Constitutionally, India is a Secular country and has no State religion. However, it has developed over the years its own unique concept of secularism that is fundamentally different from the parallel American concept of secularism requiring complete separation of church and state, as also from the French ideal of *laïcité* - described as 'an essential compromise whereby religion is relegated entirely to the private sphere and has no place in public life whatsoever'.

Despite the clear incorporation of all the basic principles of secularism into various provisions of the Constitution when originally enacted, its preamble did not then include the word 'secular' in the short description of the country which it called a 'Sovereign Democratic Republic.' This was not an inadvertent omission but a well-calculated decision meant to avoid any misgiving that India was to adopt any of the western notions of a secular state. Twenty-five years later - by which time India's own concept of secularism had been fully established through judicial decisions and state practice - the Preamble to the Constitution was amended by the Constitution (Forty-second Amendment) Act, 1976 to include the word 'secular' along with socialist', to declare India to be 'Sovereign Socialist Secular Democratic Republic.'

Religion is not defined in the Constitution of India. However, it does not close its eyes on the reality of religions. There are a number of provisions in the Constitution which either uphold the human right to freedom of conscience and to free profession, practice and propagation of religion or attempt to restrict the affairs of religion or protect the people from imposition of religious instruction or practices against their will or introduce social reform against undesirable

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86 *Supra* 1 at p. 22
87 *Ibid* at p. 22
religious practices. Thus the Constitution takes note of and accepts the facts of religion as well as irreligion.\textsuperscript{88}

Analysis of the Arts. which are in reference of fundamental rights regarding religion and other related issues are an under;

\textbf{(3.1) The Preamble of the Constitution, reads as under:}

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a\textsuperscript{89} \textbf{SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC} and to secure to all its citizens:

\begin{itemize}
\item JUSTICE, social, economic and political;
\item LIBERTY of thought, expression, belief, faith and worship;
\item EQUALITY, of status and of opportunity;
\end{itemize}

and to promote among them all FRATERNITY assuring the dignity of the individual and the\textsuperscript{90} \textbf{unity and integrity of the Nation}; ................

The basic principles proclaimed in the Preamble provides outlines for securing legal, social, political and economical justice to all the citizens of this country. The Constitution is the Supreme law of this land which empowers the legislature to make legislation in the best interest of the society. Whatever legislations are framed, have to be consistent with the principles of the Preamble and the Constitution. The Preamble is the soul of the Constitution and the Constitution is and should be the base of all the legislations, enforced or to be enforced in the territory of India.

\textsuperscript{88}\textit{Supra} 28 at p. 167
\textsuperscript{89}Substituted by the constitution (Forty-second Amendment) Act, 1976, S.2(w.e.f. 3.1.1977)
\textsuperscript{90}substituted by the Constitution (Forty-second Amendment) Act, 1976, S.2 (w.e.f. 3.1.1977)
(3.2) Related Articles of the Constitution: An Analysis

- **Art.-13.** Laws inconsistent with or in derogation of the fundamental rights.-

  1. All the 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, by-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.

The intention of this Art. is that, any ordinance, order, by-law, rule, regulation, notification, custom or usage which is contrary or inconsistent with the provisions of the Constitution is void to the extent of such contradiction or inconsistency. No State is empowered to make any such legislation, which can take away or abridge the rights conferred by part III of the Constitution. The laws which were in force before the commencement of the Constitution but
were wholly inconsistent or partly inconsistent with part-III of the Constitution, were and are also void to the extent they were or are contrary to part III.

The language of this Art. clearly mentions the intention of the founding parents of the Constitution, behind this Art. Part III which mainly provides fundamental rights to the citizens of India, can not be allowed to be adversely affected by any act or any authority. This part is specially protected because, the rights incorporated in this part, directly affect the life of the citizens. Whichever fundamental rights are provided in part III, are of such nature that, without them, neither the citizens of this country can enjoy their life truly, and nor India can claim itself to be Secular in true sense.

Bifurcating the citizens in providing the rights incorporated in part III of the Constitution, is contrary to the scheme of this Art. In reference of personal law system of India there is bifurcation in providing equal civil rights to all the citizens, on the ground of their religions. Many of such rights are fundamental rights i.e. equality in providing protection of law to all and providing equal standards of justice to all. In this respect, the personal law system, which is mostly based on usages and customs of the particular community is in contradiction of Art. 13. There is no any logical reason which is either mentioned in this Art. or anywhere else in the Constitution itself which can justify the different personal laws for different community.

- **Art.-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"

This Art. simply mandates that, any person who is within the territory of India, would never be subjected to any inequality in providing protection of law or treatment by the law. This being a fundamental right, is not for the citizens of India only but also for any person who is not a citizen of India. The
word "any person", itself clears the intention of the Constitution framers behind this Art. The Preamble of the Indian Constitution has adopted the principle to provide, "equality of statutes and of opportunity...". This literally means that, the legislature is bound to provide same and equal laws to all the people residing in this country. If this is not followed, than it is breach of the Constitutional mandate. And any Statute which is in contravention of Constitutional mandates, is unconstitutional.

The legal system of India, has formed or adopted same laws for all the areas except the personal laws. No exception is given, either in Art. 13 or Art.14, that the State can make laws for the people of different religions. If Constitution framers would have such view, they would have been incorporated proviso or explanation regarding that, in these provisions. But they have not done so. That means, they never intended to provide different laws on the ground of religion.

- **Art. 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, liability, restriction or condition with regard to-

  (a) access to shops, public restaurants, hotels and places of public entertainments; 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.

(5) Nothing in this article or in sub-clause(g) of clause (1) of article 19 shall prevent the State from making any special provisos, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as special provisions relate to their admission to educational institutions including private educational institutions, whether aided by the state, other than the minority educational institutions referred to in clause (1) of article 30.

This Art. prohibits discrimination against any citizen on the grounds of religion, race, caste, sex or place of birth. But when this Art. is studied in reference of the Personal law system of India, it clears that the Personal laws system is in contravention of this Art. too, because, it gives different treatment of law on ground of religion, race, caste, sex and place of birth. A citizen who is a Hindu has a different set of personal law than a Muslim. A citizen who is Christian has different set of personal law than Parsi. Such discrimination does not fall within the purview of Arts. 15(3), 15(4) and 15(5). There is no logical or legal answer for the question, how and why personal law system of India should not be viewed as contrary to this Art.?

Equality is a multifaceted standard maxim for a free society that is constantly looked for and labored for, augmenting the happiness and value of life to all people of ethnic origin. Equality before the law, prohibition of discrimination, equal protection of the laws and protective discrimination to promote social justice are the four concepts employed in the guarantee of right to equality under the Indian Constitution. In the context of indigenous people called Scheduled Tribes, application of all these concepts in a concerted
manner has the proven potentiality of ameliorating the disadvantaged section of the society. The concept of reasonable classification is supplemented by the doctrine of reasonableness.91

- **Art. 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, practice 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 public 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, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Generally under this Art. different communities claim to protect their personal laws. But meaningful study of this Art., clears that this Art. is neither meant to protect the personal laws of different communities, and nor can be applied to make any bifurcation on the ground of religion. This Art. plainly

91 Supra 67 at p. 317
protects the fundamental right of freedom of conscience and free profession and propagation of religion. None of the clauses or explanations of this Art. supports the personal law system of India, in implied or expressed manner.

In fact, Art. 25(2) empowers the state to make any law which is essential for regulating or restricting any economic, financial, political or other secular activity. The State is also empowered to make legislations in the interest of social welfare and reform. In other words, this Art. provides space for law reforms which are essential for securing social justice of any kind. Hence, there is no scope for protection of personal laws, which are biased and time old in many terms and areas.

- **Art. 26.** Freedom to manage religious affairs.- Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-
  
  (a) to establish and maintain institutions for religious and charitable purposes;
  
  (b) to manage its own affairs in matters of religion;
  
  (c) to own and acquire movable and immovable property; and
  
  (d) to administer such property in accordance with law.

This Art. exclusively deals with the fundamental right to manage religious affairs. None of the clauses of this Art. advocates for providing shelter to the family laws of different religions. The operation of this fundamental right is subject to public order, morality and health. Issue of Personal law system of India definitely comes under the head of "Public order and morality" because both these factors can survive, only by following and maintaining equal protection of law and order for all. Hence, whatever, whichever and however arguments are raised always, that personal law is protected under this Art. is a wrong notion, and such arguments are just by-products of selfish
politics. The religion is a matter of faith, whereas law is a matter of maintaining public order

- **Art. 27.** Freedom as to payment of taxes for promotion of any particular religion.-

  No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

  This fundamental right is aimed to secure freedom regarding not paying any tax for the promotion or maintenance of any specific religion or religious denomination.

- **Art. 28.** Freedom as to attendance at religious instruction or religious worship in certain educational institutions.-

  (1) No religious instruction shall be provided in any educational institutions wholly maintained out of State funds.

  (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

  (3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

  This Art. provides freedom as to attendance at religious instruction or religious worship in educational institutions, which are wholly maintained out of State funds. This literally means that no government or State can make any activity for promoting any specific or particular religion. Being a secular
country, India has to provide same platform for all the religions to grow up together and that too, without any special treatment.

- **Art. 29. Protection of interests of minorities.**

  (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

  (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

This fundamental right aims to provide protection of interests of minorities. Art. 29(1) gives fundamental right of protection to distinct language, script or culture of any section of the citizens residing in the territory of India or any part thereof. But by providing this fundamental right, the Constitution neither aims to provide different set of personal law nor grants any special status to any class of people. Words "distinct language, script or culture" have limited scope of interpretation and do not include having separate personal laws.

In *A. S. Narayana Deekshitulu v. State of A.P.*, the Apex Court vehemently opined that, the right to religion guaranteed under Art. 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or regulating any activity - economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are subject to reform on social welfare by appropriate legislation by the State. Though religious practices and performances of acts pursuance of religious belief are as much a part of religion as faith or belief in a particular doctrine, that by itself is not conclusive or decisive... The religious freedom guaranteed by Arts. 25 and 26, therefore, is intended to be a guide to a

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92AIR 1996 SC 1765.
community-life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Arts. 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos, Creator and realise his spiritual self. Sometimes, practices religious or secular, are intricably mixed up...

In this verdict, while explaining the meaning of secularism and secularisation, it was further opined that, there is a difference between secularism and secularisation. Secularisation essentially is a process of decline in religious activity, belief, ways of thinking and in restructuring the institution. Though secularism is a political ideology and strictly may not accept any religion as the basis of State action or as the criteria of dealing with citizens, the Constitution of India seeks to synthesise religion, religious practice or matters of religion and secularism. In secularising the matters of religion which are not essentially and integrally parts of religion, secularism, therefore, consciously denounces all forms of super-naturalism or superstitious beliefs or actions and acts which are not essentially or integrally matters of religion or religious belief or faith or religious practices. In other words, non-religious or anti-religious practices are anti-thesis to secularism which seeks to contribute in some degree to the process of secularisation of the matters of religion or religious practices.

In this judgment it was also observed that, the legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a social engineering and an instrument of social change evolved by a gradual and continuous process.
In *Bal Patil v. Union of India*\(^93\) the Supreme Court bench comprising of R. C. Lahoti, the then Chief justice of India, D. M. Dharmadhikari and P. K. Balasubramanyan JJ., while making Minority Commissions realize their duty towards minorities, observed that, the Constitutional goal has to be kept in view by the Minorities Commissions set up at the Central or State levels. Commissions set up for minorities have to direct their activities to maintain integrity and unity of India by gradually eliminating the minority and majority classes. If, only on the basis of a different religious thought or less numerical strength or lack of health, wealth, education, power or social rights, a claim of a section of Indian society to the status of 'minority is considered and conceded, there would be no end to such claims in a society as multi-religious and multi-linguistic as India is. A claim by one group of citizens would lead to a similar claim by another group of citizens and conflict and strife would ensue. As such, the Hindu society being based on caste, is itself divided into various minority groups. Each caste claims to be separate from the other. In a caste-ridden Indian society, no section or distinct group of people can claim to be in majority. All are minorities amongst Hindus. Many of them claim such status because of their small number and expect protection from the State on the ground that they are backward. If each minority group feels afraid of the other group, an atmosphere of mutual fear and distrust would be created posing serious threat to the integrity of our Nation. That would sow seeds of multi-nationalism in India. It is, therefore, necessary that Minority Commission should act in a manner so as to prevent generating feelings of multi-nationalism in various sections of people of Bharat. The Commission instead of encouraging claims from different communities for being added to a list of notified minorities under the Act, should suggest ways and means to help create social conditions where the list of notified minorities is gradually reduced and done away with altogether.

\(^{93}\) AIR 2005 SC 3172.
In *Bijoe Emmanuel v. State of Kerala*[^94], the division bench of O. Chinnappa Reddy and M. M. Dutt JJ., while dealing with the issue regarding Arts. 19(1)(a), 25(1) and 51A(a) observed that, the right to freedom of conscience and freely to profess, practice and propagate religion guaranteed by Art. 25 is subject to (1) public order, morality and health; (2) other provisions of Part III of the Constitution; (3) any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; or (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Thus while on the one hand, Art. 25(1) itself expressly subjects the right guaranteed by it to public order, morality and health and to the other provisions of Part III, on the other hand, the State is also given the liberty to make a law to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice and to provide for social welfare and reform, even if such regulation, restriction or provision affects the right guaranteed by Art. 25(1). Therefore, whenever the Fundamental Right to freedom of conscience and to profess, practice and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practice or to provide for social welfare and reform. It is the duty and function of the Court so to do. Here again as mentioned in connection with Art. 19(2) to (6), it must be a law having the force of a statute and not a mere executive or a departmental instruction.

While Summing up the judgment, the bench, observed that, our tradition teaches tolerance; our philosophy preaches tolerance; our constitution practices tolerance; let us not dilute it.

[^94]: AIR 1987 SC 748.
In *M. Ismail Faruqui v. Union of India*\(^{95}\), the Apex Court strongly opined that, it is clear from the Constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasising that there is no religion of the State itself. The Preamble of the Constitution read in particular with Arts. 25 to 28 emphasises this aspect and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touchstone of the Constitution. The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution....The Preamble to the Constitution of India proclaims that India is a Secular Democratic Republic. Art. 15 in Part III of the Constitution, which provides for fundamental rights, debars the State from discrimination against any citizen on the ground of religion. Secularism is given pride of place in the Constitution. The object is to preserve and protect all religions, to place all religious communities on a par. When, therefore, adherents of the religion of the majority of Indian citizens make a claim upon and assail the place of worship of another religion and, by dint of numbers, create conditions that are conducive to public disorder, it is the constitutional obligation of the State to protect that place of worship and to preserve public order, using for the purpose such means and forces of law and order as are required.

- **Art. 31C.** Saving of laws giving effect to certain directive principles-

  Notwithstanding anything contained in Article 13, no law giving effect to the policy of the state towards securing all or any of the principles laid down in part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy

\(^{95}\text{AIR 1995 SC 605.}\)
shall be called in question in any court on the ground that it does not give effect to such policy

By the Constitution (twenty fifth Amendment) Act, 1971 this Article is inserted in Constitution. Then words "all or any of the principles laid down in part IV" which were inserted in this Article by the Constitution (Forty second Amendment) Act, 1976, were held unconstitutional by the Apex Court in Minerva Mills Ltd. v. Union Of India Words "Article 14 or Article 19" are substituted by the Constitution (Forty-fourth Amendment) Act, 1978. In Kesavanand Bharati v. State of Kerala, Apex Court held words "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" to be invalid.

• Art. 38. State to secure a social order for the promotion of welfare of the people.

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

State, while securing a social order for promotion of welfare of the people, has to be careful that equal distribution of services should be made among all the people of India. As per Art. 38(1), the State has to

96 (1980) 3 SCC 591.
97 (1973) 4 SCC 225.
maintain social order in the manner in which social, economic and political justice can be secured equally for all. As per Art. 38(2) the State has to eliminate inequalities in status, facilities and opportunities and that too, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. By providing different rules and laws for personal law system, how this Art. can be claimed to be satisfied? Because, due to variations in personal laws, there definitely exist inequalities in status and facilities.

- **Art. 39A.** Equal justice and free legal aid.- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to secure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

  This Article imposes two obligations on the State. First, to secure the legal system which promotes justice on the basis of equal opportunities and, second, by providing free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Words "other disabilities" have a very wide scope for interpretation. This Art. advocates to remove all infirmities which comes in way for providing equal justice to all. In this reference also, the personal law system of India fails to provide equal justice to the people of India.

- **Art. 51.** Promotion of international peace and security :- The State shall endeavour to-
  
  (a) promote international peace and security;
  (b) maintain just and honourable relations between nations;
  (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
(d) encourage settlement of international disputes by arbitration.

Article 51(c) mandates, "the State shall endeavor to -..... foster respect for international law and treaty obligations in the dealings of organized people with one another..." In this reference, because personal law system of India provides unequal opportunities and status to the people, it can not be justified to be with the standards of international law.

- **Art. 51A.** which is inserted in the Constitution by the Constitution (Forty-Second Amendment) Act, 1976, mandates for Fundamental duties. It reads as; "51A Fundamental Duties :- It shall be the duty of every citizen of India:-

  (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

  (c) to uphold and protect the sovereignty, unity and integrity of India;

  (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women

  (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

  (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement....

When the interpretation of these clauses is made, it means as;

(a) Who does not respect the ideals of Constitution, is failed from discharging his Constitutional duty to respect Constitutional ideal. Secularism is one of such ideals proclaimed in Preamble.
No country can claim to be Secular, unless and until, it has a common set of laws for its all citizens.

(c) Having different personal laws is a stigma on unity and integrity of India because, if the citizens are really unite, then there is no need to have different personal laws.

(e) This fundamental duty imposes obligation on the citizens of India to promote harmony amongst all the people of India and to renounce practices derogatory to the dignity of women. But it is an admitted fact that, in many areas of personal laws of this country, there exist gender bias practices. Such illegal and unreasonable practices of personal laws are in contradiction with the theme of this fundamental duty.

(h) Word "reform" has wide scope for interpretation, and it does not preclude the State from making a common set of law for all.

(j) The people who want different personal laws for different religions, definitely violates this duty too, because different personal laws have caused several infirmities and inequalities.

**Article-44**

**Article 44: Uniform Civil Code for citizens.-** “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

Directive Principles of State Policy are placed in part IV of the Constitution. In this Part Constitution founders placed several guidelines/policies for States.
(3.3) The Emergence of UCC

The idea of UCC was introduced in to the national political debate in 1940 when a demand for such a code was made by the National Planning Committee appointed by the congress. The sub-committee for the 'Women's Role in a Planning Economy' was specifically directed to study the role of women to play in the future independent India, and it presented its report to the National Planning Committee in August, 1940. The report advocated for the enactment of a UCC. It envisaged the proposed UCC to be an optional code to begin with, which could gradually replace the different personal laws followed by the various religious communities. This recommendation was endorsed by the National Planning Committee with one Muslim member opposing the idea of a UCC. However, other resolutions by the sub-committee and the National Planning Committee indicated that the members of this committee did not think that the enactment of a UCC was feasible idea. By 1940 a few leaders of the All India Women's Conference were also demanding the enactment of a UCC. However, the Charter of Women's Right prepared by the All India Women's Conference mentioned the rights of women to have reforms made in personal laws but not extend the claim to UCC.98

Neither the Government of India Act, 1915 and nor the Government of India Act, 1935, consisted any provision which could preclude the Government to amend or uniform the personal laws of different religion people. In fact, from these legislations, it was made clear that none of the personal laws were placed out of the scope of these legislations. That means the personal laws were always open for amendment and reformation.

The historical background of the UCC is closely linked with the history of personal laws. In ancient and medieval period all branches of law namely civil, criminal and commercial were based on religion and custom. This

98Supra 33 at p.13.
religion and custom oriented legal system was complicated and unprogressive. The British rulers attempted to bring a systematic and progressive legal system in India. British rulers gradually codified and brought secular criminal and procedural legislations. As regards to the personal/matrimonial laws they refrained to enact a comprehensive and secular civil code. Here the British adopted the policy of non interference in matter of traditionally linked with the religion. However, they had no intention to completely exclude the civil matters from their plan for law reform. The survey of the legal development before the Government of India Act, 1915 showed that there was nothing restraining the government in British India for making the laws in the areas of traditionally regulated by personal laws. Under the Act of 1915 all the personal laws were brought within the scope of the Act and none of the constitutional documents brought after the Act effected any change in the situation. The legislative entries in the Government of India Act, 1935 included almost all matters traditionally regulated by the personal laws. The constitutional history of India reveals that a comprehensive codification of personal laws was not generally favoured by the British rulers because they did not want to infuriate the religious sentiments of the Indian society. They were more interested to maintain their political authority rather than social reforms. Thus, in British India no attempt had been made to prepare a secular civil code and the legislative power was used to bring piecemeal reform to satisfy vocal demands of progressive sections of Indian society.99

(3.4) The Constituent Assembly Debates on UCC

The Constituent assembly of India, held its sessions from 9th December, 1946 to 24th January 1950. The agenda of UCC was discussed under clause 39, Art. 35 in the drafted and Art. 44 in the adopted Constitution. Several members including Dr. B. R. Ambedkar, the chairman of the Drafting Committee and K. Supra 33 at pp.131-132
M. Munshi were in favour of making a uniform Code whereas it was strongly opposed by the members of the Muslim Community.

Sub-committee members like Rajkumari Amrit Kaur (a Christian), Hansa Mehta (a Hindu) and M. R. Masani (a Parsi) were of the view that inspite of part IV, this mandate need to be incorporated in part III of the Constitution and to express their view, in a joint letter to the advisory committee of the C. A. Of July 1947 they strongly pleaded that, “We are not satisfied with the acceptance of a Uniform Civil Code as an ultimate social objective set out in Clause 39 [Article 35 in the Draft Constitution and Article 44 in the adopted Constitution ]as determined by the majority of the Sub-Committee. One of the factors that has kept India back from advancing to nationhood has been the existence of Personal Laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a Uniform Civil Code should be guaranteed to the Indian people within a period of five to ten years in the same manner as the right to free and compulsory primary education has been guaranteed by Clause 23 within ten years.” (Dhagamwar 1989a: 2, Jha 2002: 3178)

However their suggestion was not accepted and the UCC was placed in part IV- Directive principles of the State policy in the adopted Constitution.

There was no female member from Muslim community. Hence, Muslim women's perspective could not come on record.

The original mandate of Art. 35 of the draft Constitution was the same as it is placed under Art. 44 in the adopted Constitution that is,

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

100 See, Supra 8 at p. 73.
Many of the members from Muslim community proposed some amendments in draft Art.35.

Shri Mohammad Ismail Sahib (Muslim member from Madras) proposed to add a proviso to Article 35 that: "provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."\(^{101}\)

Shri Naziruddin Ahmad (Muslim member from West Bengal) wanted to add a proviso that "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."\(^{102}\)

Shri Mahmood Ali Baig Sahib Bahadur (Muslim member from Madras) proposed a proviso as following, "provided that nothing in this article shall affect the Personal law of the citizens."\(^{103}\)

Shri B. Poker Sahib Bahadur (Muslim member from Madras) who supported the view of Shri Mohamed Ismail Sahib, proposed to add the following proviso; "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."\(^{104}\)

Shri Hussain Imam who was of the opinion that for a country like India, the UCC is not feasible. He expressed his view in following words: "it is all right and a very desirable thing to have a uniform law but at very distance date. For that we should first await the coming of that event. Apart of this our

\(^{101}\)Vol. VII, Constituent Assembly Debates, at pp. 540-541.
\(^{102}\)Ibid at pp. 541-543.
\(^{103}\)Supra 101 at p. 543.
\(^{104}\)Ibid at pp. 544-545.
country is very backward. Look at the Assam tribes; what is their condition? Can you have the same kind of law for them as you have for the advanced people of Bombay? Sir I feel that it is all right and a very desirable things to have a uniform law, but at a very distant date.\textsuperscript{105}

However, Tajamul Husain, a Muslim member from Bihar had expressed his progressive view during the debate on Secularism and religion, was absent in the debate on the Draft Art. 35.

Shri K. M. Munshi, Alladi Krishnaswamy Ayyar and B. R. Ambedkar found all these proposed amendments superfluous. Shri Munshi cited the examples of some European countries and said,"we are in a stage where we must unify and consolidate the notion by every means without interfering with religious practices. If, however, the religious practices in the past have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religious, they are purely matters for secular legislation. This is why emphasized by this article."\textsuperscript{106}

Shri Munshi strongly advocated the Art. 35 and said,"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 rights. 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 Cutchi Memons 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 felt that Shariat law

\textsuperscript{105}{\textit{Supra}} 101 at p. 546.
\textsuperscript{106}{\textit{Ibid}} at p. 547.
should be enforced upon the whole community carried their point. The Khojas and Cutchi Memons most unwillingly had to submit to it. Where were the rights of minority then?"\(^{107}\)

Shri Munshi strongly advocated Art. 35 and also said, "This attitude of mind perpetuated under the British rule, that personal law is part of religion, has been fostered by the British and by British courts. We must, therefore, outgrow it. If I may just remind the honourable Member who spoke last [Husain Imam] of a particular incident from Fereshta which comes to my mind, Allauddin Khilji made several changes which offended against the Shariaht, 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 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 Shariaht'. If Allauddin could not, much less can 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."\(^{108}\)

Shri Alladi Krishnaswamy supported the view of shri Munshi and expressed his view and said, “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 a 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 which has been [Sic.] ruling? Why should our Muslim friends have greater confidence, greater faith in the British rule than in

\(^{107}\)Supra 101 at pp. 547-548
\(^{108}\)Ibid at pp. 547-548
a democratic rule which will certainly have regard to the religious tenets and beliefs of all people?"\textsuperscript{109}

Dr. B. R. Ambedkar referred several developments in the area of Muslim Law during the 1930s, and different practices going on in different parts of the country among Muslims and argued, "It [the Draft Article 35] does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in 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 Shariaht Act of 1937 when it was applied to territories other than the North-West Frontier Province. The law said that here is a Shariaht law which should be applied to Mussalmans provided a Mussalman who wanted that he should be bound by the Shariaht 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 which my friends have expressed here will be altogether nullified. I therefore submit that there is no substance in these amendments and I oppose them."\textsuperscript{110}

After all the debates, Dr. B. R. Ambedkar made the following final statement in respect of uniform civil code:

"Coming to the question of saving personal law, I think this matter was very completely and very sufficiently discussed and debated at the time when we discussed one of the Directive Principles of this Constitution which enjoins

\textsuperscript{109}Supra 101 at pp. 549-550
\textsuperscript{110}Ibid at pp.550-552
the State to seek or to strive to bring about a uniform civil code and I do not think it is necessary to make any further reference to it, but I should like to say this, that if such a saving clause was introduced into the Constitution, it would disable the legislatures in India from enacting any social measure whatsoever.

The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a stand-still.... After all, what are we having this liberty for? We are having this liberty in order to reform our social system which is so full of inequities, so full in inequalities, discriminations and other things, which conflict with our fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal law shall be excluded from the jurisdiction of the State. Having said that, I should also like to point out that all that the State is claiming in this matter is a power to legislate. There is no obligation upon the State to do away with personal laws. It is only giving a power. Therefore, no one need be apprehensive of the fact that if the State has the power, the State will immediately proceed to execute to enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other community in India.... No Government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion. I think it would be a mad Government if it did so. But that is a matter relates to the exercise of the power and not to the power itself.”

At the end of the discussion, the draft Art. 35 was incorporated in adopted Constitution without any amendment and in adopted constitution, it was placed under Art. 44.

After full debate, the Constituent Assembly rejected the contention that personal law flows from religion directly. On the other hand, the Constituent Assembly has reiterated its conclusion that like all other laws, personal law is

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111 Supra 101 at pp.779-780
also secular. The legislature has full power to enact Common Civil Code for all the citizens of India. The Muslim community now feels that they have lost the battle, but the war is still going on, and they are still agitating this point afresh forgetting altogether that this point has been finally decided by the Constituent Assembly after the full and fruitful debate.\textsuperscript{112}

The Constitutional Assembly debates around the enactment of a UCC were framed within the dynamism between group identity and individual rights- multiculturalism and legal pluralism at one end and legal universalism and citizenship claims on the other. At this historical juncture of India's freedom, the overarching concern of the founding fathers was the formation of the new nation-state and its smooth governance. Within this paradigm, the provision of a UCC was debated primarily in the context of the authority of the State to regulate civil life and family relationship of its citizens and the right of minorities to their cultural identity.\textsuperscript{113}

Dimensions of diversities in the realm of personal laws in this country are thus very wide and variform; \textit{and these are not based on religion only}. Having their roots in the distant past, the inter-territorial and custom-based diversities in the sphere of personal-laws could not be buried into the debris of the freedom movement. Despite Dr. Ambedkar's call of "uniformity in civil laws"- culminating into the directive principle enshrined in article 44 of the Constitution- these diversities have not died out. Instead, these have secured recognition, long-time if not perpetual, resulting from various sources-instruments of accession of former princely states, covenants between the union government and rulers of States, constitutional scheme of distribution of legislative powers between the Centre and the States, statutory protection of ancient usages and judicial interpretation of such statutory provisions. All this may have been done under political, geographical, historical or sociological

\textsuperscript{112}Supra 7 at pp. 11-12
\textsuperscript{113}Supra 59 at p. 150
constraints. The fact nevertheless remains that the concluding words of article 44- "throughout the territory of India"-have remained wholly ineffective and meaningless. It may, in fact, be difficult to reconcile the directive principle regarding a nation wide uniformity in civil laws with the placement of personal law in the Concurrent List under Schedule VII of the Constitution, as also with those other general and special provisions of the Constitution that essentially lead to variformity.¹¹⁴

The example of religious personal laws presents us with a kind of thorough going pluralism where norms can owe their source not to extra territorial or a geographically external source... but flow from other spheres of law-making within the nation but from non-State sources. Legitimacy is granted to such religious personal norms even if their validity cannot be attributed to a State-centric constitutionalism. Yet one cannot overlook the fact that groups, such as women, who are denied a minimum threshold of entrenched rights due to the operation of such plural normative systems could continue to strive for constitutional uniformity. The Indian example of constitutional pluralism appears to indicate that a tension and uneasy co-existence between these systems can continue for decades together, within a state dedicated to constitutionalism and the idea of uniform and entrenched rights for all in the polity. The resultant tension is consequently viewed and dealt with as a political issue and not necessarily a legal or a constitutional one.¹¹⁵

In post-modern India, quick-footed thinking has now resulted in well-considered production of a mirror image of the desired object of the Uniform Civil Code in the form of a harmonized personal law system. A motherly central state and its core institutions, an activist and very powerful Supreme Court and a Parliament not incapable of speedy action, deliberately put here in

¹¹⁵ Supra 67 at p. 295
that order, have taken well-choreographed steps to achieve this particular outcome. India has quite consciously over decades - and thus not by accident - developed a fascinating reflection of the original ideal of the Uniform Civil Code, in the form of a sophisticated, harmonised system of legal regulation that maintains and skillfully uses the input of personal status laws and yet achieves a measure of legal uniformity. While the boundaries of Indian general law and personal laws have thus become ever more fuzzy, neither Hindu law nor Muslim law, nor indeed any of the various other, partly seriously outdated minority personal laws, have been abolished by these new legal developments.116

Secularism, justice, liberty, equality and fraternity are all inseparable from one another. So are clarity and security. No one of them can stand without the others. Justice without equality or fraternity is meaningless. The personal laws of this country did try to separate the two by creating distinct systems of justice for separate groups on the basis of their race, religion, caste, creed and sex. This was not palatable to the British law-givers. Thus it was that we got a uniform criminal code, uniform property and commercial laws. This was also not palatable to our social reformers and we therefore got a host of new laws freeing women from their legal bondage. It is, of course, argued that only few women have dared to take advantage of this legislation. But that is no reason for keeping them in shackles. Over the decades, at least amongst the educated classes, so many of the evils contested by the reformers of last century have become less commonly practiced, though some others, notably dowry murders, have sprung up.117

Constitution of India, do not guarantee separate personal laws for different religions people. But people who want to misinterpret the provisions of Constitution willfully, either way, give illogical arguments in support of the

116 Supra 33 at p. 126
117 Supra 24 at p. 56
separate personal law by quoting Arts. 25 and 26. In number of judgments, the Apex Court of this country has overruled such contentions. But now, its high time for the legislature to take a concrete step in this regard.

(3.5) International Instruments and Personal Law System of India

The conception of human rights is of central importance in the development of modern democracy under rule of law. Humane governance of civil society could be the reality only when Dharma, rich in its content, is applied justly. Integration of human rights, social justice, equality and gender justice are necessary for social integration in an inclusive democracy so that the full potential of all individuals and to constantly improve excellence individually and collectively, which is a fundamental duty, benefits the nation. Equality and humane treatment of all sections of the population is an essential component of justice. Human development, together with ensuring and enjoyment of human rights, would be the surest way to build a cohesive society and integrated 'Bharat'. Law is a social engineering to help the citizens. Unless they improve their thinking process, human rights spirit and human rights culture, casting aside the caste, communal, regional, linguistic or religious bitterness and distrust in favour of ushering in a just and humane governance in participatory democracy unity will remain a pious platitude. Distributive justice must be a part of inclusive democracy for humane governance. Dharma defined in its widest connotations inculcates the spirit of participatory democracy among the people and provides the hindsight to rid of narrow prejudices to pave the way for fraternity diglot pluralistic society.118

Though the concept of "Recognition of Human Rights" has its deep roots in ancient system of world, as well as in Indian history. But After 2nd

world war, drastic changes occurred at the international and as well as at the national levels of various countries. Because after 1945, many International Declarations, Conventions and Conferences were held and they defined the different form of rights for "Human Beings" and also for "Different Groups of people." Some of such most important instruments and their related themes are as under;

**(3.5.1) Universal Declaration of Human Rights, 1948**

Art.-1 declares, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Art.-2 declares, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

Art.-16 declares, "1. men and women of full age, without limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution....."

Art.-18 declares, "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or
private to manifest his religion or belief in teaching, practice, worship and observance."

Art.-22 declares, "Everyone, as a member of society, has the right to social security and is entitled to realisation through national effort and international co-operation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

(3.5.2) International Covenant on Civil And Political Rights, 1966

Art.-2(1) states, "Each State party, to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national, or social origin, property, birth or other status."

Art.-2(2) states, "Where not already provided for by existing legislative or other measures, each State party, to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

Art.-3 states, "The State parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil political rights set forth in the present Covenant."

Art.-26 states, "All persons are equal before the law and are entitled without any discrimination to be equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and
effective protection against discrimination on any ground such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status."

Art.-27 states, "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use own language."

(3.5.3) International Covenant on Economic, Social And Cultural Rights, 1966

Art.-2(2) states, "The State parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Art.-3 states, "The States parties to the present covenant undertake to ensure the equal right of men and women to enjoyment of all economic, social and cultural rights set forth in the present convenant."

(3.5.4) International Convention on the Elimination of All Forms of Racial Discrimination, 1966

Art.-2(1) promulgates, "States, parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
(a) Each State party, undertaken to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public institutions, national and local, shall act in conformity with this obligation.

(b) Each State party undertaken not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State party, shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division."

Art. 2(2) promulgates, "States parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved."
(3.5.5) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

Art. 2 mandates, "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
(g) To repeal all national Penal Provisions which constitute discrimination against women."

Art. 3 mandates, "States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of
women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."

(3.5.6) UN convention on the Rights of the child, 1989

Art. 2(1) mandates, "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

Art. 4 mandates, "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

Art. 27(1) mandates, "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."

(3.5.7) Declaration on the Right to Development, 1986

Art. 2(2) declares, "All human beings have a responsibility for development, individually and collectively, taking in to account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development."
Art. 2(3) declares, "States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from."

Art. 6 declares, "(1) All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

(2) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

(3) States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic social and cultural rights."

Art. 8 declares, "(1) States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

(2) States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights."
(3.5.8) Declaration on the Elimination of All Forms Of Intolerance and of Discrimination Based on Religion or Belief, 1981

Art. 4(1) declares, "All states shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedom in all fields of civil, economic, political, social and cultural life."

Art. 4(2) declares, "All states shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter."

(3.5.9) Declaration on Rights of National or Ethnic, Religious and Linguistic Minorities, 1992

Art. 2 declares, "1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the region in which they live, in a manner not incompatible with national legislation.

4. Persons belonging to minorities have the right to establish and maintain their own associations."
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties."

Art. 4(1) declares, "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law."

Art. 4(2) declares, "States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards."

(3.5.10) Some other related International Instruments

(3.6) General Observation

Looking to, and while observing and understanding above mentioned parts of different Declarations and Conventions and taking into account the moral and objects of all above international instruments, it is very clear that, all of them advocate for the equal rights and equal opportunities for all. They also emphasise on respecting and promoting common brotherhood and developing concept towards respecting rights of others. One principle is common in all above international instruments that is, "Providing Equal Protection of Law to All."

None of the above mentioned international instrument provides, declares or promulgates that, minorities would have different personal laws and they would be entitled to enjoy different set of personal laws, according to which their civil issues would be decided. India has shown its deep concern and respect towards the international instruments of Human Rights and has always tried to fulfill the international standards, by enacting different laws and orders. Whenever found necessary, India has passed and enacted special laws to fulfill the theme of international instruments of Human Rights.

But existing Personal Law System of India, can not be said to be as per the terms and standards of these international instruments. In fact, it is completely against the view of the international standards of equal human rights. On many instances, personal law system of India, is criticised worldwide. No doubt that some of the above mentioned Declarations and Conventions advocates for providing safeguards to religious and linguistic minorities by protecting their identity, but in no way they show the desire that, it is necessary to provide different set of personal laws to different religious minorities and it is essential for their development.
While the making of Constitution of India, founding parents of the Constitution, gave due weightage to the essence of the Universal Declaration of Human Rights, 1948 and many of the Arts. of this declaration were incorporated in the Constitution of India, in form of fundamental and Constitutional rights. Several of them were incorporated under part IV, "Directive Principles of State Policy." But there is no any such development in personal laws except the personal laws for Hindus which is near about totally changed to meet the need of the changing times. Whatever may be the reason but other personal laws are given little effects so far, but such amendments have not brought any material change.

If the Legal system of India, really claims that, it has given due respect and weightage to International Human Rights Instruments, it requires to enact an equal and common set of personal law- a UCC for all. Enacting of UCC will neither create any contradiction and nor will do any injustice to any religious minorities because, it will not be in contradiction, but in obeyance of the "Equal Protection of Law to All."

Applying a same set of personal law to all, irrespective of religion, caste and creed is not something which can cause or prohibit, religious minorities from exercising any of their rights, relating to their culture, ethnicity, identity or incredibility. But it will work to provide them equal protection of law, which in no circumstance will demolish any of the rights related with their religions. It is something about "Balancing the Rights" and not, "Disturbing the Rights." 21st Century is recognized as the "Century of Human Rights." But India can not claim that legal system of India has worked to provide equal rights to all.