APPENDICES
Appendix - I

Government of India Act 1915

Section 112. Law to be administered in cases of inheritance and succession

The High Courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents and goods, and in matters of contract and dealing between party and party, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject.
Appendices

Appendix - II

Government of India Act 1935

292. Existing law of India to continue in force

Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the laws in force in British India immediately before the Commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority.

298. Persons not to be subjected to disability by reason of race, religion etc.

1. No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown of India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India.
Appendix - III
Text of Constituent Assembly Debates

Article 35.

Mr. Mohammad Ismail Sahib: (Madras Muslim): Sir, I move that the following proviso be added to article 35:

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

The right of a group or a community of people to follow and adhere to its own personal law is among the fundamental rights and this provision should really be made amongst the statutory and justiciable fundamental rights. It is for this reason that I along with other friends have given amendments to certain other articles going previous to this which I will move at the proper time.

Now the right to follow personal law is a 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 anything is done affecting the personal law, it will be tantamount to interference with the way of life of those people who have been observing these laws for generation and ages. This secular State which we are trying to create should not do anything to interfere with the way of life and religion of the people. The Matter of retaining personal law is
nothing new; we have precedents in European countries. Yugoslavia, for instance, that is, the kingdom of the Serbs, Croats and Slovenes, is obliged under treaty obligations to guarantee the rights of minorities. The clause regarding rights of Mussalmans reads as follows:

"The Serbs, Croats and Solvene State agrees to grant to the Mussalmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with the Mussalman usage.

We find similar clauses in several other European Constitutions also but these refer to minorities while my amendments refer not to the minorities alone but to all people including the majority community, because it says,

"Any group, section or community of people shall not be obliged" etc. Therefore it seeks to secure the rights of all people in regard to their existing personal law.

Again this amendment does not seek to introduce any innovation or bring in a new set of Laws for the people, but only wants the maintenance of the personal law already existing among certain sections of people. Now why do people want a uniform civil code as in Article 35? Their idea evidently is to secure harmony through uniformity. But I maintain that for that purpose
it is not necessary to regiment the civil law of the people including the personal law. Such regimentation will bring discontent and harmony will be affected. But if people are allowed to follow their own personal law there will be no discontent or dissatisfaction. Every section of the people, being free to follow its own personal law will not really come in conflict with others.

Shri Suresh Chandra Majumdar; (West Bengal General) : Sir, on a point of order, what is being said now is a direct negation of Article 35 and cannot be taken as an amendment. The Honourable Member can only speak in opposition.

Mr. Vice-President : I hold that the Honourable Member is in order.

Mr. Mohammad Ismail Sahib : Therefore, Sir, what I submit is that for creating and augmenting harmony in the land it is not necessary to compel people to give up their personal law. I request the Honourable Mover to accept this amendment.

Mr. Naziruddin Ahmed : Sir, I beg to move :

"That to article 35, the following proviso be added, namely:-

"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."
In moving this, I do not wish to confine any remarks, to the inconvenience felt by the Muslim Community alone. I would put it on a much broader ground. In fact, each community, each religious community has certain civil laws inseparably connected with religious beliefs and practices. I believe that in framing a uniform draft code, these religious laws or semi-religious laws should be kept out of its way. There are several reasons which underlie this amendment. One of them is that perhaps it clashes with article 19 of the Draft Constitution. In article 19, it is provided that 'subject to public order, morality and health, and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion'. In fact this is so fundamental that the Drafting Committee has very rightly introduced this in this place. Then in clause (2) of the same article it has been further provided by way of limitation of the right that "Nothing in this article shall affect the operation of any existing law or preclude the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice." I can quite see that there may be many pernicious practices which may accompany religious practices and they may be controlled. But there are certain religious practices, certain religious laws which do not come within the exception in
clause (2) viz. financial, political or other secular activity which may be associated with religious practices. Having guaranteed, and very rightly guaranteed the freedom of religious practice and the freedom to propagate religion. I think the present article tries to undo what has been given in article 19. I submit, Sir that we must try to prevent this anomaly. In article 19 we enacted a positive provision which is justiciable and which any subject of a State irrespective of his caste and community can take to a Court of Law and seek enforcement. On the other hand, by the article under reference, we are giving the State some amount of latitude which may enable it to ignore the right conceded. And this right is not justiciable. It recommends to the State certain things and therefore it gives a right to the State. But then the subject has not been given any right under this provision. I submit that the present article is likely to encourage the State to break the guarantees given in article 19.

I submit, Sir, There are certain aspects of the Civil Procedure Code which have already interfered with our personal laws and very rightly so. But during the 175 years of British rule, they did not interfere with certain fundamental personal laws. They have enacted the Registration Act, the Limitation Act, the Civil Procedure Code, the Penal Code, the Evidence Act, the Transfer of Property act, the Sarda Act and various other Acts. They have
been imposed gradually as occasions arose and they were intended to make the laws uniform although they clash with the personal laws of a particular community. But take the case of marriage practices and the laws of inheritance. They have never interfered with them. It will be difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions in many communities. The laws of inheritance are also supposed to be the result of religious injunctions. I submit that the interference with these matters should be gradual and must progress with the advance of time. I have no doubt that a stage would come when the civil law would be uniform. But then that time has not yet come. We believe that the power that has been given to the State to make the Civil Code uniform is in advance of the time. As it is, any state would be justified under Article 35 to interfere with the settled laws of the different communities at once. For instance, there are marriages practices in various communities. If we want to introduce a law that every marriage shall be recognised and if not it will not be valid, we can do so under Article 35. But would you invalidate a marriage which is valid under the existing law and under the present religious beliefs and practices on the ground that it has not been registered under any new law and thus bastardize the child born?
As I have already submitted the goal should be towards a uniform civil code but it should be gradual and with the consent of the people concerned. I have therefore in my amendment suggested that religious laws relating to particular communities should not be affected except with their consent to be ascertained in such a manner as Parliament may decide by law. Parliament may well decide to ascertain the consent of the community through their representatives, and this could be secured by the representatives by their election speeches and pledges. In fact, this may be made an article of faith in an election, and a vote on that could be regarded as consent. These are matters of detail. I have attempted by my amendment to leave it to the Central Legislature to decide how to ascertain this consent. I submit, Sir, that this is not a matter of mere idealism. It is a question of stern reality which is not a matter of mere idealism. It is a question of stern reality which we must not refuse to face and I believe it will lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country. What the British in 175 years failed to do or was afraid to do, what the muslims in the course of 500 years refrained from doing, we should not give power to the state to do all at once. I submit Sir, that we should proceed not in haste but with caution, with experience, with statesmanship and with sympathy...
Mahboob Ali Baig Sahib Bahadur: Sir, I move that following *proviso* be added to article 35.

"Provided that nothing in this article shall affect the personal law of the citizen."

My view of article 35 is that the words "Civil Code" do not over the strictly personal law of a citizen. The Civil Code covers laws of this kind: laws of property, transfer of property, law of contract, law of evidence etc. The law as observed by a particular religious community is not covered by article 35. That is my view. Anyhow, in order to clarify the position that article 35 does not affect the personal law of the citizen, I have given notice of this amendment. Now, Sir, if for any reason the framers fo this article have got in their minds that the personal law of the citizen is also covered by the expression "Civil Code", I wish to submit that they are overlooking the very important fact of the personal law being so much dear and near to certain religious communities. As far as the Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion.

Shri M. Ananthasayanam Ayyanagar: It is a matter of contract.

Mahboob Ali Baig Sahib Bahadur: I know that Mr. Ananthasayanam Ayyanagar has always very queer ideas about the
laws of other communities. It is interpreted as a contract, while the marriage amongst the Hindus is a Samskara and that among Europeans it is a matter of status. I know that very well, but this contract is enjoined on the mussalmans by the Quran and if it is not followed, a marriage is not a legal marriage at all. For 1350 years this law has been practiced by Muslims and recognized by all authorities in all states. If to-day, Mr. Ananthasayananam Ayyangar is going to say that some other method of providing the marriage is going to be introduced, we refuse to abide by it because it is not according to our religion. It is not according to our code that is laid down for us for all times in this matter. Therefore, Sir, it is not a matter to be treated so lightly. I know that in the case of some other communities also their personal law depends entirely on their religious tenets. If some communities have got their own way of dealing with their religious tenets and practices, that cannot be imposed on a community which insists that their tents should be observed.

Shri L. Krishnaswami Bharthi: it sought to be done only by consent of all concerned.

Mr. Vice-President: Mr. Bharthi, the majority community has always been so very indulgent that I would ask you as a personal favour to give the fullest possible freedom to our Muslim brethren to express their views. I would ask you to exercise patience for a little while, I know they feel very strongly on this matter.
Shri L. Krishnaswamy Bharthi: My point was, Sir, that it was not an attempt at imposition. If anything is done, it will be done only with the consent of all concerned, and the Honourable Member need not only labour that point.

Mr. Vice-President: It is understood and I thank you for it.

Mahboob Ali Baig Sahib Bahadar: Now, Sir, people seem to have very strange ideas about secular State. People seem to think that under a secular State, there must be a common law observed by citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular State. In a secular State, citizens belonging to different communities must have the freedom to practice their own religion, observe their own life and their personal laws should be applied to them. Therefore, I hope the framers of this article have not in their minds the personal law of the people to cover the words "civil code". With this observation, I move that it may be made clear by this proviso, lest an interpretation may be given to it that these words "civil code" include personal law of any community.

B. Pocker Sahib Bahadur: (Madras Muslim): Mr. Vice President, Sir, I support the motion which has already been moved by Mr. Mohamad Ismail Sahib to the effect that the following provisio be added to article 35.
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."

It is a very moderate and reasonable amendment to this article 35. Now I would request the House to consider this amendment not from the point of view of the Mussalaman community alone, but from the point of view of the various communities that exist in this country, following various codes of law with reference to inheritance, marriage, succession, divorce, endowments and so many other matters. The House will note that one of the reasons why the Britisher, having conquered this country, has been able to carry on the administration of this country for the last 150 years and over was that he gave a guarantee of following their own personal laws to each of the various communities in the country. That is one of the secrets of success and the basis of success and the basis of the administration of justice on which even the foreign rule was based. I ask Sir, whether by the freedom we have obtained for this country, are we going to given up that freedom of conscience and that freedom or religious practices and that freedom of following one’s own personal law and try to aspire to impose upon the whole country one code of civil law, whatever it may mean, which I say as it is, may include even all branches of civil
law, namely, the law of marriage, law of inheritance, law of divorce and so many other kindred matters?

In the first place, I would like to know the real intention with which this clause has been introduced. If the words "Civil Code" are intended only to apply to matters of procedure like the Civil Procedure Code and such other laws which are uniform so far as Indian is concerned at present well, nobody has any objection to that, but the various Civil Courts Acts in the various provinces in this country have secured for each community the right to follow their personal laws as regards marriage, inheritance, divorce etc. But if it is intended that the aspiration of the State should be to override all these provisions and to have uniformity of law to be imposed upon the whole people on those matters which are dealt with by the Civil Courts Acts in the various provinces, well I would only say, Sir, that it is a tyrannous provision which ought not to be tolerated: and let it not be taken that I am only voicing the feeling of the Mussalmans. 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.

Now, Sir just like many of you, I have received ever so many pamphlets which voice forth the feelings of the people in these
matters. I am referring to many pamphlets which I have received from organizations other than Mussalmans, from organizations of Hindus, who characterize such interferences most tyrannous. They even question, Sir, the right and the authority of this body to interfere with their rights from the constitutional point of view. They ask: Who are the members of this Constituent Assembly who are contemplating to interfere with the religious rights and practices? Were they returned there on the issue as to whether they have got this right or not? Have they been returned by the various legislatures the elections to which were fought out on these issues?

If such a body as this interferes with the religious rights and practices it will be tyrannous. These organizations have used a much stronger language than I am using. Sir, therefore, I would request the Assembly not to consider what I have said entirely as coming from the point of view of the Muslim community. I know there are great differences in the law of inheritance and various other matters between the various sections of the Hindu community. Is this Assembly going to set aside all these differences and make them uniform? By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard? What have you got in your mind in enacting a clause like this? There are the Mitakshara and Dayabaga
systems; there are so many other systems followed by various other communities. What is that you are making the basis? Is it open to us to do anything of this sort? By this one clause you are revolutionizing the whole country and the whole setup. There is no need for it.

Sir, as already pointed out by one of my predecessors in speaking on this motion, this is entirely antagonistic to the provision made as regards Fundamental Right in Article 19. If it is agnostic what is the purpose served by a clause like this? Is it open to this Assembly to pass by one stroke of the pen an article by which the whole country is revolutionized? Is it indeed? I do not know what the framers of this article mean by this. On a matter of such importance, I am very sorry to find that the framers and draftsmen of this article have not bestowed sufficiently serious attention to that. Whether it is copied from anywhere or not, I do not know. Anyhow, if it is copied from anywhere, I must condemn that provision even in the Constitution. It is very easy to copy sections from other constitutions of countries where the circumstances are entirely different. There are ever so many multitudes of communities following various customs for centuries of thousands of years. Why one stroke of the pen you want to annul all that and make them uniform. What is the purpose served? What is the purpose served
by this uniformity except to murder the conscience of the people and make them feel that they are being trampled upon as regards their religious rights and practices? Such a tyrannous measure ought not to find a place in our Constitution. I submit Sir, there are ever so many sections of the Hindu community who are rebellign against this and who voice forth their feelings in much stronger language than I am using. If the framers of this article say that even the majority community is uniform in support of this, I would challenge them to say so. It is not so. Even assuming that the majority community is of this view. I say, it has to be condemned and it ought not be allowed, because, in a democracy, as I take it, it is the duty of the majority to secure the sacred rights of every minority. It is a misnomer to call it a democracy if the majority rides roghshod over the rights of the minorities. It is not democracy at all; it is tyranny. Therefore, I would submit to you and all the Members of this House to take very serious note of this article; it is not alike that to be passed like this.

In this connection, Sir, I would submit that I have given notice of an amendment to the fundamental right article also. This is only a Directive( Principle.

Mr. Vice-President : That may be taken up at the proper time.

B. Pocker Sahib Bahadur : What I would submit is only this. The result of any voting on this should not be allowed to affect the fate of that amendment.
Mr. Hussain Imam : (Bihar : Muslim) : Mr. Vice-President, Sir, India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In the north, we have got extreme cold; in the south we have extreme heat. In Assam we have got more raisn than anywhere else in the world: about 400 inches; just near up in the Rajputana desert, we have no rains. In a country so diverse, is it possible to have uniformity of civil law? We have ourselves further on provided for concurrent jurisdiction to the provinces as well as to the Centre in matters of succession, marriage, divorce and other things. How is it possible to have uniformity when there are eleven or twelve legislative bodies ready to legislate on a subject according to the requirements of their own people and their own circumstances. Look at the projection we have given to the backward classes. Their property is safeguarded in a manner in which property is not safeguarded in Scheduled areas. I know of Jharkhand and Santhal Parganas. We have given special protection to the aboriginal population. There are certain circumstances which demand diversity in the civil laws. I, therefore, feel, Sir, that in addition to the arguments which have been put forward by my friends who spoke before me, in which they feel apprehensive that their personal law will not be safe if this Directive is passed. I suggest that there are other difficulties
also which are purely constitutional, depending not so much on
the existence of different communities as in the existence of
different levels in the intelligence and equipment of the people of
India. You have to deal not with an uniformly developed country.
Parts of the country are very 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? You
must have a great deal of difference. Sir, I feel that it is all right
and a very desirable thing to have a uniform law, but at a very
distant date. For that, we should first await the coming of that
even when the whole of India has got educated, when mass
illiteracy has been removed, when people have advanced, when
their economic conditions are better, when each man is able to
stand on his own legs and fight his own battles. Then, you can
have uniform laws. Can you have, today, uniform laws as far as a
child and a young man are concerned?

Even today under the Criminal law you give juvenile
offenders a lighter punishment than you do to an adult offenders.
The apprehension felt by the members of the minority community
is very real. Secular state does not mean that is anti-religious
State. It means that it is not irreligious but non-religious and as
such there is a world of difference between irreligious and non-
religious. I therefore suggest that it would be a good policy for
the members of the Drafting Committee to come forward with such safeguards in this provision as well as meet the apprehension genuinely felt which people are feeling and I have every hope that the ingenuity of Dr. Ambedkar will be find a solution for this.

Shri K.M. Munshi : (Bombay General) : Mr. Vice-President. I beg to submit a few considerations. This particular clause which is now before the House is not brought for discussion for the first time. It has been discussed in several committees and at several places before it came to the House. The ground that is now put forward against it is firstly that it infringes the Fundamental Right mentioned in article 19, and secondly, it is tyrannous to the minority.

As regards article 19 the House accept it and made it quite clear that "Nothing in this article shall affect the operation of the existing law or preclude the State from making any law (3) regulating restricting. I am omitting the unnecessary words, "or other secular activity which may be associated with religious practices; (b) for social welfare and reforms." Therefore the House has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would to Parliament to make laws about it without infringing the Fundamental Right of minority.
It must be remembered that if this clause is not put in does not mean that the Parliament in future would have no right to enact a Civil Code. The only restriction to such a right would be article 19 and I have already pointed out that article 19, accepted by the House unanimously permits legislation covering secular activities. The whole object of this article is that as and when the parliament thinks proper or rather when the majority in the Parliament thinks proper an attempt may be made to unify the personal law of the country.

A further argument has been advanced that the enactment of a Civil Code would be tyrannical to the minorities. Is it tyrannical? Nowhere in advanced Muslim countries the personal law of each minority has been recognized as so sacrosanct as to prevent the enactment of a Civil Code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such right. But I go further. When the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime,, the Khojas and the Cutchi Menons were highly dissatisfied. They then followed certain Hindu customs; for generations since they became converts they had done so. They did not want to conform to the Shariat; and yet by a legislation of the Central legislature certain Muslim members who left that Shariat law would be enforced upon the whole community carried their point.
The Khojas and the Cutchi Menons most unwillingly had to submit to it. Where were the rights of minority then? 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. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not left to be tyrannical to the minority.

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 community 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 rights of parties as regards inheritance or succession. What have these thing got to do which religion I really fail to understand. Take for instance the Hindu Law Draft which is before the Legistative Assembly. If one look at Manu and Yagnavalkya and all the rest of them, I think most of the provisions of the new Bill will run counter to their injunctions. But after all we new are an advancing society. We are in a stage where we must unify and consolidate the nation by every means without interfering with religious practice. If however the
religious practice in the past have been so constructed 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 religion, they are purely matters for secular legislation. This is what is emphasized by this article.

Now look at the disadvantages that you will perpetuate if there is no Civil Code. Take for instance the Hindus. We have the law of Mayukha applying in some parts of India, We have the law of Mayukha applying in others, and we have the law of Dayabagha in Bengal. In this way, even the Hindus themselves have separate law and most of our Provinces and States have started making separate Hindu law for themselves. Are we going to permit this piecemeal legislation on the ground that it affects the personal law of the country? It is, therefore, not merely a question for minorities but it also affests the majority.

I know there are many among Hindus who do not like a Civil Code, because they take the same view as the honourable Muslim Members who spoke last. They feel that the personal law of inheritance, succession etc. is really a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a Fundamental Right to that effect and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law: you get any

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amount of discrimination against women; and if that is part of Hindu religion or Hindu religious practice, you can not pass a single law which would elevate the position of Hindu women to that of men. Therefore, there is no reason why there should not be a civil code throughout the territory of India.

There is one important consideration which we have to bear in mind and I want my Muslim friends to realise this, that the sooner we forget the isolationist outlook on life, it will be better for the country. Religion must be restricted to spheres which legitimately appertain to religion and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible, a strong and consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We think we have got national unity. But there are many factors and important factors which still offer serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is restricted to secular spheres, must be unified in such a way that as early as possible, we may be able to say, "Well, we are not merely a nation because we say so, but also in effect, by the way we live by our personal law. We are a strong and consolidated nation." From that point of view alone, I submit, the opposition is not, if I may say so, very well advised. I hope our friends will not feel that this
is an attempt to exercise tyranny over a minority, it is much more tyrannous to the majority. This attitude of mind perpetuated under the British rule, that personal law is part of the 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 interest. 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 Allaudding could not, much less a modern government accept the proposition that religious rights cover personal law or several other matters which we have been unfortunately trained to consider as part of our religion. That is my submission.

**Shri Alladi Krishnaswamy Ayyar**: (Madras : General) : Mr. Vice-President, after the very full exposition of my friend the Honourable Mr. Munshi, it is not necessary to cover the whole ground. But it is as well to understand whether there can be any objection to the article as it runs.

"The State shall endeavour to secure for the citizens a uniform civil Code throughout the territory of India."
A Civil Code as has been pointed out, runs into every department of civil relations, to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar matters. How can there be any objection to the general statement here that the States shall endeavour to secure a uniform civil code throughout the territory of India?

The second objection was that religion was in danger, that the communities cannot live in amity if there is to be a uniform civil code. The Article actually aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. What it aims at is to try to prepare at a common measure of agitation in regard to these matters. It is not as if one legal system is not influencing or being influenced by another legal system. In very many matters today the sponsors of the Hindu Code have taken a lead and not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon into the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past into an important particular, namely, we want the whole
of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation or is this country to be kept up always as a series of competing communities? That is the question at issue.

Now, my friend Mr. Pocker levelled an attack against the Drafting Committee on the ground that they did not know their business. I should like to know whether he has carefully read what happened even in the British regime. You must know that the Muslim law converts the field of contracts, the field of criminal law, the field of divorce law, the field of marriage and every part of law as contained in the Muslim law. When the British occupied this country, they said, we are going to introduce one criminal law in this country which will be applicable to all citizens, be they Englishmen, be they Muslims. Did the Muslim take exception, and did they revolt against the British for introducing a single system of criminal law? Similarly we have contracts governing transactions between Muslims and Hindus, between Muslims and Hindus. They are governed not by the law of the Koran but by the Anglo-Indian jurisprudence, yet no exception was taken to that. Again, there are various principles in the law of transfer which have been borrowed from the English jurisprudence.

Therefore, when there is an impact between two civilizations or between two cultures, each culture must be influenced and
influence the other culture. If there is a determined opposition, or if there strong opposition by any section of the community, it would be unwise on the part of the legislators of this country to attempt to ignore it. Today, even without Article 35, there is nothing to prevent the future Parliament of India from passing such laws. Therefore, the idea is to have a uniform civil code.

Now, again, there are Muslims and there are Hindus, there are Catholics, there are Christians there are Jews, in different European countries. I should like to know from Mr. Pocker whether different personal laws are perpetuated in France, in Germany, in Italy and in all the continental countries Europe, or whether the laws of succession are not coordinated and unified in the various States. He must have made a detailed study of Muslim jurisprudence and found out whether in all those countries there is a single system of law.

Leave alone people who are there. To-day, even in regard to people in other parts of the country, if they have property in the continent of Europe, where the German Civil Code or the French Civil Code obtains the people are governed by the law of the place in very many respects. Therefore, it is incorrect to say that we are invading the domain of religion. Under the Muslim law, unlike under Hindu law marriage is purely a civil contract. The idea of a sacrament does not enter into the concept of marriage in
Muslim jurisprudence though the incidence of the contract may be governed by what is laid down in the Koran and by the later jurists. Therefore, there is no question of religion being in danger. Certainly no Parliament, no Legislature will be so unwise as to attempt it apart from the power of the Legislature to interfere with religious tenets of peoples. After all the only community that is willing to adapt itself to changing times seems to be the majority community in the country. They are willing to take a leaf from the Muslims for the purpose of reforming even the Hindu Law. Therefore, there is no force in the objection that is put forward to Article 35. The future Legislatures may attempt a uniform Civil Code or they may not. The uniform Civil Code will run into every aspect of Civil Law. In regard to contracts, procedure and property uniformity is sought to be secured by their finding place in the Concurrent List. In respect of these matters the greatest contribution of British jurisprudence has been to bring about a uniformity in these matters. We only go a step further than the British who ruled in this country. Why should you distrust much more a national indigenous Government than a foreign Government which has been ruling? Why should our Muslim friends have greater confidence, greater faith in the British rule that in a democratic rule which will certainly have regards to the religious tenets and beliefs of all people?
Therefore, for these reasons, I submit that the House may unanimously pass this article which has been placed before the members after due consideration.

The Honourable Dr. B.R. Ambedkar: Sir, I am afraid I cannot accept the amendments which have been moved to this article. In dealing with this matter, I do not propose to touch on the merits of the question as to whether the country should have a Civil Code or it should not. That is a matter which I think has been dealt with sufficiently for the occasion by my friend, Mr. Munshi as well as by Shri Alladi Krishnaswamy Ayyar. When the amendments to certain fundamental rights are moved, it would be possible for me to make a full statement on this subject, and I therefore do not propose to deal with it here.

My friend Mr. Hussain Imam, in rising to support to amendments asked whether it was possible and desirable to have a uniform code of laws for a country as vast as this is. Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Laws of Transfer of Property, which deals with property relations and which is operative
throughout the country. Then there are the Negotiable Instruments Acts and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its contents and applicable to the whole country. The only province the Civil Code has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about the change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact covered the whole lot of the field which is covered by a uniform civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

Coming to the amendments, there are only two observations which I would like to make. My first observation would be to state that members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now I wish to challenge that statement. I think most of my friend who have spoken on this amendment have quit forgotten that up to 1935, the North-West Frontier Province was not subject to Shariat Law. It followed the Hindu law in the matter of succession and in other
matters, so much so that it was in 1939 that the Central Legislature had to come in to the field and to abrogate the application of the Hindu law to the Muslims of the North-West Frontier Province and to apply the Shariat law to them. that is not all.

My honourable friends have forgotten, that, apart from the North-West Frontier Province, up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat law to the rest of India.

I am also informed by my friend Shri Karunakara Menon that in North Malabar the Marumakkathayam Law applied to all not only to Hindu but also to Muslims. It is to be remembered that the Marumakkathayam Law is a Matriarchal form of Law and not a Patriarchal form of law.

The Mussulmans, therefore, in North Malabar were up to now following the Marumakkathayam Law. It is therefore no use making a categorical statement that the Muslim Law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it has
been made applicable ten years ago. Therefore, if it was found necessary, that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindu law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by Article 35. I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments to the sentiments to the Muslim community.

My second observation is to give them assurance. I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of this 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 Code shall apply only to those who made a declaration that are prepared to be it so that at the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North-West Frontier Province. The law said that here is a Shariat law which should be applied to Mussulmans provided a Mussulman who wanted that
he should be bound by the Shariat Act should go to an officer of the state, make a declaration that he is willing to be bound by it, and after he has made that declaration the law will bind him and his successors. It would be perfectly possible for parliament to introduce a provision of that sort, so that the fear my friends have expressed here will be altogether nullified. I therefore submit that there is no substance in these amendments and I oppose them.

**Mr. Vice-President** : The question is:

"That the following *proviso* be added to article 35:

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

The motion was negatived.

**Mr. Vice-President** : The question is:

"That to article U 35, the following *proviso* be added, namely.

"Provided that the personal law of any community which is 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."

The motion was negatived.

**Mr. Vice-President** : The question is:

"That Part IV of the Draft Constitution be deleted"
The motion was negatived

Mr. vice-President: The Question is:

The motion was adopted

Article 35 was added to the Constitution
13. Laws inconsistent with or in derogation of the fundamental rights.

(1) 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.

(2) The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,-

(a) "Law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any
such law or any part thereof may not be then in
operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this
Constitution made under Article 368.

14. Equality before law. The State shall not deny to any person
equality before the law or the equal protection of the laws within
the territory of India.

15. Prohibition of discrimination on grounds of religion,
race, caste, sex or place of birth.

(1) The State shall not discriminate against any citizen on
grounds only of religion, race, caste, sex, place of birth or
any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex,
place of birth or any of them, be subject to any disability,
libility, restriction or condition with regard to -

(a) access to shops, public restaurants, hotels and places of
public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places
of public resort maintained wholly or partly out of State
funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any
special provision for women and children.
(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

19. Protection of certain rights regarding freedom of speech, etc.-

(1) All citizens shall have the right -

(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to from associations or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India;

and

(f) ..............................................................

(g) to practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of
India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d) and (e) of the clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public for the protection of the interests of any Scheduled Tribe.
(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said subclause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

21. **Protection of life and personal liberty.**

No person shall be deprived of his life personal liberty except according to procedure established by law.

25. **Freedom of conscience and free profession, practice and propagation of religion.**

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to
freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in 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;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a character to all classes and sections of Hindus.

Explanation I. - The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II. - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

31. Compulsory acquisition of property.

(1) No person shall be deprived of his property same by authority save by authority of law. [Omitted by the Constitution (44th) Amendment Act 1978]

37. Application of the principles contained in this Part.

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down 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.

44. Uniform civil code for the citizens.

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

225. Jurisdiction to existing High Courts.

Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue to powers conferred on that legislature made by virtue to powers conferred on that legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of Justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.
245.Extent of laws made by Parliament and by the
Legislatures of States.

(1) Subject to the provisions of this Constitution, Parliament may
make laws for the whole or any part of the territory of India,
and the Legislature of a State may make laws for the whole or
any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on
the ground that it would have extra-territorial operation.

372. Continuance in force of existing laws and their
adaptation.

(1) Notwithstanding the repeal by this Constitution of the enactm
ts referred to in Article 395 but subject to the other
provisions of this Constitution, all the law in force in the
territory of India immediately before the commencement of
this Constitution shall continue in force therein until altered
or repealed or amended by a competent Legislature or order
competent authority.

(2) For the purpose of bringing the provisions of any law in
force in the territory of India into accord with the provisions
of this Constitution, the President may by order make such
adaptations and modifications of such 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 adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any Court of law.

(3) Nothing in clause (2) shall be deemed -

(a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution; or

(b) to prevent any competent Legislature of other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

Explanation I.- The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II.- Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra-territorial effect.
Explanation III.- Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this constitution had not come into force.

Explanation IV.- An Ordinance promulgated by the Governor of a Province under s. 88 of the Government of India Act 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of Article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

LIST III
(Concurrent List)

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
Appendix - V

Mussalman Wakf Validating Act, 1913
[7th March, 1913]

An Act to declare the right of Mussalmans to make settlements of property by way of wakf in favour of their families, children and descendants.

Whereas doubts have arisen regarding the validity of wakf created by persons professing the Mussalman faith in favour of themselves, their families, children and descendants and ultimately for the benefit of the poor or for other religious, pious or charitable purposes;

and whereas is expedient to remove such doubts:

It is hereby enacted as follows:

1. Short title land extent:

   (1) This Act may be called the Mussalman Wakf Validating Act, 1913.

   (2) In extends to the whole of India except the state of Jammu and Kashmir.

2. Definitions. In this Act unless there is anything repugnant in the subject or context:

   (1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any
purpose recognized by the Mussalman law as religious, pious or charitable.

(2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi school of Mussalman law.

3. Power of Mussalmans to create certain Wakfs.

It shall be lawful for any person professing the Mussalman faith to create a \textit{Wakf} which in all other respects is in accordance with the provision of Mussalman law, for the following, among other, purposes:

(a) for the maintenance and support wholly or partially of his family, children or descendants, and

(b) Where the person creating a \textit{wakf} is Hanafi Mussalman, also for his own maintenance and support during his life-time or for the payment of his debts out of the rents and profits of the property dedicated:

Provided that the ultimate benefit in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of permanent character.

4. Wakfs not to be invalid by reason of remoteness of benefit to poor, etc.

No such \textit{wakf} shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious
5. Saving of local and sectarian custom:

Nothing in this Act shall affect any custom or usage whether local or prevalent among the Mussalmans of any particular class or sect.
Appendix - VI

Muslim Personal Law (Shariat) Application Act, 1937
(Act XXVI of 1937)

[7th October, 1937]

An Act to make provisions for the applications of the Muslim Personal Law (Shariat) to Muslims.

WHEREAS it is expedient to make provisions for the application of the Muslim Personal Law (Shariat) to Muslims; it is hereby enacted as follows:

1. **Short title and extent**:

   (1) This Act may be called the Muslim Personal Law (Shariat) (Application) Act, 1937.

   (2) It extends to the whole of India except the State of Jammu and Kashmir.

2. **Application of Personal Law to Muslims**:

   Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage including *talak ila, Zihar, lian, khula* and *mubaraat*, maintenance, dower, guardianship, gifts, trusts and trust properties and *wakfs* (other than charities and charitable
Appendices

institutions and charitable and religious endowments) the rule of
decision in case where the parties are Muslims shall be the Muslim
Personal Law (Shariat).

3. **Power to make a declaration:**

(1) Any person who satisfies the prescribed authority -

(a) that he is a Muslim, and

(b) that he is competent to contract within the meaning of
section 11 of the Indian Contract Act 1872, and

(c) that he is resident of the territories to which this act
extends may, by declaration in the prescribed from and
filed before the prescribed authority, declare that he
wishes to obtain the benefit of the provisions of this
section, and thereafter the provisions of the section 2
shall apply to the declarant and all his minor children and
wills and legacies were also specified.

(2) Where the prescribed authority refuse to accept a declaration
under sub-section (1), the person desiring to make the same
may appeal to such officer as the State Government may, by
general or special order, appoint in this behalf, and such
officer may, if he is satisfied that the appellant is entitled to
make the declaration, order the prescribed authority to
accept the same.

4. **Rule making power:**

(1) The State Government may make rules to carry into effect
the purposes of this Act.

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(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of the following matters, namely:

(a) for prescribing the authority before whom and the form in which declarations under this Act shall be made;

(b) for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any persons in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied.

(3) Rules made under the provisions of this section shall be published in the Official Gazette and shall thereupon have effects as if enacted in this Act.

5. Dissolution of marriage by Court in certain circumstances:

(Repealed by the Dissolution of Muslim Marriage Act 1939 (VIII of 1939) s. 6 (17-3-1939).

6. Repeals:

The undermentioned provisions of the Acts and regulation mentioned below shall be repealed in so far as they are inconsistent with the provisions of this Act, namely:-

(1) Section 26 of the Bombay Regulation IV of 1827;

(2) Section 16 of the Madras Civil Courts Act, 1873;
Appendices

(3) Repealed;

(4) Section 3 of the Oudh Laws Act, 1876;

(5) Section 5 of the Punjab Laws Act, 1872;

(6) Section 5 of the Central Provinces Laws Act, 1875;

(7) Section 4 of the Ajmer Laws Regulation, 1877.
Appendices

Appendix - VII

The Dissolution of Muslim Marriages Act, 1939*
(Act VIII of 1939)
3 (Passed by the Indian ge islation)
Received the assent of the Governor-General
on the 17th March, 1939

An Act to consolidate and clarify the provisions of Muslim law relating to suit for dissolution of marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

Whereas it is expedient to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie; it is hereby enacted as follows:-

1. Short title and extent :

(1) This Act may be called The Dissolution of Muslim Marriage Act, 1939.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Grounds for decree for dissolution of marriage :

A woman married under Muslim law shall be entitle to obtain a decree for the dissolution of her marriage on any one or more
of the following grounds, namely:--

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a period of two years or is suffering from leprosy or virulent venereal disease;

(vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years;

   Provided that the marriage has not been consummated;

(viii) that the husband treats her with cruelty, that is to say:

   (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical treatment, or

   (b) associated with woman of evil repute or leads an infamous life, or
(c) attempts to force her to lead an immoral life, or
(d) disposes of her property or prevents her exercising her legal rights over it, or
(e) obstructs her in the observance of her religious profession or practice, or
(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Koran;

(ix) on any other ground which is recognised as a valid for the dissolution of marriages under Muslim law;

Provided that -

(a) no decree shall be passed on ground (iii) until the sentence has become final;

(b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and the husband appears either in person or through and authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

(c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court
within such period, no decree shall be passed on the said ground.

3. **Notice to be served on heirs of the husband when the husband’s whereabouts are not known:**

   In a suit to which clause (i) of section 2 applies -

   (a) the names and addresses of the persons who would have been the heirs of the husband under Muslim law if he had died on the date of filing of the plaint shall be stated in the plaint.

   (b) notice of the suit shall be served on such persons, and

   (c) such persons shall have the right to be heard in the suit;

   Provided that paternal uncle, and brother of the husband, if any, shall be cited as part even if he or they are not heirs.

**Effect of conversion to other faith:**

The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2;

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.
4. Rights of dower not to be affected:

Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.

5. Repeal of Section 5 of Act XXVI of 1937:

Section 5 of the Muslim Personal Law (Shariat) Application Act, 1937, is hereby repealed. (Repealed by Act XXV of 1942).
Appendix - VIII

Muslim Women (Protection of Rights on Divorce) Act 1986
(No. 25 of 1986*)

(First published in the Gazette of India (Extraordinary). Part II, Section I dated the 19th May, 1986).

An act to protect the rights of Muslim Women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-seventh Year of the republic of India as follows :

1. **Short title and extent :**

   (1) This Act may be called the Muslim Women (Protection of Rights on Divorce) Act, 1986.

   (2) It extends to the whole of India except the State of Jammu and Kashmir.

2. **Definitions :**

   In this Act, unless the context otherwise requires :

   (a) "divorced woman" means a Muslim woman who has married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law :
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(b) "iddat period" means, in the case of a divorce woman:

(i) three menstrual courses after the date of divorce, if she is subject to menstruation;

(ii) three lunar months after the divorce, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier.

(c) "Magistrate" means a Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure, 1973(2) of 1974) in the area where the divorced woman resides;

(d) "prescribed" means prescribed by rules made under this Act.

3. **Mahr or other properties of Muslim women to be given to her at the time of divorce:**

   Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to:

   (a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

   (b) where she herself maintains the children born to her before or after her divorce a reasonable and fair
provision and maintenance to be made and paid by her former husband for a period of two years from the respective date of birth of such children;

(c) an amount equal to the sum of *mahr* or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of *mahr* or dower has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, *mahr* or *dower* or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that –

(a) her husband having sufficient means, has failed or neglected to make or pay her within the *iddat* period a reasonable and fair provision and maintenance for her and the children, or
(b) the amount equal to the sum of *mahr* or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her. Make an order, within one month of the date of filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such *mahr* or dower or of the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for leaving the amount of maintenance or *mahr* or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2) of 1974), and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term
which may extend to one year or until payment if sooner made, subject to such persons being heard in defence and the said sentence being imposed according to the provisions of the said Code.

(4) Order for payment Maintenance:

(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not remarried and is not able to maintain herself after the iddat period, the may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the
Magistrate on the ground of his or her not having the means to pay the same, order that the share of such relatives in the maintenance ordered by him, be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the share of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second provision of sub-section (1), the Magistrate, may, by order, direct the State Wakf Board established under Section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1), or as the case may be, to pay the share of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. Option to be governed by the provision of sections 125 to 128 of Act 2 of 1974:

If on the date of the first hearing of the application under sub-section (2) of Section 3, a divorced woman and her former
husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of Section 125 or the Code of Criminal Procedure 1973 (2 of 1974), and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation: For purposes of this section, “date of the first hearing of the application” means the date fixed in the summon for the attendance of the respondent to the application.

6. Power to make rules:

(1) The Central Government may by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the foregoing power, such rules may provide for –

(a) the form of the affidavit or other declaration in writing to be filed under Section 5,

(b) the procedure to be followed by the Magistrate in disposing of application under the Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters,

(c) any other matter which is required to be or may be prescribed.

3. Every rule made under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it
is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. **Transitional provisions**:

Every application by a divorced woman under Section 125 or under Section 127 of the Code of Criminal Procedure, 1973(2) of 1974), pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in this Code and subject to the provisions of Section 5 this Act, be disposed of by such Magistrate in accordance with the provisions of this Act.
Appendix - IX

The Muslim Women (Protection of Rights on Divorce) Rules, 1986

Ministry of Law and Justice (Legislative Department)

In exercise of the powers conferred by Section 6 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986), the Central Government hereby makes the following rules for carrying out the purposes of the Act, namely.

1. Short title and commencement:

(1) These rules may be called the Muslim Women (Protection of Rights on Divorce) Rules, 1986.

(2) They shall come into force at once.

2. Definitions:

In these rules, unless the context otherwise requires,

(a) “Act” means the Muslim Women (Protection of Rights on Divorce) Act 1986 (25 of 1986).

(b) “Code” means the Code of Criminal Procedure 1973 (2 of 1974), and

(c) “Form” means form annexed to these rules.
3. Service of summons:

(1) Every summons issued by a Magistrate on an application made under the Act, shall be in writing, in duplicate, signed by the Magistrate or by such other officer as he may, from time to time, direct, and shall bear the seal of the Court.

(2) Every such summons shall be accompanied by a true copy of the application.

(3) Every summons issued under sub-rule(1) shall specify the date of the first hearing of the application which shall not be later than seven days from the date on which the summons is issued.

(4) Every summons shall, be served by a police officer or by an officer of the Court issuing it.

(5) The summons shall, if practicable, be served personally on the respondent, by delivering or tendering to him one of the duplicates of the summons.

(6) Every respondent on whom the summons is so served shall, if so required by the serving officer, sign a receipt on the back of other duplicate.

(7) Where the respondent cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall; if so required by serving officer, sign a receipt therefor on the back of the other duplicate.
(8) If the service cannot, by the exercise of due diligence, be
effected as provided in sub-rule (6), or sub-rule (7), the
serving officer shall affix one of the duplicates of the
summons to some conspicuous part of the house or
homestead in which the respondent ordinarily resides, and
thereupon the Court, after making such inquiries as it thinks
fit, may either declare that the summons has been duly served
or order fresh summons in such a manner as it considers
proper.

(9) When a Court desires that a summons issued by it shall be
served at any place outside its local jurisdiction, it shall
ordinarily send such summons in duplicate to a magistrate
within whose local jurisdiction, the respondent resides, or is,
to be there served.

(10) When a summons issued by a Court is served outside its
local jurisdiction and in any case when an officer who served
the summons is not present at the hearing of the case, the
affidavit purporting to be made before a Magistraté that such
summons has been served and a duplicate of summons
purporting to be endorsed in the manner provided by sub-
rule (6) or sub-rule (7) by the person to whom it was
delivered or with whom it was left shall be admissible in
evidence and the statements made therein shall be deemed to
be correct unless and until contrary is proved.

(11) The affidavit mentioned in sub-rule (10), may be attached to
the duplicates of the summons and returned to the Court.
10. **Evidence.** All evidences in the proceedings under the Act shall be taken in the presence of the respondent against whom an order for the payment of provision and maintenance, *Mahr* or dower or the delivery of property is proposed to be made or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner specified for summary trials under the Code.

Provided that if the Magistrate is satisfied that the respondent is wilfully avoiding service or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex-parte and any order so made may be set aside for good cause shown on application made within seven days from the date thereof subject to such terms so as to payment of cost to the opposite party as the Magistrate may think just and proper.

5. **Power to postpone or adjourn proceedings.** In every application under the Act, the proceedings shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until the witnesses in attendance have been examined unless the Court finds adjournment of the same beyond the following day to be necessary for reasons to be recorded.

6. **Costs:**

The Court in dealing with the application under the Act shall have power to make such order as to cost as may be just.
7. Affidavit under Section 5. An affidavit filed under Section 5 of the Act shall be in Form ‘A’.

8. Declaration under Section 5. A declaration in
under Section 5 shall be in Form ‘B’.

Form ‘A’
Form of Affidavit
(See Rule 7)

I/We...................................... son/wife of ...........................................
aged ...... years, resident of .........................................................
and ................................................................. son/wife
of ................................................................. aged........... years,
resident of ....................................................... hereby state on oath
as follows:

1. That I/We have informed myself/ourselves of the
provisions of Section 5 of the Muslim Women (Protection of
Rights on Divorce), Act 1986 and of the provisions of Section

2. That I/We .............................................................. desire to be
governed by the provisions of Section 125 to 128 of the Code of
Criminal Procedure, 1973 in preference to the provisions of the
Muslim Women (Protection of Rights on Divorce) Act 1986.

3. That the contents are true.

Deponent/Deponents

Signed and verified at ........................................ this the ..........day
of .......... 19 ........

Deponent/Deponents

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Form ‘B’

Form of Affidavit

(See Rule 8)

I/We........................................ son/wife of ..................................
aged ...... years, resident of ..................................................
and ................................................................. son/wife
of, ................................................................. aged........ years,
resident of ........................................................ hereby declare as
follows:

1. That I/We have informed myself/ourselves of the
provisions of Section 5 of Muslim Women Protection of Rights
on Divorce), Act 1986 and of the provisions of Section 125 to

2. That I/We ........................................ desire to be
governed by the provisions of Section 125 to 128 of the Code of
Criminal Procedure, 1973 in preference to the provisions of the
Muslim Women (Protection of Rights on Divorce) Act 1986.

3. That the contents of the above declaration are true.

Deponent/Deponents

Signed and verified at ......................... this the ............... day
of .......... 19 .........
Appendix - X

Caste Disabilities Removal Act 1850
(Act XXI of 1850)

An Act for extending the principle of s. 9, Regulation VII, 1832, of the Bengal Code throughout India.

PREAMBLE

Whereas it is enacted by s. 9, Regulation VII, 1832 of the Bengal code, that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion, or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled"; and whereas it will be beneficial to extend the principle of that enactment throughout India; It is enacted as follows :-

1. Law or usage which inflicts forfeiture of, or affects, rights on change of religion or loss of caste to cease to be enforced –

So such of any law or usage now in force within India as inflicts on any person forfeiture of rights or property, or may be
held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in any Court.
Appendices

Appendix - XI

Child Marriage Restraint Act, 1929
(as amended in 1978)
(Act No. XIX of 1929)
(October 1, 1929)

An Act to Restrain the Solemnization of Child Marriages; it is hereby enacted as follows:

1. Short title, extent and commencement:

   (1) This Act may be called the Child Marriage Restraint Act, 1929.

   (2) It extends to the whole of India except the State of Jammu and Kashmir and it applies to all citizens of India without and beyond India.

   (3) It shall come into force on the 1st day of April, 1930.

2. Definitions. In this Act unless there is anything repugnant in the object or context.

   (a) "child means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

   (b) "child" marriage means a marriage to which either of the contracting parties is a child;

   (c) "contracting party" to a marriage means either of the parties whose marriage is or is about to be thereby solemnized; and
(d) "minor" means a person of either sex who is under eighteen years of age.

3. **Punishment for male adult below twenty-one years of age marrying a child:**

   Whoever being a male above eighteen years of age and below twenty-one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days or with fine which may extend to one thousand rupees or with both.

4. **Punishment for male adult above twenty-one years of age marrying a child:**

   Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months, and shall also be liable to fine.

5. **Punishment for solemnizing a child marriage:**

   Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to three months, and shall also be liable to fine, unless he proves that he had reason to believe that the marriage was not a child marriage.

6. **Punishment for parent or guardian concerned in child marriage:**

   (1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any
other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to three months, and shall also be liable to fine:

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

7. Offence to be cognizable for certain purpose:

The Code of Criminal Procedure, 1973, shall apply to offences under this Act as if they were cognizable offences

(a) for the purpose of investigation of such offences; and

(b) for the purpose of matters other than (i) matters referred to in section 42 of that Code, and (ii) the arrest of person without an order of Magistrate.

8. Jurisdiction under this Act:

Notwithstanding anything contained in section 190 of the Code of Criminal Procedure 1973, no Court other than of Metropolitan Magistrate or Judicial Magistrate of the first class shall take cognizance of, or try, any offence under this Act.

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9. Mode of taking cognizance offences:

No Court shall take cognizance of any offence under this Act after expiry of one year from the date on which the offence is alleged to have been committed.

10. Preliminary inquiries into offences:

Any Court, on receipt of complaint of an offence of which it is authorised to take cognizance, shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1973, either itself make an enquiry under section 202 of that or direct a Magistrate subordinate to it to make such enquiry.

11. (Omitted by Act XLI) of 1949).

12. Power to issue injunction prohibiting marriage in contravention of this Act:

(1) Notwithstanding anything to the contrary contained in this Act, the court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 6 of this Act prohibiting such marriage.

(2) No injunction under sub-section (1) shall be issued against any person unless the court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.
(3) The court may either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

(4) Where such an application is received, the court shall afford the applicant an early opportunity of appearing before it either in person or by pleader, and if the court rejects the application wholly or in part, it shall record in writing its reasons so for doing.

5. Whoever knowing that an injunction has been issued against him under sub-section (1) of this section, disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees or both:

Provided that no woman shall be punishable with imprisonment.