

EGALITARIAN PARADIGM: ANALYSIS OF UNIFORM CIVIL CODE AS A CATALYST FOR GENDER EQUALITY IN INDIAN MATRIMONIAL LAW

PARADIGMA IGUALITÁRIO: ANÁLISE DO CÓDIGO CIVIL UNIFORME COMO CATALISADOR DA IGUALDADE DE GÊNERO NO DIREITO MATRIMONIAL INDIANO

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Abstract: The controversy about the implementation of the Uniform Civil Code has been in news for more than seven decades now and there exist concoction of point of views, where on one hand Uniform Civil Code is supported citing National Integration as a reason whereas on the other hand its implementation presumes that it will be used as a tool to obliterate identity of the minorities of the country. This activist approach of the judiciary is a ray of hope as it has transformed into communal politics. With the rise of majority and minority fundamentalism, the secular consensus is getting diluted and communal violence is escalating. The inconsistency in personal laws has been challenged in the court of law on the touchstone of Article 14 and through judicial activism; the courts have turned in

the direction to bring reformation to these laws. This article highlights the gender inequality that persists in different personal laws with respect to marriage and divorce and how reforming of personal laws is not a suitable way to ensure gender justice. The article also discusses the Uniform civil code of Goa and what are the loopholes in it. Finally, the article presents a model code with respect to marriage and divorce that can be adopted to prepare a Uniform Civil Code in India.

Keywords: Judicial activities. National Integration. Personal laws. Religious freedom. Uniform civil code.

Resumo: A controvérsia sobre a aplicação do Código Civil Uniforme tem sido notícia há mais de sete décadas e existe uma mistura de pontos de vista, em que, por um lado, o Código Civil Uniforme é apoiado invocando a integração nacional como motivo, enquanto que, por outro lado, a sua aplicação pressupõe que será utilizado como um instrumento para eliminar a identidade das minorias do país. Esta abordagem ativista do poder judicial é um raio de esperança, uma vez que se transformou em política comunal. Com o aumento do fundamentalismo da maioria e da minoria, o consenso secular está a diluir-se e a violência comunal está a aumentar. A incoerência das leis pessoais foi contestada em tribunal com base no artigo 14.º e, através do ativismo judicial, os tribunais viraram-se para a reforma destas leis. Este artigo salienta a desigualdade entre os sexos que persiste em diferentes leis pessoais no que diz respeito ao casamento e ao divórcio e o facto de a reforma das leis pessoais não ser uma forma adequada de garantir a justiça entre os sexos. O artigo também aborda o Código Civil Uniforme de Goa e as suas lacunas. Por último, o artigo apresenta um modelo de código relativo ao casamento e ao divórcio que pode ser adotado para elaborar um Código Civil Uniforme na Índia.

Palavras-chave: Actividades judiciais. Integração nacional. Leis pessoais. Liberdade religiosa. Código civil uniforme.

1. Introduction

The phrase “Unity in Diversity” has been memorized into the brains of every Indian where on one side diversity is cherished, simultaneously, it also causes difficulty in the integration and governance of the nation-state. With the Independence, ‘one nation’ was formed where people entering this nation knew that they have to live under one uniform law and as a result when constitution was framed by our founding father’s equal status was given to every citizens of the country irrespective of their caste, religion, creed, sex, race or place of birth (The Constitution of India, 1950. Art 15). India succeeded to achieve this uniformity in various spheres such as civil, contractual, criminal, and constitutional except family and matrimonial laws which are governed by personal laws of respective religions. The founding fathers of the constitution wanted to cleanse the nation out of its archaic traditions and in the attempt of it, grave scrutiny was made in the constituent assembly with each community vehemently expressing its dissent but no conclusion could be drawn out of it. As a compromise, Article 44 was included in the constitution, making Uniform Civil Code a directive rather than a mandate with no timeline for its implementation (The Constitution of India, 1950). The codification of diversified laws and legal norms, various cultural and traditional laws provide recognition to that law and strives for better enforceability. Ambedkar imagined for a unified nation and it could only be achieved by a uniform law treating all citizens equally.

The personal laws govern matters related to marriage, divorce, adoption, maintenance which belongs to every community of people therefore it can be said that personal laws govern the way of life of the citizens of a country which shows how personal laws are deeply embedded into the lives of the people. All the intensive debate in the constituent assembly was around how uniform laws in relation to personal matters will bring national integration and will be a step in a direction to build our nation more secular. There was hardly any importance given to the gender perspective of these personal laws as they are inconsistent with promoting gender justice, one of the reasons could be that there was little to no voice of women in the parliament during such debates and it was the men of our country who participated in the debates. The notion to create a uniform civil code has always been used by the leaders as a weapon to give ignition to their respective political motive. The personal law embodies our patriarchal society which is highly discriminatory towards women and put them at an inferior position causing inequality, deprivation, and violence. With all the debates about its implementation, no one would disagree with the proposition that any law which offends the fundamental right of an individual should be

let go off. Indian being a secular state follows no state religion and it denotes that the state cannot favor one religion over another so that there is no discrimination on the ground of religion. Unlike the United States where strict separation of church from the state is followed, in India the state tries to create a balance among all religious identities. The recent cases of communal violence and lynching prove that India is still a religiously fragile country. When Religion takes over to govern people's lives, a uniform civil code can be created to maintain the balance between personal laws and common law governing all citizens. Article 44 is a directive enshrined under the constitution but we as a nation has failed to give it life for seventy years by justifying how Indians are not ready for encroachment in their respective religions. We need to understand if not in seventy years how many more decades will we take to bring uniformity in the personal laws and eliminate arbitrariness from it because the need of UCC has been established by the apex court through various judicial pronouncements time and again. Secondly, in the political situation which could be described as beef-policing, history-tampering, cow-worshipping majoritarianism, selective purging of personal laws is not advisable whereas making laws in matters of secular activities such as marriage or divorce should be completely separated from the religion itself so that society moves towards a secular civil code(MP JAIN, 2015). The researcher has tried to correlate the application of the uniform civil code with gender equality by harmonizing the idea of legal pluralism with growing gender disparities and has also predicted legal exigencies in the implementation of uniform civil code by comparing uniformity in the Goa civil code. The researcher has used secondary sources like e-books, online law journals on the subject from libraries and online databases, newspaper articles and case laws.

2. Gender Equality and Uniform Civil Code

James Mill in the year 1817 acknowledged that the state of women in a society is manifestation of the development of that civilization in context of modernity; consequently women, modernity and nation became indivisible components in a connected dialogue of civilization (CHAKRABARTY, 1993). For the reformation of the society, women's right was a necessity to national rejuvenation and an index of national achievement (SEN,2007, p.233). Decades after our independence we still have not achieved the desired stage of gender equality. India was positioned at 135th rank by the World Economic Forum in the Global Gender Gap Report 2022, twenty-two ranks below her 2020 position. The existence of different personal law which attributes to major gender disparities is one of the core reasons to widen this gap. These

gender disparities breed out of the socio-economic conditions under which they are evolved. The contention of implementing uniform civil code roots from the fact that it will cut away the ground in which prejudices breed. A critical look into the constituent assembly's debate shows determination of the many founding fathers to enforce a uniform code and received major criticism from the fundamentalist who opposed reformation. Opposition arguments were surrounded by the fact that how India was incompatible to have uniform civil code due to its diversity and the right to pursue one's personal laws is a part of fundamental right provided to the citizens. It was further pressed that non-interference with personal laws is a component of minority rights (CONSTITUENT ASSEMBLY DEBATES, Dec. 1, 1948 7.64.90, 7.64.93). Diluting the progress, a lesser version of Hindu bill was passed in 1956 in the form of separate acts. The founding fathers envisioned the Constitution to be structured to act as an effective weapon to deal with such vices but they had to settle for making the dream of UCC as a directive principle of state policy. This step was opposed by women members like Rajkumari Amrit Kaur and Paula Banerjee who saw this move to keep the issue unaddressed (SAMADDAR,2005). K M Munshi, a supporter of UCC affirmed that religion must be alienated from legal regulation of life and there is an emergent need to modernize the civil laws. It was assured by B.R Ambedkar that the uniform code will have components of Hindu and Muslim law making it a secular document (CONSTITUENT ASSEMBLY DEBATES, Nov. 23, 1948 7.58.9145, 7.58.149). In the historic judgment of *State of Bombay v. Narasu Appa Mali*, AIR. (39) 1952 Bombay 84, Bombay High Court placed immunity on customs and traditions by placing them outside the ambit of fundamental rights; this principle shifts the focus from vision of social transformation of the constitution. This judgment had the potential to transform the fate of the personal laws in India but failed to do so. The triple talaq case exorcises the ghost of *Narasu Appa* where it was held that unilateral talaq was discriminatory on basis of gender and hence it was set aside which was a much-needed reform in Muslim personal law (*Shayara Bano v. Union of India*, (2017) 9 SSC 1). The language of the Supreme Court was criticized by many academicians as it became harsher and deployed pessimistic stereotypes against Islam, singling out the vulnerable situation of Muslims (KISHWAR, 1986). The State needs to have a more holistic perception and not target a particular religion because all personal laws have their own version of discriminatory practices which do not apply parity between women and men. It is true that due to codification of Hindu laws, it moved a step towards modernization but to keep it out of the question of reformation is totally flawed. Feminist scholars criticize the fact that there is rarely any amendment done in

personal laws to become accustomed to societal modification and they mostly remain "fossilized in the name of religious inviolability" (PARASHAR, 1992).

The Stand of the judiciary has been clear for a few decades now, the court regard itself as incapable to set in motion for the concrete change to implement UCC. "The only solution for many of these social problems is to appeal to the appropriate organs of the State to do their assigned job in the best interests of the Community" (National Textile Workers v. PR. Ramkrishnan and Others, 1983 AIR 75). In Vallamattom v. Union of India, (2003) 6 SCC 611, the apex court asserted that UCC can serve as a tool for national integration by eliminating disparate loyalties to law which have contradictory ideologies. The controversy to implement UCC has gone through different contentions of different stakeholders, the most important being the women, they were always adamant to move towards a more secular and gender neutral society and the will to enforce UCC was strong during 1950-60s. The Emergency period i.e., during Shah Bano case in 1985 and the demolition of the Babri Masjid in Ayodhya in 1992 this led to a "communalized climate" marked the beginning of rethinking among the feminist which resulted in deviation of track from the Hindu nationalist parties (Mohd Ahmed Khan v. Shah Bano Begum and Ors, AIR 1985 SC 945). The feminist thought the idea of UCC is getting hijacked by the BJP to use the name of uniform Code in order to impose Hindu law on the entire populace. The women rights group changed their terminology to show that they have no alliance with right-wing parties and started using terms like 'common', 'egalitarian', 'gender-just' civil code. Now, instead of a uniform code they want the judiciary to take the steering wheel and bring reformation in the existing personal laws. The shortcoming of the approach to bring reformation within the system is its slow and gradual transformation (AGNES, 2011) and while negotiating with religious community leaders, the goals of the feminist might also get diluted. To invalidate some of the discriminatory practices of personal laws it becomes difficult for the court to step in because the wordings used are blatant and unambiguous (Sesharathamma and Anr v. Thota Manikyamma, 1991 SCC (4) 312 and Gita Hariharan v. Reserve Bank of India, AIR (1999) SC 1149).

The idea to completely wipe out the religious personal laws has faced major criticism for the people who have accepted the idea of legal pluralism; they rely on the contention that implementing uniform civil law on deeply personal matters of marriage and divorce will be a threat to diverse identities of the people and collective identity of the communities as it violates the fundamental right to freedom of religion guaranteed under Article 25 of the Indian Constitution. In such a situation, it becomes critical to realize that religion is not a right but a

freedom, freedom of conscience and there is no indispensable correlation between religion and personal law in a civilized society, where one guarantees religious freedom, the other dissociates religion from social relations therefore the personal laws matters pertaining to secular character cannot be guaranteed under Article 25 and 26 of the Constitution. There is a need to depoliticize the issue of uniform civil code and to perceive such religious practices through the prism of gender equality. Along with the active attempts by the judiciary, the legislature should take on its prime responsibility to eliminate political agendas and work on the dream of B.R Ambedkar.

With codification, Hindu personal laws have evolved without considering the scriptures but still there is a long way to go. Marriage is still considered as a sacrament and there is excessive stress given to the ceremonies. Without performing adequate rites and ceremonies, the marriage becomes null and void (Hindu Marriage Act, 1955, § 7) and the burden to prove also rests upon the party using it. It is one of the loopholes for Hindu men to go off the hook from the blame of bigamous marriage. This differentiation in the legal age for marriage contributes to the stereotype that wives must be younger than their husbands (LAW COMMISSION OF INDIA, Reforming family law, 2008). The Hindu law also recognizes the marriage between a 16-year-old girl and an 18-year-old boy as valid but voidable. Another inequitable law is the restitution of conjugal rights (Hindu Marriage Act, 1955, § 9) which violates the fundamental right to life, privacy and equality as it tends to force the unwilling spouse to cohabit. The position of the spouses is not the same as the husband can get a divorce on the ground of adultery but the wife has to prove an additional ground of cruelty or desertion which is quite discriminatory on the part of women. Additionally, the irretrievable breakdown of marriage is not recognized as a valid ground for divorce because of sanctity given to marriage.

Muslim Personal Law (Shariat) Application act forms an Islamic code for Indian Muslims and it has several negative effects on the status of women in the society. Marriage is a contract and its objective is breeding and legalizing children. There is uncertainty on the age of marriage in Muslim personal law as it allows a girl to marry once she attains puberty. Polygamy is a very controversial issue. It demonstrates how patriarchy can prevail and dictate (MASHHOUR,2005). A Muslim man can marry as many as four wives without taking any kind of consent from his existing wife or wives (SHARMA, 2004) but a Muslim woman is not allowed to do the same and if she marries another husband, she is liable for bigamy under section 494 of Indian Penal Code, 1870). Giving permission to enter into a polygamous as a privilege to few people belonging to a certain religious community or tribe creates religious tensions in society. Among the Sunnis, the proposal and acceptance should be made in presence and hearing of two adult male witnesses or

one male and two female witnesses which demonstrate that how a woman is half a male, which is pure sexism and demonstrates the mindset about the position of women in the Muslim community. Another discriminatory practice which is followed is Muta marriage where the temporary husband is entitled unilaterally to cancel the deal by paying the negotiated price whereas the woman cannot, in theory, cancel the contract which is a sign of her inferior status. According to Muslim Law, any husband, who is of sound mind and has attained puberty, may divorce his wife whenever he desires, without assigning any reason at his whim whereas the woman has no such absolute right to divorce as she can file for divorce under certain specific contingencies. The grounds for divorce are also not equitable where adultery and underage marriage is a ground for divorce for every religion but the Muslims.

In Christian marriages, the difference in marital age for both genders (groom should not be below the age of 21, whereas the wife must not be below 18 years of age) gives an insight of the patriarchal society where the girl is not supposed to go for higher studies and should be fully dependent upon her partner. A man may obtain a divorce when his wife has committed adultery, while a Christian woman seeking divorce is required to prove at least two offenses by her husband, such as adultery with cruelty or adultery with desertion. Impotency is a ground for Hindu and Muslim but not for Christians. Section 10-A of the Indian Christian Marriage Act, 1972 allows all marriages irrespective of its date of solemnization to be dissolved by mutual consent provided that the parties to such marriage have been living apart for at least 2 years. This criterion of two year is not inconsistent with other religions which permit divorce by mutual consent as their requirement is that parties should have been separated for one year only.

UCC needs to be built on two fundamentals, firstly, to extract the best pro-women elements of each personal law system, to adopt appropriate features from other countries secondly, to extract provisions from international conventions and agreement. V. R Krishna Iyer also asserted that the UCC should not be a majoritarian undertaking else it should be a collection of the best from every system of personal laws. He further affirmed about religious practices cannot be provided protection after sacrificing basic tenets of human rights (IYER, 1987). The Supreme Court has been indicative of responsibility of legislature to draft the code of uniform civil code in many of its judgments. Now five petitions have being filed in the Supreme Court to sought directions to the union to create a judicial commission or a high-level expert committee to draft the code within three months.

3. Uniformity in Goa Civil Code and French Civil Code

Goa is seen as an example for the whole nation to bring uniformity in the personal laws; the uniform code is applicable to every Goan while protecting certain limited rights (Jose Paulo Coutinho v. Maria Luiza Valentina Pereira, (2019) SCC Online SC 1190). Regardless of the domicile of Goa, the civil code applies to every person. The question which is important to analyze is whether the goa civil code is uniform in actual sense and is free from gender disparities. The civil code in Goa is the residue of Portuguese regime, further; the Union of India continued the Portuguese Civil Code of 1867 by the virtue of the Goa Daman and Diu administration act 1962 even after Goa became a part of Indian Union.

Article 1057 of Goa's Code which provides for the registration of marriages lacks uniformity between catholic and non-Catholic marriages (Portuguese Civil Code, 1867, art. 1057). The registration of marriage is compulsory under Goa civil code with recording of the intention to marry of the spouses before the civil registration authorities then after two weeks a marriage deed is signed but for catholic couple's signatures in the church is sufficient as per civil registration. In such situation many non-Catholic women suffer as they don't have knowledge about the requirement of the second signature for a non-Catholic marriage therefore in case of any dispute such marriages are held invalid. The Report No. 21 titled as the "Protection of Institution of Marriage Bill 2012" of the Goa Law Commission highlights the "concordata" which is the treaty signed in 1940 between the King of Portugal and the Pope, the Catholics takes away the civil jurisdiction of the court in the matters of separation, annulment of marriage. Article 1086 of Goa's code provides right to the Church to nullify Catholic marriages with the limitation that all the requisite inquiries will be done by a civil court (Portuguese Civil Code, 1867, art. 1087). Non-consummation stands as a valid reason for annulment by the Church tribunal if such marriage was solemnized in church but not in the case of non-Christians as the power to annul marriage is solely exercised by the civil court (Portuguese Civil Code, 1867, art. 1089). Article 1204 provides adultery as a valid ground for divorce for the husband but the wife has to additionally prove that such adultery happened with a public scandal for a judicial separation whereas for a divorce she has to prove that the husband abandoned her or is keeping a mistress in the conjugal home. This puts the women in inferior position where she is subjected to discrimination in spite of a uniform civil code, (MUSTAFA, 2021). Furthermore, Article 3 of the Decree of Gentile Hindu Usages and Customs of Goa, 1880 gives permission to a Hindu man to have a second wife in certain situation such as if the wife is of 25 years of age and has not

provided the husband with a child or if the wife has attained age of 30 without giving birth to a son. Such laws prove where the goan code stands in respect to gender equality where the wife is subjected as a machine to provide child which can be easily replaced. This provision is in direct conflict with the Indian Penal Code and the Hindu Marriage Act. It is pertinent to recognize from the Goa's civil code that uniformity alone will not bridge the gap between gender discriminatory laws as it is equally important to focus on bringing just laws which do not give her second position in the society and gives equal rights as those of men (JAMIL,2018).

To ensure a gender just society by creating amendments either by creating a uniform civil code or by reforming the existing personal laws, it is pertinent to learn from the experiences of other secular democracies while recognizing the particularity of our situation. In western countries like USA, UK, France and Canada, gender equality was not just achieved by creating a uniform law but it took several years through series of feminist struggles to achieve what they have today. The significant change which was brought was with an increase in state involvement coupled with high degree of religious uniformity which should be followed by India (MAHAJAN, 2017). Therefore, to move towards the direction to achieve a more gender equal personal laws three elements should be inculcated i.e. individual liberty and equal treatment should be provided to each citizen, the role of state should be acknowledged in the process of secularization which delegitimizes the role of religious body and authorize the state to be sole legislator in the personal law matters and bringing the community at a common consensus to incentivize change within existing structures of community power.

It would be helpful to study family law structure of a secular nation which can be a future prospective for India. In France, a uniform code was in existence since 1804 but still there existed number of gender disparities which were further erased through several enactments. For instance, the act of 1938 provided legal-civil personality to married women; the acts of 1942 and 1965 further promoted equality of married women. The French Civil Code (FCC) or the French Code of Civil Procedure (FCCP) acts as the primary sources for all the laws pertaining to family matters. All the matters relating to family are heard by the local civil courts (tribunaux de grande) by the judges (FCCP, art 1070). The Marriage under French law is a civil contract and the couple must perform the civil marriage ceremony for it to be legal then after that a religious ceremony can be conducted but it has no legal binding. The couple can also sign a civil solidarity pact (PACS) which is a contractual form of civil union between two adults; including same-sex partners. It is essential that both the partners should be at least 18 years i.e. same marriageable age for both (FCCP, art 143 to 226). Additionally, the grounds of divorce for both the genders

and the jurisdiction of matters relating to divorce is decided by the application on certain grounds of rules of regulation (EC) 2201/2003 ‘Brussels II bis’ and in case no EU jurisdiction is decided upon then, the French court takes up the matter according to French rules (FCC, art. 227 to 309). The Global Gender Gap Report 2022 gives the clear picture about the position of women on four major parameters which are (Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment) and checks the progress to bridge such gap. According to the report, France stands at the rank 16 whereas India has fallen to the position 140 out of 156 nations. This shows the need to improve the status of women in the India society for which creating gender equal personal law will just be a starting point as it will empower the women of the nation further to move towards progressive society.

4. The Road to Uniform Civil Code

The Indian Constitution advocates for gender equality, starting with Art. 14, which states that “the State shall not refuse to any person equality before the law or equal protection of the laws within the territory of India.” Further, Art. 15 strengthens this by stating that “the State shall not discriminate against any citizen solely on the basis of religion, race, caste, sex, place of birth, or any of them.” With the ostensible objective of enforcing equality, Art.13 declares that all "laws in force" in India at the time of the Constitution's commencement are invalid "to the extent that they are contrary to the provisions of this Part." Articles 13, 14, and 15 ensures women's equality and declares any religious personal law as invalid, which is in effect at the time the Constitution was adopted, to the extent that they conflict with the equality provisions. Introducing UCC will not only enforce Article 44 but additionally it is a step in the direction of equality which is a fundamental right under part III of the Constitution. Even though freedom of religion includes the right to be ruled by personal law, it does not include the right to continuous denial of equality or personal liberty to a section of the population governed by personal law for an extended period (SATHE, 1995).

Theoretically, any religious law which undermines gender equality can be abolished, and it will not violate Constitution pursuant to the limiting factors of Art. 25. Conclusively, there is no scrimmage between Art. 44 and Arts. 25, 26 & 29 as the constitutionality of the RPLs should be seen through the prism of the golden triangle, i.e., Arts. 14, 15 and 19 of the Indian Constitution.

To overcome the growing religious schism over RPLs and gender discriminatory practices, the personal law system must be completely abolished. A Model draft that will help the population understand the criteria of formulating a secular just code is very crucial for the existence of such a law. Since devising the draft is so ambitious because of the complexity within RPLs; however, the government should take a stage-by-stage approach that will involve both males and female leaders within each community in the process who should be in favor of the main goal of establishing a UCC that governs all citizens. The fundamental condition will be that all legislation must be compatible with gender equality principles embodied in the Indian Constitution. An expert committee should be formed in which the Members will be nominated and confirmed by Parliament, and it should be a fair representation from all regions of India. This committee would consult and draft law which would go through a process of a majority polling system (two-third of the total number of members). This stage of the process is essentially focused on revisiting the discussion over RPLs within religious groups. Rather than having the whole discussion externally between organizations such as the BJP and the Muslim Law Board and as a result give voice to the marginalized voices equally. The committee would also take into account suggestions made by eminent judges, academicians, women's organizations, etc. so that the draft can symbolize views of every stakeholder, which are in consonance with the constitutional principles. This process will also make sure that a minority community don't feel threatened with the majority voice and values. This tenure where the relevant data will be gathered and scrutinized within the committee should be done in the most transparent manner possible (CRAIG, P.; BGCRA, G.D, 2007)

The next step after debate and discussion would be formulating the draft. The model should not have the voice of a single religion; instead, it could take the secular values from each religion to form a just code. In contrast to the previous stage, Parliament will contribute to the codification of the Drafting Committee's unified civil code. Parliament's duty, however, it will be procedural rather than substantive in nature. Parliament will adopt the code into law, subject to apparent problems with the Constitution's gender equality provisions which will be applicable to all Indian citizens. For the time being, a model code is drafted simultaneously the RPLs should be updated, nullifying all the unjust practices such as triple talaq. Earlier, the judicial approach towards reforming the personal laws was not in existence which with time has come to the right track where the courts are interfering and bringing positive changes in the society.

Another major hurdle that must be cleared is the time factor, where the opposition has been implying about how the nation is not ready for uniform civil laws, but these arguments are

based on Savigny's theory (1779-1869) which was effectively used to prevent the French code from being implemented, and it also delayed Germany's codification. In the Constituent assembly itself, it was discussed that how this is not the right time for the codification of UCC. Savigny was also not against the idea of codification, but he wanted to make sure to give appropriate time to Germans. But, in India, we have failed to enact UCC for 76 long years because of political considerations.

The formulation of UCC will not negate any person's freedom to practice their religion, i.e., a Hindu will not be forced to perform nikah, or a Muslim will not be forced to perform any kind of religious rites. Additionally, the state must not simply permit the institution of a religious-law system but must help in its enforcement when the need arises, and the circumstances permit. Simply having a civil law does not invalidate the existence of a religious law system. In places such as London, New York City, or Toronto, individuals married civilly first and then in a church or synagogue. They later obtain a legal remedy for religious elements of their marriage and divorce, if required. We suggest that India have access to the same system. The primary law will be civil; parallelly, citizens can follow their respective religion and its religious law.

5. Conclusion

It is imperative that there is a possibility of communal tension and riots which should be dealt by the government in the prior state by acknowledging the fact that there is opposition and then educating them by telling the pros of the same. Most importantly the code should not be driven in favor of any one religion or partisan consideration and banish all other religions. The intention of the code should be humanitarian and munificent and should not make minority religion feel excluded and suppressed. UCC should be a civic code which eradicates all suppression and all negatives that Immanuel Kant recognized as 'racial evils' and which obstructs the nation to move towards its main goal i.e., equality, liberty, fraternity, and dignity. It should include the progressive features of all different religions and not be an imposition of the majoritarianism. The Secular code should also give recognition to non-heterosexual relationships, provide same grounds for divorce for every citizen irrespective of sex or religion, and give priority to registration of marriage and equal ownership of properties along with equal rights in inheritance. The UCC must create a balance between protecting fundamental rights of the citizens and religious beliefs of individuals, a code which is just and proper according to a man of ordinary prudence, without any inclination towards any religion.

Since the process is so complicated that there has been no draft so that citizens could have an idea what a secular code might look like, it becomes more imperative that the process of drafting should be well thought of and it should involve men and women of different religious groups to augment the legitimacy of such a code (CHIBBER, 2008). By engaging all religions and providing equal representation will reduce the majority-minority tension and will make each religion accountable for its own reform. With the survey it is suggestive that the majority of the citizens are aware about the UCC and feel positive about its implementation but in a sensitive and unbiased manner. It is inherent in our constitution that an individual's fundamental right should be given priority over collective freedom of religion.

The rationale behind codification of scattered laws and legal norms, cultural and traditional laws is to grant predetermined recognition to rules which simplifies the enforceability of such laws and rights and duties arising out of such law also gets due recognition. The main purpose of article 44 is to set the goal to achieve which is uniformity and equality. As India is progressing towards being a more developed state, it is imperative to acknowledge the shackles that bars it to become a more progressive state i.e., religion. It is high time that all the links between religion and law should be disintegrated as religion is a citizen's personal matter to which the state should not interfere but law is an evident area where state takes part. India needs a well thought step towards uniform civil code as a motivation to dismiss gender disparities and not just as a political drive. Religious fundamentalism must be waived off in a developed nation and a step should be taken towards uniform civil code but not at the cost of communal riots therefore a slow paced march towards making one law and one nation is sufficient with active role of judiciary purging into the personal laws making it align with the fundamentals of the constitution i.e., equality and liberty on one hand whereas legislature should actively create a commission to give life to uniform civil code and the process of the drafting should be given utmost attention for it to not become an issue.

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