
A Common Civil Code for Contemporary India

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ABSTRACT

India is a multicultural and multilingual country having en-number of customary and religious practices. The Major religious denominations in India are Hindu, Muslims and Christians; they follow their own personal laws. Personal laws are the system of rules which deals with marriage, succession, adoption, maintenance and guardianship. Thus each and every person is governed by their own religious and customary practices. There is no common personal to all the religion. This variation in personal laws leads to many complications for instance as the Muslims are allowed to marry four wives simultaneously, many of the Hindus and Christian male are converting to Islam merely for the sake of marriage, hence there is a dare need for uniform civil code for modern India.

INTRODUCTION

“One country, one nationality, one citizenship, and one legal system is axiomatic and we cannot think in terms of personal laws that vary with communities, religions and sects”- Justice Krishna Iyer. (V.R, 1986)

A common civil code is a process whereby family law is impressed with a secular character so that citizenship as Indian, not his particular religion, sect or school, will pronounce the prescriptions (V.R, 1986) and proscriptions that govern his economic, social and other temporal affairs.

The ‘Uniform Civil Code’ is a phrase consists of three words ‘uniform’, ‘civil’, ‘code’. The form of a thing refers the word ‘uniform’. Article.44 of Indian Constitution uses the term “uniform” instead of “common”. But the both terms are used as meaning of the other usually in the conversation involving to the societal provision.

The term ‘civil’ is a flexible expression which is applied in different senses. This term derives from the Latin terminology ‘civilis’ which means a citizen. Whenever this word civil is used as replacement of word ‘law’ the intention is leading to the pathway of differentiating the criminal and political rights from the personal rights and rights of the individual. This acquired various meaning in the course of time and no jurists has discovered the English meaning of this term, since it is said that it has its origin from the law of roman known as ‘jus civil’. Since the term ‘civil law’ refers to private law of a state, in other words a set of municipal laws, related to family laws. Hence it does not include international law in other words its opposite of criminal law.

The word 'code' has its basis from the expression 'codex' which means a book. In Europe from eighteenth to twentieth century's the term code is referred to a more or less wide-ranging organized testimonial in written form of most important organs of law, such as the civil law or the criminal law of a specific country, overriding the combination of custom, judgment and small pieces of enactment which have formerly applied.

In contemporary epoch a 'code' has been logically used to refer a complete work of legislation. It is based on homogeneous principles and adaptable as entire area of law or a great part of legal principle is arranged in a systematized manner. Thus, the expression 'civil code' is an enactment of a set of rules intended to have a complete codification of civil legislation and not partial or incomplete legislation. Finally, the word 'Uniform civil code' means a code which shall be evenly applicable to all citizens without any reference to their religion, race, sex, caste and creed.

The West European countries had codified their laws; the 'Civil Code' includes the Act in which the civil relation among their citizens has been administered. But excluding issue dealt with special system, as such commerce, procedure and crime. It covers inter alia domicile, marriage, divorce, contract, sale, partition, exchange, mortgage, succession, and so on.

Genesis of Uniform civil code in India:

India is a country having multi-lingual and multi-cultural features. There are many minorities in India such as Muslims, Christians, Buddha's, Jains and Sikhs and are blended and merged of codified and uncodified personal laws of their respective religion. Personal laws are system of rules that are determined by reference to a specific religion. In India the personal law governs interpersonal relationship and is divided according to Hindu law, Muslim Law and Christian law. The Hindus have their sources from Vedas, smritis and srutis. On the other side Muslims have their own personal laws according to holy Quran and Hidayah which is also divine in nature. Christians and Parsis also have their own personal laws. Hindu law had been codified and which is made applicable to Buddhist, Jains and Sikhs also.

However there is no Uniform Personal law in a single statute for all Indians which are acceptable to all religious communities in India. Moreover the Muslim personal laws cannot be brought under the ambit of judicial review and this situation makes it more difficult for the enforcement of fundamental rights i.e., for example Article 14, Right to Equality. The concept of Uniform Civil Code is to bring all personal laws common so that the existing disparities can be avoided.

Hindu period:

In Hindu period, the society was running in an organized manner and there was common laws laid down by the religious leaders. These rules not only consist of religious ceremonies and rites, but it includes the code of morality and ethics for the society. The civil laws and religious and social rules were one and the same and were not differentiated from each other. According to their view law is integral part of their religion. The important feature of the Hindu law was that it governed the entire Hindu common source of its growth and has its origin of a divinely inspired class called Brahmins.

There is no difference of opinion about the fact that the entire spectrum of social, political and economic life of the people was regulated on the basis of rules and regulations revealed by the divinely sages and philosopher who made new laws. Hence during the Hindu period, there was no other religious community there was no conflict among the people.

Muslim Period:

Towards the end of eleventh and twelfth century began the downfall of Hindu period and raise of Mohammedan rule in India. Thus Muslim law became the law which could be enforced through the machinery of the state. Muslim rulers neither accepted the Hindu law nor abolished it all together. As far as civil law is concerned they allowed the Hindus to follow their own laws and for Muslims, Muslim law. This paved the way for two different personal laws. And all non-Muslims were governed by their own religious and customary laws. Grady in his book “Administration of Personal laws under Muslim Rule in India” said that the “Hindus enjoyed a complete indulge with regard to the rites and ceremonies as well as with respect to various privileges and immunities regarding property (succession)”, the rule of decision when both the parties were Hindus the case was referred to the decisions of Hindu pundits or Hindu Lawyers. Thus under Muslim rule, there was two parallel civil law.

British period:

After firm establishment of British rule in India, Britishers did not want to be governed by local Muslim laws, which were the “Official Law” at that time. Thus British East India Company during the period of Warren Hastings in 1772 recognized that there were different laws for different groups of people mainly based on religion. They divided laws into two kinds one is general law and the other is personal law. The general law includes criminal law, contract and commercial law and the personal law meant for the matters related to family and religion. There is a presumption that the British introduced the personal law system, but in fact Hindus had framed their own rules and regulations based on Vedas and Customary laws. The British thus followed the same established pattern, instead of unifying the laws; they added diversity by implementing their own laws. But they made some changes in the legal system by codifying the Genaral laws i.e., Indian Penal Code, 1860, Indian Evidence Act, 1872 and Indian Contract Act and very few enactments in Personal laws.

The British has enacted few common laws such as the Special Marriage Act, 1879, Married Women’s Property Act, 1874, Indian Minority Act, 1875. The Guardians and Wards Act, 1980, The Gains of Learning Act, 1930, The Indian Succession Act, 1925 and the Child Marriage Act, 1929. Irrespective of religion the above said laws were applicable to all. The British followed divide and rule policy in India in order to avoid communal riots. Therefore they did not show any pursue to implement Uniform Civil Code laws in India. According to Chowdry Hyder Hussain, a Prominent Muslim Lawyer, in his Article A Unified Code for India - “Living under the British rule for about two centuries we have come to consider it only natural for Hindus to be governed by Hindu Law and Muslims to be governed by Muslim Law, but it is wholly a medieval idea and has no place in the modern world. I would therefore strongly urge the necessity of having only single code to be named as Indian Civil Code applicable to everybody living within the territory of India irrespective of caste, creed or religious persuasions”.

The three various legal systems i.e. the Hindu, Muslim and British system have paved the way for the development of present Indian legal system. The fundamental principles of Hindu law were originated from Vedas and custom. The Manusmriti is first and foremost source of Hindu law, in ancient period the king generally will not interrupt in the religious freedom of his people. Simultaneously the local custom and usages were part and parcel of the administrative system. During the Mughal rule, Muslims were governed by their own laws whereas Hindus were free to practice their own customs, traditions and laws. In spite of the common view that the Muhammedans were bound to follow Quran in strict sense, Quranic principles were not strictly enforced by Mughal rulers.

During the reign of British, they did not interfere into the personal laws of Hindus and Muslims. In the initial period, administrators basic intend was to trade from India and exploits its natural resources. They sustained judicial system enforced by Muslim rulers. After firm establishment of their rule in India, they slowly changed criminal sanction and introduced their own system in civil laws. An attempt was made to codify the personal laws during their concluding stage. Although, First Law Commission was appointed in the year 1834 but some legislative enactments could be made around 1860s such as Marriage Dissolution Act, 1866 and Indian Divorce Act 1869. On recommendation of Sir Syed Ahmad Khan, Britishers enacted Kazis Act 1881 for appointing Kazis for Muslims in India. A number of other laws were also implemented. The whole history of personal laws proves that they were prejudiced by transform of time to some extents. Though, the British Governance had introduced their system of rule gradually without touching the personal laws of various religious denominations. To modify personal laws is not only difficult task for the Britishers it is very challenging for the Indian government also. After Independence also the father of constitution and other political leaders had struggled a lot for the codification of personal laws. The effort altogether paved the way to codify laws only for Hindus and it is impossible for Muslims.

Post Independence Period:

The genesis of the demand for Uniform family laws has its origin from the Women's movement of the pre independence era within the larger context of the nationalist struggle. The All India Women's Conference was an active protagonist demand and the issue of gender equality within the political agenda. In 1940 the National planning committee while focusing upon the economic dimension of Women's rights, recommended for Uniform Civil Code in order to have a planned society there by providing equal rights for men and women. In the initial phase Uniform Civil Code was to be optional code which could gradually replace the different personal laws followed by different communities. When it was seriously discussed the base purpose of women's right has evaded instead of that Uniform Civil Code should be incorporated for National integrity.

While drafting the constitution there was two divisions of opinion rendered by great leaders one Gandhi, and the other Nehru, Ambedkar and others, the former wanted to return to ancient religious and cultural thoughts and Nehru along with Ambedkar wanted to follow the west as much as possible and give India Uniform secular structure. This got great opposition and majority of leaders, especially the Muslim leaders started opposing it on two main basis. Firstly it does not empower State to legislate in Personal laws. Secondly they asserted that India is Secular country thus it should not let the legislature to interfere in the personal

beliefs and practice of religious communities. The Honourable Dr.B.R. Ambedkar, although did not accept the amendments and defended the right of the state to interfere in the personal laws of the different communities. He defended the arguments of the Muslim and Hindu members of the constituent assembly. He said that he was shocked by the arguments of Mr. Hussain Imam that India was too vast country to have uniform laws. This is precisely what we did have. “We had uniform and complete criminal code, property laws, practically a uniform code in all matters except marriage and succession” (Government, 1950). He added that it was not true that Muslim law was incontrovertible and identical throughout India up to 1935. The Muslims and Hindus in North Malabar followed Marumakkathayam laws relating to succession. And till 1937 the shariat law was not applicable to North- West Frontier province, in matter of succession the Muslims to a large were governed by the Hindu law [Philosophy of Uniform civil code, p. 38]. Thus he concluded his argument by these words, that “this is not a novel method already adopted in the Shariat Act, 1937 when it was applied to territories other than the North West Frontiers. The law said that here is a Shariat law which should be applied to Mussalmans provided a Mussalman who wants that he should be bound by the Shariat Act should go to an officer of the state, make a declaration the law will bind him and his successor. It would be perfectly possible for Parliament to introduce a provision of that sort, and so that the fear which my friends have expressed here will be altogether nullified. I, therefore submit that there is no substance in this amendments and I oppose them.” (Deshta, 1995).

Ambedkar strongly demanded for secular law but all in vain, hence the Uniform Civil Code was put on hold and was planted in to the constitution as one of the many Directive Principles of state policy under Art.44, which states that State shall endeavour to secure a Uniform civil code to all citizens. There is no time limit nor it is clearly defined when it should be implemented, instead codification of all personal laws, Hindu law alone has been codified because it has diversity in itself as it paved the way for Hindu Marriage Act,1955, Hindu Adoption and maintenance Act,1956, Hindu Minority and Guardianship Act,1956, and Hindu Succession Act,1956.

Factors Responsible For Non- Implementation of Uniform Civil Code:

After independence the stages of Uniform Civil code can be divided in to two phases. One is 1950-1985 the Hindu laws alone is codified, the Muslim laws were exempted from enacting and remains unreformed. Instead of that the Central government in the year 1954 enacted, “The Special Marriage Act”, a secular law, which empowers everyone to marry outside the personal law. And the person marrying under The Special Marriage Act, 1954 were governed by “Indian Succession Act, 1925” for matters relating to inheritance and succession.

The second phase started from 1985 to 2005, similarly as in the first phase the Muslim law has its vacuum, compared to other minority groups the Muslims were the largest minority in India, as per the demography the population of Muslims in India rose from 12% of total population to 135 millions. The Muslim in India becomes a vital part of the political structure with various political parties; still it is impossible for the legislation to implement Art. 44 of Indian Constitution.

Thus the Uniform civil code becomes a serious and complex subject and since several questions arises that,

What is going to be in the Uniform civil code?

Whether it is true that there are no uniform civil laws at all?

Is it true we have no uniform civil laws?

All the three questions are interrelated with each other, thus we have a large number of civil laws that apply to all Indians. Among them are procedural laws such as civil procedure code, criminal procedure code, Evidence Act, Registration Act etc, commercial laws like the Transfer of Property Act, banking laws, Tax laws, relating to income, sales, customs, excise, etc., miscellaneous enactments such as land revenue code, and tenancy acts, and socially significant legislation like the Dowry Prohibition Act and the Bonded Labour System (Abolition) Act.

The expression Uniform civil code is perhaps a misnomer. It should have been called a Uniform code of Family laws (Engineer, 1987). But even here we find several uniform laws such as: the Special Marriage Act, 1872 replaced by the Special Marriage Act, 1955, the Indian Succession Act, 1875, the Guardians and wards Act, 1890, and the Medical Termination of Pregnancy Act, 1971, Juvenile Justice Act, 2002, Domestic Violence Act, 2005. In addition to that certain service rules, Air service rules covering government employees and public sector companies which forbid polygamy; provident fund and life insurance rules treat the wife as the sole successor.

The Special Marriage Act, 1955 applies to all Indian irrespective of religion. It enables persons of different religions to marry without conversion and the law of succession applicable for them is the Indian Succession Act, 1925. And The Child Marriage Restraint Act, 1929 replaced by Prohibition of Child Marriage Act, , the Guardian's and Ward's Act, 1890, the court has the power to appoint guardian to minor, in spite of respective personal laws the wellbeing and safety of the child is supreme consideration. The age of majority is 18 years in Indian Majority Act, but for a minor whom a guardian has been appointed attains majority on completing 21 years of age, irrespective of the religion. According to Vasudha Dhagamvar (Engineer, 1987), even the Medical Termination of Pregnancy Act, though special law is a family related law as the MTP Act go along with personal laws which does not allows termination of pregnancy. And it is drafted in such a way it even prohibits abortion by an unmarried mother and married women with consent of the husband is an offence unless there is an grave danger to the life of pregnant mother. Thus various factors were responsible for the non- implementation of Uniform civil code, the three main factors is religious factors, and political factor.

Religious factor:

In the above paragraphs relating to genius of uniform civil code, it is clear that the codification of laws was initiated by the British Administration. During their reign other than personal laws, the civil and criminal laws are codified. As the Indian religious society believes the personal laws as part and parcel of the religion, since the British did not want to infuriate. The same view was expressed in the constituent assembly debate in respect to Uniform civil code under Art.35.

The Muslim leaders vehemently opposed the idea of Uniform civil code by stating that it would affect their religious freedom. The supporters argued that Uniform civil code would

pave the way to attain gender equality and unity of the nation. And moreover personal laws are not inter related component of religion, hence the State has the power to control the religious freedom.

The legal inconsistency, between freedom of religion and need to execute uniform civil code, has not been resolved ever since 70 years of Independence. It shows that country is in the same position as before the Independence, thus who are opposing Uniform civil code still under the scapegoat of religious freedom. The following submissions may be advanced in support of Uniform civil code,

Firstly, no doubt the religion has socio religious aspects, and it must be confined to one's own belief and faith, thus the individual relation with god should be segregated from other concepts of social life.

Secondly, though the constitution of India provides fundamental right to freedom of religion, under Art.25 expressly saves,

- i. laws relating to secular activity which may be associated with religious freedom,
- ii. Laws providing for social welfare and reform. It has been rightly argued that the personal laws of various communities may be subjected or amended to change under the regulatory power of the state. The traditional orthodox Indian society cannot be reformed unless the state regulates the personal laws. At times, the state has shown the courage to regulate the religious freedom but because of the political considerations nothing was done to achieve constitution goal of Uniform civil code in India. Constitutionally secularism is now the basic structure of the state must start to secularise the personal laws in order to achieve a preferred constitutional objective.
- iii. Most of the European countries have their uniform civil code and all the citizens are subject to the same set of laws. Neither exceptions are not made nor are nor protest heard. In those countries the uniform laws in civil matters are not considered tyrannical or oppressive by the minority religion. When comparing other European countries, India's position is totally different, hence Indian constitution is based on secular principles and adopted uniform civil code as future constitutional objective. But still India is facing a variety of discriminatory, non-progressive and religious personal laws. Many countries including Islamic nations such as Egypt, Turkey, and Pakistan have established progressive laws but in India it is not possible to secularize the personal laws hence it is resisted by the religious fundamentalists.
- iv. At present, it has been blindly argued that the replacement of personal laws with a state enacted uniform family code is interference in the religious laws and it will lower down the purity and dignity of the religion. In this connection it has been also argued that in a religious society like India reforms in family laws may be more effective if such reforms come by the initiative of community itself. While referring to this variety of opposition it may be submitted that no doubt many times, the great religious messengers and leaders have succeeded to reform the society by using the tool of religion. But after, the end of the life of such messenger the leaders have succeeding legal heirs often fail to carry the real spirit behind the religion. They also failed to impart the required interpretations, often needed in the changing time and circumstances, and hence religion loses its authority and dignity and even sometimes stands against the reform and

progress. One such e.g., is Nikah halala which means after talaq if the husband wants to reunite with divorced wife, she has to marry another man, after consummation, the husband has to pronounce talaq and she has to observe iddat, this was the mandatory stipulation imposed by Prophet in order to curtail the arbitrary power of the husband to pronounce talaq. But now this stipulation has totally gone against the Muslim divorced wife. Thus the substitute of religious personal laws by the state made Uniform civil code should not be considered as an obstruction to the additional progress to religious personal laws.

Cultural Factors:

The term culture has not been clearly given in the Indian constitution but according to scholars in sociology, historians and other skilled persons generally culture is defined narrowly and a little widely. Thus wider sense culture means as a way of life of people in its scope it includes values, beliefs, economic and cultural activities, technologies and many other factors.

The other important factor against the Uniform civil code in India has been that its implementation will affect the cultural heritage, and i.e the mandatory execution of it will estrange the people from state. In this view it has been argued that Art 29 of Indian Constitution guarantees “every section of the citizens of India the right to conserve its languages, script or culture” and since Uniform civil code in India may impose a different kind of culture and values for citizens, thus it is considered as against the constitutional protections. It has also been said that the law or legal system is closely linked with the culture of the society, and hence the protection of culture requires that the personal laws of the society should not be interfered. It is a quite interesting fact that this objection is against Uniform civil code in India, has been raised by the minorities and especially by the Muslims.

Thus the argument that the implementation of Uniform civil code will destroy the cultural identity of citizen is not acceptable and moreover it is not the role of Uniform civil code. And also it is submitted that culture of a community will not be spoiled if one of the element is subjected to modification or reforms. And another important feature of culture is that change in accordance with developing society and it should not be stagnated in the same condition. The law being the part and parcel of culture needs not be stoppage in one place hence it requires the modification with changing social circumstances. Therefore, outdated or unjust laws cannot be prescribed in the name of protection of culture for, e.g practice of sati an evil practice has been prohibited by Sati Prevention Act, 1988. Hence undue emphases to preserve unjust laws will, no doubt affect the growth of culture. Thus the uneven and inequitable principles of diverse personal laws cannot be protected in the nature of culture.

The opposition that Uniform civil code in India may impose uniformity without considering the cultural modes of various religions which may results in the alienation of such religious communities from the state is false. And moreover the constitution of India ensures enough “protection under religious freedom” under Art.25 and “cultural freedom” under Art 29 and free judiciary has interpreted the constitutional provisions to provide maximum protections to the religious and cultural minorities and also the parliamentary practice shows that often the laws were enacted with the consent of the enacted of the affected population especially in case of minorities communities.

Political factors:

We had enough discussion in this chapter that “Uniform civil code was opposed strongly by the Muslim leaders including some orthodox Hindus and supported by others, some has view including Nehru, that necessary and desirable principle, but the right time has not been reached to implement it. Others believe that the implementation of Uniform civil code, should not be imposed by the State, but must evolve from below. Yet others argue that a transitional measure is required in the form of a voluntary, non binding model code which gradually wins consensual support before it can be turned in to Uniform civil code”.

“The problematic factor in Muslim law is husband’s unbridled power to divorce wife unilaterally by uttering triple talalq, Justice Khalid.J. (Haneefa V Pathummal Beevi) Has questioned whether the Muslim wife should suffer the tyranny for all the times and whether their personal law should remain cruel towards the unfortunate wives. He appealed to the leaders of the public opinion to positively respond to the monstrosity. In spite of this unfair position the Parliament doesn’t take up this matter for reform. Jawaharlal Nehru felt that the Muslims were not sufficiently educated to accept and approve the modern values. He observed that “Now we do not wish Hindu majority to do it. These are personal laws and so they will remain for the Muslims unless they want change them” – Nehru.

Role of Judiciary:

Though there are various factors which prohibits the implementation of Uniform civil code and also the legislation is silent on the aspect of Uniform Civil Code, the Hon’ble Supreme Court of India has given timely decisions in various cases, The Supreme Court in 1985 in (Mohd. Ahmed Khan V Shah Bano Begum, 1985), explained the necessity of Uniform Civil Code. In this case a Muslim Women claimed for maintenance from her husband under Sec.125 of Cr.P.C after she was given triple talaq by her Husband. Husband contended that he did not have to provide maintenance of his divorced wife as per Muslim personal law. As under Muslim law, the husband’s liability to provide maintenance for his wife is limited to the period of Iddat. The SC held that she has a right to get maintenance from her husband under Sec.125 of Criminal Procedure Code, which states that a person with sufficient means has to maintain his wife, if she has not remarried. The court opined that Art.44 (3) of the constitution remained as dead letter. The then Chief Justice of India Y.V.Chandra Chud observed that, “A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies”.

The second issue arose in (Sarala Mudgal V Union of India, 1995) the question was whether a Hindu husband married under Hindu Marriage Act, 1955, by embracing Islam, can solemnize second marriage. The court held that it is void marriage as embracing Islam will not dissolve the existing marriage and it would be an offence under Sec.494 of the IPC. Jus. Kuldip Singh also opined that Art.44 has to retrieve from the cold storage where it is lying since 1949. The Hon’ble chief justice referred to the codification of Hindu laws and held that “ where more than 80% of the population have been already brought under codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of the ‘Uniform Civil Code’ for all the citizens in the territory of India”.

Recently in 2016 in (Shayara Bano V Union of India, 2017), the case was filed by the wife to declare the Talaq (talaq-ul-biddat) pronounced by her Husband is void-ab-initio, the

question was whether Triple Talaq, violates the acceptable norms of “public order, morality and health and to the other provisions of part III of the constitution. The Court held that triple talaq is violating the rights given under Art 14 and 21. And it is clearly a practice of patriarchal society and therefore, cannot be sustained in today’s world of gender equality.

But these piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of Uniform Civil Code. Justice to all is far more satisfactory way dispensing justice than justice from case to case.

French Code civil in Pondicherry:

When the French established their administration over some territories of India, they did not introduce any change in legal system of the territories where they settled. In 1699 after the Ryswick Treaty, Pondicherry becomes a French territory and the inhabitants become the French nationals in law. At that time French was a religious state and state religion was the catholic religion (Annouswamy, 1995) hence one should be a catholic to be a French citizen. Thus the descendants of French nationals and local people who had converted to Catholics had enjoyed the rights and privileges conferred upon French nationals. In spite of this the Pondicherry local residents who refused to convert to Catholics were considered as French nationals but their rights were restricted.

After the French revolution in the year 1789 the situation changed especially after the civil code has been promulgated in Pondicherry, the French settlements of Pondicherry, Karaikal, Mahe, Yanam are concerned, by a resolution dated 06.01.1869, amongst the other things, the French code civil was made applicable to the inhabitants of that settlement, with saving clause to the effect that the inhabitants of those settlements (Indian) whether Hindus, Muslims or Christians would continue to be governed by the usages and custom of their respective caste [Ibid p. 143]. Subsequently by a resolution dated 24.04.1880, for the provisions regarding birth and death and those regarding to the performance of marriages in the code civil was made applicable to the inhabitants of French settlements in India. However, with a saving clause that making it optional to the indigenous stock except the Christians of the French settlement to marry and divorce as per their own customs.

But in respect of all other matters related to personal laws, the Christians were governed by their customary Hindu law for e.g. law relating to succession. The person who had renounced their personal law was entirely governed by the French law relating to obligation arising out of marriage. However, considering the condition prevailed in India the age of parties to the marriage was reduced to 14 and 12 respectively. Irrespective of religion the marriage performed as to their customary law has to be registered compulsorily. The prohit and Kazi has liability to inform the marriage celebrated by them to mayor failing which is punishable with fine or imprisonment or both.

In addition to this a further option was given to the indigenous stock of the French settlements in India to renounce their personal laws and to adopt the French law was applicable by then to the French nationals by a resolution dated 21.09.1881. The renunciation is encouraged by offering more privileges and Government employments to those who are giving up their personal laws and adopting the French civil code. Mostly such opportunities are availed by the Christian community and the least section of the Hindu

hierarchy system. Hence those who had renounced his personal laws and opted French code civil were named as Renocants.

Pondicherry has now become Indian Territory, and there are still some areas, in which French law continues to apply,

Firstly, there are more than 10,000 French nationals of Indian origin who are governed by the code civil as modified from time to time in France in matters of personal law.

Secondly, those who during the French regime, have renounced their personal status and chosen to be governed by code civil and who did not opt to remain French at the time of cession and have, therefore, become Indian nationals, are still governed by the code civil in respect of personal law (Annouswamy, 1995) (India)

Thirdly, a saving clause has been added in enactments in the field of personal laws which were extended, to the effect that those laws are not applicable to Renoncants, that is to say, Indians of any religion who during the French period have opted to be governed by the code civil in matter of personal law in the place of their customary personal law.

Though common civil code has many features there are certain obstacles such as, the Child Marriage Restraint Act, has been declared not applicable to Renoncants, and moreover The Indian Succession Act, 1925 is also not applicable to them, a secular law where the major part of the Act deals with Testamentary succession, protection and administration of the property of the deceased, and rules of intestate succession of Indian Christians and other than Indian Christians.

The Civil code of Goa:

The practice in Goa is unique compared to other parts of India. In Goa the Hindus are governed by polygamy (India), Identical statutes were enacted also for Daman and Diu and the Muslims are governed by monogamy just against the law in rest of India. Neither Nikha nor Talaq is recognized and Muslim marriages and divorce are governed by the Goa civil code. It is because the Portuguese policy is not divide and rule policy as British they followed assimilation and codification to facilitate the smooth running of administration. Hence various religion and castes were listed and codified their customs and usages. They introduced the Continental system of family law which prevailed in Portugal and based on French civil code. But it is not similar as French civil code, and there was no total separation from Church. The Portuguese mingles the religion with polity and completely under the papal authority. The code is mainly enacted for the Roman Catholic in order to provide certain concessions to them. The marriage of Roman Catholic were solemnized in the church as per the cannon law, but for others have to perform the marriage in the office of the Registrar. Thus sacramental nature is given only to Christian marriage and granted statutory recognition (India)Article 1069 of the code, and also (Agnes, 2011) Similarly the annulment granted by the ecclesiastical tribunal is also recognized as valid. Hence the Catholic community in Goa need not apply for civil divorce under Indian Divorce Act, which is applicable to rest of the Christians in India.

Even in the year 1961, Goa, Daman and Diu were liberated and become the part of India (Union territory), the Hindu Code Bill and other personal laws were not made applicable to these territories and the laws which were then in force were allowed to retain (India, Goa,

Daman and Diu (Administartion) Act,1962)Sec 5. The Muslim community in Goa accepted the Portuguese Civil Code. An attempt in 1981 was made to apply the law of India to Goa, was opposed successfully by Goan Muslim youth groups and Goan women's association.

In (Ashabi Khan V Mrs. Parveen Khan and another, 2006). The applicants are interested parties objected to the proceedings on the ground that the parties are Muslims and therefore they are governed by the Muslim personal law (Shariat) Act, 1937 and therefore respondent, who is the widow of the deceased cannot be allotted 50% of the share of the property of the deceased. The Trial court has observed that both sets of parents of the deceased and applicant have been living and working in Goa since Portugese time. They are therefore governed by the Uniform civil code. And the Court held that the Family law of Goa is applicable to the parties and not the Shariat Act, 1937. Thus the Respondent and her daughter who would be entitled to the share in the assets left behind by the deceased husband/father.

In addition to that the Goan civil code provides useful guidelines regarding the concept of joint matrimonial property. Even though it is not strictly uniform and allows for certain exemptions it can be viewed as a possible model for a common civil code for India.

In addition to French civil code and Goa civil code, the Bar Council of India had drafted a model Uniform civil code in the year 1986, relating to marriage, divorce, maintenance, custody and guardianship of children, adoption, legitimacy, inheritance, succession, implementation machinery and procedures.

Conclusion:

As Indian society is marching towards the modernity and also according to demographical data the population of Muslims has been increased comparatively, still they are minority religion in India along with some other religion such as Christianity, Parsi, Jew and some Tribes. Thus it is ruthless to fear that implementation of Uniform civil code will affect the rights of minority religion. In turn common code has objectives to safeguard the merits of all religion and no way is it going to affect neither the individuality of Muslims nor any other religion.

With regard to gender equality the researcher found that personal laws irrespective of religion are purely patriarchal. Though the weight age is different is one way or other it affects the gender equality. It is better to term it that non- implementation of uniform civil code will affect the right of minority. Here researcher denotes the females as minority community. Thus, the researcher concludes that the implementation of Uniform civil code is the right path to remove gender inequality or in other terms it is a lighting path to gender equality.

And moreover, when it is possible to enact a codified law to a major population of India i.e more than 80% why it is not possible to include other 20% of the population under one code. The researcher had analysed and highlighted those even Muslim countries such as Pakistan, Afghanistan, Turkey, etc, has abolished Triple talaq and various evil practices and codified their personal laws. It is not a big task to enact Uniform Civil Code in India, and also it is clear from various enactments and judgments. Thus the researcher opines that it is in the hands of the Government to take step, and to have a fresh look in to the Uniform civil code.

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