

## PREFACE

The issue of the personal laws vis-a-vis uniform civil code is entangled within the polemics of identity politics, minority rights, women's rights, national integration and uniform citizenry. Champions of each category view it through their own prisms, making the debate extremely complex, more so in a plural and noisy democracy like India. The existence of different religious communities and personal laws in India is viewed as a major hurdle for achieving the constitutional goals of gender equality. Nonetheless, much of the controversy is because of the reason that the status of personal laws under the Constitution of India is ambiguous and requires clarity. Unless and until the position of personal laws under the Constitution becomes clear, the controversy surrounding the personal laws will continue to exist. Time and again the Parliament of India has put in efforts towards bringing changes and reforming the personal laws. However, the steps taken so far have proved to be inadequate. Right to equality and prohibition on the discrimination of sex, religion etc; are the two important fundamental rights besides other rights guaranteed by Part III of the Constitution of India. On the other hand differing rights is provided to people under their separate personal laws. There is no uniformity in terms of enjoyment of these rights under different personal laws recognised by the state and being followed by different communities in India. Under the personal laws both men and women have differing rights in matters concerning marriage, inheritance, divorce etc. The women have fewer rights compared to their male counterparts. There exists inequality between the sexes under the separate personal laws irrespective of the fact that the Constitution clearly guarantees 'equality to all' without any discrimination. Also the controversy with regard to personal laws has arisen because of the reason that its status under the Constitution is not clear.

Therefore, unless and until the position of the personal laws within the framework of Indian legal system is made clear as to whether it is 'law' or 'law in force' or a custom having the 'force of law', the personal laws will continue to remain a controversial issue. Since the personal law is excluded from the definition of 'law' under Article 13 thus, it was placed beyond the Constitutional scrutiny. The implication of this is that the constitutional principles cannot be invoked to scrutinise the personal laws irrespective of their discriminatory content. However, there are instances where the statutes relating to personal laws had to pass constitutional scrutiny and tested on the anvil of Article 13.

Time and again whenever controversy surrounding personal laws came to the forefront there has been a huge demand for the implementation of a secular uniform civil code. Amid such a situation where the status of personal laws is not clear under the Constitution of India and the lackadaisical attitude of the Parliamentarians on the issue of personal laws, the judicial approach towards the said issue become pertinent to discuss. The judiciary have been proactive and in many cases Judicial Activism has addressed matters of personal laws. However, they have been conflicting judgements of the courts on the status of personal law i.e. ‘whether or not Part III of the Constitution governs personal laws’.