

THE SOCIO-LEGAL VIABILITY OF THE UNIFORM CIVIL CODE IN INDIA

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Abstract—In the last two years i.e., 2021 and 2022, India has faced many challenges. India, a tradition-bound society, was just recovering from Covid aftermath when it got entwined with questions regarding legal reforms—From banning the hijab in educational institutions to increasing the age of consent in consensual relationships and invalidating the marriages under personal laws to attempting to increase the age of marriage to 21 years for females via Bill introduced in Lok Sabha, the political will is seen to be tilted towards codification of personal laws. India has been a country that stands for tolerance and universal acceptance—a country that accept all religions as true. A country with unique and diverse geography, races, castes, languages, ideologies, and spiritual beliefs. But when individual rights are juxtaposed with the societal balance, the latter is preferred. It is in this light that India is trying to carefully balance the interests of various religious, social, and economic groups by pressing up for the codification of family-related matters. Where on one hand secularism has been an inextricable part of our constitution, the need to have a uniform law on personal matters and its far-reaching consequences on the socio-economic and cultural landscape of the country have been debated. Where on the one hand, every person has a fundamental right to profess, practice and propagate their religion in whichever way they want, India as a civilization is striving towards national integrity and gender equality. It has been 75 years of Independence, yet we are stuck at crossroads

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of our nation's history that still questions the legal and social viability of the directive principle of state policy- the Uniform Civil Code. This paper attempts to answer some old questions with a new perspective; to understand the need for a uniform civil code while juxtaposing it with the right to religion. The researchers seek to analyze the jurisprudential and historical aspects of UCC, understand its socio-legal implications, and comparatively analyze laws in European Countries with that of India. Furthermore, the researchers attempt to analyze the Goa Civil Code and the element of "uniformity" in it and eventually develop a model of UCC in India.

Keywords: Uniform Civil Code, Religion, The Constitution of India, Secular.

"I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty to reform our social system, which is so full of inequities, discriminations, and other things, which conflict with our fundamental rights."

—Dr. B.R. Ambedkar

I. INTRODUCTION

When the constituent assembly adopted, after intensive deliberations, the Constitution of India in 1950, it had scarcely imagined that a day would come when the country would be polarized, and the concept of Uniform Civil Code would remain only a topic of 'discussion'. The 42nd Constitutional Amendment Act of 1976 reinforced India's commitment to secularism, establishing the country as a state that does not go by any religious scripture or custom. Its stance on the nature of secularism has been clarified and reiterated in many Supreme Court cases as well. Primarily, there are two versions of secularism: First, the French model, where the state must be kept distinct from religion while preserving the ability to intervene, and second, the American model, where state and religion may not engage in the affairs of the each other in the sense that makes America a country where religion and state are mutually

exclusive.¹ However, there is a third version of secularism, which is followed in India; India's secularism is rooted in the idea of "principled distance," which is derived from the country's diverse religious makeup.² Simply put, India's approach to secularism differs from that of the US and Europe, which follow a "negative secularism" principle that emphasizes the separation of religion and state. In contrast, India's "principled distance" approach advocates for the state to remain impartial and treat all religions equitably, promoting a level playing field for all religious groups.³ In the case *S.R. Bommai v. Union of India*⁴, Justice Reddy ruled that, "religion is a matter of personal belief, it cannot be intermingled with activities, and can be governed by the state through the passage of legislation." Recently, controversies like Hijab ban⁵ and Triple Talaq⁶ invigorated the debate of need of a Uniform Civil Code.

When the Indian Constitution came into force, it secured for us certain fundamental rights and the right to enforce those rights. Other rights that were not practically put under fundamental rights were placed in a different category, namely Directive Principles of State Policy.⁷ The reason why certain rights were placed in Directive Principles of State Policy was that India did not have the requisite support and resources at that point in time. Having said that, the perpetual question of whether the country is now ready or has resources is yet to be answered. The idea of having a Uniform Civil Code has been envisaged in Article 44 of the Constitution which includes inter alia, the entire gambit of family law. The idea is to have the same law on marriage, divorce, maintenance, and succession for all religions, just like civil and criminal laws in India. Through Article 44, the state is trying to perform its responsibility of giving a law that is applicable to all citizens.

II. HISTORICAL OVERVIEW OF UNIFORM CIVIL CODE

(a) Pre-colonial and Colonial Era: The history of the uniform civil code can be understood through three phases: pre-colonial era, colonial era and post-colonial era. Before the British came to India i.e., prior to

¹ Rajeev Bhargava, *Reimagining Secularism: Respect, Domination, and Principled Distance*, 48(50), ECONOMIC & POLITICAL WEEKLY, 79-92, 2013, <https://www.epw.in/journal/2013/50/revisiting-secularisation-special-issues/reimagining-secularism.html> (last visited on Mar. 23, 2023).

² As per political theorist Rajeev Bhargava, This idea promotes that religion may be included in the affairs of the State if such inclusion promotes freedom, equality or any other value integral to secularism.

³ Tushar Bhardwaj & Abhinav Mohan Goel, *Uniform Civil Code*, 8, SUPREMO AMICUS, 271, 276 (2018), <https://supremoamicus.org/wp-content/uploads/2018/10/V8A33.pdf> (last visited on Mar. 23, 2023).

⁴ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1: AIR 1994 SC 1918.

⁵ *Aishat Shifa v. State of Karnataka*, SLP (Civil) No. 5236/2022

⁶ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

⁷ Leila Seth, *A Uniform Civil Code: Towards Gender Justice*, 31(4), IIC QUARTERLY, 40, 2005, <https://www.jstor.org/stable/i23005885> (last visited on Mar. 24, 2023).

1612, Mughals were ruling the country. During the Mughal period, justice was administered by Qazis who were applying Muslim law to Muslims.⁸ Hindu law, on the other hand, has always derived its source from Vedas which was largely based on their religion and therefore before Hindu Laws were codified in 1956, religious documents like Manu smritis, Yajnavalkyasmriti and Narada Smriti had already laid down principles regarding adoption, marriage, succession etc.⁹ Suffice it to say, Hindus and Muslims were governed by their respective religions. During the period of British rule, there was a rise in their authority and influence over the administration of India. Governor General Warren Hastings implemented significant changes to the legal and governmental systems, including the establishment of fair and impartial courts for civil cases that did not differentiate between Hindus and Muslims. These reforms aimed to create a more uniform and just system of governance.¹⁰ On the criminal side, Muslim law was applicable throughout the country. With more intervention Britishers gradually superseded the Muslim criminal law by the English law, and this happened after the establishment of the Supreme Court. Following 1781, three legal systems—Hindu law, Muslim law, and English law—predominated. As a result, personal laws controlled civil cases involving inheritance, maintenance, divorce, marriage, etc., while English law was implemented for criminal cases.¹¹ According to the First Law Commission, which was chaired by Lord McCauley, there is no *lex loci* for non-Hindus and non-Muslims because these two sects were regulated by their respective religions in terms of family laws. Over time, uniform laws for civil and criminal matters were developed in India, including the Indian Penal Code, Indian Evidence Act, Transfer of Property Act, Indian Contract Act to ensure consistency and clarity in legal proceedings.

- (b) **Constituent Assembly Debates over UCC:** When the Indian people formally decided to establish a democratic republic in which there would be justice, liberty, equality, and brotherhood more than 75 years ago¹², the concept of a uniform civil code was suggested. It was desired that a Uniform Civil Code (UCC) must be included in fundamental rights. However, certain aspirations of the country that could not have been achieved immediately for various reasons, were placed in the fourth chapter titled Directive Principles of the State Policy.¹³ Different people had different opinions on having a UCC in the Country. For

⁸ D.C. Manooja, *Uniform Civil Code: A Suggestion*, 42(2/4), JOURN. OF THE INDIAN LAW INST. (JILI), 448, 449, 2000, <https://www.jstor.org/stable/43953824> (last visited on Mar. 25, 2023).

⁹ PARAS DIWAN, *MODERN HINDU LAW*, Delhi, (4th ed. 2009).

¹⁰ *Ibid.*

¹¹ The Regulating Act, 1773.

¹² INDIA CONST. The Preamble.

¹³ LEILA SETH, *TALKING OF JUSTICE: PEOPLE'S RIGHTS IN MODERN INDIA*, (Aleph Book Company, 2014), https://books.google.com/books/about/Talking_of_Justice.html?id=tN7ArQEACAAJ (last visited on Mar. 25, 2023).

instance, Mr. B. Pocker Sahib Bahadur, a member of the constituent assembly sought clarity on the term “uniform civil code” and the specific legislation that would serve as the benchmark for drafting it. He wanted to understand which community laws would be used as a reference point for creating a uniform code for all citizens¹⁴ and in this way he showed his skepticism about the existence of Uniform Civil Code for all Indians. Furthermore, the Muslim Assembly members expressed concern that the term “civil code” did not precisely refer to a citizen’s own laws, which made them particularly uneasy. Addressing the concerns of his fellow assembly members, K.M. Munshi explained that the purpose of including the provision for a uniform civil code in the Constitution was to allow for the unification of personal laws in the country when deemed appropriate by the Parliament or by a majority in Parliament. In essence, the provision was a means to promote consistency and uniformity in personal laws across all communities.¹⁵ Despite his explanation, except for Tajamul Hussain from Bihar, every Muslim member spoke out against the Uniform Civil Code in the Constituent Assembly. Interestingly, all the Muslim members who protested against the inclusion of this code were men.¹⁶ On the opposite end of the spectrum, Parsi activist Minoos Masani was joined by Christians Rajkumari Amrit Kaur and Hindu activist Hansa Mehta in calling for the fundamental right to equality for women.¹⁷ Back then, the concept of a Uniform Civil Code faced criticism on two main fronts: firstly, that it would infringe upon the provisions of Article 25 of the Indian Constitution and secondly, that it would oppress minority communities and amount to an act of tyranny against them.¹⁸ Shri K.M. Munshi, a member of the drafting committee, while negating the grounds of opposition noted that even in the advanced Muslim countries like Turkey or Egypt, the rights of the minorities have not been recognized as so sacrosanct as to prevent the enactment of a civil code.¹⁹ He opined that like European countries where civil code has been applied, applied the code to all minorities because a uniform law required to exist. Dr. B.R. Ambedkar was also in a favor of having UCC in India, during the debates he emphasized on having the code as per him India already had a uniform code in eleven subjects like, contract, transfer of property, sale of goods, civil procedure, criminal procedure to name a few. Thus, by and large the majority believed it was not the right time to have UCC in the country.

¹⁴ CONSTITUENT ASSEMBLY DEBATES, vol. VII, 543, (1949).

¹⁵ Divya S., *Secularism and Uniform Civil Code*, 5(1), INT. JOURN. OF LAW MANAGE AND HUMANITIES (IJLMH), 44, (2022), <https://www.ijlmh.com/paper/secularism-and-uniform-civil-code/#> (last visited on Mar. 25, 2023).

¹⁶ LEILA SETH, *supra* note 13

¹⁷ *Ibid.*

¹⁸ V.N. SHUKLA, CONSTITUTION OF INDIA, 307, (9th ed. 2009).

¹⁹ CONSTITUENT ASSEMBLY DEBATES, vol. VIII, 543.

III. THE SOCIO-LEGAL ASPECT OF UNIFORM CIVIL CODE

Law has an intrinsic relationship with society. ‘Family’ once known as the smallest unit of the society, cannot be understood without gauging its legal implications. Thus, understanding laws related to family matters is incomplete without understanding its legal structure. A closer examination of the sociological school of law suggests that law should function as a process that minimizes conflicts and maximizes the fulfilment of desires for the majority, while also taking into account the competing interests of different groups. In essence, the law should serve as a mechanism for promoting social harmony and resolving disputes in the most efficient and equitable manner possible. As per Roscoe Pound, making, interpreting and application of laws cannot be done without considering the social facts.²⁰ Thus laws, specifically Family law cannot be understood without considering its societal context. India has a complex legal system that includes Hindu law, Islamic law, Christian law, Parsi law, and numerous tribal laws that govern family-related matters. Due to the diverse religious composition of the country, these laws are characterized by intricate nuances and often reflect the tension between traditional and modern influences.

As we know that law is the reflection of the society one lives in and similarly, society shapes a particular law as per its needs. As one of the celebrated sociologists Enhrich say, “*Law is to be found in social facts and not in the formal sources of law.*” Enhrich’s perception is particularly relevant with respect to the recognition of human rights as well as social reform processes in the present context. Women rights and the social reforms done to protect those rights have always aimed at modernizing Indian society and have had an especially pronounced impact on the country’s legal traditions.²¹ However, more often than not a country that has diverse personal laws for different religious groups finds herself stranded at the crossroads of gender equality and religious freedom. It has been more than 75 years and still the question that whether we need a common code for marital laws across all religious communities hovers around. Therefore, the need to question and understand the viability of having a Uniform Civil Code is at its peak. Recently, in one of its rulings, the Delhi High Court(2022) declared that the marriage of a Muslim girl who is underage is invalid because it contravenes the Protection of Children from Sexual Offences Act(hereinafter referred as POCSO).²² However, the ruling is in contravention to the Muslim personal law that permits and validates the

²⁰ James A. Gardner, *The Sociological Jurisprudence of Roscoe Pound (Part I)*, 7(1), VILL. LAW REV., 1961, <https://digitalcommons.law.villanova.edu/vlr/vol7/iss1/1> (last visited on Mar. 25, 2023).

²¹ P.I. BHAT AND V.D. KULSHRESHTHA, *LAW AND SOCIAL TRANSFORMATION IN INDIA* 701-703 (Eastern Book Company, Lucknow, 2012) 2nd ed. 2012.

²² *Imran v. State (NCT of Delhi)*, (2022) 4 HCC (Del) 283.

marriage of Muslim girls who are 15 years or older.²³ In a recent case, the court ruled that the POCSO Act, a special law, would take precedence over personal laws that are based on Sharia law. The court's decision was aimed at ensuring justice for victims of sexual offenses. But it disrespected the principles of personal laws. Umpteen cases like these are adjudicated in India on a daily basis and the courts in their pursuit of justice end up interpreting the legislation in the strictest sense. In another similar incident, the Hon'ble Allahabad High Court opined that the object of POCSO is to protect children from sexual abuse. However, a hyper technical approach towards teenage relationships would be counterproductive. Therefore, a "bio-social approach" needs to be adopted and appreciated i.e. one that conceptualizes the biological and social requirements of two teenagers, who on account of mutual infatuation are attracted and decide for their future.²⁴ Clearly, there is no Supreme Court ruling as yet that holds that teenage love affairs must not be brought under the ambit of the POCSO Act, even when it, on various occasions, has held that provisions of the POCSO Act must be applied with strictness and sensitivity, taking into consideration the peculiarities of each individual case. In an attempt to answer such ambiguities, the Supreme Court in *The Indian Young Lawyers Association's case*²⁵ held that in order to uphold the fundamental rights of individuals and to promote gender equality a uniform civil code is the need of the hour. It is seen in certain cases that minor girls above the age of 16 years fall in love and have sexual relations with their teenage partners. In certain other cases, where teenagers marry under their personal laws, the issue becomes even more problematic, especially if the minor wife becomes pregnant and seeks medical help. In such cases, the male partner may face punishment under POCSO Act.²⁶ The Supreme Court recently ruled that while the male partner will still be legally responsible, the Registered Medical Practitioner does not have to reveal the name and other personal information of the minor in the information. This has lessened the strictness of the law somewhat.²⁷ If there is a uniform code that could inculcate all the aspects of family law in it and provide equitable relief, it would be a progressive step.

The debate about having a UCC is also important from the lens of gender justice. Gender includes people from LGBTQs as well is a subjective term that has more to do with society than biology. Despite having S. 377 of the

²³ AHMED, A., *MUSLIM FAMILY LAWS: AN INTRODUCTION TO ISLAMIC FAMILY LAW*, 34, (Oxford University Press 2003).

²⁴ *Atul Mishra v. State of U.P.*, 2022 SCC OnLine All 420.

²⁵ *Indian Young Lawyers Ass'n v. State of Kerala*, MANU/SC/1094/2018.

²⁶ Section 19 of the POCSO requires any person, including a child, who has reason to believe that an offence under the Act is likely to be committed, to report it to the police. The provision also requires any person who has knowledge that such an offence has been committed to approach the police.

²⁷ *X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi*, 2022 SCC OnLine SC 905.

Indian Penal Code²⁸ read down to the extent it criminalized two consulting adults and paved the way for same-sex couples²⁹, the law has still not legally recognized and sanctioned their relationship. Unlike heterosexual couples, homosexuals cannot get their marriage registered, ask for alimony, adopt a child, etc. Having a uniform code can be a steppingstone for paving way for the neglected communities like these. Transgenders could, in fact, be the biggest beneficiaries of having revamped family laws, for them there is a chance that their rights related to succession, maintenance, and adoption be recognized. Although the recently passed Transgender Persons (Protection of Rights) Act of 2019 attempted to safeguard certain rights of transgender persons by widening its ambit, rights related to succession, marriage, etc. are still not acknowledged.³⁰

Dr B.R. Ambedkar said, “*I measure the progress of a community by the degree of progress which women have achieved.*”³¹ Whether it concerns rights inside marriage, or rights to property, inheritance, and succession, religious personal laws have been established and interpreted by males and have generally been detrimental to women. The debate regarding UCC got invigorated when the practice of instant Triple Talaq was declared unconstitutional in the case of *Shayara Bano v. Union of India*.³² Some argue that for the sake of all the Indian citizen, especially women, all personal laws must come within the ambit of constitutional principle of equality. Similarly, arguments were made that if a woman from one religious community has a right to be in a monogamous relationship, divorce her husband, get maintenance and equal succession rights in the family property, remarry her own husband at her will, a woman from a different religion cannot be deprived of such right.³³ It is argued that UCC holds promise in eradicating prejudiced elements from personal laws grounded in religion, thereby offering equal rights and safeguards to all individuals, regardless of their affiliation with minority communities. This assertion is based on the notion that the UCC could provide a level playing field and eliminate discriminatory provisions. This would help to eliminate religious-based discrimination and promote equality between different religious communities. However, there are also concerns that a UCC may not fully accommodate the specific rights and cultural practices of minority communities. In addition, there is a risk that a UCC may be used to restrict the rights of minority communities and impose majority norms.

²⁸ Indian Penal Code, 1860, §377: “whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished”, No. 45, Acts of Parliament, 1860, (India).

²⁹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 :AIR 2018 SC 4321.

³⁰ Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019, (India).

³¹ JOSEPH DEMAKIS, THE ULTIMATE BOOK OF QUOTATIONS, 415, (Create Space Independent Publishing Platform, 2012).

³² *Supra* note 6.

³³ LEILA SETH, *supra* note 13.

It is argued that India is suffering from inconsistencies and inequities brought forth by the distinct personal laws for various ethnicities as personal laws vary from community to community and may contradict with one another and therefore the implementation of a Uniform Civil Code may eliminate disputes, inconsistencies, and discrepancies while preserving the concept of “One Country, One Flag, and One Law” and unite India.³⁴

To ensure that cultural diversity is preserved, it is important that the UCC is developed in a participatory manner, involving the diverse communities and groups in India. This would ensure that the UCC considers the specific needs and cultural practices of different communities and promotes unity in diversity.

IV. UNIFORM CIVIL CODE IN DIFFERENT COUNTRIES

In 1814 Thibaut and Savigny, the two leading German civil law scholars of the time³⁵ engaged in a “codification debate” that addressed the moot question as to whether there should be any uniform civil code in all the German states. Where Thibaut favored Codification, Savigny believed it was essential to maintain the legislation in its current form with its historical roots. Savigny, a supporter of the historical school, thought that law cannot simply be codified by legislation since it is a result of people’s culture and history. Law in Thibaut’s view was more in line with Enlightenment ideals. He considered legislation to be a rational creation that may be thoughtfully crafted and passed by a legislator. A review and analysis of the historical argument can be a useful addition to the current discussion on the Indian UCC, notwithstanding the fact that the situation in nineteenth-century Germany was very different from that in India today.³⁶ The conflict between Thibaut and Savigny resulted from their disparate views on what constituted law and how it arises, namely Thibaut’s positivistic notion and Savigny’s historical, or organic, understanding. Similar to this historical illustration, the topic of the creation of an Indian Uniform Civil Code today may likewise be pertinent to various views of jurists and sociologists. Discussing legal theory first, before moving on to address specific issues of designing legal policy, might therefore aid in bridging the gap between the opposing parties in the discussion over the UCC for India.

³⁴ J.G. Arora, *Only “Uniform Civil Code” can Save India*, PGURUS (Jul. 19, 2020), <https://www.pgurus.com/only-uniform-civil-code-can-save-india/> (last visited on Apr. 25, 2023).

³⁵ HANS HATTENHAUER, THIBAUT UND SAVIGNY: IHREPROGRAMMATISCHENSCHRIFTEN, (Vahlen, Munich, Jun. 11, 2002).

³⁶ Prof. Dr. Alexander J. Wulf, *Insights from the Historical German Codification Debate with Relevance for the Development of a Uniform Civil Code for India*, 60(2), JILI, 121, 2018, https://www.jstor.org/stable/pdf/26826632.pdf?refreqid=excelsior%3Aa715fe26c6a98df8127d-9f54209a239e&ab_segments=&origin=&initiator=&acceptTC=1 (last visited on Apr. 24, 2023).

- (a) ***UCC in Germany and France:*** The concept of a UCC has been a topic of interest and debate in many countries, including Europe. This concept has been implemented in several European countries, where the legal system is based on the principle of equality and non-discrimination. In these countries, personal laws have been replaced by a uniform code that is applicable to all people, notwithstanding their religious or cultural background.³⁷ The Napoleonic Code (the French civil code) is a system of civil law that places an emphasis on equality and individual rights, and it is the foundation upon which the UCC is founded in nations like Germany and France. Early in the 19th century, France introduced the Napoleonic Code, which was later implemented by a number of other nations, including Germany.³⁸ In these countries, the UCC governs all aspects of civil law, including marriage, divorce, inheritance, and property rights. In countries like the Netherlands and Belgium, the UCC is based on the principles of the Dutch Civil Code, which is a civil law system that emphasizes the principles of non-discrimination and equality. Like the French code the Dutch Civil Code also governs all aspects of civil law, including marriage, divorce, inheritance, and property rights. In these countries, the UCC applies to all citizens, notwithstanding their cultural or religious background, and is dependent on the principles of non-discrimination and equality.³⁹ The Swedish Civil Code, a civil law system that places a strong emphasis on the principles of equality and non-discrimination, serves as the foundation for the UCC in nations like Sweden and Norway. The Swedish Civil Code governs all aspects of civil law, including marriage, divorce, inheritance, and property rights. The gender-neutral nature of the Swedish legal system ensures that courts are competent to adjudicate matters between same-sex couples, a crucial consideration in a country where the recognition of same-sex relationships is still a matter of debate. Infact, this makes Sweden one of the top countries to live in. Infact, as per the World Justice Report(2021), Sweden ranked 4 out of 139 countries on rule of law.⁴⁰ In these countries, the UCC is built on the notions of equality and non-discrimination, and it extends to all citizens regardless of their religion or cultural background. Therefore, a UCC built on the tenets of equality and non-discrimination has been

³⁷ Tushar Bhardwaj, *supra* note 3 at 3.

³⁸ Dr. C.K. Mathew, *Uniform Civil Code: The Importance of an Inclusive and Voluntary Approach*, THE HINDU CENTRE FOR POLITICS & PUBLIC POLICY, 2019, <https://www.thehinducentre.com/publications/issue-brief/article29799345.ece/BINARY/Issue%20Brief%20No.10.pdf> (last visited on Mar. 24, 2023).

³⁹ Mathias Reimann, *Towards a European Civil Code: Why Continental Jurists Should Consult their Transatlantic Colleagues*, 73, TUL. L. REV. 1337 (1999), <https://heinonline.org/HOL/Page?handle=hein.journals/tulr73&div=44&id=&page=&collection=journals> (last visited on Apr. 25, 2023).

⁴⁰ Sweden Ranked 4 out of 139 Countries on Rule of Law —World Justice Project. Available at: https://worldjusticeproject.org/sites/default/files/documents/Sweden_2021%20WJP%20Rule%20of%20Law%20Index%20Country%20Press%20Release.pdf (last visited on Apr. 25, 2023).

effectively adopted in a number of European nations. A universal civil code that is applicable to all individuals, regardless of their religious or cultural identity, has taken the place of personal laws in these nations. This model has been quite successful in the countries.

- (b) ***UCC in Goa (India):*** One of the few Indian states that has successfully implemented a form of UCC is Goa. The Goa Civil Code, largely derived from the Portuguese Civil Code, was enacted in the state in the 1960s and applicable to all the people of Goa, regardless of their religion or beliefs. The code is seen as progressive and secular in nature that regulates issues like marriage, divorce, inheritance, and adoption. The Napoleonic Code was established in 1804 and became one of the most influential legal codes in the world. Its impact on the development of civil law systems was profound and far-reaching, with numerous countries adopting elements of the code into their own legal systems.⁴¹ One such country was India, where the Portuguese colony of Goa adopted a uniform civil code based on the Napoleonic Code.⁴² It was a significant milestone in the development of a uniform legal system in India, paving the way for greater gender equality and social justice. The adoption of the Napoleonic Code allowed for the harmonization of various aspects of the legal system in Goa, including family law, property law, and contract law. Additionally, it brought Goa in line with the rest of India, which was undergoing its own legal reforms at the time.⁴³

Despite the important role that the Napoleonic Code played in the development of the civil law system in Goa, it was not without its critics. Some scholars have pointed out that the code was a product of a specific historical and cultural context and may not be appropriate for other legal systems. For instance, the Enlightenment and French Revolutionary ideas, which might not be applicable in other cultural contexts, had a significant impact on the Napoleonic Code. Furthermore, despite the Goa Model being in place for many years, there are still implementation challenges. For instance, there have been cases where women have been denied their property rights, in spite of having the Uniform Civil Code. The code is not so “uniform” in certain ways, like, even if the law also doesn’t recognise bigamy or polygamy, including for Muslims but it grants an exception to a Hindu man to marry once again if his wife doesn’t conceive a child by the age of 21 or a male child by the age of 30.⁴⁴ There are certain discrepancies with respect to how the law recognises a

⁴¹ Robert Wilde, *A History of the Napoleonic Code, Code Napoléon*, THOUGHT CO, Jul. 31, 2019, <https://www.thoughtco.com/the-napoleonic-code-code-napoleon-1221918> (last visited on Jan. 14, 2023).

⁴² Oliver Herrenschildt, *The Indians’ Impossible Civil Code*, 50(2), EURO. SOCIOL. REV., 309-347, 2009, <https://www.jstor.org/stable/23999094> (last visited on Jan. 14, 2023).

⁴³ RAJESWARI SUNDER RAJAN, *THE SCANDAL OF THE STATE: WOMEN, LAW, AND CITIZENSHIP IN POSTCOLONIAL INDIA*, (Duke University Press, 2003), <https://doi.org/10.2307/j.ctv1198tw9>.

⁴⁴ *Explained: The Goa Civil Code, the New Model for a Uniform Civil Code*, HINDUSTAN TIMES, (May 11, 2022), <https://www.hindustantimes.com/india-news/>

valid marriage when it comes to Roman Catholics and non-Catholics. The code did not address some important issues, such as the status of women and their rights. In Goa, the uniform civil code was modified to address some of these issues, but the limitations of the Napoleonic Code remain a subject of debate and discussion among legal scholars. This system is like the legal systems of some European countries provides a uniform set of laws for personal matters for a particular religious community.

V. CONCLUSION AND WAY FORWARD

The implementation of a Uniform Civil Code in India has been a topic of debate for decades. While there is general agreement on the benefits of consolidating personal laws under one umbrella, opinions diverge on the appropriate timing and the extent to which the code should be religion-neutral. Some argue that the current political and social climate is not conducive to the introduction of a Uniform Civil Code, while others contend that it is a necessary step towards ensuring equal rights for all citizens. Another pressing issue in India today is the drafting of a uniform civil code. Concerns have been raised about the potential of the uniform civil code to favor one religion over another, particularly the Hindu religion. As much as it is necessary to draft UCC correctly, it is reckoned that doing so is not without its challenges. There may be community unrest and even bloodshed if it is not done carefully and with sensitivity and thus, the most important question to be addressed is: what parameters should be used to gauge uniformity while drafting such a code? While feminists have rightly argued for a ‘civil’ code instead of a ‘uniform’ code that is gender-just, it is important to remember that there are multiple layers to personal laws beyond just gender. Property rights of illegitimate children, child marriage, registration of marriage, custody of child and inheritance laws are examples of those layers that need to be addressed too. In fact, as society progresses, issues like gender fluidity, and the rights of transgender couples are going to be important concerns of family law. Therefore, any civil code that is drafted must not only be gender-just in terms of male or female but also take into account the contemporary social realities and future challenges that India may face as a civilization. Thus, the goal should be to accomplish gender equality (which is not just limited to males or a female) and also to maintain societal balance at large, while respecting the diversity of India’s religious landscape.

Having said that, there is no denial in the fact that a uniform civil code has the potential to bring about significant socio-legal changes in India. It can promote social cohesion, regulate the practice of child marriage, and provide equal property rights to all citizens, regardless of their religious beliefs. While there are concerns about the UCC, its benefits far outweigh its potential drawbacks.

[explained-the-go-a-civil-code-the-new-model-for-a-uniform-civil-code-101652304333768.html](https://www.researchgate.net/publication/364111111-explained-the-go-a-civil-code-the-new-model-for-a-uniform-civil-code-101652304333768.html)
(last visited on Jan. 14, 2023).

Therefore, it is important for policymakers to carefully consider all aspects of this issue before making any decisions. Only then can we ensure that a uniform civil code is drafted in a way that is just, equitable, and respectful of India's rich cultural heritage. We need a law that harmonizes Thibaut's and Savigny's point of view, by juxtaposing legal positivism with the sociological approach. In recent times, there has been a growing recognition of civil rights for marginalized groups such as same-sex couples and transgender individuals. Countries like Sweden have led the way in this regard, with their family laws being codified and yet flexible enough to accommodate the evolving needs of society. The Swedish legal system provides a blueprint for how a uniform civil code in India could be drafted to ensure that it is gender-neutral and inclusive of all individuals, irrespective of their sexual orientation or gender identity. By taking inspiration from Sweden, India could create a legal framework that is not only just and fair but also sensitive to the changing social realities of the country. At last, a thoughtful and collaborative approach that takes into account the views of all stakeholders is necessary to navigate this complex issue and move towards a more just and equitable society.