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Navigating the Complexities of Implementing a Uniform Civil Code in India: A Historical and Comparative Analysis

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ABSTRACT

The concept of a Uniform Civil Code (UCC) in India has been a subject of intense debate and discussion since the pre-independence era. The UCC aims to replace the diverse personal laws, based on religious scriptures and customs, with a common set of laws governing every citizen. This research paper delves into the historical evolution and development of the idea of a UCC in India, tracing its origins to the colonial period and examining its inclusion in the Constitution of India as a Directive Principle of State Policy. This research paper further explores the contentious debates in the Constituent Assembly and the varying perspectives of different communities on the UCC. Through a comparative analysis, this research paper highlights the implementation of uniform civil laws in other countries and their impact on societal cohesion and legal uniformity. The role of the judiciary in India, particularly the Supreme Court, in advocating for the UCC and addressing conflicts arising from personal laws is critically examined. This research paper also presents the unique case of Goa, which operates under a uniform civil code inherited from Portuguese law, and assesses its feasibility as a model for the rest of India. In conclusion, this research paper offers recommendations for gradually implementing a UCC in India, emphasizing the need for a balanced approach that respects religious freedoms while promoting national integration and gender equality. The recent legislative developments in Uttarakhand are discussed as a significant step towards realizing the long-standing goal of a UCC in India.

***Keywords**: Uniform Civil Code, Personal Laws, National Integration, Fundamental Rights, Directive Principles of State Policy.*

I. INTRODUCTION

The phrase Uniform Civil Code (UCC) is made up of three words: "uniform," "civil," and "code." The term uniform refers to the form of a thing. Although the Constitution of India uses

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the term "uniform" rather than "common" in Article 44, the two phrases have been used interchangeably in discussions on the Article. Several critics have pointed out that, while the term "uniform" is frequently used interchangeably with the phrase "common," yet uniform is a distinct concept in the sense that the former refers to the one and the same in all circumstances whatsoever, whilst the latter refers to the same in similar circumstances. However, we have used both words interchangeably in the present work. The term "civil" is a fairly elastic concept that can be used in a variety of contexts. When this word is used as an adjective to the term "law," it refers to a citizen's private rights and remedies, as opposed to criminal, political, or other issues.[2] The phrase "civil law" has its origin in Roman law's "jus civile," which has taken on different definitions over time, none of which, however, encompasses what is referred to as "civil law" in English. Thus, the term "civil law," which comes from the Latin equivalent "jus civile," refers to a State's municipal law. It refers to the body of private law, excluding public and international law. It is also used in contradiction of the criminal law.[3] The phrase "civil law" is used in the sense of family law, but it also includes other elements such as contracts, compensation, and so on. The word "code" comes from the Latin word "codex," which means "book".[4]

When the National Planning Committee demanded such a code in 1940, the idea of a uniform civil code was put into the national political discourse.[5] Following that, the notion of a UCC was constitutionally proposed in India's Constituent Assembly. [6] When the UCC was debated as Article 35 in the Constituent Assembly, certain members of the Assembly were vehemently opposed. Shri Mohamad Ismail Sahib proposed to amend Article 35 to include 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."[7] People's right to follow their own personal law, he contended, was one of the fundamental rights. It is a part of their religion and culture, and any action that affects personal law would be an affront to their way of life and religion. According to him, the goal of UCC is to promote harmony by uniformity, which can only be accomplished if people are free to follow their own personal laws. Shri Naziruddin Ahmed proposed the second amendment, which would include the following proviso in Article 35:

[2] *The Shorter Oxford English Dictionary: Volume 1*, 34 (Oxford University Press, Oxford, 2019).
[3] *Encyclopedia Britanica, Volume 5*, 743 (William Benton, Chicago, 1959).
[4] *The Encyclopedia Americana : Volume 7*, 194 (Americana Corporation, USA, 1960).
[5] Archana Parashar, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* (Sage, New Delhi, 1992).
[6] B Shiva Rao, *The Framing of India's Constitution*, 128 (Indian Institute of Public Administration, New Delhi, 1968).
[7] *Constituent Assembly Debates*: *Volume 7*, 540 (1948).

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> "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".

Shri Ahmed raised the possibility of a conflict between Article 35 and Article 19 of the draft Constitution, which establishes the Fundamental Right to Religion. According to him, Article 19 is a positive provision that is justiciable, meaning that anyone can bring a case to the court to have it enforced; on the other hand, Article 35 gives the State considerable flexibility, allowing it to overlook the right to freedom of religion. He claimed that Article 35 appeared to encourage the Government to violate the guarantees outlined in Article 19. He pointed out that, while many uniform civil laws have battled with personal law in the 175 years of British rule, they have never interfered with marriage and inheritance law. Finally, he suggested that the goal should be to create a UCC, but that it should be done gradually and with the permission of those affected. He added that 'we should not proceed in haste but with caution, with experience, with statesmanship, and with sympathy'.[8] During the debate, Shri Mahmoob Ali Baig Sahib Bahadur offered another change to Article 35, which included the following proviso:

> "Provided that nothing in this Article shall affect the Personal law of the citizens".

He maintained that the personal law of some cultures is totally based on their religious beliefs.[9] He went on to say that even in a secular State, citizens from all communities must be able to practise their religion freely. Another member, Shri B. Poker Sahib Bahadur, backed the motion put up by Shri Mohamed Ismail Sahib and suggested 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".

In support of his revisions, he noted that even the majority was divided on the uniform civil code, and that even if the majority community is in favour of it, it must be criticised and not allowed since it is the obligation of the majority in a democracy to protect the sacred rights of every minority. Another member, Shri Hussain Imam, agreed with the argument, stating that the UCC is not possible for a large country like India with a diverse population. He had the impression that:

[8] Ibid
[9] Ibid

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> "[I]t is all right and a very desirable thing to have a uniform law but at a very distant date. For that, we should first await the coming of that event. Apart from this our country are 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 thing to have a uniform law but at a very distant date".[10]

Certain members of the Constituent Assembly came out in support of UCC. As a result, Shri K. M. Munshi claimed that Article 35 is not in conflict with Article 19 because Article 19 allows the State to control secular activities, as well as bring about social reform and welfare. According to him, the entire purpose of this Article is to allow the Parliament to attempt to unify the country's personal law as and when it sees fit. Dr. Ambedkar stated that India already had a single rule that covered practically all aspects of human relationships. Except for marriage and succession, he said, India was ruled by uniform law in terms of criminal law, process law, property law, and so on. He stressed that most human connections in India were already governed by standard regulations. Dr. Ambedkar then refuted the claim that Indian personal law was unchangeable. He said:

> "Article 35 which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country, it does not say that after the code is framed the State shall enforce it upon all citizens merely because they are citizens. 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."[11]

In view of these realities, Dr. Ambedkar saw no merit in the members' proposed revisions and opposed them. Article 35 was passed without revisions at the end of the debate, and it was then renumbered as Article 44 and read as follows:

> "44. Uniform civil code for the citizens.-The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India".

As a result, examining these arguments illustrates the disparity of opinion that existed among Assembly members about the viability of enacting such a law. What is clear is that the enactment of a UCC, which proponents describe as the cornerstone of modern secular society

[10] Ibid., at p. 546.
[11] Ibid., at p. 551.

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in the country and thus necessary in the process of evolving such a new secular social order, was initially postponed on the ground that its immediate implementation was unwise.[12] However, it is to be noted that under Article 44 of the Constitution of India, the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. Article 44 is not enforceable by the Court. Nevertheless, as per Article 37 of the Constitution provision in Article 44 is fundamental in the governance of the country, hence, it is the duty of the State to apply this principle in making laws. The Supreme Court of India in *Pannalal Bansilal Patil* v. *State of Andhra Pradesh,*[13] opined that uniform law for all persons may be desirable but its enactment in one go may be counter-productive to the unity of the nation. In the case of marriage, divorce, maintenance, adoption and inheritance in India there are personal laws of Hindus, Muslims, Christians etc. Therefore, uniform civil code/law in marriage, divorce, maintenance, adoption and inheritance become controversial in India.

The study is divided into five more parts besides the Introduction. Part 2 of the study demonstrates the evolution and development of Law relating to Uniform Civil Code in India, while part 3 outlines the Uniform Civil Code in different countries (other than India). Part 4 examined the Constitutional development of Uniform Civil Code and Role of the Judiciary in India, while part 5 brings out the Goa Uniform Civil Code and feasibility of its application in India. Part 6 concludes the study and provides analytical observations and recommendations.

II. EVOLUTION AND DEVELOPMENT OF LAW RELATING TO UNIFORM CIVIL CODE IN INDIA

It emerges from the discussions in part 2, namely, "Evolution and Development of Law relating to Uniform Civil Code in India" that the demand for a uniform civil code was there even before English people came to India. Before the British administration in India, the Hindu and Mohammedan law officers hardly followed a particular method of interpreting them.[14] The Charter Act, 1833, laid down special emphasis on the enactment of uniform law in certain important fields to govern all persons without any distinction of caste, creed and religion. With a view to implement such a policy, the Charter Act, 1833, came to be introduced under which the First and Second Law Commission also came to be constituted. But, the Second Law Commission which was appointed in 1833, was positively against the codification of the personal laws. It observed:

[12] Rajkumari Agrawala, "Uniform Civil Code: A Formula Not a Solution," in Tahir Mahmood (ed.) *Family Law and Social change*, 79 (N. M. Tripathi Pvt. Ltd, Bombay, 1975).
[13] AIR 1996 SC 1023: (1996) 2 SCC 498.
[14] Anam Abrol, "Case for a Uniform Civil Code," 14 (1 and 2) *Indian Socio-Legal Journal*, 105-114, 105 (1988).

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> "It is our opinion that no portion, either of the Mohammedan law or of Hindu law, ought to be enacted as such in any form by a British legislation….The Hindu law and Mohammedan law derived their authority respectively from Hindu and Mohammedan religion. It follows that, as a British legislature cannot make Mohammedan or religion, so neither can it make Mohammedan or Hindu law."[15]

Subsequently, the Queen's Proclamation of 1858[16] promised "equal and impartial protection of the law" to the native subjects of the conquered Indian subcontinent.[17] The proclamation *inter alia*, gave an assurance to the Indians that the Englishmen would not interfere in their religious affairs. However, the administration faced many difficulties in the judicial administration of India in the absence of any suitable legislation substantive as well as procedural.[18] Britishers never interfered with the personal laws of Indians. They thought that interference with the existing system of law might be interpreted by the Indians as an interference with their religion and might be disliked by them. The underlying reason was not to injure the religious susceptibilities of the Indians. Secondly, they came to India to rule and not to make any improvements in the conditions of the Indian people. They wanted to take the line of least resistance and to avoid all complications to the possible extent. Britishers believed that whenever any changes were made these were with a view to ameliorate the conditions of the people and on the basis of popular reception. The attitude of non-interference adopted by the British administration in the case of Hindu law was reflected. A similar attitude was adopted in the case of Muslim law. However, changes made in Hindu law were far greater than those made in Muslim law. Only a few changes through legislation were made in Muslim law because of a wrong notion and misleading belief that Muslim law is totally opposed to changes and entirely devoid of flexibility and dynamism.[19]

During the British period in India, many laws were passed to introduce reforms to the old Hindu law. The study of Hindu law discloses that in most of the cases, the innovating Acts had the support of the enlightened sections of Hindus, but the conservative and orthodox Hindus viewed the innovations as an invasion upon their religious practices. It is thus crystal clear that

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[15] M. P. Jain, *Outlines of Indian Legal History*, 581-590 (N.M. Tripathi (P) Ltd., Bombay, 1990).

[16] Queen Victoria's Proclamation, made on Nov, 1, 1858 was a milestone in the history of modern India as it marked the end of British East India Company's Rule.

[17] Suparna Sengupta, "The Sovereign Exception: Interpreting 'British Subjects' in the Queen's Amnesty of 1858," 46(5-6) *Social Scientist*, 21-38, 21 (2018).

[18] V. D. Kulshreshta, *Landmarks in Indian Legal and Constitutional History*, 306 (Eastern Book Company, Lucknow, 1981).

[19] For example, the Bengal Muhammadan Marriages and Divorce Registration Act, 1913, Mapilla Succession Act 1918; the Jammu and Kashmir State Muslim Dower Act 1920; the Mussa'man Wakf Act, 1934; the Muslim Personal Law, (Shariat) Application Ad 1937: Cutchi-Memons Act 1938; the U.P. Muslim Wakf Act, 1936; and the Bib Waki Act, 1947; and the Dissolution of Muslim Marriages Act, 1939.

the legislation touched all topics, namely, marriage, succession, caste, inheritance, etc. earlier considered sacrosanct and beyond the legislative pale. In 1856, the Hindu Widows' Remarriage Act legalizing the remarriage of Hindu widows was passed at the instance of reformist sections of the Hindus.[20] Legislation on widow remarriage was considered as being against the injunction of Shastras. Although in ancient India widow remarriages were permitted in special cases and were even prevalent amongst certain classes of people of certain localities before the passing of the Act, they were opposed by the majority of the Hindus on religious grounds. The Indian Majority Act, 1875, fixed the age of majority on completion of the eighteenth year. It applied to Hindus in all matters except marriage, divorce, and adoption. In 1929, the Child Marriage Restraint Act was passed to discourage the practice of existing child marriages. The minimum marriage age for male was fixed eighteen years whereas for a female it was fifteen years. Then came the Hindu Women's Right to Property Act, 1937, conferring on Hindu Women better rights of property than they had previously. This Act made revolutionary changes in the area of Hindu law of joint family, coparcenary, partition, inheritance etc. In 1946, the Hindu Married Women's Right to Separate Residence and Maintenance Act was enacted enabling a Hindu woman to claim separate residence and maintenance from the husband under certain circumstances mentioned in the Act even without dissolving the marriage. Many other Acts[21] made considerable reforms to the principles of succession and inheritance, which were regarded as binding by the old Hindu law.

As stated above, the idea of a uniform civil code has been favoured and disfavoured by both Hindus and Muslims in the Constituent Assembly. Among the Muslims-the orthodox Muslims opposed a common civil code[22] while secularists were in its favour.[23] Similarly, there are Hindus who have favoured[24] and opposed[25] the mandate of Article 44 of the Constitution of India. As regards the other minority communities like Christians, Parsis and Jews, they have not raised at least any noticeable voice against the mandate of Article 44.

III. UNIFORM CIVIL CODE IN DIFFERENT COUNTRIES (OTHER THAN INDIA)

[20] See, Krishna Bhagwan Agrawal, "Advisability of Legislating a Uniform Indian Marriage Code," in Mohammad Imam (ed.) *Minorities and the Law*, 443 (N. M. Tripathi, Bombay, 1972).
[21] See, the Hindu Inheritance (Removal of Diabilities) Act, 1928; the Hindu Law of Inheritance (Amendment) Act, 1929.
[22] Choudhary Hyder Hussain, M.C. Chagla, Hamid Dala Satyashodak Mandal, Rashid Ali Beg, Muslim Satyashodhak Mandal, Justice M. L. Baig and Noor Jahan Razak.
[23] Sahabuddin Tyabji, Maulana Mohammad Yusuf Islami, Maulana Abul Rais, Shama Peerzada, Dr. Abdul Zalil Faridi, Maulana Minnatullah Rahmani, Ghulam Mohammad Menon, Sheikh Abdullah, Judges of High Courts, Bashir Ahmed Sayeed, Khalil Ahmed, A. K. Moidu.
[24] Justce P. B. Gajendragadkar, Justice Hedge; Justice V. R. Krishna Iyer, Mr. T.K Tope, Dr S R. Bhatt, Justice Y V. Chandrachood, Justice P. B. Mukherji, Dr. U.C. Sarkar, Smt Sujata Manohar, and Dr. B. Sirvaramayya.
[25] Guru Golwalker, Swami Kripatriji, and Smt. Raj Kumari Agrawala.

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It emerges from the discussions in part-3, namely, "Uniform Civil Code in Different Countries (Other Than India)" that so far as the applicability of uniform civil code in Roman law, Portuguese law, German law, French Law**,** the law of United Kingdom (UK), and the law of United States (US) are concerned in all countries have implemented the scheme of uniform law in case of marriage, divorce, maintenance, adoption and inheritance. The root of the uniform civil code was found under Roman law which has been subsequently followed by various legal systems like Portuguese, German, French**,** the UK, and the US. So far as marriage law is concerned, in the United States of America (US) marriage laws are established by individual States. There are two methods of receiving State recognition of a marriage such as common-law marriage and obtaining a marriage license. Common-law marriage is no longer permitted in most States though federal law does not regulate State marriage law, it does provide for rights and responsibilities of married couples that differ from those of unmarried couples. Marriage is a Constitutional right in the US. *In M.L.B.* v. *S.L.J.*,[26] the US Supreme Court held that choices about marriage, family life, and the upbringing of children are among associational rights that can be ranked as "of basic importance in our society," rights sheltered by Due Process Clause of the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect. The Supreme Court further in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*,[27] held that the US law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child-rearing, and education. These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. The age at which a person can marry varies by State from 17 to 21. *Loving* v. *Virginia*,[28] was a landmark civil rights decision of the US Supreme Court in which the Court ruled that laws banning interracial marriage violate the Equal Protection and Due Process Clauses of the Constitution. Polygamy (or bigamy) is illegal in all 50 States of the US and is punishable by a fine, imprisonment, or both, according to the law of the individual State and the circumstances of the offence. The US Government does not recognize bigamous marriages for immigration purposes even if they are legal in the country where a bigamous marriage was

[26] 519 US 102 (1996).
[27] 505 US 833 (1992).
[28] 388 US 1 (1967).

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celebrated. Any immigrant coming to the United States to practice polygamy will not be admitted.

Domestic partnerships are a version of civil unions. Registration and recognition are functions of States, localities, or employers; such unions may be available to couples of the same sex and, sometimes, opposite sex. Although similar to marriage, a domestic partnership does not confer the rights, privileges, and obligations afforded to married couples by the federal Government, but the relevant State Government may offer parallel benefits. Because domestic partnerships in the United States are determined by each State or local jurisdictions, or employers, there is no nationwide consistency on the rights, responsibilities, and benefits accorded domestic partners. Some couples enter into a private, informal, documented domestic partnership agreement, specifying their mutual obligations because the obligations are otherwise merely implied, and written contracts are much more valid in legal circumstances. Divorce is the province of State Governments, so divorce law varies from State to State. Before the 1970s, divorcing spouses had to prove that the other spouse was at fault, for instance for being guilty of adultery, abandonment, or cruelty; when spouses simply could not get along, lawyers were forced to manufacture "uncontested" divorces. No fault divorce on the grounds of "irreconcilable differences",[29] "irretrievable breakdown of marriage,"[30] "incompatibility", or after a separation period etc. gradually became available in all States beginning. The temperamental incompatibility as a ground for divorce is a novel and radical innovation in the US.[31] Roman marriage covers a wide range of topics, including not only the "process of marriage" (which includes engagement, wedding ceremonies, and dowry), but also topics like divorce, remarriage, adultery, household management duties, property relations between spouses, philosophical perspectives on marriage, and more.[32] There were two general kinds of marriage among the Romans: (i) marriage with *manus*, and (ii) free marriage. In the early days of Roman marriage, the wife was expected to serve as her husband's "hand" or *manus*. *Manus* involved a woman's absorption into her husband's agnatic group and the transfer of her person and possessions from her father's or brother's to her husband's supervision.

The legal framework that governs Portugal is known as Portuguese law. It is a component of civil law, a system of law derived from Roman law. The Civil Code of 1867 was drafted by

[29] Betsey Stevenson, "The Impact of Divorce Laws on Marriage-Specific Capital," 25(1) *Journal of Labor Economics*, 75-94, 79 (2007).
[30] Brian T. Trainor, "The State, Marriage and Divorce," 9(2) *Journal of Applied Philosophy*, 135-148, 144 (1992).
[31] Lester B. Orfield, "Divorce for Temperamental Incompatibility," 52(5) *Michigan Law Review*, 659-680, 661 (1954).
[32] Bruce W. Frier, "Roman Marriage: 'Iusti Coniuges' from the Time of Cicero to the Time of Ulpian by Susan Treggiari," 88(1) *Classical Philology*, 94-98, 94 (1993).

Antonio Luiz de Seabra,[33] a judge at the Oporto Court of Appeal, whom the Queen of Portugal had entrusted with that task in 1850. The Code represents a legal system that values individual liberty. It emphasizes the individual rights holder rather than societal institutions. Party autonomy has limited boundaries. It is divided into four parts that include civil capacity, acquiring rights, property rights, and when rights are violated and how to address them. The present Portuguese Civil Code (Codigo Civil in Portuguese) was adopted on November 26, 1966.[34] It replaced the previous Portuguese Civil Code of 1868. The Portuguese Civil Code of 1966 is divided into 5 main Parts:

1. Sections 1 through 396 of the General Part (*Parte Geral*) contain rules that apply to all four parts as well as Private Law generally. These rules cover things like legal authority, legal interpretation, personhood, legal capacity, the emancipation of minors, wills, revocation, the formation of contracts, statutes of limitations, and agency.
2. Sections 397 through 1250 of the Law of obligations (*Direito das Obrigaçes*) describe contractual duties as well as all other types of civil obligations, such as torts, unjust enrichment, and *negotiorum gestio*.
3. Sections 1251 through 1575 of the Property Law (*Direito das Coisas*), which describe possession, ownership, and other property rights (such as servitudes), as well as how those rights may be transferred.
4. Sections 1576 through 2023 of the Family Law (*Direito da Famlia*) deal with marriage, marital property plans, legal guardianship, and other family-related legal ties.
5. Sections 2024 through 2334 of the Inheritance Law (*Direito das Sucesses*), as well as the law of wills and succession contracts (*pacta successoria*), govern what happens to a deceased person's estate.

The core structure and ideas of the 1966 Portuguese Civil Code have not changed since 1867, despite extensive updates and adjustments both inside Portugal and in some of its former foreign territories where it is still in use. The parties' free will is subject to a number of significant limitations that the old Code did not provide. Three pillars of the new code, which replaced the liberal ideology that served as the inspiration for the 1867 Civil Code, are the principle of good faith (*boa fe*) in the formulation and fulfilment of contracts, the prohibition of the abuse of rights (*abuso de direito*), and a specific favour debitoris. The Portuguese Civil

[33] His draft code, originally submitted to the Government in 1858 and subsequently revised by a committee of experts, was approved by a Law of 1 July 1867 and entered into force on 23 March 1868.
[34] It entered into force on 1 June 1967.

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Code is in operation in two Union Territories in India (Pondicherry and Goa, Diu and Daman).[35] This Civil Code is a part of private law, which is the area of Portugal's *jus commune* civil law system that deals with relationships between individuals. Private law includes the law of contracts and torts (known as private law in civil legal systems) as well as the law of obligations (known as private law in common law systems). Latin terms for "common law" include *ius commune* or *jus commune*. In English law, it is sometimes referred to as "the law of the land" and is a term frequently used by civil law jurists to describe those components of the civil law system's enduring legal foundations. In the 17th and 18th centuries, a unified "European system of law" included Roman-Dutch law. The majority of the states in Central and Western Europe were governed by the same laws from the late Middle Ages until the end of the 18th century; the only exceptions were England (not Scotland) and, to a lesser extent, the countries of Scandinavia. This uniform system of law is called the *ius commune*.[36] It is to be distinguished from public law, which focuses on interactions between organisations and the State, including regulating statutes, criminal law, and other laws that have an impact on the general welfare. In general, public law deals with interactions between the State and people in general, whereas private law deals with interactions between private persons. This Portuguese Civil Code has been in force in Goa, India.

The legal system of the United Kingdom[37] is called the common law system under which there are two systems: the criminal justice system and the civil justice system. The issue of a uniform civil code falls under the civil justice system. In the countries of Western civilization, the two best-known systems are the civil law and the common law, particularly as exemplified in French and England. It is sometimes said that the countries of the civil law are those which received their legal system from the Roman law. The common law, as a legal system, is associated with its origin and development in England. [38] The civil justice system in the UK addresses a large number of civil issues such as marriage, divorce, alimony, adoption, inheritance etc.

IV. CONSTITUTIONAL DEVELOPMENT OF UNIFORM CIVIL CODE AND ROLE OF THE JUDICIARY IN INDIA

[35] For detail see, Joseph Minattur, "The Story of A Civil Code," 18(1) *Journal of the Indian Law Institute*, 149-152 (1976).
[36] Helmut Coing, "The Sources and Characteristics of the *Ius Commune*," 19(3) *The Comparative and International Law Journal of Southern Africa* , 483-489 (1986).
[37] The UK is divided into three main jurisdictions (or self-contained legal systems): (i) England and Wales, (ii) Scotland, (iii) Northern Ireland.
[38] Joseph Dainow, "The Civil Law and the Common Law: Some Points of Comparison," 15 (3) *The American Journal of Comparative Law*, 419-435, 421 (1966).

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It emerges from the discussions in part-4, namely, "Constitutional Development of Uniform Civil Code and Role of the Judiciary in India" that Article 44 of the Constitution of India is not enforceable by the Court. Nevertheless, as per Article 37 of the Constitution provision in Article 44 is fundamental in the governance of the country, hence, it is the duty of the State to apply this principle in making laws. Under Article 13 of the Constitution, every law contravening any of the provisions of Part III is declared to be void, while under Article 14 right to equality is given to every person. When a State agency is made use of for implementing customs, usages, and laws allowing discrimination in the matters of matrimonial rights, succession, partition, maintenance and guardianship, there is a clear violation of Article 14. Article 15 also prohibits discrimination. As per Article 21 of the Constitution, everyone is entitled to personal liberty and its deprival shall be in accordance with the procedure established by law. Recent decisions of the Supreme Court have established that such procedure shall be just, fair and reasonable.[39] As family is a form of association it is amenable only to reasonable restrictions by the laws on the ground of public order and morality. On the whole, these constitutional provisions insist on fair conditions even in the sphere of personal law. In addition, there are provisions enabling or directing the State to bring about social reforms. According to Article 25(2)(b) nothing in this Article, (namely, Article 25(1) guaranteeing freedom of religion) shall affect the operation of any existing law or prevent the State from "making any law providing for social welfare and reform..." Under Article 15(3), the State is empowered to make laws creating special provisions for women and children. Further, the right to conserve religion under Article 29(1) cannot be interpreted to protect personal laws either for the reason that personal law is not an essential matter of religion or for the reason that the State is enabled to make social reforms under Article 25(1).[40] In this context, the judicial approach towards the utility of the uniform civil code under the Constitution of India can be discussed by divided into seven periods as follows:

(A) First Period: 1950-1960

Despite the fact that the Constitution of India entered into force on January 26, 1950, no issues involving the uniform civil code have been determined by any High Courts or the Supreme Court. However, during the first phase of the uniform civil code's operation under the Constitution of India, from 1951 to 1960, Indian courts established the relationship between the uniform civil code and personal law or local laws. It was contended before the Bombay

[39] *Maneka Gandhi* v. *Union of India*, AIR 1978 SC 597: (1978) 1 SCC 248.
[40] See, P. Ishwara Bhat, "Directive Principles of State Policy and Social Change with Reference to Uniform Civil Code," 25(1 and 2) *The Banaras Law Journal*, 75-96, 88 (1989).

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High Court in the case of *State of Bombay* v. *Narasu Appa Mali*,[41] in 1951 that the Hindu community in Bombay had been singled out for prohibition of polygamy under the Bombay Prevention of Hindu Bigamous Marriages Act, 1946. It is pointed out that polygamy is common and permitted among Muslims in the State of Bombay, but Muslims can marry more than one woman with impunity, whereas a Hindu who does so faces severe punishment. It has also been argued that the Constitution of India establishes a secular State, that Article 44 of the Constitution directs the State to secure for its citizens a Uniform Civil Code throughout India, and that the State of Bombay has discriminated between Hindus and Muslims solely on the basis of religion, enacting a separate Code of Social Reform for Hindus from that which applies to Muslims. The Court had to decide whether personal law was included in the definition of "laws in force" in Article 13(1) of the Constitution, and if the Act infringed on fundamental rights guaranteed by Articles 14, 15, and 25 of the Constitution. The Court found that the Act does not violate the fundamental rights provided by Articles 14, 15, and 25 of the Constitution of India and that personal law does not fall under the definition of "laws in force" as defined in Article 13(1) of the Constitution. The Court went on to say that there must be a clear distinction made between religious faith and belief and religious practises. Religious faith and belief are protected by the State. If religious activities are incompatible with public order, morality, health, or a social welfare policy pursued by the State, religious practises must yield to the greater good of the people of the State. The Bombay High Court determined the first notable case on the uniform civil code in India.

In *D.P. Joshi* v. *The State of Madhya Bharat*,[42] the Supreme Court ruled that the state's exclusive legislative jurisdiction does not include personal legislation. The Entry-5 of the Concurrent Legislative List of the Seventh Schedule deals with personal law. In contrast, Article 44 of the Constitution of India establishes a uniform civil code for the entire country. As a result, it is exceedingly doubtful that regional personal law will be allowed to take effect in any significant way. In *Union of India* v. *Firm Ram Gopal Hukum Chand*,[43] the Allahabad High Court held that the ultimate goal of the uniform civil code is to weed out the various jungles of local laws and plant a uniform system of laws that will create a national outlook, citing Articles 44 and 141 of the Constitution of India. The ultimate goal of Articles 44 and 141 of the Indian Constitution is the same. The first tries to achieve a common code of laws through legislation through Parliament, while the second aims to achieve a common code of

[41] AIR 1952 Bom 84: 195 1(53) BomLR 779. This case was decided on July 24, 1951.
[42] AIR 1955 SC 334: [1955] 1 SCR 1215. This case was decided on January 27, 1955.
[43] AIR 1960 All 672. This case was decided on January 01, 1960.

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laws by judicial declarations of law through the Supreme Court.

(B) Second Period: 1961-1970

During the second stage of the uniform civil code's operation under the Constitution of India, from 1961 to 1970, the Indian courts focused on determining the uniform application of law among citizens. The term "citizen" is used in Article 44 of the Constitution of India. The question is, what does the term "citizen" mean in legal terms? In *State Trading Corporation of India* v. *Commercial Tax Officer*,[44] the Supreme Court ruled that the word "citizen" appears twice in the fourth part of the Constitution, headed "directive principles." Article 39 qualifies itself with the terms "men and women," which reveals its own framework. Article 44 asks the State to work toward establishing a Uniform Civil Code for all citizens, with the word "citizens" referring to both men and women because it is hard to believe that the Constitution is considering a uniform civil code for corporations. In *Commissioner of Income Tax* v. *Ram Rakshpal*,[45] the Allahabad High Court ruled that the subject covered by the provisions of the Hindu Succession Act, 1956, which provides a self-contained and comprehensive code relating to both testate and intestate succession of persons defined as "Hindu" in the Act, is broad and includes Buddhists, Jains, and Sikhs by religion. The Act's primary goal was to bring uniformity to the law of succession. One could argue that the Act is a step toward a uniform civil code, which is one of the goals outlined in Article 44 of the Constitution's Directive Principles of State Policy. On the issue of uniform application of law, the Kerala High Court held in *Shahulameedu* v. *Subaida Beevi*, [46] that the Constitution of India directs that the State should strive to have a uniform civil code applicable to all Indian humanity, and that, indeed, when motivated by a high public policy, Section 488 of the Criminal Procedure Code has made such a law, it would be improper for an Indian to challenge it. As a result, Indian courts must apply Section 488(3) of the Code of Criminal Procedure to Indian women, Hindus, Muslims, and others.

(C) Third Period: 1971-1980

During the third period, from 1971 to 1980, the Indian courts explicitly acknowledged that Article 44 of the Constitution of India provides for the integration of India by bringing all communities together on a common platform on matters that are currently governed by various personal laws but do not form the essence of any religion. In *Kesavananda Bharati* v. *State of*

[44] AIR 1963 SC 1811: [1964] 4 SCR 99. This case was decided on July 26, 1963.
[45] [1968] 67 ITR 164 (All). This case was decided on November 09, 1966.
[46] 1970 K.L.T. 4. This case was decided on December 08, 1969.

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Kerala,[47] the Supreme Court of India held that as desirable as it is, the Government has not been able to take any practical steps toward the attainment of the goal of a uniform civil code. Obviously, no court can compel the Government to establish a uniform civil code, although it is important for the country's integrity and unity. About Article 44 of the Constitution of India in *Arya Samaj Education Trust, Delhi* v. *Director of Education*,[48] the Delhi High Court ruled that Entry 5 of the Concurrent List of the Seventh Schedule empowers the Central and State legislatures to pass laws governing, *inter-alia*, all matters in which parties in judicial proceedings were subject to their personal law immediately before the Constitution's inception. As a result, the Constitution empowers legislatures to override personal laws and pass legislation that contradicts them. The Hindu Code was enacted in four instalments, starting with the Hindu Marriage Act of 1955, followed by the Hindu Succession Act of 1956, the Hindu Minority and Guardianship Act of 1956, and the Hindu Adoptions and Maintenance Act of 1956.

In *Khurshid Khan Amin Khan* v. *Husnabanu Mahimood Shaikh*,[49] the Bombay High Court ruled that nothing in Section 125 of the Criminal Procedure Code of 1973 prevents Muslim women from benefiting from Section 125. A "wife" is defined in Section 125 to include "a woman who has been divorced from her husband and has not remarried." The Parliament can make such an enactment concerning Muslim women using its powers under Article 15 of the Constitution of India, which allows Parliament to make specific provisions for women. The law is in line with Article 44 of the Constitution, which calls for a uniform civil code. As a result, there is nothing in Muslim law or culture that prevents Parliament from passing legislation granting a divorced Muslim wife the right to demand maintenance from her quondam husband, even after the *iddat* period has passed.

(D) Fourth Period: 1981-1990

During the fourth phase, from 1981 to 1990, Indian courts expressed concern that Article 44 of the Constitution had remained a dead letter for so long and suggested that it be implemented as soon as possible. Thus, in *National Textile Workers* v. *P.R. Ramakrishnan*,[50] the Supreme Court ruled that Article 44, which requires the legislature or the executive to enact a uniform civil code for all people, must be implemented by either the legislature or the executive. Would the Supreme Court, by issuing a writ, compel the administration to carry out the policy without

[47] AIR 1973 SC 1461: (1973) 4 SCC 225. This case was decided on April 24, 1973.
[48] AIR 1976 Delhi 207: (1976) ILR 2 Delhi 93. This case was decided on November 17, 1975.
[49] 1976 (78) Bom LR 240: 1976 MhLJ 628. This case was decided on January 5, 1976.
[50] AIR 1983 SC 75: (1983) 1 SCC 228. This case was decided on December 10, 1982.

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the support of the appropriate legislation? Would the Court, despite the fact that the concept of equality is enshrined in the Constitution and Article 44 specifically requires the State to strive to secure a uniform civil code for all citizens, enforce a uniform civil code in respect of all citizens without the aid of appropriate legislation? For many of these social issues, the only remedy is to appeal to the proper state institutions to do their jobs in the best interests of the community. It is erroneous to believe that the Court can solve all difficulties through some stretched interpretation of the law.

In *Ahmed Khan* v. *Shah Bano Begum*,[51] the Supreme Court ruled that there is no indication of any official action aimed at developing a uniform civil code. A concept appears to have gained traction that the Muslim community should take the lead in reforming their personal law. A uniform civil code will aid national unification by removing divergent allegiances to laws with opposing ideas. Making unjustifiable concessions on this issue is unlikely to ring alarm bells in any community. The State is responsible for ensuring a uniform civil code for all citizens of the country, and it has indisputably the legislative authority to do so. Legislative skill is one thing, but having the political fortitude to employ that expertise is quite another, according to one of the case's attorneys. We recognise the challenges of bringing people of all faiths and beliefs together on a single platform. However, if the Constitution is to have any value, it must begin somewhere. Because it is beyond the endurance of sensitive minds to allow injustice to exist when it is so obvious, the courts will inevitably take on the role of reformer. However, judges' haphazard attempts to bridge the gap between personal laws cannot substitute for a uniform civil code.

Further, the Supreme Court in *Jorden Diengdeh* v. *S.S. Chopra*,[52] suggested that the time had come for the intervention of legislature in matters of marriage and divorce to provide for uniform code for a way out of unhappy situations. The unsatisfactory state of affairs consequent on the lack of a uniform civil code is exposed by the facts of the present case. Thus, in *Raj Kumar Gupta* v. *Barbara Gupta*,[53] the Calcutta High Court observed that even today in India, proclaimed to be "Secular" in lis National Charter and mandated thereby almost four decades ago to secure to all its citizens a Uniform Civil Code, "religion" is still being allowed to have a dominant and decisive role even in secular matters relating to law and its administration and the rights and status of a person in matters relating to marriage, succession, guardianship and the like still depend on the religion he would belong to. Hence, in *Siraj*

[51] AIR 1985 SC 945: (1985) 2 SCC 556. This case was decided on April 23, 1985.
[52] AIR 1985 SC 935: (1985) 3 SCC 62. This case was decided on May 10, 1985.
[53] AIR 1989 Cal 165: 1989 (1) CLJ 195. This case was decided on July 21, 1988.

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Sahebji Mujawar v. *Roshan Siraj Mujawar*,[54] the Bombay High Court held that Article 44 of the Constitution of India had remained a dead letter and it was high time that a beginning should be made in the direction of securing a uniform civil code for all the citizens of this country.

(E) Fifth Period: 1991-2000

During the fifth period from 1991 to 2000, the Courts in India took into consideration the concept of secularism in explaining the concept of a uniform civil code. Thus, in *S.R. Bommai* v. *Union of India*,[55] the Supreme Court held that by the secular state, it is meant that the state is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. Secularism often denotes the way of life and conduct guided by materialistic considerations devoid of religion Article 44 enjoins upon the State to endeavour to secure to its citizens a uniform civil code. These provisions by implication prohibit the establishment of a theocratic State and prevent the State from either identifying itself with or favouring any particular religion or religious sect or denomination. The State is enjoined to accord equal treatment to all religions and religious sects and denominations.

In *Sarla Mudgal* v. *Union of India*,[56] the Supreme Court held that Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession, and like matters are secular character that cannot be brought within the guarantee enshrined under Articles 25, 26, and 27. The personal law of the Hindus, such as relating to marriage, succession and the like have all a sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus along with Sikhs, Buddhists, and Jains have forsaken their sentiments in the cause of national unity and integration, some other communities would not, though the Constitution enjoins the establishment of a "common civil code" for the whole of India. The Supreme Court, therefore, requests the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavour to secure for the citizens a uniform civil code throughout the territory of India." Further, in *Lily Thomas* v. *Union of India*,[57] the Supreme Court held that a change of religion does not dissolve the marriage

[54] AIR 1990 Bom 344. This case was decided on April 3, 1989.
[55] AIR 1994 SC 1918: [1994] 2 SCR 644. This case was decided on March 11, 1994.
[56] AIR 1995 SC 1531: (1995) 3 SCC 635. This case was decided on May 10, 1995.
[57] AIR 2000 SC 1650: (2000) 6 SCC 224. This case was decided on April 5, 2000.

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performed under the Hindu Marriage Act or between two Hindus. Thus, a married Hindu contacting a second marriage after professing Islam, despite his conversion would be guilty of an offence punishable under Section 17 of the Hindu Marriage Act read with Section 494 of the Indian Penal Code because mere conversion does not automatically dissolve his first marriage. The Court further observed that the Government would take steps to make a uniform code only if the communities that desire such a code approach the Government and take the initiative themselves in the matter.

(F) Sixth Period: 2001-2010

During the sixth period from 2001 to 2010, the Courts in India attempted for separation of religion from personal law. In *Daniel latifi* v. *Union of India*,[58] a five-judge Constitution Bench of the Supreme Court upheld the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and held that a Muslim divorced woman has the right to maintenance even after Iddat period under the 1986 Act. The Court said that a Muslim husband is liable to make reasonable and fair provision for the future. of the divorced wife which clearly extends beyond the iddat period in terms of section 3(1)(a) of the Act. Also, a divorced woman who has not remarried and who is not able to maintain herself after the iddat period can proceed as provided under section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they may inherit on her death according to Muslim Law from such divorced woman including her children and parents. If the relatives are found unable to pay her maintenance the Magistrate may direct the State Wakf Board established under the Wakf Act to pay such maintenance.

Thus, in *John Vallamattom* v. *Union of India*,[59] the Supreme Court held that as Article 44 of the Constitution of India provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India there is no necessary connection between religious and personal law in a civilized society. Further, Article 25 of the Constitution confers freedom of conscience and free profession, practice, and propagation of religion. The aforesaid two provisions viz., Articles 25 and 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. It is no matter of doubt that marriage, succession, and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles

[58] AIR 2001 SC 3958: (2001) 7 SCC 740. This case was decided on September 28, 2001.
[59] AIR 2003 SC 2902: (2003) 6 SCC 611. This case was decided on July 21, 2003.

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25 and 26 is suspect legislation. It is a matter of regret that Article 44 of the Constitution has not been given effect. Parliament is still to step in for framing a Common Civil Code in the Country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies. In *Seema* v. *Ashwani Kumar*,[60] the Supreme Court, ordered for compulsory registration of marriages irrespective of religion. It directed the Center and union territories to amend the rules to this effect within three weeks of the judgment.

Goa was a Portuguese Colony for over 450 years, before it was liberated, and became part, of India again, in 1961 The Indian Parliament has maintained all the Portuguese laws then in force in Goa. Goa had a uniform civil code, which was a self-contained Code coveting substantive law on the civil side which is still in force in Goa and applicable to all people in Goa irrespective of religion. In *Saeesh Subhash Hegde* v. *Darshana Saeesh Hegde*,[61] the petitioner married the respondent following provisions of the Portuguese civil code. Disputes have arisen between the petitioner and respondent. Respondent left her matrimonial home. The respondent instituted a matrimonial case before Family Court under Section 13(1) (ia) of the Hindu Marriage Act, 1956. Maintainability of petition challenged before the court. The High Court of Karnataka held that the Hindu Marriage Act was not maintainable and the family court had no jurisdiction. Hence, Portuguese family law applies to parties.

(G) Seventh Period: 2011- Present

During the seventh period from 2011 to till date, the Courts in India examined the scope and ambit of applicability of the adoption and Goa uniform civil code to various religious groups other than the domicile of Goa. In *Shabnam Hashmi* v. *Union of India*,[62] there was an issue raised whether a Muslim has the right to adopt. The Apex Court held that adoption by any person irrespective of religion, caste, creed, etc., is permissible. Any person can adopt a child under the Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended in 2006), Prospective parents have the option to employ the provisions of section 41 of Juvenile Justice (Care and Protection of Children) of Act, 2000 to adopt a child or they can also choose not to do so and to submit themselves to their applicable personal laws. However, personal laws cannot dictate the operation of provisions of an enabling statute like the Juvenile Justice (Care and Protection of Children) Act, 2000 and cannot come in the way of a person who chooses to adopt a child under Juvenile Justice (Care and Protection of Children) Act, 2000. The Juvenile Justice Act, 2000 is a secular law and a small step in reaching the goal of a Uniform Civil

[60] AIR 2006 SC 1158: (2006) 2 SCC 578. This case was decided on February 14, 2006.
[61] AIR 2008 Kant 142: 2008 (2) HLR 617. This case was decided on March 6, 2008.
[62] AIR 2014 SC 1281: (2014)4 SCC 1. This case was decided on February 19, 2014.

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Code under Article 44 of the Constitution. Thus, Muslims can adopt a child with full rights as natural parents under provisions of Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Gender discrimination in the form of triple *talaq* (*talaq-e-bidat*) of Muslim women has been debated in India as a unilateral action of Muslim husbands. In *Shayara Bano* v. *Union of India*,[63] the constitutional validity of triple *talaq* under Muslim personal law has been challenged citing the touchstone of fundamental rights. It has been argued in favour of triple *talaq* that it is a Muslim religious practice and therefore is existing law under Article 13(1) of the Constitution and thus under the Muslim Personal Law (Shariat) Application Act, 1937 permits this religious practice. The Supreme Court held that the triple *talaq* is instant and irrevocable. There is no scope for reconciliation between the husband and wife by two arbiters from both the families of husband and wife to save the marital tie, therefore, reconciliation cannot ever take place. This form of triple *talaq* is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation to save it. The triple *talaq*, therefore, has been held to be violative of the fundamental right contained under Article 14 of the Constitution. The 1937 Act, insofar as it seeks to recognize and enforce triple *talaq*, the Court has struck down it as void to the extent that it recognizes and enforces triple *talaq* within the meaning of the expression "laws in force" in Article 13(1) of the Constitution. The Parliament has also enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019 to protect the rights of married Muslim women and to prohibit divorce by pronouncing *talaq* by their husbands.[64] The Act provides that any pronouncement of *talaq* by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or by any other manner whatsoever, shall be void and illegal[65] and punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine. [66]

In *Jose Paulo Coutinho* v. *Maria Luiza Valentina Pereira*,[67] the issue before the Supreme Court was whether the property of a Goan domiciled outside the territory of Goa would be governed by the Goa Civil Code (Portuguese Civil Code, 1867) or by Indian Succession Act or by personal laws, as applicable in the rest of the country, for example, the Hindu Succession Act, 1956, the Muslim Personal Law (Shariat) Application Act, 1937, etc.? The Supreme Court

[63] AIR 2017 SC 4609: (2017) 9 SCC 1. This case was decided on August 22, 2017.
[64] The Act came into force w. e. f. September, 19, 2018.
[65] Ibid., Section 3.
[66] Ibid., Section 4.
[67] 2019 (12) SCALE 338: 2019 (10) SCJ 158. This case was decided on September 13, 2019.

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held that Goa is a shining example of an Indian State that has a uniform civil code applicable to all, regardless of religion except while protecting certain limited rights. Therefore, in case of divorce, each spouse is entitled to a half share of the assets. The law, however, permits pre-nuptial agreements which may have a different system of division of assets. Succession is governed normally by personal laws and where there is a uniform civil code, as in Goa, by the Civil Code. There is a conflict between the Indian Succession Act, the Hindu Succession Act, the Muslim Personal Law (Shariat) Application Act, 1937, etc., and the Portuguese Civil Code concerning the laws of inheritance but this conflict has to be resolved. The Supreme Court held that the Portuguese Civil Code is a special Act, applicable only to the domiciles of Goa, will apply to the Goan domiciles in respect to all the properties wherever they are situated in India whether within Goa or outside Goa and Section 5 of the Indian Succession Act or the laws of succession would not apply to such Goan domiciles.

Thus, there is an emerging judicial trend towards the recognition of a uniform civil code in India but the question is what should be the model of such a uniform civil code?

V. GOA UNIFORM CIVIL CODE

It emerges from the discussions in part-5, namely, "Goa Uniform Civil Code" that in the state of Goa, a civil code is based on the Portuguese Family Laws. The Portuguese Civil Code of 1867 and the Code of Civil Procedure of 1939 encompass the entire spectrum of civil law there. The latter is 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. When Goa was occupied in 1961 by India, the Government promised the people that these laws would be left intact. In 1962, an enactment of the Indian Parliament called the Goa, Daman and Diu Administration Act, kept Portuguese civil laws in force until or unless repealed by the legislature or other competent authority. Thereafter, with the passing of other parliamentary acts about legislation in, areas such as contracts, transfer of property, easement rights, and registration, the corresponding provisions in the Civil Code of Goa were superseded. Only those provisions in the Civil Code about family laws and usages have so far survived incursion. These include the laws appropriate to manage divorce, succession, guardianship, property, torts domicile, possession, access, and waterways.[68]

[68] Tina M. Thomas, "A Uniform Civil Code in India: The Flaws of the Personal Law System and Goa as a Model

There are several reasons why the existence of this civil code in Goa is of paramount importance in our study of civil law in India. The first has to do with the concept of absolute equality. 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. Under the Goan Civil Code, marriage is a contract and civil registration of marriage is mandatory. Whenever an express contract delineating succession is not made, the Law of Community Property is automatically applicable. This law governs nearly ninety-eight percent of all Goan marriages. Under the law, each spouse automatically acquires joint ownership of all assets already in their possession as well as those due to them by inheritance. These assets may not be disposed of in any way by one spouse without the express consent of the other. In addition, by virtue of registration of her marriage, a Goan woman can establish her rights from the outset. This is an advantage women living under other personal laws do not possess, since registration of marriage is not mandatory and, therefore, is difficult to prove. Moreover, in the event of legal separation under Goan civil law, a woman is entitled to fifty percent of her husband's income. As a result, atrocities against women are less heard in Goa compared to other states.

Under the Goan civil law, registration of births and deaths is also mandatory. Children of deceased parents are known as "mandatory heirs". They cannot be disinherited whether male or female, save under extraordinary circumstances. If the deceased parents leave 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, they may only dispose of fifty percent of the estate in a manner according to their choosing. This is known as the quota disponivel. The remaining fifty percent must be divided equally among all mandatory heirs. Such a provision ensures the just distribution of assets among all heirs. In fact, the only way a woman living under this 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 that says such a renunciation is only valid if done subsequent to the death of the parents. Thus, Goan civil law seems more just and more equal than the personal laws governing the rest of the land.[69]

for a Common Law," 5(1) *International Affairs Journal,* 7-13, 12 (2009).

[69] Naeem Vargo and Robin Goldfaden, "The Goa Uniform Civil Code: Alive And Kicking," 10(7) *From The Lawyers Collective,* 21-23, 22 (1995).

VI. Conclusion and Suggestions

To conclude it can be said that the above judgments that the Indian Courts have stressed on the need for a uniform civil code and have settled the disputes which have arisen due to the apparent conflicts in the personal laws. So, if a uniform civil code is enacted and enforced, then it would help to accelerate national integration. Overlapping provisions of the law could be avoided, Litigation due to personal law would decrease, a sense of oneness and the national spirit would be roused, and the nation would come out with new power so that it could face any odds finally defeating the communal and the divisionism forces.[70]

It is sincerely recommended that the personal laws of different communities have to be replaced by a uniform civil code. At first, the uniform civil code may be non-compulsory but after some time it must be made compulsory for all. If a conflict arises between a uniform civil code and personal laws, the uniform civil code must have overriding authority. Generally, it is believed that a uniform civil code is against freedom of culture and religion. To make the uniform civil code feasible a proviso may be added in Articles 25(1) and 29(1) to the effect that nothing contained in these Articles shall affect the operation of any law made under Article 44 of the Constitution. It is recommended that political considerations should not be made a plea for frustrating progressive judicial march towards the uniform civil code. The government must create conditions that will make a progressive and broad-minded outlook of the people towards a uniform civil code. Education surely plays a crucial role in this regard. The Government must explain the contents and importance of Article 44 to the citizens. The mass media may be of great help in this regard. Academicians also try to create a favourable environment for a uniform civil code. They advance the feelings of secularism and enlighten the contents of the uniform civil code to the citizens so that they understand the useful effect of the uniform civil code.

To execute the uniform civil code Parliament must constitute, a board of notable jurists belonging to different religions so that the task of uniformity of laws becomes feasible. Citizens have to understand that with the enactment and implementation of a uniform civil code, their religious identification will not be lost. To realize a uniform civil code a draft bill is to be prepared. Such a draft should be prepared by an expert body in consultation with the Minorities Commission having regard to the contemporary aspect of human rights. The Law Commission must initiate a relative study of the different personal laws of different communities in India. It also makes a precise list of similarities and dissimilarities in the

[70] Law Commission of India, Fifteenth Report, 1960.

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various personal laws. At first, there should be a uniform civil code on those issues on which there is very little difference. The issues that are of controversial nature can be resolved with the principles of natural justice and gradually included in a uniform civil code. The Apex court in many cases directed the Government to enact a law to execute a uniform civil code, It is necessary for national integration and the welfare of the nation. The need of the hour demands that the Government must accept the direction of the apex court in good faith and implement it as soon as feasible.

Thus, there is an emerging judicial trend towards the recognition of a uniform civil code in India. The common civil code if enacted will deal with the personal laws of all religious communities relating to the above matters which are all secular in character of the Indian state and enhance fraternity of unity among citizens by providing them with a set of personal laws that incorporates the basic values of humanism. Thus, the uniform civil code is eminently desirable in the interest of modernization of society and for a common system of justice for all. The Uttarakhand Uniform Civil Code 2024 is in the direction of implementation of the Uniform Civil Code in India.[71] This Code provides a detailed scheme of law relating to solemnising contacting marriages, registration of marriage,[72] restitution of conjugal rights and judicial separation,[73] nullity of marriage and divorce,[74] intestate and testamentary succession,[75] protection of estate of deceased,[76] and live–in relationship.[77] This development is a step forward towards the reform of the law of the Uniform Civil Code in India. This reform is an indication of healthy socio-legal development in India. However, there is an urgent need for Parliamentary legislation on the issue of the Uniform Civil Code in India.

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[71] This Act is called as the Uniform Civil Code, Uttarakhand, 2024. This Code is not intended to apply to the members of any Scheduled Tribes within the meaning of Clause (25) of the Article 366 read with Article 342 of the Constitution of India.
[72] Sections 4-20.
[73] Sections 21-22.
[74] Sections 23-32.
[75] Sections 33-185.
[76] Sections 186-209.
[77] Sections 378-389.

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