ltd. v. Union of India\textsuperscript{35} the court held that 'harmony and balance between Fundamental Right and Directive principles is an essential feature or the basic structure of the Constitution'.

In pursuance of this approach, the court has been trying to draw a balance and harmony between the Fundamental Right and Directive Principle. However the court is not against giving pre-eminence of Directive Principle and Fundamental Rights. Thus Mathew J. observed: I think there are rights which are inherent in human beings because they are human beings—whether you call them natural rights or by some other appellation is immaterial. As the preamble indicates, it was to secure the basic human rights like liberty and equality that the people gave unto themselves the Constitution and these basic rights are an essential feature of the Constitution; the Constitution was also enacted by the people to secure justice, political social and economic. Therefore, the moral rights embodied in Part IV of the Constitution are equally an essential feature of it, the only difference being that the moral rights embodied in Part IV are not specifically enforceable as against the State by a citizen in a court of law in case the State fails to implement its duty but, nevertheless, they are fundamental in the governance of the

\textsuperscript{33} AIR 1970 S C 2040.

\textsuperscript{34} Ibid 2050.

\textsuperscript{35} AIR 1980 S C 1784, 1806.
country and all the organs of the State, including the judiciary, are bound to enforce those directives. The fundamental rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in the light of its experience. Restrictions, abridgment curtailment, and even abrogation of these rights in circumstances not visualized by the Constitution makers might become necessary; their claim to supremacy or priority is liable to be overborne at particular stages in the history of the nation by the moral claims embodied in Part IV".\textsuperscript{36}

Beg, J. put the matter thus.\textsuperscript{37}

"Perhaps the best way of describing the relationship between the fundamental rights of individual citizens, which imposed corresponding obligations upon the State and the directive principles, would be to look upon the directive principles as laying down the path of the country's progress towards the allied objectives and aims stated in the Preamble, with fundamental rights as the limits of that path, like the banks of a flowing river, which could be mended or amended by displacements, replacements or curtailments or enlargements of any part according to the needs of those who had to use the path."

\textsuperscript{36} Kesavananda Bharati V. State of Kerla, (1973) SCC 225, 880-81, Para 1714.

\textsuperscript{37} id; SCC.P.902, Para 1802.
Again in *Minerva Mills Ltd. v. Union of India*38, invalidating that provision of Forty-second Amendment which under Article 31-C gave pre-eminence to all the directive principles against some of the fundamental rights, Chandrachud, C.J. said.39

"The Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution."

The extracts from the speech of Dr Ambedkar, Chairman, Drafting Committee, explaining the underlying object in laying down the Directive Principles of State Policy may well be quoted here:

"It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. It is, therefore, no use saying that the directive principles have no value. In my judgment, the directive principles have a great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanisms provided in the

39. Id; AIR 1806.
Constitution, without any direction as to what our economic ideal or as to what our social order ought to be, we deliberately included the directive principles in our Constitution. I think if the friends who are agitated over this question bear in mind what I have said just now that our object in framing this Constitution is really twofold: (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every government whoever it is in power, shall strive to bring about economic democracy, much of the misunderstanding under which most members are labouring will disappear.”

It is now universally recognised that the difference between the fundamental rights and the directive principles' lies in this that the fundamental rights are primarily aimed at assuring political freedom to the citizens by protecting them against excessive State action while the directive principles are aimed at securing social and economic freedoms by appropriate action. The fundamental rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule, but they are of no value unless they can be enforced by resort to courts, so they are made justiciable. However, notwithstanding their great importance the directive principles cannot in their nature of things be enforced in a court of law. It is unimaginable that any court can compel a legislature to make a law. If the court can compel

Parliament to make laws then parliamentary democracy would soon be reduced to a oligarchy of judges. It is for this reason that the Constitution says that the directive principles shall not be enforceable by courts. However, it does not mean that the directive principles are less important than the fundamental rights for the simple reason that they are not judicially enforceable. Article 37 of the Constitution emphatically states that directive principles are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It follows that it becomes the duty of the court to apply the directive principles in interpreting the Constitution and the laws. The directive principles should serve the courts as a code of interpretation. Fundamental rights should thus be interpreted in the light of the directive principles and the latter should whenever and wherever possible, be read into the former.\footnote{Akhil Bharatiya Soshit Karamchan Singh V. Union of India (1981) 1 SCC 246 : AIR 1981 S C 298.}

This command of the Constitution must be ever present in the minds of the judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the directive principles.\footnote{U.P.S.E.B. V. Hori Shanker Jha, (1978) 4 SCC 16 : AIR 1979 S C 65.} In Bandhua Mukti Morcha v. Union of India,\footnote{(1984) 3 SCC 161 : AIR 1984 SC 802, 812.} the Court also held that though the directive principles are unenforceable by the courts and the courts cannot direct the legislature or executive to enforce them, once a legislation in pursuance of them has been Passed, the courts can order the State to enforce the law, particularly when non-enforcement of law leads to denial of a fundamental right.
Special importance has been attached to the directive principles vis-a-vis the fundamental rights in *Unni Krishnan v. State of A.P.*,44 where the Court has drawn the parameters of the right to education from Articles 45 and 41. Following these articles in that order it has held that 'every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.45

In this connection on of the most important question is that how to implement the Art. 44 without affecting the Fundamental Right of the citizen. In this connection Prof. Tahir Mahmood is of the opinion that legislative enactment of an all India Uniform Civil Code straightway is not envisaged by the Constitution even at the central or union level. Article 44 wants the government and the legislatures to make possible endeavours which may in the long run secure uniformity in the making and application of civil laws.

The demand that Parliament should straightway enact a uniform civil code was made by a Muslim Scholar. He 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 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 everybody living within the

44. (1993) 1 SCC 645.
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."  

The sincere advice so strongly given to the emerging nation by that veteran lawyer was lost on his people. The mandate of article 44 could not be carried out over a score of years. As late as 1972, another eminent jurist-then a member of the country's highest court of justice-was still urging his people to accept uniform civil code. Welcoming the delegates to the, Indian Law Institute's seminar on Islamic law in January 1972, Justice Hegde of the Supreme Court said:

Religion-oriented personal laws were a concept of medieval times.... A society which is compartmentalized by its laws can hardly become a homogeneous unit... 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.  

Intellectuals belonging to both the major religious communities of India feel sorry for the non-implementation of the directive of article 44. The Chairman of the Law Commission feels:


47. K.S. Hegde, Welcome Address in Indian Law Institute, Tahir Mahmood (ed.), Islamic Law in Modern India 3(1972).
In any event, the 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.\footnote{P.B. Gajendragadkar, Secularism and the Constitution of India 126 (1971).}

In this context the views of Prof. Tahir Mahmood is very pertinent the learned author writes; But, overlooking all these counsels, those who have been in ruling position since independence have adopted and constantly maintained an extracautious approach to the mandate of article 44, so much so that no one expects it to be carried out in the foreseeable future. The reasons behind the government's apathy and indifference are not difficult to understand. It has repeatedly made it clear that it is fully alive to the strong feelings against a uniform civil code prevailing in certain sections of the citizens. And it does not wish to stifle these feelings. It wants rather to wait till some miraculous power wins over all the voices of dissent. The mandate of article 44 was not addressed to the legislature only-its addressee was the 'State', which term, as applicable to the part on directive principles, 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.\footnote{Article 12. Article 36 Says that 'State' in Part IV has the same meaning as in Part-III.}
Moreover, the mandate was that the State shall 'endeavour to secure' a uniform civil code; not that it shall enact it straightaway. Just for the enactment of a uniform civil code a clear mandate was not necessary; even without it the legislature could have enacted such a code in exercise of the powers vested in it under List III, entry 5 of Schedule VII to the Constitution. In the mandate of article 44 the accent was on the words 'endeavour' and secure': the word 'enact' was not even used. The fathers of the Constitution, it is evident, were quite alive to the Himalayan difficulties likely to be faced in the way to the enactment of a uniform civil code. They, therefore, directed the 'State' to 'endeavour to secure' it. They wanted both the legislature and the executive to lead the nation jointly to the era of a uniform civil code. In other words, they wanted the code to be enacted and enforced at the end of an evolutionary process during which the people would be prepared to accept and actually practise the same in their day-to-day domestic life. Let us examine to what extent the three organs of the State have discharged their constitutional responsibility of starting and carrying out the evolutionary process implied in the phraseology of article 44.

The twenty three-year record of the legislative wing of the State in making efforts to unify the nation under a common civil code includes the enactment of:

50. Entry 5 reads as: "Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; and all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution, subject to their personal law".
(i) the Special Marriage Act, 1954;

(ii) the Hindu Code of 1955-56\(^\text{51}\); and

(iii) the Dowry Prohibition Act, 1961.

The Special Marriage Act, 1954, (which replaced the Act of 1872 bearing the same title) put on the statute book a secular code of marriage, divorce and inheritance. \(^\text{52}\) It enabled any two Indians-irrespective of their religious persuasions-desiring to marry (or already married to) each other to give up their personal law without abandoning their religion and to adopt a common and secular law of marriage and inheritance. This was a distinct improvement over the former Special Marriage Act, 1872, the provisions of which one could avail of only by declaring disbelief in religion. The civil code adopted in the form of the Special Marriage Act, 1954, and the Indian Succession Act, 1925, is, however, entirely optional in its application. It can be adopted by a couple at their pleasure; it is not imposed on any citizen by the State against his or her wishes.

Another important fragment was recently sought to be added to this optional civil code. The Adoption of Children Bill, 1972, would enact a secular and uniform law of adoption, which will govern all cases of adoption in the country irrespective of the religion of the parties involved in a particular transaction. It would repeal

\(^{51}\) By 'Hindu Code' are meant, in this article, the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoption and Maintenance Act. 1956.

\(^{52}\) The law of inheritance applicable to a couple governed by the Special Marriage Act, 1954, is contained in sections 29-49 of the Indian Succession Act, 1925.
the provisions relating to adoption in the Hindu Adoption and Maintenance Act of 1956 as well as all customs and usages contrary to its principles. Orthodox sections of both Hindus and Muslims, however, opposed the Bill, the latter with a distinct vehemence and in a rather organized way. The only uniform law compulsorily applicable to all citizens of India, so far enacted by Parliament, is the Dowry Prohibition Act, 1961. It prohibits monetary transactions in marriage for all the communities. Yet, it specifically exempts from its application the Muslim Law of mahr (dower) which of course, is a concept quite different from dowry.

No probe has been officially made so far into the actual working of any of the above laws, though it is very important to examine how far have these enactments contributed towards the gradual unification of family law as envisaged in article 44. Findings of private researchers reveal that to a very large extent these laws have not been taken notice of by a majority of the citizens. Few have exercised the option given by the Special Marriage Act, 1954, to abandon the personal laws of marriage and inheritance. Even where the Act has been made use of, the purpose was to overcome customary disapproval of or parents objections to a proposed marriage or something else other than an actual dissatisfaction with the religion-based personal laws. The Hindu Code of 1955-56 remains equally ineffective. Old traditions of marriage and inheritance continue to prevail in the Hindu society. Of course, the divorce law under the Code has been made use of in urban India, but those who have taken recourse to its provisions are utterly dissatisfied with many of its aspects. The quasi-Hindu communities, Sikhs, Jains, etc. who were subjected to the Hindu
Code have not generally accepted it in their day-to-day life. As such, the uniformity of laws intended by the makers of the Code has not been achieved with much success. Likewise, the Dowry Prohibition Act, 1961, remains a dead letter ever since its enactment. Dowry transactions not only freely take place among the Hindus, but these also have become popular even among the Muslims under the pretext of excessive dahez. Instead of dying out gradually as a result of the 1961 legislation, this evil is assuming new dimensions and finding new adherents day by day. Thus, the unifying or partly unifying legislation has miserably failed to achieve the desired objectives. But this failure seems to be bothering not many in the government which apparently thinks it has discharged its duty by putting the laws on the statute book.

The legislature has not so far ventured to touch the muslim personal law which in itself is a bundle of diversities. The Muslims of India are divided into Sunnis and Shi'as, the Sunnis into Hanafis and Shafiis, the Shi'as into "Ithna' Asharis and Ismailis, the Ismailis into Khojas and Bohoras, the Bohoras into Daudis and Sulaymanis and soon. Each of these groups has it own personal laws. The personal laws of the Ithna 'Asharis and the Isma'ilis are very much different from those of the Hanafis' and Shafi'is specially in the field of intestate succession. In regard to testamentary succession, an ordinary Muslim can opt between the Shari'a and local custom\textsuperscript{53} (most Khojas prefer the latter), but a Shafi'i Mapilla of South India is bound to adhere to the law of Islam.\textsuperscript{54} In matters

\textsuperscript{53} See Section-3, the Muslim Personal Law (Shariat) Application Act, 1937.
\textsuperscript{54} Se the Mapilla Succession Act, 1918.
of legacies and adoption every Indian Muslim has a discretion to choose between the Shari'a law and the local custom.\textsuperscript{55} Members of the Mapilla community have their own Maurmakkatayam law of quasi-coparcenary, unknown to the rest of Muslims.\textsuperscript{56} The dower stipulated in a marriage-contract, if found excessive with regard to the husband's means, can be reduced by the courts in the Oudh area of U. P. and in Kashmir,\textsuperscript{57} but not in any other part of India. These and the like diversities shatter the common belief that Muslim personal law is a monolithic code.\textsuperscript{58}

The other religious minorities, too, have their separate personal law. The general scheme of inheritance laid down in the Indian Succession Act, 1925,\textsuperscript{59} is in practice applicable to Christians and Jews also. But the same enactment furnishes a distinct scheme of inheritance for the Parsi community.\textsuperscript{60} The Christians and parsis have their separate codified marriage and divorce laws; those of Christians are supplemented in South India by many local Acts. The Jewish law of marriage remains uncodified, while those who are governed by it should be envious of the law reforms enforced in State of Israel.

Though judiciary is not specifically included in the definition of 'State' as applicable to directive principles,\textsuperscript{61} yet before

\begin{itemize}
\item[55.] Supra note 10.
\item[56.] See the Mapilla Marumakkatayam Act, 1928.
\item[57.] This is permissible under section 5 of the Oudh Law Act, 1876; and the J. & K. State Muslim Dower Act, 1920.
\item[58.] For a detailed account of all these diversities see the author's article, Progressive Codification in Muslim Personal Law in Islamic Law in Modern India, supra note 2 at 80-98.
\item[59.] Part-V, Sections 29-49.
\item[60.] Id. sections 50-56.
\item[61.] See supra note 5.
\end{itemize}
proceeding further, we may examine recent judicial trend in respect of article-44. Like all other constitutional directives the mandate of article 44 too, is not enforceable in a court of law. Naturally, therefore, the judiciary cannot be expected to have taken any direct step to ensure the implementation of the mandate. It has been suggested by some scholars of constitutional law that application of different presonal laws to different groups of citizens could be struck down by the courts on the basis of discrimination by the State on the ground of religion only which infringes the fundamental right guaranteed in article 15 of the Constitution. To such a suggestion the High Court of Punjab gave the following answer:

If the argument of discrimination based on caste or race could be valid, it would be impossible to have different presonal laws in this country, and the courts will have to go to the length of holding that only one uniform Code of laws relating to all matters covering all castes, creeds or communities can be constitutional. To suggest such an argument is to reject it.62

In other words, the court did not want to enforce the directive of article 44 under the pretext of enforcing the fundamental rights. The limitations of the judiciary in striking down the various personal laws were explained by Justice Gajendragadkar, then a Judge of the Bombay High Court, in State of Bombay v. Narasu Appa63 in the following words:

63. AIR 1952 Bom. 84, 91-92.
Article 44 of the Constitution is, in my opinion, very important.... This article says that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. In other words, this article by necessary implication recognizes the existence of different codes applicable to the Hindus and Mohammedans in matters of personal law and permits their continuance unless the State succeeds in its endeavour to secure for all the citizens a uniform civil code. The personal laws prevailing in the country owe their origin to scriptural texts. In several respects their provisions are mixed up with and based on considerations of religion and culture; so that the task of evolving a uniform civil code applicable to the different communities of this country is not very easy. The framers of the Constitution were fully conscious of these difficulties and so they deliberately refrained from interfering with the provisions of the personal laws at this stage but laid down a directive principle that the endeavour must hereafter be to secure a uniform civil code throughout the territory of India.

What could, then, be the share of the judiciary in the State's constitutional responsibility to lead the Nation to a uniform civil code? Some of the courts have shared this obligation by upholding the validity of the unifying or partly unifying social legislation. when challenged on the ground of unconstitutional discrimination. In Narasu Appa's case,\(^\text{64}\) in which validity of the

\(^{64}\) id. at 87.
abolition of polygamy in particular communities only was at issue, former Chief Justice M. C. Chagla of Bombay High Court had observed:

One community might be prepared to accept and work social reform, another may not yet be prepared for it; and Art. 14 does not lay down that any legislation that the State may embark upon must necessarily be of an all-embracing character. The State may rightly decide to bring-about social reform by stages and the stages may be territorial or they may be communitywise.

Some courts have contributed in a different way to the unification of family law. They have, by strong arguments, upheld the applicability to all citizens of those legal provisions which, if liberally interpreted would furnish uniform family laws in fragments. Thus in Shahulameedu v. Subaida Beevi,65 while interpreting the rule relating to wife's maintenance contained in section 488 (3) of the Criminal Procedure Code, the High Court of Kerala did not deny its benefit to the wife of a bigamous Muslim staying away from him after his second marriage. Specifically referring to the mandate of article 44, Justice Krishna Iyer in his judgement said:

The Indian Constitution directs that the State should endeavour to have a uniform civil code applicable to the entire Indian humanity, and indeed, when motivated by a high public policy, Sec. 488 of the Criminal Procedure Code has made such a law, it would

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be improper for an Indian Court to exclude any section
of the community born and bred up on Indian earth
from the benefits of that law....\textsuperscript{66}

In discharging the State's responsibility to lead the nation
to a uniform civil code, the poorest record is of the executive. By
directing the State to 'endeavour to secure' such a code, article
44 had placed a greater responsibility on the executive organ of
the State than on the legislatures. It was the responsibility of the
government to prepare the people gradually to accept a uniform
civil code willingly and without compulsion. What has, one may
ask, the government done in this direction during these
twenty-three years which have elapsed since the enforcement
of the Constitution? Has it taken any steps to educate the masses
on the social ideal spoken of in article 44? Has it launched any
programme to build up public opinion in favour of that ideal? Did
it adopt any measures to mitigate the influence of the obscurantist
forces in the society? The answers to all these questions have to
be given, regretfully, in the negative.

The vehement opposition of a uniform civil code and of the
family law reform by the Muslim masses and by others is the result
of the government's failure to make them understand these issues
in their true perspective. Undue weightage is being given in this
respect to the views held by conservative sections of the citizens;
and this can obviously have only political motivations. In 1963
the government had expressed its intention of appointing a
committee to study how the problem of family law reform was tackled

\textsuperscript{66} Id. at 9.
in the contemporary Muslim countries. But the government did not translate its intention into action because of the resentment expressed even against this very sensible move by vested interests. Time and again leaders of the ruling party have declared - in and outside Parliament - that the government will not touch the Muslim personal law unless a substantial number of Muslims themselves demand reform. Even after the recent Bombay Convention for the protection of Muslim 'personal law, Congress President Shankar Dayal Sharma reiterated this policy of his party's government. But; what has the government done to educate the Muslims in that respect? The only thing which can be quoted in answer to this question is the advice given by the prime minister during an annual session of the ruling party that the Muslims should change their outlook in the matter and "start a process of considering changes in their personal law with an open mind."

Only such governmental counsels cannot, it is submitted, change the trends. Moreover, they are counterbalanced by the frequent assurances given by the ruling party that it has no intention to act. The newspapers of April 3, 1973 reported that while considering the causes of its failure in the recent Bombay municipal election, the Central Parliamentary Board of the All India Congress Committee wished to remove the misgivings among Muslims that the Congress "wanted to interfere with their personal law and assured that it firmly stood by the policy of

67. See A.G. Noorani, "Reform of Muslim Personal Law". Indian Express, New Delhi, 21-5-1972.
69. See the report of the Ahmedabad session of the A.I.C.C. in the Hindustan Times, 10.10.1972. The advice was given was given during the meeting of the "Minority Cell".
non-interference it adopted on the issue in 1938." Referring to the directive principles, Ambedkar had warned in the Constituent Assembly that "If any Government ignores them, they will certainly have to answer for them before the electorate at election time." But, it seems that in regard to the directive of article 44 the tables have been turned, so much so that a government which intends to implement it has to answer for it before at least certain sections of the electorate.

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. It is open to the ruling party in Parliament, if it so chooses, to seek an amendment to the Constitution with a view to repealing article 44. But so long as the mandate continues to exist on the statute book, it is outside the jurisdiction of the government to declare that it will not be implemented in any degree merely because of political reasons.

Much is to be done by various organs of the State towards 'endeavouring' to 'secure' a uniform civil code for the citizens. The above survey of the progress so far made in that behalf and of the current trends indicates how disappointingly little has been achieved and how very much stupendous a task is still ahead.

71. 7 Constituent Assembly Debates 41.
(C) FUNDAMENTAL DUTIES AND THE UNIFORM CIVIL CODE:

The Constitution (forty-second) Amendment Act, 1976 brought an innovative concept of Fundamental Duties in the Indian Constitution.\(^{72}\) It may be pointed out that some of the Fundamental Duties are already being enforced through ordinary law, but some of the Fundamental Duties appear to be legally unenforceable because they are vague and imprecise.\(^{73}\) So far legal status of Fundamental Duties are concerned, these are not capable of legal enforcement' this can be regarded as 'directory'. Again, these Duties of individual citizens can not be enforced through mandamus, as they cast no public duties.\(^{74}\)

The above discussion does not however, suggests that these Fundamental duties have no legal value. It may be mentioned that there is a close relationship between the ideals of Fundamental Duties and the UCC and it may be demonstrated that the some of the Fundamental Duties also indicate' desirability to have the UCC in India.

The object of the UCC in India has been to achieve national unity and integrity through communal harmony. The authors of Fundamental Duties are also of the view that every citizen of India must have a duty" to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and sectional diversities".\(^{75}\)

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72. For This Purpose a New Part IV A consisting of Art. 51-A as been added to the constitution.
73. For details, See, M.P. Jain, Indian constitution law 1987, P. 750.
75. Art. 51-A (C)
UCC is also a medium through which the people belonging to heterogeneous elements come to united into a Nation as such. It will also further fraternity and unity/integrity of the Nation, which also find a prime place in the Preamble of the Constitution. It has been laid down in Art 51A(c) that it shall be the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India.

Apart from the goal of national unity one of the most important objects of the UCC has been to protect the dignity of women by giving them equal status in the society. As we have seen that the personal laws of almost all the communities have been against the equal right of women. The UCC has been considered as a friend of women since it may abolish the ill effects of personal laws. The one of the Fundamental Duty also says that it shall be the duty of every citizen of India "to renounce practices derogatory to dignity of women", Therefore, from this point also the ideals of the fundamental Duties and UCC is the same.

It may be mentioned here that at one time the Law Commission of India took the question of framing a uniform code of marriage and divorce, the Muslim and Christian Communities opposed the move and the same government which has induced the Hindus to give up their religious laws, permitted the minorities communities, resistance for political reasons'. Now when Art 51-A has been enumerated in the Constitution a student of Constitutional law may submit that any opposition to UCC by any community would also be a violation of Art 51 A.

One of the important development of the Constitution of India has been that under the Constitutional scheme, the
importance of Directive principle of State policy as well as Fundamental Duties has been increased. For example the Directive Principle and Fundamental Duties both have been used to determine 'reasonability' of law in relation to Articles 14, 19, 21, 25 of the Constitution. In this connection Prof. D.D. Basu has opined that "it may be expected that in determining the Constitutionality of any law if a Court finds that it seeks to give effect to any of Fundamental Duties it may consider such law from unconstitutionality.\textsuperscript{76}

In this connection in Rural litigation v. State of U.P.\textsuperscript{77} The Supreme Court has held that since the Fundamental Duties are obligatory for a citizen, it would follow that he State should also strive to achieve the same goal. The Court may, therefore, issue suitable directions in these matters, in appropriate cases.

In the end we may submit that there is close relationship between ideals if Fundamental Duties and the UCC. Since the Fundamental Duties have been used to determine the reasonableness of the law thus if UCC is formulated, It should not be seen as violation of the fundamental right of religion.

\textsuperscript{76} D.D. Basu, Introduction to constitution of the India, 1997, P. 133.