INTRODUCTION

The most ancient of any known system of jurisprudence is Hindu Law, broadly speaking is the aggregate of duties and obligations-religious, moral, social and legal. Hindu law, which is concrete legal system, is a matter of positive law. In the present context, the right and obligations of a Hindu are determined by Hindu Law which is his traditional law, also called the law of his religion or personal law subject to the exception that any part of the law may be modified or abrogated by the statute.

According to Medhatithi, law as understood by the Hindus is a branch of Dharma, as expression which signifies duty. There is a fictional concept which suggests that Hindu Law originated from the Vedas, also called Shruti, however, Hindu Law emanated from books called Smritis e.g. Manusmriti, Yajnavalyka and the Smritis of Vishnu, Narad, Parashar, Apastamba, Vashist, Gautam etc.. Later, commentaries which were called Nibandhas or Tikas were written on these Smritis e.g. the commentary of Vijnaneshwara, Jimutvahana, Nanda Pandit etc. Commentaries were then written on these commentaries e.g. Viramitrodaya. Originally, law was customary law. However, the problem with custom was that it was often vague and uncertain. Hence, textbooks were required to deal with the subject and this requirement was fulfilled by the Smritis and Commentaries. Thus, the study of such a developed legal system initiates a critical and analytical examination of its fundamentals and concepts along with the practical details which together form the content or body of the law.

The growth of Hindu Law was a slow and steady process, displacing the old and obsolete rules, by growing usages and customs. However, the growth was retarded under the British rule. The Britishers with their intelligence expounded and elucidated the complicated unfamiliar laws and laid down rules in their own unique style. Under their guidance the customs and usages outweighed the written text of law. The establishment of usage required that it was ancient, certain and reasonable. Gradually, judge-made laws started responding to the changing needs and circumstances. At that point of time, codification seemed to be the remedy as it would be
comprehensive legislation. The question of codification remained a matter of debate for more than a century.

A Hindu Law Committee was appointed in 1941 to examine and prepare a comprehensive code for the Hindus. The Committee recommended that it should be codified in gradual stages and a uniform code of Hindu Law is to be evolved which would blend the most progressive features of the various schools of law which prevailed in different parts of the country. As such the Hindu Marriage Act was enacted in May, 1955; the Hindu Succession Act in June, 1956; the Minority and Guardianship Act in August, 1956 and Hindu Adoption and Maintenance Act in December, 1956.

The Hindu Marriage Act enforces monogamy as a rule of law and bigamy is rendered punishable as a crime. The conditions and requirements of a ceremonial Hindu marriage are simplified and the two Hindus, not merely Hindus by religion but Buddhists, Jains and Sikhs as well, can solemnize the ceremonial marriage recognized by the Act. Relief by way of judicial separation, declaration of nullity of marriage and divorce are permissible under the Act.

The norms set up by the Hindu Marriage Act were derived from (a) British law and Victorian notions of the indissolubility of marriage and (b) the hegemonic culture of dominant groups living on the north-western plains of India which were far more repressive than the culture of many other regions and even of the lower status communities in the same region. These were the regions where the devaluation of women was most severe, manifested not only in such phenomena as institutionalized seclusion through various forms of purdah, but also in exaggerated son preference, low sex ratio, high mortality rates of women and girls, low literacy and employment rates and most important, the perception of daughters as an unproductive liability to be got rid of through marriage and sent as far as possible from the native village. Norms and taboos arising from this culture were posited as true for all of India, even though in fact they were not prevalent in many other regions, including most of south India. The most these communities could hope for was exemption - tribals or on grounds of custom and even this was achieved only in a few cases after a long battle.
The old Hindu Law granted women limited proprietary rights and discriminated women on grounds of sex in the matter of intestate succession to the estate of the parents or the husband. The Hindu Succession Act, 1956, improved the rights of Hindu women but had some features which were discriminatory in nature. The Act also provided women her right to stridhan. Although the Act did not entitle daughter to inherit in the coparcenary property but she could inherit equal share similar to her brother from the interest or property left behind by her father in the coparcenary property. The Supreme Court through its various judgments recognized the right of the mother in the coparcenary property equal to her son.

The retention of the Mitakshara coparcenary meant retaining a large part of earlier Hindu Law which discriminated against women. The assumption that daughters must go out of the family on marriage and cease to be full members of their natal family was at the root of all inequities. The list of heirs being different for a male and a female, with a woman’s in-laws figure nowhere at all in his list of heirs. The provisions denying a married daughter the right to residence in her parental home unless widowed or deserted and denying any daughter the right to demand her share in the house if occupied by male family members. Father’s right to will away his interest in the coparcenary property in favour of his sons and discriminating against daughters and even traditional female heirs such as a widowed daughter-in-law.

The new Succession Act breaks from the past but has to concede its characteristic of the age which is one of great ideals and fast changing theories. The Act lays down a uniform system of inheritance for the whole country and lays down some simple rules relating to succession of the property of Hindu male and female. Now, male and female heirs are treated as equals without any distinction.

By the codification of the Hindu Marriage Act and the Hindu Adoptions and Maintenance Act, the right to maintenance includes all the necessaries of life such as food, clothes and shelter. This obligation is created by the outcome of legal relationship. Under the reformed law the amount of maintenance granted to a wife is left to the individual judge’s discretion, though it cannot exceed one-third of the total income. One of the biggest hurdles in the way of getting a fair maintenance is that the burden of establishing the husband’s income and
The Hindu Adoptions and Maintenance Act, 1956, is a weird mixture of British adoption law with one kind of Hindu adoption, "dattaka". The dattaka form of adoption required a ceremony of giving by the natural parents or guardians of the child and taking by the adoptive parents. The Act retained irrational anomalies as not allowing a person to adopt a son if he already has a natural or adopted son, not allowing adoption of a daughter if there is already a natural or adopted daughter and restricting the number of adoptions to a maximum of two - one boy, one girl. The present Act has accepted a secular object of adoption. The Act does not provide for the performance of any religious ceremonies at the time of adoption.

Article 44 of the Constitution contains the directive principle for providing a uniform civil code. This directive principle needs to be interpreted in consonance with the spirit of the constitution. The expressions 'uniform' and 'common' are often used interchangeably but they are two different connotations. The word 'uniform' in Article 44 means that all communities must be governed by uniform principles of gender justice and human justice. It must be interpreted in conjunction with Article 14 of the Constitution which guarantees equality before the law and equal protection of the law. To attain this goal, the inner meaning is to be evaluated and brought forward. The Constitution -makers did not mean a single law for all but provided scope for reform of each personal law so as to weed out gender injustice and outmoded traditions and practices. Revision of the personal laws will ultimately take us towards a uniform civil code.

The research intends to aid in planning which contributes towards developing a socially stable nation. The findings helps us in disseminating and creating general awareness of the current situation and problems faced within society which will inspire public to participate in formulations and implementation of rational, progressive, protective improvemental measures.