

“Examining the Changing Dynamics of Personal Laws in India: With Special Reference to Uniform Civil Code”

Krish Parashar
NMIMS Kirit P. Mehta School of Law

ABSTRACT

This paper primarily talks about the *concept of the Uniform Civil Code* and its *legal dimensions*. In this paper, the basic essence of the Uniform Civil Code is examined and what does it mean and its legal perspective and theories.

This paper commences with the *introduction* to the Uniform Civil Code in which it defines the concept of the Uniform Civil Code and also discusses about *its origin* or where it is derived from. It further discusses *the need or desire* for the Uniform Civil Code under this part itself, that whether the Uniform Civil Code should be implemented or not and *what are the Arguments made For and Against it*.

As we further proceed towards the approach of the research paper, this paper discusses about the *relationship of the Uniform Civil Code with the Secularism* and discusses *how the implementation of the Uniform Civil Code may lead to the disintegration of the nation* and how this will lead to the *breakdown of the peace and harmony* among the people.

Then, it further discusses the questions which are *still unanswered* about the Uniform Civil Code which would come into existence someday. Last but not the least, this paper concludes with certain sets of *recommendations and conclusions*.

Key words: Diversity, Unity, Disintegration, Directive Principle of State Policy.

REVIEW OF LITERATURE

The debate here is if the UCC governs all people, irrespective of their religion, does it supersede the right of citizens to be governed under different personal laws based on their religion or ethnicity? (*Choudhary*) A bill on the uniform civil code was introduced in the Indian parliament. But it never became an Act due to oppositions. One of the grounds on which the objection was raised was that Islam does not recognize adoption, and hence, it would be violative of Article 25 of the Constitution which provides the right to practice and profess any religion. However, Art. 25 protect only such practices which are essential and integral part of any religion. The custom of adoption was prevalent even in pre-Islamic Arabia. Article 38(2) clearly tells that the State should strive to eliminate any inequality. Hence, a Uniform Law will only strive to eliminate the unequal status of a child adopted by a Hindu and a child adopted by a non-Hindu.¹

¹ Choudhary, Vaibhav: “A Proposal for Uniform Civil Code for Law of Succession in India.” *SSRN Electronic Journal*, 2010.

(*Sharma*) This book explores the interplay between the issues of law, culture, and religion International Journal of Pure and Applied Mathematics Special Issue 4685 in light of the various intra-community and inter-community disputes. A series of guidelines and considerations have also been proposed. (*Shetreet and Chodosh*) The author feels that the Uniform Civil Code has been kept unattended since long which has made India suffer. Hence, this article discusses the need for the same. (*Hazarika*) In this book, the author is of the opinion that uniform civil code is an ignored concept which must be revived and debated upon. The author insists that it is high time that importance is given to the uniform civil code and a path is crafted for the same.²

(*Ratnaparkhi*) This book deals in depth regarding the constraints in implementing a uniform civil code in India and why it is still a foreign concept. He speaks in detail regarding the challenges in the implementation of the same.³

(*Kumar*) In this book, the author proposes steps for a successful implementation of a uniform civil code and how it can be done so without disrupting peace and causing riots. (*Dhagamwar and Indian Law Institute*) In this book, the author draws a comparison between the uniform civil code and the Hindu and Muslim personal laws.⁴

INTRODUCTION

"Diversity may be the hardest thing for a society to live with, and perhaps the most dangerous thing for a society to live without."

Religious diversity ***forms the basis*** of the contentious debate of the Uniform civil code in India. At a time when the risk of religious extremism and polarisation of opinions runs high, are our representatives ***up to the task*** of unifying us through a Uniform civil code? Most of our notions about this discussion are framed by court judgements and party manifestos, however, this issue does not centre only on one or two religions. There are ***countless multiplicities*** to be involved and considered when an ***all-encompassing*** law such as this is to be made.

UNIFORM CIVIL CODE basically, precisely and in a lay man's language means one country one rule. Legally the term civil code means to cover the entire body of laws governing rights relating to ***property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance.***

Uniform civil code essentially means unifying all these "personal laws" to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. However, ***an exact figure has not been painted yet*** but though the exact contours of such a uniform code have not been spelt out, it should

² Sharma, Sharda Girijesh: "Uniform Civil Code and Adoption Laws in India." SSRN

³ Ratnaparkhi, M. S. Uniform Civil Code: An Ignored Constitutional Imperative. Atlantic Publishers & Dist, 1997.

⁴ Kumar, Ajai. Uniform Civil Code: Challenges and Constraints. 2012.

presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde.

In India, we have a criminal code that is equally applicable to all (*certain exceptions in the North-East exist*), irrespective of religion, caste, gender and domicile. However, a similar code does not exist especially with respect to divorce and succession and we are still governed by the personal laws. These personal laws are varied in their sources, philosophy and application.

Thus, a major constraint arises while bringing people governed by different religions under one roof.

“The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.”⁵

Though **Dr. B.R. Ambedkar** was an extensive supporter of the Uniform Civil Code, he couldn't get it through more than a status of **Directive Principle** due to opposition from the members. This directive principle is aimed to achieve, gradually, rather than at once having far-reaching equality for all citizens. The state has been entrusted with this voluminous task.

However, no significant steps have been taken by any government till now. Apart from **secularism in India being an issue**, this became one of the most controversial topics in contemporary politics during the Shah Bano case in 1985. The debate then focused on the Muslim Personal Law, which is **partially based** on the **Sharia law** and remains unreformed since 1937.

HISTORY

Before jumping straight to the Research problem, Lets go back in time and understand the genesis of fundamental rights and DPSP enshrined in the Part 3 and 4 of the Indian Constitution respectively. the National leaders and makers of our constitution made promises about the rights that the citizens of free India should get. These rights not only included **civil and political** rights but also **social and economic rights**. However, when India got its long overdue independence, it was not feasible to grant all the rights but at the same time they didn't want to go back on the promises.

Therefore, a **subcommittee on fundamental rights** was appointed and they suggested that rights should be divided into two categories:

1. Some rights could be granted **immediately**.
2. The others **may be granted in future**, if and when the country was in a position to grant them.

The former one came to be known as fundamental rights and the latter one as Directive principle of state policy.

⁵ Article 44 of Indian Constitution.

What the author would understand from above is that Uniform Civil Code was put into the DPSP because it was not feasible in India at that time and there is a reason it may still not be feasible in India at this stage.

With the **42nd amendment** passed by the parliament of India in 1976, preamble of India was changed from;

- Sovereign democratic republic to
- Sovereign **socialist secular** democratic republic.

Secularism, in its literal terms, means that state has **no religion**. It literally means neutral and impartial towards any religion. The constitution has chosen secularism as its vehicle to establish an egalitarian social order.

It is argued and believed by some that implementation of a Uniform Civil Code is just going to **bring social unrest** in the nation. Today India take pride in saying that it has the strongest democratic setup in the world and it is the **most diversified country** in the world having different culture in every 300 km radius and that is what makes this country beautiful and implementing Uniform Civil Code is nothing but **killing its beauty by attacking the fundamental rights directly**.

ANALYSIS OF THE ARGUMENTS

As of today, there is **no available draft** available for a Uniform Civil code. Therefore, the scope of debates that take place with respect to the legality and feasibility of Uniform Civil Code is very **limited**. The provisions of the Uniform Civil Code are not available and therefore, they have to be assumed for the sake of arguments.

Here are few of the arguments made in support of the Uniform Civil Code along with the counter arguments for the same;

➤ **Argument for:**

1, The laws in India have always been gender biased against women

There has always been a compelling argument that implementation of a Uniform Civil Code is necessary because it will strive to eliminate gender inequalities that exist currently in the personal laws.

- among Muslims, Triple Talaq was an example where men had the power to divorce their wife immediately and the **wife had no power in it**.
- Again, among Muslims, there are discriminatory **laws of inheritance** where a male gets twice the property of female upon the death of parent.

In a Nutshell, **either by custom or any other way**, women are directly or indirectly denied rights and are treated unequally and it is said that it's high time the Uniform Civil Code **should be** implemented in India.

Argument against it:

Firstly, what is to be understood is **women inequality is just one part of personal laws**. It cannot be denied that in the past there has been evident inequality against women but it is argued that we cannot implement Uniform Civil Code on this foundation. Moreover, what is to be understood is that there has been **significant development of the women community** overall.

Old and obsolete laws like triple talaq has been removed⁶ to ensure them equal standing in the marriage. Sati, an atrocious custom was abolished long ago. The most significant fact over here is that these customs, laws were eliminated. A change was bought **internally rather than an external force**.

Also, according to Muslim personal law, legal age to marry for a Muslim was when is when he/she attains puberty but this was negated by **child marriage restraint act,1929**.

Therefore, there has been an overall significant development of the women community. However, this doesn't mean that we have been completely successful in eliminating inequality completely.

➤ **Argument for:**

2.It should be implemented because it is in the constitution.

It is contended that Uniform Civil Code should be implemented because it has a **place in the constitution**. It was Dr B.R Ambedkar vision that personal laws should not be on the basis of religion. It should be equal for all the citizens irrespective of the religion they belong to.

Argument against it:

Law is will of the people. It is contended that there is a reason that Uniform Civil Code was put into the Part 4 of the constitution, it was because people were not ready for it. It is contended that Uniform Civil Code will be futile because it is against the will of the people. An internal change is required rather than an external force like Uniform Civil Code.

To understand this Internal Change, **section 377 of India Penal Code can be examined**. It speaks about unnatural offenses and one of its aspect is homosexual carnal intercourse with consent. It was declared unconstitutional by various courts earlier and **even the people supported the decision**. However, with the advent of time, it was the majority who supported its scrapping and the supreme court scrapped a part of section 377⁷. This serves as an example that law is will of the people.

⁶ Shayara Bano vs Union of India, 2017, 9 SCC 1

⁷ Navtej Singh Johar vs Union of India, W. P. (Crl.) No. 76 of 2016 D. No. 14961/201

UNDERSTANDING UNIFORM CIVIL CODE

SCOPE OF UCC:

1. Marriage
2. Divorce
3. Inheritance
4. Adoption
5. Maintenance (Part of divorce)
6. Religious ceremonies

MARRIAGE

Different legislations according to religions exists such as,

- Muslim Personal Law (Shariat) Application Act, 1937

This act deals with marriage, succession, inheritance and charities among Muslims. The Dissolution of Muslim Marriages Act, 1939 deals with the circumstances in which Muslim women can obtain divorce and rights of Muslim women who have been divorced by their husbands and to provide for related matters. These laws are not applicable in Goa state, where the Goa Civil Code is applicable for all persons irrespective of religion. These laws are not applicable to Muslims who married under the Special Marriage Act, 1954.⁸

- The Indian Christian marriage act 1872
- The parsi marriage act, 1936
- Hindu marriage act, 1955
- Special marriage act, 1954
- Anand marriage act,1909

Under the ambit of marriage, we have;

1. Conditions for marriage
2. Ceremonies
3. Guardianship
4. Restitution of conjugal rights
5. Child custody
6. Alimony and maintenance.

What changes would the uniform civil code would bring with respect to marriages? If one assumes that rituals will be unaffected,

The *dissimilarities between them* could be found out in;

⁸ <https://indiacode.nic.in/bitstream/123456789/2303/1/A1937-26.pdf>

The conditions for marriage

1. Firstly, the *meaning of marriage* is different among the religions. In Islam, marriage is an actual representation of a sacred contract, as mentioned in the Quran, *Surah al nisah, chapter 4 verse 21*, whereas in others such as hindu, Sikhs, Christians, it is more of a *sacred institution*.
2. Mehr is a legal requirement in order to make a muslim marriage valid. It is mentioned in the *Quran, Surah al nisah, chapter 4 verse 4*. It means that the husband has to mention a specific amount, in cash or kind which he gives or promises to give in the future. It is the *right of a muslim woman* and it is *not the same as dowry, maintenance or alimony*. However, *in hindu or Christians we don't have any such concept*.
3. Section 2 of Hindu Marriage Act talks about who can get married under the hindu marriage act and it clearly mentions that only a hindu may marry another hindu. Same is mentioned in the Quran, *Surah al Baqarah chapter 2 verse 221 "don't marry a non-believing woman until she believes and vice versa"*. However, Indian Christian marriage act, 1872, *Part 1 section 4 states that at least one of the two parties must be a Christian*.

Conjugal rights

There are certain rights which the husband and wives have which can be demanded. These are known as conjugal rights, according to the *Section 9⁹ of Hindu marriage act*, if any of the spouse deserts the other along with his/her society without any probable cause or justification, the aggrieved party can file a case in court and seek for restitution of conjugal rights. Now, there is *no such mention in the Shariat application act regarding this*. So, what will be the stand of proposed Uniform Civil Code on this?¹⁰

DIVORCE

In India, as with most personal matters, rules for divorce are connected to religion. Divorce among *Hindus, Buddhists, Sikhs and Jains* is governed by the *Hindu Marriage Act, 1955*, *Muslims* by the *Dissolution of Muslim Marriages Act, 1939*, *Parsis* by the *Parsi Marriage and Divorce Act, 1936* and *Christians* by the *Indian Divorce Act, 1869*. All civil and *inter-community marriages* are governed by the *Special Marriage Act, 1956*. The divorce law works with some conditions and not in all situations. A spouse can initiate to give a legal notice for divorce to the other spouse before ending the husband and wife relationship.

There is divorce by:

1. Mutual consent.
2. Non mutual consent.

⁹ <https://indiankanoon.org/doc/322349/>

¹⁰ <https://www.merriam-webster.com/dictionary/conjugal%20rights>

It is assumed that the proposed UCC won't interfere with the rituals, procedure in which the divorce is taken place among different religions, yet, some things remain unanswered,

According to *the Section 14 of hindu marriage act,1956*, Provided certain exceptions, it shall not be competent for any Court to entertain any petition for dissolution of marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage.¹¹ However, in holy Quran, *in Surah al Baqarah, chapter 2 verse 228-242* talks about divorce and no where there is a waiting period before filing a suit for divorce.

The duration of a divorce by mutual consent varies from *6 to 18 months*, depending on the decision of the court. Usually, the courts prefer to end mutual consent divorces sooner. As per *Section 13B of Hindu Marriage Act, 1955* and *Section 28 of the Special Marriage Act, 1954*, the couple should be living separately for at least one year before divorce proceedings can begin. *Section 10A of Divorce Act, 1869*, however, requires the couple to be separated for at least *two years*. What would be the provision regarding the same?

In Islam, couples can only be *divorced and remarried thrice*.¹² Not more than that. However, there is no limit for Hindus and Christians, will the proposed Uniform Civil Code bring a change or leave things *Status Quo*?

ADOPTION

Largely, *two different laws operate*. Muslims, Christians, Parsis and Jews are governed by the *Guardians and Wards Act, 1890*, as formal adoption is not allowed in these religions. Hindus, Sikhs, Buddhists and Jains on the other hand follow the *Hindu Adoption and Maintenance Act, 1956*.

In the case of marriages, a person is *free to marry* under the personal laws or the special marriage act, 1954, provided that the person is not willing to solemnize his/her marriage under the religion he follows. Similarly, in case of succession, a person, if governed by personal laws and at the same time he is having an option to apply under Indian succession act,1925. Similarly, in case of adoption, a *Muslim, Christian or a Parsi may desire a legal adoption since legally it is prohibited in their religion*.

1. Under the *section 7 and 8 of hindu adoption and maintenance act*, there are conditions mentioned for a *male hindu and female hindu* when it comes to adoption. It is clearly mentioned that a male hindu can only adopt with the *prior consent* of his wife, *a few exceptions exist*. However, under the *section 8(c)*, it is mentioned that a woman, *who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be*

¹¹ <https://indiankanoon.org/doc/205162/>

¹² http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

of unsound mind. there exists a clear bias over here. Now, the question that stands is whether Uniform Civil Code is the solution for *such inequality?*

2. in Islam, there is partial adoption known as *kafala* and in Christianity, there *is no adoption*. Therefore, they have to apply under guardianship under the Guardianship and ward act, 1890. Now, in the 21st century, *they should be given the option to adopt freely*. However, there shouldn't be an *imposition and ideally there should be an adoption statute for them*, but what is to be understood is there exists a concept that is Rule of Law. Rule of law essentially means that *law is greater than men*. However, it has a formula, Rule of Law is *Rule by Law plus general Spirit of the People*. Rule by law is nothing but the *exact law as in verbatim*. It means that a country following rule by law will impose the law on people *no matter how cruel it is*. That is *not how democracy works*. There needs to be a law which is actually supported by the *general consciousness* of the people.¹³

INHERITENCE

When one looks at inheritance laws, there are *two scenarios*, when a person *dies intestate* and when he *dies testamentary*. A person who *dies without leaving a will* is called to *have died intestate* and a person *dying with leaving a will* is called to be *died testamentary*. Considering intestate laws, we have religion-based statutes such as;

1. *For Hindu, sikh, Jain, Buddhist-* Hindu Succession act,1956
2. *For Parsis-* Indian succession act,1925 (section 50-56)
3. *For Christians and Jews-* Indian succession act,1956 (section 31-49)
4. *For Muslims-* The Muslim Personal Law (Shariat) Application Act, 1937

Few of the differences between different personal laws could be pointed out in places like;

1. *If we consider Islam*, in Quran, *Surah al nisah chapter 4 verse 11-12*, the inheritance of a woman is *half* compared to that of a man. Since upon marriage, a woman receives *Mehr, maintenance* after divorce, from husband, as well as *inheritance*, while a man only has the inherited property, it is generally considered among Muslims that the woman should have a *lesser share in the inherited property*. Therefore, Son gets double the property of daughter.

A few examples of the share are;

- Wife without children gets 1/4th property of the deceased husband
- Wife with children gets 1/8th property of the deceased husband
- In case of more than one wife, share diminishes of each wife
- Sister gets 1/2 property than the son
- Mother gets 1/3rd share of deceased son if he doesn't have kids
- Mother gets 1/6th property of deceased son if he has kids

¹³ <https://plato.stanford.edu/entries/rule-of-law/>

2. ***Among Christians***, If the husband leaves behind both a widow and lineal descendants, she will get ***one third the share of his property***, while the remaining ***two-thirds*** will go to the ***descendants***. If there are no lineal descendants, but other relatives are alive, one-half of the property will go to the widow and the rest to the kindred. ***If there are no relatives***, the entire property will go to ***the wife***. A ***daughter*** has ***an equal right as*** her brother to the ***father's property***.¹⁴ She also has full right over her personal property upon attaining majority.

These differences exist among ***different personal laws*** and it will be ***very challenging*** for the Uniform Civil Code to ***bring a balance between these communities*** while keeping in mind the ***sentiments of the people*** and having a ***strong legal backing*** along with it.

THE GOA CIVIL CODE

There is no question that over ***400 years of Portuguese rule*** has left an indelible imprint on Goa. We see the colonial period reflected in its Iberian architectural style and in many of the customs and traditions of its people. Part of this cultural heritage, ***for better or for worse***, depending on one's point of view, has begun to fade over the past thirty-seven years. Today, in a great number of homes and in the academic arena, as a direct result of the Indian government's decision to ***dispense*** with the Portuguese system of education following the conquest of 1961, the Portuguese language has increasingly been replaced by Marathi, Konkani and/or English. While this transformation has been welcomed by many native Goans, it has also created an educational vacuum which is most noticeable in the realm of Law.¹⁵

Perhaps the ***most valuable or most dreadful living legacy*** left in Goa by the Portuguese is a codified system of Law: the Portuguese Civil Code of 1867 and the Code of Civil Procedure of 1939, which encompass the entire spectrum of Civil Law. It is a codification divided into four sections. ***Part I*** contains Articles 1 through 17 delineating the basic provisions of the Code, the most important of which is Article 7, which establishes the principles of racial and gender equality. ***Part II*** further develops these provisions. ***Part III*** deals exclusively and comprehensively with property rights. ***Part IV*** concerns itself with matters of civil responsibilities infringement of rights and their restitution.

In 1962, an enactment of the Indian Parliament, the ***Goa, Daman and Diu Administration Act***, provisionally kept Portuguese civil laws in force in Goa until or unless repealed by the Legislature or another competent authority. Thereafter, with the passing of a number of other Parliamentary Acts pertaining to legislation in areas such as Contracts, Transfer of Property, Easement Rights, Registration and so forth, the corresponding provisions in the Civil Code of Goa have been superseded. Only those provisions in the Civil Code ***pertaining to Family Laws*** and Usages have so far survived incursion. These include the laws appropriate to marriage/divorce, succession, guardianship, property, Torts, domicile, possession, access, and

¹⁴ <https://familymattersonline.info/2014/07/07/christian-inheritance-laws/>

¹⁵ <http://mmascgoa.tripod.com/id12.html>

waterways, among others. However, these laws have *yet to be translated into English*, the language of the new generation of lawyers in Goa, and so, increasingly, the number lawyers and judges conversant with these laws is on the decline, creating a significant impediment in the adequate dispensation of justice.

For the most part, the civil laws currently in force in Goa that pertain to marriage, divorce, protection of children and succession are *non-discriminatory* in terms of *caste, ethnicity or gender*. this is an advantage that does not exist in the rest of India, where the population is governed by Common Law, and in which there exists a lacuna where the protection of the rights of women and children are concerned. Under Portuguese Law, marriage is a contract and the civil registration of marriage is mandatory. There are four different marital options under the law community property, absolute separation of property, separation of assets existing prior to marriage and communion of property after marriage, and total regime. Whenever no express contract was made, the Law of Community Property was automatically applicable. Therefore, marriages that took place under Community Property Law were considered legal and the other three options were considered conventional.

However, since *98 percent of Goan marriages* take place under Community Property law, this is the application most relevant to the discussion. Under Community Property Law, each spouse automatically acquires joint ownership of all assets already in their possession as well as those due to them by inheritance. In other words, the total number of assets (and liabilities) that a couple brings into a marriage come under the purview of Community Property. these assets may not be disposed of or encumbered in any way by one spouse without the express consent of the other. In this way, women are protected under the law by husbands who might otherwise do as they please with the assets. this is a benefit the majority of Indian women do not have. In addition, by virtue of registration of her marriage, a Goan woman is able to establish her rights from the outset, another advantage that women living under the Common Law system to not possess, since registration of marriage is not mandatory and therefore is difficult to prove, if at any time such proof becomes necessary. And in the event of legal separation, a woman is entitled to 50 percent of her husband's income, and not dependent on his charity.

Under the Civil Laws of Goa, registration of births and deaths are also mandatory. The children of deceased parents fall in the category of what is known as *mandatory heirs*. They cannot be disinherited whether male or female, save under extraordinary circumstances where the heir has been found guilty of an offense against the parents punishable by more than six months imprisonment, or has taken judicial action against the parent(s), or has refused to take care of the parent(s) prior to their demise. If the deceased parent(s) leave(s) no will, all mandatory heirs are entitled to an equal share of the estate of the deceased.

If, on the other hand, the deceased has made a will, he/she may only dispose of 50 percent of the estate in the manner of his/her choosing. This is known as the *quota disponivel*. The remaining *50 percent must be divided equally among all mandatory heirs*. Such a provision ensures the just distribution of assets among all children, whether male or female.

In fact, the only way a woman living under the Civil Law system can be deprived of her legitimate inheritance is by her own express renunciation. The possibility of parents coercing their daughters to renounce their share is reduced by a provision which says that such a renunciation is only valid if done subsequent to the death of the parents. Moreover, in the event of divorce, the legitimate share of the wife, who in a majority of cases is not the major breadwinner, is not contingent upon the *munificence* of her ex-husband under Community Property Law, she is automatically entitled to half of all assets. The egalitarian nature of the Portuguese Civil Laws has been lauded by women's groups throughout India, and is seen as a starting point for legislative reforms regarding women's rights in the rest of the country.

This brings us to a discussion on the potential of the Civil Code to *serve as a basis for the codification of Indian laws*. Article 44 of the Indian Constitution enjoins the Indian Legislature to create a uniform civil code for all India constitutional mandate which has yet to be implemented 50 years after Independence. In light of this deficiency, and in an effort to initiate debate and discussion, a conference was held by the Goa, Daman and Diu Bar Association in 1979. At the time, the *then Chief Justice of India, Y.V Chandrachud*, made the following observations: *It is heartening to find that the dream of a uniform civil code in the country finds its realization in the Union Territory of Goa, Daman and Diu. In my view it would be a retrograde step if Goa too were to give up uniformity in its personal laws which it now possesses.*

Thereafter, in spite of several short-sighted and politicized attempts made at a local level to repeal Goas existing family laws in favour of the Hindu Succession Act and the Hindu Marriage Act, the Goa State Government to its credit has repeatedly rejected such moves. Recently, in May of 1997, another conference was held in Goa which brought together a number of legal luminaries from Portugal and India. A brainchild of Advocate M.S. Usgaocar, currently Goas Advocate General, the conference was organized by the Vaikuntrao Dempo Centre of Indo-Portuguese Studies in collaboration with the *Ordem dos Advogados de Portugal* and in association with the Bar Council of Maharashtra and Goa.¹⁶

It was dedicated to the memory of Dr. Luis da Cunha Gonsalves, who wrote *The Treatise of Civil Law*, an exhaustive study of the Portuguese Civil Code of 1867, and today considered by scholars of Portuguese Law as a *magnum opus* without equal in jurisprudence. For three days, some of the leading legal minds in India and Portugal, which included the Chief Justice of India and the Attorney General of Portugal, came together, presenting papers to a packed auditorium and entering into dynamic exchange of information on topics ranging from Marital Regimes of Property under the Civil Code, to a comparative analysis of the Portuguese Civil Codes of 1867 and 1966, to the Writ Jurisdiction and Administrative Law as practiced in India.

However, there are several *criticisms of Goa Family code as well*, but that doesn't come under the scope of this study. However, it is said that the Goa family code can be used as a

¹⁶ <http://mmascgoa.tripod.com/id12.html>

template for nationwide Civil Code, this statement doesn't hold true on ground level. As we already discussed, majority of people living in Goa follow Christianity, the ***cultures are almost identical due to the Portuguese history***. This doesn't hold true for the rest of 27 states and 8 Union Territories that exist in rest of India. The cultures, language, habits change in every 300 kilometres radius. It cannot be denied that the Goa family code holds some appealing concepts on equality, however, this, in no way implies that it will hold true in the same way for the rest of India too. This is the very reason why the concept of ***positive discrimination exists***.

Goa is the ***only state in India*** that has uniform civil code regardless of religion, gender, caste. Goa has a common family law. Thus, Goa is the only Indian state that has a uniform civil code. In Goa, Hindu, Muslim, Christians all are bound with the same law related to marriage, divorce, succession.

In Goa, marriage is a ***contract between two people*** of different sex with the purpose of living together and constitute the legitimate family which is register before the office of civil registrar. And the particular rules and regulation has to be followed by the parties after that they can live together and start their life but there are certain restrictions according to which these categories of person are prohibited to perform marriage for example: any spouse convicted of committing or abetting the murder of other spouse shall not marry.

QUESTIONS STILL UANSWERED

When we look at Uniform Civil Code from a ***Political sphere***, we learn that the ***NDA*** government has always been in favour of ***one nation one law***. On the contrary, the opposition including ***INC, NCP, AIMIM*** have always ***opposed its implementation***. However, there are still a few questions ***unanswered by the government*** with respect to the ***provisions*** of the Uniform Civil Code.

1. Do fundamental rights to ***liberty and equality*** take ***precedence*** over the right to ***religion to manage its own affairs?***
2. If someone were to ask directly that the formulation of Uniform Civil Code would ***mean that Hindu personal laws, Muslim personal laws and Christian personal laws*** will ***cease to exist*** in the form they do today in the even that Uniform Civil Code comes into existence or some of them would serve as a template to form the uniform civil code?
3. Would the formation of Uniform Civil Code mean the ***abolition of Hindu Undivided Family*** which is used to claim tax benefits?
4. ***Article 350B of Indian constitution*** states that there should be a ***special officer*** for linguistic minorities to investigate all matter relating to safeguarding their interests and ***report to the President of India***. When one speaks about the application of Uniform Civil Code, there is always a concern about the ***protection of minorities***. Therefore, a question raised is regarding the appointment for the same in consultation with the president and ***if yes***, has there been any views by the ***concerned officer?***

CONCLUSION AND SUGGESTIONS

Religion is *so deeply embedded* into the roots of Indian history that we should not forget that the *first war of independence, 1857* happened when Hindus like Mangal Pandey were asked to *chew off the cartridge* of rifle made by *pig and cow*. Cow are *sacred in Hinduism* and *Muslims* considers pig as a *taboo*; Religion is what brought them together *against the britishers*.

Earlier the *word of religious texts, scriptures* were *word of law* to people. It was later that a very crucial *concept of equality came into existence* and these *customary laws were legislated* upon and indiscriminatory laws were removed.

These *civil aspects* were so important that the *literal texts of holy books* were turned into *statutes*. Therefore, these civil aspects have been embedded as an *integral part of religion* whereas *criminal aspects were uniformed in Lex loci report in the 1840*. However, *Goa* was already exposed to *the family code* since the *annexation of Portuguese* in the past. Therefore, there is a difference.

This Past of Civil law cannot be ignored. those who call the Lex loci report of 1840 outdated, **law commission report of 2018 headed by Justice Balbir Singh** concluded;

The Law Commission has urged the legislature to *“first consider equality within communities’* between men and women, rather than *“equality between communities”*. Submitting a consultation paper on *“reform in family laws”*, the Commission has dealt with laws that are discriminatory *“rather than providing a uniform civil code which is neither necessary nor desirable at this stage”*.¹⁷

In the *absence* of any consensus on a Uniform civil code, the Commission says *the best way forward may be to preserve the diversity of personal laws*, but at the same time, *ensure that personal laws do not contradict fundamental rights guaranteed under the constitution of India*. In order to achieve this, it is desirable that *all personal laws* relating to matters of family must first be *codified to the greatest extent possible*, and the *inequalities* that have crept into codified law, should be *remedied by an amendment*.

¹⁷ <http://lawcommissionofindia.nic.in/>