Inquiries into the personal laws bereft of the historical development of the concerned communities will be extremely inadequate as they may not help the researcher to identify the laws' real source. In this view, the origin and development of Christian law in India has not so far been adequately gone into. Keeping in view the importance of such a study calling for an exploration of the origin and development of the Christian community and its branching out in India as a prelude to the inquiry into the Christian laws, the history of the community in India was examined and the present study indicates that Christianity in India has a diverse origin in different parts of India. And this diversity has resulted in the development of different systems of personal law for different sects among them.

At present Christians in India constitute a minority but their numerical strength is not negligible. Yet they have not been able to act as an influential group either socially or politically. Their legal problems
therefore do not get adequate attention from the State. There are different denominations among the Christians in India. And, there are differences in the laws applicable to them. Mainly five main systems and other sub-systems of law applicable to them can be identified, ranging from patriarchal to matriarchal systems, and there is no underlying uniformity in these matters. The reasons for the differences as mentioned above could be attributed to the peculiarities of the origin and development of the community in India.

In fact, in the ancient past, the Christian communities, by and large, followed the customary practices of their Hindu brethren. But with the advent of the westerners, their customs and laws were subjected to pressure for change.

Practically, the western influence brought about friction and conflicts in the community. These conflicts gradually led to divisions in the community, some showing flexibility in adjusting with the foreign law, some holding on to their age-old customs. In
the latter divisions neither the Church nor the legislature could come any way near the doorstep of the customary law regime. The community in the North East India is an example of this phenomenon.

In the former divisions indeed the statute law could steal itself into the territory of customary law. However, the influence of customs on such divisions is so strong that in spite of the application of statute law effecting changes in customary practices, the community could afford to ignore the statute law.

Customs relating to marriage, divorce and succession being inextricably associated with Church, traditionally the authority of the Bishops and the Ecclesiastical Institutions over their faithful in such matters was unquestionable. However, this 'state of affairs' could not continue. The social changes and developments that swept away the community off its feet have overturned the position and the liberals in the community inspired by the changes elsewhere could bring in some statute law to govern the arena traditionally held by the customs. This situation has given rise to
a series of conflicts resulting in the erosion of the authority of the Ecclesiastical Institutions. Perhaps, these conflicts could have been avoided had there been an attempt to examine the historical development of the legal concepts.

The history of reception of canon law concepts in different parts of India throws some light on the differences in the personal laws applicable to Christians in India. So far as the canon laws' reception in Kerala is concerned, it is seen that canon law reached the Malabar coast from Rome, travelling through Mesopotamia and Portugal, much before the advent of the British in India. The Canon Law thus received in Kerala retained its pristine purity whereas the canon law received in British India was tinged with English legal concepts. It was different from the original as at the time of Reformation canon law in Britain underwent a metamorphosis signifying the acceptance of merger of the State and the Church. This change required that any change in canon law was to be brought out with the approval of the State. In this process of synthesis
the dividing line between canon law and State law got practically obliterated. And it was this canon law, as submitted above, which got into the rest of India ruled by the British.

It is in these circumstances that we find today that the earlier British Indian laws like the Indian Divorce Act, 1869, and the Indian Christian Marriage Act, 1872 came to contain the spirit of the English canon law of the Church of England. And the introduction of the English canon law through statutes has been effected by a gradual and indirect process.

The peculiar circumstances, under which statute law came to be applied to certain Christian communities which showed willingness to assimilate foreign concepts, show that mostly they were brought as supplementary to the existing customary practices. Some were brought as laying down procedure rather than as substantive law. The Indian Christian Marriage Act, 1872 is in point. Some were brought as legislation incorporating provisions of the customary or Church law
as is the case with the Indian Divorce Act. This Act also spread the carpet for English legal concepts to get into the body of our law. *Status quoism* being one of the characteristics of the Indian legal system, our courts still follow these concepts though their validity had been questioned in England resulting in their abolition.

To elaborate, the Indian Divorce Act is not a comprehensive legislation. It is only an amending Act, following the English law of its times- the Matrimonial Causes Act, 1857- which too was an amending Act. Under Section 7 of the Indian Divorce Act, 1869, the Courts in India are to act and give relief on principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief. It is interesting to note that this English Court in turn had to exercise its jurisdiction on the principles and rules of the Ecclesiastical Courts in England, (ie, in accordance with the principles of canon law) by virtue of section 32 of the Supreme Court of Judicature (Consolidation) Act, 1925 of England. As has been pointed
out, England has since moved far away from this position, and yet the Indian Courts are to look for principles and rules that lay buried deep in the English soil. And the attempts made by the civil courts in India to break the shackles of English law, without the authority of legislation, make matters worse.

The applicability of different systems of law in different areas and to different sects in the same area has frequently created confusion and at times conflicts. Of these the conflicts between the State Law and the Church Law have often come up before the Courts which in turn show the tendency of favouring State Law. Running through all these conflicts is the apparent sex discrimination in Christian laws on marriage, divorce and succession.

At this juncture it is to be noted that, as said earlier, in Kerala it was the original canon law that was in existence and as such there was no scope for application of the Indian Divorce Act, 1869 carrying the pride and prejudices of the Victorian England. Still
It came to be extended to that area also as there was no provision of law enabling the Christians there to effect divorce and none objected to it in the particular historical context when British Indian legislation was considered to be a right model.

As regards the law of marriage and declaration of nullity of marriages, conflicts have often come to the fore in the Kerala High Court. After some uncomfortable decisions, in Leelamma’s Case, a balance between personal law of Catholics and the civil law in the matter of declaration of nullity of marriages was struck. And this decision was in tune with the decision of the Supreme Court in Lakshmi Sanyal. Following the precedent established by the English Matrimonial Courts, permanent alimony was also ordered in Leelamma’s Case even after a declaration of nullity of the marriage. This was indeed a progressive approach. And, having

1. See supra Chapter III, n.53,59,71 and the accompanying text.
2. See Ibid. n.69,122,168 and the accompanying text.
3. See Id. n.123 and the accompanying text.
regard to the historical development of law it was also the correct approach. However this was not allowed to reign too long. The ratio of Leelamma was overturned by a Full Bench of the Kerala High Court in George Sebastian's Case and thus the Court put the clock back again. At present the issue is before the Supreme Court which is yet to render a decision.

With regard to the grounds of divorce, there is apparent discrimination against women and this view is shared by both the community and the Law Commission of India. Yet, the Supreme Court in Anil Kumar Mahsi's Case examined the question of discriminatory aspects of the grounds of divorce available to Christians under the Indian Divorce Act, from the view point of a Christian husband and held that Section 10 of the

4. See Id. n.71.
5. See supra Chapter VI, n.19 and 77-79 and the accompanying text.
6. See supra Chapter IV, n.115 and the accompanying text.
7. See Ibid. n.88 and the accompanying text.
Act is not discriminatory and hence is not violative of Article 14 of the Constitution of India. Perhaps the Court has taken it as protective discrimination in favour of women. At any rate, this question was not examined by the Court from the standpoint of a Christian woman. Though this question is yet to be settled by judicial decisions, public opinion as elicited in a survey favours a thorough reform of the law applicable to Christians in India. 8

In view of sex discrimination writ large on the various provisions of the Indian Divorce Act as rightly adverted to by the Law Commission of India in its 90th Report, one wonders how the Supreme Court, in Anilkumar Mahsri's Case9 arrived at its conclusion that Section 10 of the Indian Divorce Act, 1869 is not violative of Article 14 of the Constitution of India.

Indeed, a Full Bench of the Kerala High

8. See supra n. 103 of Chapter VI and also see supra n. 108 of Chapter V and the accompanying text.
9. See supra Chapter IV, n. 88.
Court has in *Mary Sonia Zachariah* ruled that Section 10 of the Indian Divorce Act is discriminatory to women. It has therefore struck down a clause of Section 10 of the Act. Though the intention of the Court was to eliminate discrimination against women, after its striking down the objectionable clause, Section 10 stands, it is argued, discriminatory to Christian husbands after the said decision of the Full Bench.

The rum part of the present law is that whenever a "guilty" woman is granted the decree of divorce or judicial separation she becomes entitled to maintenance/alimony as she would be deemed to be a "wife" within the meaning of Section 125 Cr.P.C. But in the event of declaration of nullity of marriage, the woman is left high and dry, as she is not entitled to

10. See supra Chapter IV, n.117-126 and Chapter VI, n.31(a)-31(d) and the accompanying text.

11. See supra Chapter III, n.164-167 and the accompanying text.

12. See Ibid. n.168-170 and the accompanying text.
get alimony or maintenance. This calls for an amendment of Section 125 Cr.P.C as well.

The discrimination inherent in the Indian Divorce Act is not to be seen in the case of application of the Portuguese Civil Code and the French Civil Code in India. This has been achieved because of the flexibility of these Codes to accommodate the personal laws on marriage, nullity of marriages and divorce. It is seen that the Portuguese Civil Code as applicable in Goa has recognised the personal law and its procedure. Further, in the case of civil marriages also, the law in Goa is not gender discriminative. This is not to say that the laws in Goa are without any blemish. But, at any rate, those laws are far ahead of the English law as applied in the rest of India, in matters relating to marriage, divorce and succession.

In fact, in matters relating to intestate succession, Christian women were in a more disadvantageous position. Inspite of the provisions of law in these areas, the community more or less got adjusted to the modern
concepts of equality between the sexes, notwithstanding stray and exceptional cases. It was in this background that the Supreme Court handed down its judgment in *Mary Roy's Case.* In an attempt to give a fair deal to Christian women, the Indian Succession Act, 1925 was extended to the Part B States and the Supreme Court construed the provisions of the Part B States (Laws) Act, 1951 in such a manner as to enable Christian women to demand equal treatment in matters of intestate succession. Notwithstanding the good intentions, the decision in *Mary Roy* has opened up a Pandora's box. Instead of settling the problems, it has created more problems for the community by way of unsettling many arrangements made under the earlier custom. It has thus created a storm, uprooting many families, throwing their settled arrangements out of gear.

The Indian Succession Act also signifies gender discrimination. Unfortunately the Supreme Court has not appreciated this fact. Before making its provisions

13. See supra Chapter V. n.1.
14. See Ibid. n.51.
applicable to the areas of the Part B States, neither the Legislature nor the Court undertook a comprehensive evaluation of the historical origin and the social reasons for the development of the law of Christian succession in various parts of India. The Court has also not examined the implications of the application of Indian Succession Act to the Kerala Christians who showed the courage and wisdom to go for a separate legislation when the Indian Succession Act was in the Indian Statute Book. Quite naturally, the aggressive application of an inherently discriminatory law in the Kerala context has created more problems than it could solve. The Indian Succession Act needs toning up to be in tune with the mores of the community placed at the threshold of the twenty-first century. And further, the decision raised the question of the legitimacy of the Court in going for a policy decision, which should have been done by the legislature after giving careful attention to the pros and cons of all the aspects of the matter. At any rate, the decision of the Supreme Court in Mary Roy's Case stands on quicksands. And the attempt to remove the
difficulties arising out of the Supreme Court's decision by the Travancore-Cochin Christian Succession (Revival and Validation) Bill, 1994 proposed to be enacted in Kerala State has not been in the right direction either. What is necessary as a stop-gap arrangement is only a Bill for validation of past transactions and not a revival of the earlier law. And the Bill ought to contain a safety valve to allow those women who really want to agitate for their rights, a reasonable time to do so, within a specified time from the enactment of the Bill into law, before a designated Court.

In the matter of succession, the French Civil Code as applied in Pondicherry is also gender biased. At any rate, the provisions of the French Civil Code are not as discriminatory to women as the Indian Succession Act, 1925 is. A comparison of the provisions of the Indian Succession Act, with that of the Portuguese or French Civil Code also indicates that it is the English law under the Indian Succession Act that is more discriminatory.

15. See supra Chapter II, n.162.
towards women and it is that law, that is acclaimed by many as egalitarian, without making a comparative evaluation.

In short, the Indian Divorce Act, 1869, the Indian Christian Marriage Act, 1872 and the Indian Succession Act, 1925 contain a good number of provisions that are discriminatory towards Christian women. This is violative of the constitutional mandate under Articles 14 and 15 and hence there is urgent need for a thorough reform of the law in these respects. There are other areas of family law such as the law of adoption and guardianship governed by customary practices—still remaining in the most unsatisfactory stage. All these call for urgent legislative intervention.

As a consequence of the realisation of discriminatory aspects in the law of marriage, divorce succession etc. an attempt has been made by activists and social reformers to initiate a move for reform of the law. Though the attempt towards this end has been
carried to the stage of drafting a bill and it has been submitted to the Government of India after consultations at various levels among the various denominations of Christians in India, the complexity arising out of the diversity of historical origin and development of the different denominations have not been properly comprehended and for the problems arising therefrom, no solution is seen suggested or made in the bill.

Piece-meal legislation is not the answer to the problems facing the Christian communities. The efforts towards legislation made by both the official and non-official agencies, have not emanated from a comprehensive study of the subject; nor did the courts explore the matter deep before handing down judgments.

Fresh legislation is the only answer to the problems faced by the Indian Christian Community crushed under the archaic laws that embody the philosophy of a bygone century. The question that looms large before the legislator is as to what type of legislation is

16. See supra Chapter VI, n.28.
desirable. The Constitution of India mandates the state to endeavour to secure for the citizens a uniform civil code throughout the territory of India.\textsuperscript{17} Hence it would be useful to look into the views of the proponents of a uniform civil code. Almost all possible arguments were taken against the inclusion of Article 44 in the Constitution and they were all rejected by the Constituent Assembly before Article 44 was adopted by a motion.\textsuperscript{18} But even after 47 years of independence, the Constitutional goal remains a mirage.

As far as the Christian community in India is concerned, they do not appear to be against the enactment of a uniform civil code as it may not make any difference to them.\textsuperscript{19} It is described that the battle for a common civil code is a battle of the tenses, the present

\textsuperscript{17} See Article 44 of the Constitution.


representing the spirit of secular humanism, pushing into submission the past representing feudal-clerical absolutism. Yet many aspects are being relegated to the past, but the law and the legal system have substantially remained the same failing to incorporate the spirit of secular humanism into the system.

There is no uniformity even in the existing Hindu Personal Law because it allows variations in matters such as divorce or adoption on the ground of custom. Excessive emphasis on uniformity is therefore unwarranted and undesirable. A uniform civil code will have to evolve


21. See for example §29(2) of the Hindu Marriage Act, 1955. It enacts:

"Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnised before or after the commencement of this Act".


through a gradualistic approach. The emphasis should be on social justice rather than on uniformity. And gender justice is more a constitutional mandate under Articles 14 and 15 than the mandate under Article 44 of the Constitution.

Following this line of approach, the laws relating to Christians in India should be reformed and secularised and it would be unrealistic and unjust to wait for the evolution of a uniform civil code. Therefore, urgent attention can be and ought to be turned to the reform of Christian personal law in India. This mandates us to take into account various issues. Among Christians in India there are various denominations. The denominational differences are such that these denominations may be poles apart on certain issues. A practical approach on the lines adopted in Section 29(2) of the Hindu Marriage Act can be made in the case of

23. See supra n.22.
Christians as well. This seems to be unavoidable from the fact that there are regional, cultural and dogmatic divergences among Christians in India and the Church has not interfered with many a customary practices that are not against the basic teachings of the Church.

The efforts made in the past for reformation of the law by way of legislation has not been a success, for various reasons. Most of these efforts were not on proper lines. The half hearted, half-baked legislative proposals has had more religious overtones. What is necessary is a more secular law in tune with the times and in accord with the constitutional mandate. Once the laws applicable to Christians are reformed on the basis of justice and gender equality, it would be a step forward to the establishment of a uniform civil code. As welfare of the citizens is the most important concern of the "State", it is mandatory for it to live up to the expectations of the people as otherwise it would be failure of the "State" and the very purpose of existence of the "State" would not be then justified. Therefore, the
wisdom shown by the Maharaja of Travancore can be emulated by appointing a Christian Committee representing the various systems and sub-systems of different regions of India and thrash out their differences for the common good and enact a uniform civil code for Christians in India.