

COMPARATIVE ANALYSIS OF UCC AND PORTUGUESE CIVIL CODE IN GOA WITH PERSONAL LAWS PREVAILING THROUGH INDIA

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ABSTRACT

A Constitution means a document with a specific legal sanctity, which defines the framework work and main functions of government bodies and lays down the principles governing the functioning of these institutions”¹ When we talk about The Constitution Of India, then it is obvious to note that it is the world largest written Constitution. The Constitution deals with various rights, duties, principles, jurisdictions, roles, etc. Here in this paper, the researcher would like to draw some attention to comparing the Uniform Civil Code(one of the principles that lies in Directive Principles of State policy) and Portuguese Civil Code regarding Personal Laws in India. “A uniform civil law refers to a single law which applies in personal matters like marriage, divorce, custody, adoption and legality to all Indian citizens. It aims to substitute a fragmented system of personal laws which govern relations between individuals and related matters within different religious communities. Goa has a common family law, being the only Indian country with a uniform civil code, and in 1954 it allows a citizen to marry outside the sphere of special personal religious law.”²

KEYBOARD: Secularism, Equality, Law, Constitution, Uniformity

INTRODUCTION

In the Parliament of India in 1948, Indian independence became a highly debated one after the Uniform Civil Code³. On the one hand, great individuals like Dr B.R. Ambedkar, supported with the support of other prominent nationalists such as Gopal Swamy Iyenger, Anantasayam Iyengar, the KM Munshiji etc. were in favour of the Uniform Civil Code, but. In contrast, Muslim fundamentalists such as Pocker Sahib and other religious figures strongly opposed it. The argument concerning the UCC was heated by the Constituent Assembly’s 1947 idea of the Uniform Civil Code and by

¹Wade and Philips, CONSTITUTIONAL LAW, p.1(4th ed)

² Shikha Goyal, WHAT IS UNIFORM CIVIL CODE? JAGAN JOSH, 18 April 2021, <https://www.jagranjosh.com/general-knowledge/why-uniform-civil-code-is-necessary-for-india-1477037384-1>

³The Constitution Of India, 1950, Art 44

the Subcommittee on Fundamental Rights. Clause 39 of the proposal for the directive principles of the State policy was included as one of the DPSP, provided that the state seeks to ensure a Uniform Civil Code for the citizen. The feud was to keep India from becoming a nation and ensure Indian people that the various personal laws of religious communities were respected. The Chairman of the drafting committee of the Constitution, Dr B.R. Ambedkar, said that “We have in this country uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country, in the Indian Penal Code and the Criminal Procedure Code. The only province the civil law has not been able to invade so far as the marriage and succession, and it is the intention of those who desire to have Article 35 as apart of Constitution to bring about the change.”⁴

Before the time of the Congress, Muslims had guaranteed the exercise of their Islamic personal laws and therefore the architects of the Constitution, which would have compromised by enshrining the Uniform Civil Code under Article-44 of the Constitution, in other words, the adoption of a Uniform Civil Code system would have been binding for the state rather than only as a matter of fact. Nehru said in 1954 in the Parliament, “I do not think at the present time the time is ripe for me to try to push it (Uniform Civil Code) through.”⁵ The founding fathers of the Constitution came to an honourable compromise by putting it in accordance with Article 44 as the guiding principle of the state because of its political sensitivity.

The UCC is similar to that which applies to all communities regardless of their religion, race, caste, creed, etc. Uniform civil code (“UCC”). A civil code applies to a wide range of aspects of personal relations, including the Indian Contract Act, the Transfer of Property Act, the code of civil procedure, which is uniformly applicable across Indian territories, for example, contracts, property, marriage and heritage.⁶ However, there is still a separate field of law other than these civil laws that are not applied uniformly. Marriage, divorce, estate, adoptions, maintenance, etc., laws, which differ from one religion to the other, are sometimes called “personal law,” which governs the family of a person regardless of where the individual comes from. The October 1840 Lex Loci report highlighted the importance and necessity of uniformity in codifying Indian law on crimes, evidence, contracts, etc. but recommended that Hindu/Muslims’ personal laws be kept out of the scope of such

⁴ Lok Sabha Secretariat, Constituent Assembly Debates Vol. III, 551, 23 Nov. 1948.

⁵ Virendra Kumar, “Towards a Uniform Civil Code: Judicial Vicissitudes [from Sarla Mudgal (1995) to Lily Thomas (2000)]” 42 JILI 315 (2000).

⁶ Henry Campbell Black, ‘Black’s Law Dictionary’ (6th edn, West Publishing Co., 1995)

codification. Some laws, in particular Hindu laws, are now codified, while others continue to apply as non-codified personal laws to religious communities.⁷

The Portuguese Civil Code⁸, which includes the whole range of civil law, is a codification divided into four sections, and the Portuguese civil Code of 1867 and a civil code of 1939. Part I includes Articles 1 to 17, which delineate the code's fundamental provisions. The provisions of Part II are further developed. Part III covers proprietary rights exclusively and in full. Part IV deals with civil liability issues, rights violations and the return of civil liability.⁹

Significant changes in the field of family law were introduced in 1910 when the monarchy was replaced by the Republic in Portugal. The marriage was compulsory before a civil registration office, and only those registered were deemed valid in accordance with the law. Provisions permitting divorce were made for the first time.¹⁰ These laws were uniformly applicable to every segment of society and applied in Goa in 1961.¹¹

In 1962, the provisional application in Goa of the provisional laws of the Indian Parliament, the Goa, Daman and Diu Administration Act, was maintained until the legislative branch of the Government or other competent authority had repealed this Act. The relevant provisions of the Civil Code of Goa have subsequently been replaced with the passage of a number of other parliamentary laws relating to legislation in areas like contracts, property transfers, land use rights registrations, etc.¹² Incursion has so far survived only those provisions of the Civil Code related to family laws and customs. They include marriage/divorce laws, estate laws, custody, property law, port law, residence, property ownership, access to and waterways. However, the new generation of lawyers in Goa, the language of these laws, has not yet been translated into English, and the number of judges

⁷ Abul Bashar Mohammad Abu and Noman Saeed Ahsan Khalid, 'Uniform Family Code: An Appraisal of Viability in Pluralistic Bangladeshi Society' (2011) 16 The Chittagong University Journal of Law. <[http://www.culaw.ac.bd/files/jurnal-2011/Vol.%20XVI,%202011%20\(p.81-109\).pdf](http://www.culaw.ac.bd/files/jurnal-2011/Vol.%20XVI,%202011%20(p.81-109).pdf)>

⁸ Portuguese Civil Code, 1867, <https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportuguesecivilcode.pdf>

⁹ Goa's Civil Code - INSIGHTSIAS, INSIGHTSIAS (2021), <https://www.insightsonindia.com/2021/04/19/goas-civil-code/> (last visited Jun 15, 2021).

¹⁰ Goa civil code - Wikipedia, En.wikipedia.org (2021), https://en.wikipedia.org/wiki/Goa_civil_code (last visited Jun 15, 2021).

¹¹ Goa's Civil Code - INSIGHTSIAS, INSIGHTSIAS (2021), <https://www.insightsonindia.com/2021/04/19/goas-civil-code/> (last visited Jun 15, 2021).

¹² Research Paper on Uniform Civil Code, Lawyersclubindia (2021), <https://www.lawyersclubindia.com/articles/research-paper-on-uniform-civil-code-8717.asp> (last visited Jun 15, 2021).

and lawyers who know them is increasingly declining, which creates a significant obstacle for the proper dispensation of justice.¹³

But it remains a dead letter law even after 72 years of enactment. Based on recent decisions, this paper analyses and examines the socio-legal aspects of UCC and PCCs in India.

LITERATURE REVIEW

1. 'UNIFORM CIVIL CODE: WHAT IT IS & WHY IT MATTERS'¹⁴ is an article by Viraj Gaur; here, in this article, the author has critically analyzed the Uniform Civil Code with advantages and disadvantages and central govt. Plans with the UCC. The article also deals with the Shah Bano Case to support the analyzing topic UCC in detail with policies of the central Government.
2. 'UNIFORM CIVIL CODE: SHOULD BE OR SHOULD NOT BE' is an article by Busra Noor; the article deals with various case laws that explain UCC with respect to the Constitution of India. According to the article, "The importance of a uniform civil code could be deduced by the fact that it was devoted to a full article by the framers of the Constitution. The Indian Constitution provides for the establishment in Part IV of the Directive Principle of State Policy of a uniform civil code for its citizens under Article 44. Article 44 states that the state shall seek, throughout its territory, to secure for its citizens a uniform civil code."¹⁵
3. 'WHY AMBEDKAR SUPPORTED UNIFORM CIVIL CODE' is a blog by Abhinav Kumar and Seema Singh, and this blog deals with the point of view of Dr B.R. Ambedkar for UCC in India. According to this Blog, "The advocates of the uniform civil Code were Ambedkar and many political leaders. Many, including Nazirrudin Ahmad, opposed it, claiming that without their consent, the religious laws of different communities should not be affected. The resistance to the UCC was also fought by the Hindus, Orthodox, who

¹³ Goa's Civil Code - INSIGHTSIAS, INSIGHTSIAS (2021), <https://www.insightsonindia.com/2021/04/19/goas-civil-code/> (last visited Jun 15, 2021).

¹⁴ Viraj Gaur, UNIFORM CIVIL CODE: WHAT IT IS & WHY IT MATTERS, TheQuint, <https://www.thequint.com/explainers/uniform-civil-code-explained-what-it-is-and-why-it-matters>, 19 April 2021

¹⁵ Busra Noor, UNIFORM CIVIL CODE: SHOULD BE OR SHOULD NOT BE, Amity Education, 151; AIJJS, https://amity.edu/UserFiles/aibs/743c2016%20AIJJS%20_151-154.pdf, 19-April-2021

thought that the UCC would influence the shastras' personal laws. Ambedkar believed that in cases where women were given little or no rights, the laws were highly discriminatory.”¹⁶

4. ‘UNIFORM CIVIL CODE IN GOA: A CASE STUDY’ is an article by Pooja Arora, which deals with UCC in Goa and personal Laws prevailing in it. According to the article, “ An exception is the uniform civil Code in Goa. It is a drastic step that must be taken with considerable care that the Uniform Civil Code is adopted for all of India. The implementation of UCC poses many challenges. It should take into account the interests of minorities. Due to the Portuguese laws that have been in force for several years, UCC was successful in Goa. Although the adoption of the uniform civil code has many advantages, many religious groups still have a piece of lack information on UCC as a way to dominate one religion. Considering the religious and cultural diversities that exist in different countries, the uniform laws in one country do not guarantee success in all the other states. The standardization of legislation does not fully ensure equality between all. Although Goa has adopted a common civil code for all people, it is still not uniform and has some exceptions for various religions. All communities are broadly included in the Goan Code, but it cannot be said that India is the perfect model.”¹⁷
5. ‘ALL YOU NEED TO KNOW ABOUT GOA CIVIL CODE’ is an article by Kirti Kothari, and the article explains what PCC is and what is its relevance. According to the article, “The need of the hour is a uniform civil code. In several cases, the judiciary and the legislature proposed that the uniform civil code be implemented. With regard to the Goa Code, the implementation of the Goa Civil Code in the remainder of the country is certainly a role model. There are no loopholes in this system, and this does not mean that the system as a whole is

¹⁶Abhinav Kumar and Seema Singh, WHY AMBEDKAR SUPPORTED UNIFORM CIVIL CODE, The Hindu-The Business line, 15th April 2021, <https://www.thehindubusinessline.com/opinion/why-ambedkar-supported-uniform-civil-code/article34320070.ece>

¹⁷ Ayush Verma, UNIFORM CIVIL CODE IN GOA: A CASE STUDY, Ipleaders, 8 April 2021, https://blog.ipleaders.in/uniform-civil-code-go-a-case-study/#Personal_laws_in_India

rejected. There is always room for improvement and improvement, and the same is true of the Goa Civil Code.”¹⁸

6. ‘LEGAL CHANGES AND GENDER INEQUALITY: CHANGES IN MUSLIM FAMILY LAW IN INDIA’ written by Narendra Subramanian.

The research paper deals with the changes required in Muslim families because of inequality towards Muslim women. “Group-specific family laws are said to provide women fewer rights and impede policy change. India’s family law systems specific to religious groups underwent important gender-equalizing changes over the last generation. The changes in the laws of the religious minorities were unexpected, as conservative elites had considerable indirect influence over these laws. Policy elites changed minority law only if they found credible justification for the change in group laws, group norms, and group initiatives, not only in constitutional rights and transnational human rights law. Muslim alimony and divorce laws were changed on this basis, giving women more rights without abandoning cultural accommodation. Legal mobilization and the outlook of policy makers—specifically their approach to regulating family life, their understanding of group norms, and their normative vision of family life—shaped the major changes in Indian Muslim law. More gender equalizing legal changes are possible based on the same sources.”¹⁹

7. ‘GOA UCC MODEL’ written by Lavanya Sreedharan.

The article deals with the Portuguese Civil Code in Goa. “Uniformity of law does not necessarily translate to uniformity of equality. It is difficult to decide what rules should be decided to govern everyone and how to justify them as equal and indifferent to all. There is a looming fear amongst minorities that the uniform civil code will derive its basis from Hindu concepts that will make it hard to gain acceptance. So instead of suddenly implementing a Uniform Civil Code, it would be more feasible to slowly do acts and amend specific provisions of personal laws that are discriminatory in general to all human beings.”²⁰

¹⁸ Krithi kothari, ALL YOU NEED TO KNOW ABOUT GOA CIVIL CODE, Ipleaders, 19-April-2021, <https://blog.ipleaders.in/goa-civil-code/>

¹⁹ Narendra Subramanian, “Legal Change and Gender Inequality: Changes in Muslim Family Law in India.” *Law & Social Inquiry*, vol. 33, no. 3, 2008, pp. 631–672. JSTOR, www.jstor.org/stable/20108777. Accessed 15 June 2021.

²⁰ Lavanya Sreedharan, Goa UCC Model - Indian Law Portal Indian Law Portal (2021), <https://indianlawportal.co.in/goa-ucc-model/> (last visited Jun 15, 2021).

8. 'UNIFORM CIVIL CODE IN INDIA: A SOCIO- LEGAL PERSPECTIVE' written by Shantanu Pachauri.

The paper aims to balance the right to religious freedom with the right to equal opportunities by separating 'essential religious practices' from 'secular activity.' It is necessary to enact a uniform civil code, but it should be done gradually and slowly after the people have become particularly aware of the minorities' scope and scope. "One such directive principle is given under article 44 of the Constitution, which creates an obligation on the state to enact a Uniform Civil Code. Over the years, various directions have been issued by the Supreme Court for its implementation. But, due to excessive politicization, it is still a distant dream. In the absence of a uniform law regarding personal matters like marriage, divorce, adoptions, etc., various personal laws are applicable to different religious communities. These laws find their source and authority in their religious texts and customs which provides for gender discriminatory practices."²¹

9. 'PERSONAL LAWS AND THE CONSTITUTION OF INDIA' written by Mohammad Ghouse

In this paper, the researcher showed the relation between the Constitution of India and personal laws in Muslim Family Law. "It is evident from the preceding discussion that the Constituent Assembly refused to make the Muslim law immutable and inviolable and that in its opinion the state could enact laws to reform or replace the personal laws by a common civil code, under article 25(2), as a measure of social welfare and reform. The High Courts have upheld its view by saying that abolition of polygamy among the Hindus is a measure of social welfare and reform. And reform of the Muslim law, too, violates neither religious freedom nor the cultural rights of the Muslims. On the contrary, the disability and discrimination to which the Muslim law subjects the Muslim wife infects that part of it with unconstitutionality."²²

²¹Shantanu Pachauri, UNIFORM CIVIL CODE IN INDIA: A SOCIO- LEGAL PERSPECTIVE, International Journal of Law and Legal Jurisprudence Studies :ISSN:2348-8212:Volume 3 Issue 1

²² 14.139.60.114 (2021), <http://14.139.60.114:8080/jspui/bitstream/123456789/736/15/Personal%20Laws%20and%20the%20Constitution%20in%20India%20.pdf> (last visited Jun 15, 2021).

10. 'WOMEN AND UNIFORM CIVIL CODE IN INDIA' written by Mahatma Rai and Salvin Paul

The paper highlights the gender injustice faced by women in society in the light of UCC in India. "Personal laws evolved in the context of the socio-political and religious demand of their times, and despite their diverse origins, religious boundaries, the personal laws are inscribed with the patriarchal norms. These normative values dictate the lives of women to which they struggle every day. The one solution to ensure gender justice and equality is the UCC because the UCC is not just about secularism and communal politics but more about securing justice and equality for women. Moreover, the debate has also brought to the forefront a tension in the Constitution between individual rights and community rights where women's issues are left out. But the UCC will work as the protector of the rights of the people, especially women. It will not take away the right to perform religious ceremonies and rituals, but would any woman object to a code that gives her equal property rights, protection from polygamy and arbitrary divorce, and the right to inheritance. The formation of UCC will create a uniformity toward both men and women that will direct toward consistency, peace, and security in society."²³

RESEARCH OBJECTIVES

1. To understand the basic concept of the Uniform Civil Code and Portuguese Civil Code.
2. To Analyze and Compare between UCC and PCC as per the Personal laws in India
3. To analyze all the relevant concepts in the light of decided cases.

RESEARCH QUESTIONS

1. How is the Portuguese Civil Code of Goa different from the Uniform Civil Code in India?
2. What are the respective Pros and Cons of PCC and UCC?
3. What are the Other provisions in PCC apart from the Marriage institution?

RESEARCH METHODOLOGY

Methodology of the research is the path that researchers have to pursue. In short, the author outlines the research strategy, the area of study and data sources such as primary data sources and secondary

²³Maheema Rai &Salvin Paul. (2020). Women and Uniform Civil Code in India. 10.1007/978-3-319-70060-1_71-1.

data. It also shows where the researchers formulate their problems and their objective results and present results from data gathered during the study period. In this study, both qualitative and quantitative methods were used, and primary and secondary sources were combined. Quantitative data analysis and results are supported by qualitative data.”²⁴ Doctrinal method of research has been used in this research paper, as the topic demands analysis of various case laws and articles. Sources for this paper are e-books, journals and legal websites for case laws to make the paper more informative. Finding the law, analyzing it and coming up with logical analysis are the main aspects of this research. The basic information can be found in the statutory material, primary and secondary sources.

UNIFORM CIVIL CODE IN INDIA

Uniform Civil Code²⁵, a common code containing a similar set of civil laws, irrespective of their religion, caste, sex etc., has now been a major issue for India. The Uniform Code of Civil Code (UCC) shows that the nation has been raised from discrimination against religion, race, caste, sex and the child. UCC calls upon the individual laws to be replaced by a common set governing each citizen based on the customs of each religion.²⁶

Such laws deal with four broad fields: marriage and divorce and Maintenance and Succession. If these three words are real, then the political, religious and social division of the country is sufficient. People in India are still dominated by the personal laws of their respective communities even after their 73 years of independence. In order to achieve uniformity, the framework of the Constitution included Article 44, which follows: “The State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India.”²⁷

Although Article 37²⁸ of the Constitution stipulates that the Court of Justice cannot enforce the guiding principles of state policy, however, this does not diminish the significance of the principles of the directive. It was not feasible to impose a Uniform Civil Code on citizens in the circumstances

²⁴ Intech open, <https://www.intechopen.com/books/cyberspace/research-design-and-methodology>, last visited 13/04/2021

²⁵Supra 15

²⁶ S.SADHANA, Mrs.S.BHUVANESWARI, A CONTEMPORARY STUDY ON THE UNIFORM CIVIL CODE, Acadpubl.eu (2021), <https://acadpubl.eu/hub/2018-120-5/4/383.pdf> (last visited Jun 15, 2021).

²⁷Supra 15

²⁸The constitution of India, 1950, art 37

shortly after independence. This is why the code was included under the State Policy Directive Principle.²⁹

The Preamble to the Indian Constitution³⁰ also reflects the spirit of the Constitution. It highlights that India is a nation of sovereignty, secularism, democracy and the Republic. The soul of the Constitution is contained in it. It ensures justice, freedom and equality for the citizens and thus fosters solidarity while ensuring individual dignity and national unity and integrity.³¹

Why is Article 44³² important?

“Article 44 of the Indian Constitution Directive aimed at tackling discrimination against vulnerable groups and at harmonizing cultural groups across the nation. In formulating a Constitution, Dr B R Ambedkar said that a UCC should be desirable, but that it should be voluntary at present and so, as part of the State Policy Directive in Part IV of the Indian Constitution, Article 35 of the Draft Constitution has been added as Article 54. The Constitution incorporated it as an aspect to be fulfilled if the nation is ready to accept it and social acceptance can be given to the UCC.”³³

Ambedkar, in his speech in the Constituent Assembly, had said, “No one need be apprehensive that if the state has the power, the state will immediately proceed to execute...that power in a manner may be found to be objectionable by the Muslims or by the Christians or by any other community. I think it would be a mad government if it did so.”³⁴

The importance of a uniform Civil Code can therefore be seen in this context. In order to impose a single civil code on the citizens, the authors of the Indian Constitution had been convinced of a certain amount of modernization.

UNIFORM CIVIL CODE AND THE INDIAN CONSTITUTION

The main issue is that if the Constitutionalists were to enforce a standardized civil code in Indian countries, they would not have to have put that uniform Code as part of the State Policy Directive in

²⁹Jayan, U.C.C. Based on Indian civil code, Legal Service India, <http://www.legalservicesindia.com/article/1461/u.c.c.-based-Indian-civil-code.html>, last visited June 15, 2021

³⁰The preamble of the Constitution Of India

³¹Maheema Rai &Salvin Paul. (2020). Women and Uniform Civil Code in India. 10.1007/978-3-319-70060-1_71-1.

³²Supra 15

³³Abhinav Kumar and Seema Singh, WHY AMBEDKAR SUPPORTED UNIFORM CIVIL CODE, The Hindu-The Business line, 15th April 2021, <https://www.thehindubusinessline.com/opinion/why-ambedkar-supported-uniform-civil-code/article34320070.ece>

³⁴ Lok Sabha Secretariat, Constituent Assembly Debates Vol. III, 551, 23 Nov. 1948.

accordance with Article 44 of the Constitution. The State Policy Directive, as indicated by the name, is only directed to the state, which is contained in Part IV (Article 36-51). It is not obligatory to comply with them, and the Court cannot comply with them. They are just positive obligations on the state that will contribute to good governance. It is clearly stated in the Preamble to the Indian Constitution that India is a secular, democratic republic. That means there is no state religion. A secular state shall not discriminate against anybody on religious grounds. A religion only deals with the relationship between man and God. Religion must not interfere with an individual's mundane life. The secularisation process is closely linked as a cause and effect to the objective of the Unified Civil Code." For instance, an individual's personal law practice or tradition can be acceptable, but it may be unacceptable to people with other personal laws.

If traditions are in practise, therefore, the nature of the conflict turns from general differences to hardcore animosity. It is difficult for people to accept or adapt to some changes, and when it comes to a society such as India where religion defines life, people are connected to their religion instead of understanding that it is the religion made by people and that people don't make religion." This idea is in the cemetery, as some people still think of burning. The behaviour of people from every religion and not any specific section of society must be governed and regulated by a unitary law.

A 'Secular' Democratic Republic has been set up in the Preamble of the Indian Constitution. This means that there is no State faith or that the state does not operate on a given faith or does not discriminate on religious grounds. Free religion and freedom for religious matters are guaranteed in Articles 25³⁵ & 26³⁶ of the Indian Constitution as enforceable fundamental rights.

At the same time, Article 44, not applicable in the Court of the law, stipulates that a uniform civil code in India shall be sought by the state. Uniform Civil Code is the uniform method or law, which regulates the people as one law, without discriminating on the basis of religion, faith or belief.³⁷

³⁵The Constitution of India, art 25

(1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law - a) regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice; b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

³⁶The Constitution of India, art 26

"Subject to public order, morality and health, every religious denomination or any section thereof shall have a right- a) to establish and maintain institutions for religious and charitable purposes; b) to manage its own affairs in matters of religion; c) to own and acquire movable and immovable property; and d) to administer such property in accordance with law."

³⁷ Tanushree, UNIFORM CIVIL CODE IN INDIA: AN ANALYSIS, <https://jcil.lsyndicate.com/wp-content/uploads/2016/11/Tanushree.pdf>

PORTUGUESE CIVIL CODE IN GOA

In essence, Goa's Portuguese Civil Code of 1867 is a Portuguese alien code. Its implementation or failure to implement Hindu Marriage Act 1955 and the Hindu Succession Act 1956 or the Indian Succession Act 1925 or the Shariat Act 1937 and the Muslim Marriage Act 1939 etc. in Goa."

In accordance with Article 1³⁸ of the Decree of Gentile Hindu Usages and Customs of Goa, 1880 were preserved, and Gentile Hindus were exempt from the civil code. This decree has continued to establish the Hindu common family, which is called a company in Portugal, technically more close to a partnership than to the concept of a Hindu common family.³⁹ The Shariat Act⁴⁰ has not been extended to Goa; the Muslims and the Shastri Hindu Law are subject to the code. Those who love the laws of the jihad would be taken aback knowing that marriage cannot be annulled by reason of religion under Article 1090⁴¹ of the Goa Code. The code survived under Section 5(1) of the Act of 1962 on Goa, Daman and Diu, which allowed it to remain in force. On the contrary, the 2019 Jammu and Kashmir Reorganisation Act repealed laws based on local Hindu customs, including the non-Islamic customs and customs of Kashmiri Muslims.⁴²

Major Provisions of Goa civil Code in comparison with the laws for India

According to the Civil Code of Goa, it can be obtained either by giving birth in Goa or by giving birth to the father or grandfather and finally by marriage. It is high time to reform Indian property law (applicable to the rest of India), taking into account the Goa Civil Code. This is because there is no uniformity in Indian property legislation; it becomes a heroic task for the judiciary to decide issues concerning it. The codes are enormously different. The Goa Civil Code promotes absolute equality and uniformity that the property codes in the rest of India do not contain. By its application

³⁸ Goa's Portuguese Civil Code of 1867

³⁹ ms. chitraloungani, Uniform Civil Code in Goa, Legal Service India, <http://www.legalservicesindia.com/article/2157/Uniform-Civil-Code-in-Goa.html>, June 15, 2021

⁴⁰ Saeed Khan, 'Stop Muslim Polygamy, its 'heinously patriarchal 'says Gujarat High Court, pitching for a Uniform Civil Code' *The Economic Times* (Ahmedabad, 6 November 2015). <<http://economictimes.indiatimes.com/news/politics-and-nation/stop-muslim-polygamy-its-heinously-patriarchal-says-gujarat-hc-pitching-for-a-common-civil-code/articleshow/49683665.cms>> accessed on June 15, 2021

⁴¹ Goa's Portuguese Civil Code of 1867

⁴² Saeed Khan, 'Stop Muslim Polygamy, its 'heinously patriarchal 'says Gujarat High Court, pitching for a Uniform Civil Code' *The Economic Times* (Ahmedabad, 6 November 2015). <<http://economictimes.indiatimes.com/news/politics-and-nation/stop-muslim-polygamy-its-heinously-patriarchal-says-gujarat-hc-pitching-for-a-common-civil-code/articleshow/49683665.cms>> accessed on June 15, 2021

to all Goan sections, the provisions of the Goa Civil Code came into force uniformly in 1961 and later as a Parliamentary decree.”⁴³

Despite covering almost all aspects related to property, the Goa Civil Code has been silent on areas like transfer of property, contracts, registration, easement rights and so on and so forth.

- The concept of absolute equality is the first and foremost provisional. The current civil laws in Goa which concern various provisions such as marriage, separation, children’s protection and succession, are non-discriminatory with respect to caste, ethnicity or sex. This is the shortcomings of common law that may be discriminatory⁴⁴
- A system called the Communion of Assets governs a marriage under Goa’s civil law by which his spouse receives half of the undivided right in each another’s property once the individual is married.⁴⁵
- Marriages take place in Goa by means of four methods, one by Community Property Law, which is considered a legal method and three by conventional means. The Community Property Law (for women) automatically allows every wife to take joint ownership of both the property they own as well as the property they are entitled to. Thus, without the express will or consent of the third, these assets cannot in any way be disposed of by a spouse. Thus, in the law of property of all the rest of India, the fundamental difference is that a woman has no such right under it.⁴⁶
- In addition, marriage registration is required because a woman in Goa is able from the very beginning to define her rights. This is another major advantage for women.⁴⁷
- Parents are not allowed to completely disinherit their children but can do so only in part.⁴⁸

⁴³Syline, Civil Code of Goa vs Personal Laws in India, Ipleaders, https://blog.ipleaders.in/civil-code-go-a-vs-personal-laws-india/#_ftn1, June 15, 2021

⁴⁴Supra 48

⁴⁵Supra 48

⁴⁶Supra 48

⁴⁷Supra 48

⁴⁸Supra 48

- The Civil Codename of Goa is worthy of consideration as it lays down common property ownership and equality of treatment for men and women throughout India. It can help prevent frequent marriage breakdowns.⁴⁹
- The heritage legislation in Goa is quite interesting. As a husband, as well as a wife, possess the property together, the other spouse gets half the property in the event of the death of a spouse. And if the couple has a son and a daughter, half the rest of the land needs to be shared equally.⁵⁰

Marriage laws Under the Goa UCC

- Marriage under **Article 1056** of the Goa Civil code is a contract between two people of the opposite sex to live together and constitute a legitimate family.⁵¹
- Any male who is 21 years of age or more and any girl who is 18 years of age or more can marry. The religion of such persons is irrelevant according to **Article 1090** of the Goa Civil Code.⁵²
- Under **Article 1073** of the Goa Civil Code, marriage cannot take place between (i) relatives by consanguinity or affinity in a direct line, and (ii) those who have another spouse with whom their marriage has not been dissolved, also known as bigamy, polygamy is not permitted under this law.⁵³
- Under **Article 1083**, marriage can be proven only by a certified copy of the competent registration.⁵⁴
- There are four methods of marriage under the Goa Civil Code, three conventional methods and the fourth is by the splitting of assets [**Article 1096, 1097, 1098, 1099, 1100, 1101**].⁵⁵

⁴⁹Supra 48

⁵⁰Supra 48

⁵¹Portuguese Civil Code, 1867, Art 1056

<https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportuguesecivilcode.pdf>

⁵²Portuguese Civil Code, 1867, Art 1090

<https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportuguesecivilcode.pdf>

⁵³Portuguese Civil Code, 1867, Art 1073

<https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportuguesecivilcode.pdf>

⁵⁴Portuguese Civil Code, 1867, Art 1083

<https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportuguesecivilcode.pdf>

- There should be the consent of both parties before and at the time of marriage. Marriage cannot be agreed to under the title of betrothal, affiancement or any other contract to marry in the future [**Article 1067**].⁵⁶
 - Under **Article 1123** of the Goa Civil Code, as soon as the spouses get married, the assets get equally divided between both. Thus, both parties have equal rights over each other's assets.
 - Consent to marriage may be given through an attorney, provided that a power of attorney is special and expressly designates the person with whom the marriage shall be contracted.⁵⁷
 - Registration of marriage of non-Goans is currently banned in Goa. However, the chief minister of Goa, Pramod Sawant, said they will make a provision through amendment so that non-Goans will be allowed to do so.⁵⁸
- Divorce Under the Goa UCC

Under **Article 1204** of the Goan Civil Code, the grounds for divorce are:

- Adultery by husband or wife⁵⁹
- Complete abandonment of wife⁶⁰
- Conviction of the spouse to life-imprisonment⁶¹
- Ill-treatment and serious injuries⁶²
- Separation may be sought only by the innocent spouse (**Article 1205**).⁶³

⁵⁵Portuguese Civil Code, 1867, Article 1096, 1097, 1098, 1099, 1100,

1101 <https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportugueseccivilcode.pdf>

⁵⁶Portuguese Civil Code, 1867, Art

1067 <https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportugueseccivilcode.pdf>

⁵⁷Portuguese Civil Code, 1867, Art

1123 <https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportugueseccivilcode.pdf>

⁵⁸Portuguese Civil Code, 1867, Art

1123 <https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportugueseccivilcode.pdf>

⁵⁹Portuguese Civil Code, 1867, Art

1204 <https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportugueseccivilcode.pdf>

⁶⁰Supra 64

⁶¹Supra 64

⁶²Supra 65

⁶³Portuguese Civil Code, 1867, Art

1205 <https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportugueseccivilcode.pdf>

- Procedure of Divorce

Under **Article 1205, 1206**, the procedure for divorce is:

- The spouse who desires to get divorced shall move to the court of his or her domicile or residence and summon a family council consisting of six closest relatives of both parties, three from each side, the competent law officer of the Public Ministry, who shall have no right to vote but only express his opinion.⁶⁴
- In case there is a lack of relatives, friends of the family can make up for it, and if there is a lack of the same, respectable persons of the neighbourhood may make up for it.⁶⁵
- In case of a tie, the matter shall be decided by the judge.⁶⁶
- The wife may apply for provisional custody, whether the wife or the husband is the applicant.⁶⁷

COMPARISON BETWEEN UCC AND PCC IN PERSONAL LAWS

Personal rights are defined as a law which applies on the basis of religions, faith and culture to a certain class or group of people or a specific person. It is one of the Indian law's unique components. India is a multicultural society with various religious groups having their own faith and conviction. Their conviction is determined by the laws. And these laws are drawn up by considering various customs and customs."⁶⁸ Since the colonial era, Indians have been following these laws.

Marriage Laws Analysis in India and Goa⁶⁹

Hindu Laws

A marriage is considered valid under Hindu Marriage Act, 1955 if it fulfils certain conditions, namely:

- Either of them is single at the time of marriage.⁷⁰
- Either of the parties is capable of giving a valid consent.⁷¹

⁶⁴Portuguese Civil Code, 1867, Art 1205,

¹²⁰⁶<https://www.indiacode.nic.in/bitstream/123456789/8312/1/ocrportugueseccivilcode.pdf>

⁶⁵Supra 69

⁶⁶Supra 69

⁶⁷Supra 69

⁶⁸ The Goan Way of Civil Code(Family Laws) | RACOLB LEGAL, RACOLB LEGAL | QUALITY IS ALL THAT MATTERS (2021), <http://racolblegal.com/the-goan-way-of-civil-code-in-contrast-to-personal-family-laws-in-india-a-grand-success-or-steep-failure-with-special-reference-to-marriage-regimes/> (last visited Jun 15, 2021).

⁶⁹ The Goan Way of Civil Code(Family Laws) | RACOLB LEGAL, RACOLB LEGAL | QUALITY IS ALL THAT MATTERS (2021), <http://racolblegal.com/the-goan-way-of-civil-code-in-contrast-to-personal-family-laws-in-india-a-grand-success-or-steep-failure-with-special-reference-to-marriage-regimes/> (last visited Jun 15, 2021).

⁷⁰Hindu Marriage Act, 1955

- The bride must not be less than 18 years and the groom, not less than 21 years of marriage.⁷²
- Neither of them is under prohibited degrees unless custom prohibits so.⁷³
- There is no sapinda relationship between the two parties, i.e., belong to the same sect by blood.⁷⁴
- Both the parties are required to be Hindus.⁷⁵
- Marriage may also be solemnized according to customary rites and ceremonies of the parties.⁷⁶
- Saptapadi (taking seven rounds around sacred fire) is a very important ritual of Hindus, and upon completing the seventh round, the marriage becomes complete and solemnized.⁷⁷

Where all the essentials of marriage are fulfilled, a marriage under Hindu Marriage Act is deemed to be valid.

Issues under Hindu Laws in contrast to Goa Civil Code

However, in contrast to the Goa Civil Code, marriage problems are solemnized in the Hindu Marriage Act. Sapinda relationship first of all limits marriage between two individuals who may or may not have blood relationships. In addition, a Hindu marriage is considered sacrosanct, in contrast to the Goa Civil Code, where marriage is equal to a contract. In addition, Saptapadi is another issue that complicates marriage under Hindu law. Marriage may, however, be solemnized by mere registration under Goa Civil Code.⁷⁸

Parsi Laws⁷⁹

Any marriage under the following conditions is considered an invalid marriage:

- The parties to the marriage are related by degrees of consanguinity or affinity.⁸⁰

⁷¹Supra 75

⁷²Supra 75

⁷³Supra 75

⁷⁴Supra 75

⁷⁵Supra 75

⁷⁶Supra 75

⁷⁷Supra 75

⁷⁸Supra 74

⁷⁹THE PARSI MARRIAGE AND DIVORCE ACT, 1936,
https://www.indiacode.nic.in/bitstream/123456789/2476/1/a1936_3.pdf

⁸⁰Supra 84

- Marriage is not considered to be solemnized if it does not has 'Ashirvad' by the Parsi priest and in the presence of two other Parsi priests.⁸¹
- And any marriage wherein bride is less than 18 years, and groom is less than 21 years.⁸²

Issues under Parsi Laws in contrast to Goa Civil Code

There are. However, certain marriage problems are solemnized in accordance with Parsi Law, although they are smaller than those under Hindu law. However, the marriage is only celebrated in the presence of the main Parsi priest and two other priests other than the priest. In addition, restrictions on marriage by consanguinity or affinity may be regarded as a matter of concern, given that marriage is considered to be a contract under the Goa Civil Code.⁸³

Christian Laws⁸⁴

Any marriage under Christian Laws is considered to be valid only if the following circumstances are fulfilled:

- Herein, the bride should be at least 18 years, and the groom must be at least 21 years of age.⁸⁵
- The marital relationship between the partners should not be more than monogamous.⁸⁶
- And the marriage is conducted in the presence of person licensed under Section 9 of Indian Christian Marriage Act, 1872 and two other credible witnesses.⁸⁷

Issues under Christian Laws in contrast to Goa Civil Code

Christian legislation has only one disadvantage for witnesses, apart from which it is nearly equal to the civil laws of Goa.⁸⁸

⁸¹Supra 84

⁸²Supra 84

⁸³Supra 74

⁸⁴ THE INDIAN CHRISTIAN MARRIAGE ACT 1872,

http://home.kar.nic.in/download_files/Passport/The_Indian_Christian_Marriage_Act1872.pdf

⁸⁵Supra 89

⁸⁶Supra 89

⁸⁷Supra 89

⁸⁸Supra 74

Muslim Laws⁸⁹

Marriage under Mohammedan Laws requires the following conditions to be fulfilled so as to be considered as valid under Mohammedan Laws:

- Marriage is defined as a contract aimed at procreation and legalizing children.⁹⁰
- Capacity to contract wherein a person who is not of unsound mind and has attained the age of puberty is under valid capacity to enter the contract of marriage.⁹¹
- There must be a proposal and an acceptance to that proposal with valid consent. This is done under the presence of two persons from either side.⁹²

Issues under Muslim Laws in contrast to Goa Civil Code

The two contrast between the two laws of the family. At the same time, they both agree that marriage is a contractual form. The obstacles are, however, limited only to women. Polygamy is allowed for men. This contrasts greatly with the Goa Civil Code, in which Muslim men receive equal treatment in contrast to other religions. Strictly limited is polygamy herein. Marriage registration is compulsory under the Goa Civil Code, which was not required by Mohammedan laws. The advantage of this is, rather than relying on witnessing during Nikah, which was done in Mohammedan Law. The evidence is provided to Registrar as to the validity of the marriage.⁹³

Special Marriage Act, 1954⁹⁴

This kind of marriage offers two individuals of different sex regardless of religion a civil marriage. In Indian, this law prevailed to marry outside the customs of their personal law. This law applies across India except for Jammu and Kashmir since it is accorded a special status in accordance with Article 370. His law is nearly identical to the 1955 Hindu marriage law, which gives an idea of how the Hindus are secularised in law. All Muslim community people are married under this special marriage. Under this Act, polygamy was illegal, and even the divorced system was governed by this law by Indian inheritance acts. However, certain provisions are applied in Goa for divorce. Muslim community members who have entered their marriage in Goa cannot take more than one woman in accordance with this Act, and all property and property held by the spouse during the marriage pe-

⁸⁹ The Muslim Personal Law (Shariat) Application Act, 1937, <https://indiankanoon.org/doc/1325952/>

⁹⁰Supra 94

⁹¹Supra 94

⁹²Supra 94

⁹³Supra 74

⁹⁴Special Marriage Act, 1954

riod shall be entitled to a half part of the property and a half part of the property if the spouse dies. And the other half property was split into the same ratio among the children.⁹⁵

CONCLUSION

An exception is the Goa Uniform Civil Code. It is a dramatic measure that should be taken with care to adopt a uniform civil code for the whole of India. The implementation of UCC presents many challenges. It should be taken into account the interests of the minorities. Due to the Portuguese rules, which have been in place for many years, the UCC in Goa was successful. Even if the adoption of a uniform civil code has many advantages, the religious groups have much misinformation on the UCC as an instrument of domination of a single religion. In the face of religious and cultural diversity in different states, the uniform laws in one country will not guarantee its success in all other countries. The consistency of laws does not fully ensure equality between all. While Goa has adopted a common civil code for all, it is not yet uniform and has certain exceptions for various religions. In general, everyone is part of the Goan Code, but it is not to be said that India is a perfect model.

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