

**The Politics of Uniform Civil Code and the Naga Customary Law:
Rhetoric and Reality**

**A Dissertation to be submitted to the
School of Arts and Languages
In partial fulfillment of the requirement of the award for the degree
In
Masters of Arts in Political Science**

**Under the guidance of
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DECLARATION

*I do hereby declare that the dissertation entitled “**The Politics of Uniform Civil Code and the Naga Customary Law: Rhetoric and Reality**” submitted in partial fulfillment of the requirement for the award of the degree of masters is entirely my original work and all ideas and references have been duly acknowledged. It does not contain any work that has been submitted for the award of any other degree or diploma of any university.*

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*This is to certify that Mr. Luto Swuro has completed his dissertation on the topic “**The Politics of Uniform Civil Code and the Naga Customary Law: Rhetoric and Reality**” under my guidance and supervision. To the best of my knowledge, the present work is result of his original investigation and study. No part of dissertation has been submitted for any other degree or diploma.*

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ABSTRACT

India is a country with diverse religion, culture and traditions and in some of the practice of the various communities, discrimination tend to prevail in the society. Thus the framers of the Constitution felt the need to implement Uniform Civil Code (UCC) in the country with the intention to bring equality among the citizens and to uplift the status of women. Uniform Civil Code is a code which was proposed to remove the personal laws related to marriage, inheritance, adoption, separation, maintenance etc. with one common set of law for all the citizens irrespective of religion, caste, culture, traditions and region. The bill for uniform civil code was included in Article 44 of the Indian Constitution under the Directive Principles of State Policy (DPSP) which says that “The state shall endeavor to secure for citizens a uniform civil code throughout the territory of India.” However, the Bill has still not become an Act even after fifty years of Indian independence as the subject is one of the most debatable and controversial topic in the Indian History. This paper looks in to the implications of uniform civil code in special reference to Naga Customary Law in the context of Nagaland. The customs and traditions of the Naga people are practiced and passed from generation to generation and are oral in nature. However, even in the Naga society the customary laws vary from village to village. The Naga Customary Law is respected and practiced by the forefathers till date and are bonded in their life right from the birth.

Keywords: Uniform Civil Code, Naga Customary Law, Equality

ACRONYMS

1. UCCUniform Civil Code
2. M.P-Member of Parliament
3. Sect.....Section
4. DPSP.....Directive Principle of State Policy
5. IPC.....Indian Penal Code
6. NNC.....Naga National Council
7. MISA.....Maintenance of the Internal Security
8. NSCN.....National Socialist Council of Nagaland
9. GCC.....Goa Civil Code
10. DBA.....Dimapur Bar Association
11. NTC.....Naga Tribes Council
12. GB.....Gaonbura
13. NLA.....Nagaland Legislative Assembly
14. MEA.....Ministry of External Affairs
15. MHA.....Ministry of Home Affairs
16. NDA.....National Democratic Council
17. AFSPA.....Armed Force Special Powers Act
18. BJP.....Bharatiya Janata Party
19. INC.....Indian National Council
20. CPI(M).....Communist Party of India(Marxist)

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CHAPTER-I

INTRODUCTION

1.1 Understanding Uniform Civil Code

Uniform Civil Code is a code which was proposed to substitute the personal laws which are based on customs and traditions or scriptures of various communities or religion which governs one set of rule to all citizens of the nation.

In the Indian Constitution, Article 44 was included in the Directive Principle of State Policy (DPSP) which asserts that “The State shall endeavor to secure to all citizens a uniform civil code throughout the territory of India”. Be that as it may, as given in the Indian Constitution of Article 37, DPSP are not enforceable in any of the given court.

Today the Indian citizens from different parts of the country have their own personal law which governs their way of life basing on their religion, caste or customs and traditions. A uniform civil code would guarantee to each citizen the same set of law which would administer the matters of marriage, maintenance, divorce, inheritance, adoption and so on. As of now the present laws of the Hindus, they are pledged to practice monogamy whereas in the case of the Muslims, they are allowed to practice Polygamy. Similarly, the Hindus have a complete enactment on adoption whereas in the case of Christians and Parsees the 9idea is not acceptable according to their personal laws. If uniform civil code is implemented in India such differences will all come under one set of rule.

The primary goal of uniform civil code is to elevate the mistreated and upgrade national reconciliation in the nation. All people group would then be represented by one precedent-based law on common matters, for example, marriage and adoption which are directly controlled by their very own laws of various groups all throughout India. The Judiciary made a call for the implementation of uniform civil code in the country. The Supreme Court in 1985 evoked the parliament to implement the civil code in Mohd Ahmed V Shah Bano Begun which was known popularly as Shah Bano Case. Under this case, it states that poverty-struck Muslim lady who got the maintenance from her partner under S 125 of a Criminal Procedure Code as her husband gave her a triple divorce which is popularly termed as “triple talaq”. The Supreme Court supported her

and asserted that she had a right and that her husband should provide a provision for her divorced wife based on Koran. The response from the Muslim leaders with regard to this judgment was immediate. They started to protest across the streets and disturbances spread all over the country and the leaders of the Muslim Community swear that they would do anything to safeguard their own personal rules and order. The then government which was carried by the former Prime Minister, Rajiv Gandhi immediately responds to Muslim's demand and Muslim Women's Act, was passed in 1986, which deals with the safeguarding of rights with regard to divorce. This act totally nullified the decision made by the Supreme Court at the Shah Bano's case.

This case is followed by *Sarla Mudgal V Union Government* where the Supreme Court (SC) reminded the government of India once again to look in to this matter. The debate was whether a Hindu husband could marry a second wife without leaving his first wife after converting to Islam. The case was headed by Justice Kuldip Singh where he said that a Hindu husband is not permissible to marry a second wife and is punishable under the Indian Penal Code (IPC). In this regard, the Judge looked into the implications of uniform civil code for at least twenty times and lamented that: "Successive governments till date have been completely negligent in fulfilling the implementation of Uniform Civil Code under Article 44 in the Constitution". In this case, the then Prime Minister P.V Narasimha Rao was directed by the court to give a fresh look in to the constitutional mandate more thoroughly as the governments come and go and yet failed to implement Article 44 since the time of its enactment.

Another case was in 2003, where a Christian Priest from Kerala named Father John Mallamatton, alarmed the doors of the Supreme Court where the Apex court affirmed S. 118 of the Indian Succession Act as unconstitutional since it imposed a strict irrational restriction to the Christians only in the sphere of religious and charitable bequests. This case was headed by Former Chief Justice of India Khare, which observes as: "It is a matter of great regret that Article 44 of the Indian Constitution has not been given effect to, Parliament is still to step in for framing a uniform civil code in the country." (Pragati Ghosh, 2016)

Various writers have a perspective that the reason for not implementing a code such as Uniform civil code even after long six decades of attaining Independence is that no majority support can be found in the parliament.

1.2 Brief background on Naga Political History

Back in the long time past days, Naga village used to be free similar to the Greek city states, until the British individuals came and attacked the Nagas in 1832. The Nagas battled and opposed the British individuals for long 47 years. In any case, in 1879, the British vanquished a portion of the land while the bigger bit remained un-controlled and free and was under the control of the Nagas. The Nagas presented their first composed explanation to the British Government's Simon Commission with a request that the Nagas are to be allowed to sit unbothered. Furthermore, the British at long last left the Naga individuals and India got her opportunity on August 15, 1947, Nagas announced their Independence on fourteenth August, 1947, one day before India got Independence, which was fittingly cabled with the United Nations Organizations.

Nonetheless, India grabbed hold of Nagaland as a feature of the Indian Union, saying that Nagaland was too little and poor to oversee itself. Subsequently, the Nagas led a National Plebiscite on May 16, 1951 under the flag of Naga National Council (NNC) to show India and to the world that Nagas would not live under India under any conditions.

At the point when India led its initially General Election in 1952 all over India, Nagas began challenging and boycotting the Indian forced races saying that Nagaland was not a piece of India and kept on living freely as indicated by their standard laws, standards of non-participation and peacefulness to maintain herself as an Independent State.

Taking after this protestation of the Nagas, by 1953 India began sending her military troops into the territories of the Nagas to pound the general population who strikes back and called them as the "Defiant Nagas" and by 1956, India sent more than 100,000 warriors into the Naga Hills. What's more, in 1958, the Indian Parliament sanctioned a law called Armed Forces Act of 1958 which gives the military the boundless energy to shoot and murder anyone without a warrant. At last, with such military power, more than 200,000 Nagas were tormented, assaulted and murdered and the Naga Villages were burned to the ground. With before this law, there was the Assam Maintenance of Public Order Acts of 1953 when Nagaland was then an area under Assam which even limited a get together of five people or more.

From that point, Nagaland Security Regulation was marked in 1962 taken after by Unlawful Activities Prevention act in 1972. At the point when the entire of India went under the "Crisis Rule" from 1975 to 1977 under the administration of the then Prime Minister Mrs. Indira Gandhi, the Maintenance of the Internal Security (MISA) was forced. The Naga pioneers, youth and understudies were captured and imprisoned where their shared objective was to pulverize the Naga National Movement. It was amid this Emergency Rule, that the Shillong Accord was likewise marked on November 11, 1975. Disregarding everything, there was likewise a time of peace activities.

For example, in 1964, there was an announcement of truce between the Government of India and the Naga National Council. Nonetheless, it neglected to turn out with an answer as India was not prepared to announce Nagaland as an Independent State as were the Nagas not willing to miss the mark concerning an Independent Nagaland. At that point, on July 25, 1997, another truce was reported in the Indian Parliament by the then Prime Minister Mr I.K Gujral and the Chairman of the National Socialist Council of Nagalim, Isak Chishi Swu under three concurred standards which were

- That the talks will be held without any conditions
- That the talks will be held at the highest level (Prime Ministerial Level)
- That the talks will be held in a third and neutral country (Neither in India nor in Nagaland)

Today, it is exactly 13 years and 6 months that the peace have prevailed between India and Nagaland and the political talks have been going on since then with around 70 talks in other cities across the world such as Amsterdam of Netherlands, Osaka in Japan, Kuala Lumpur in Malaysia, Vienna in Austria, Geneva and Zurich in Switzerland and so on with some recent talks in Delhi with the invitation of the Prime Minister and also in Nagaland at Kohima and Dimapur.

One of the imperative talks held at Amsterdam in Netherland on July 11, 2002, was that the Government of India had in composing "Recognized the unique history and situation of the Nagas" which was regarded as the landmark of the ongoing peace process as it came after long 50 years of wars and persuasions.

Likewise the Government of India gone into a truce with the National Socialist Council of Nagalim (NSCN) driven by Mr. S.S Khaplang and Mr. Khitovi Zhimomi in 2001 which is as yet proceeding till date. (Neingulo Krome, 2011)

1.3 Literature Review

A Literature review is a review of the articles, diaries, books and different sources which may help the readers to get comfortable with the extension and confinements of the examination think about and to bring a reasonable idea about the exploration. The essential objective is to find the truths and bits of knowledge and the right approach to start a review or research is by reviewing of writing. Approximately few articles in journals have been counseled in the readiness of this exploration.

Khrishna Sen (2004) conducted study on "Uniform Civil Code" here he talks about how Uniform Civil Code can be executed and can be placed into practice. He contends that there is a mandate and that order ties every one of us and that order being the key, we need to acknowledge the position as positivists and realists that a uniform common code is one of the desiderata of the Constitution. In his article, he said that the most critical question is how we offer impact to established order? He expressed that we should embrace particular techniques keeping in mind the end goal to accomplish the coveted target. One such methodology would be a 'discretionary code', i.e., we outline a typical code however make it discretionary for a timeframe. Thus, He said that "as opposed to compelling one uniform law down the throats of individuals, we should give individuals an adequate measure of time to welcome the new law and when a generous piece of the general population acknowledge it, as seen in the wake of receiving the Indian Succession Act 1925, then it can be made necessary". What this infers is that there must be an advantageous acknowledgment by the distinctive groups of India and for that reason as a between time measure as an interim as a procedure we make it discretionary or facilitative.

Leila Seth (2005) conducted a study on "Uniform Civil Code- towards gender justice" here the writer discusses the privileges of ladies and protested that it is the greater part a-century since Article 44 was instituted yet progressive governments have not demonstrated the important get up and go and fearlessness to follow up on it. The requirement for a uniform common code is bantered about and a little yet vociferous area of the Muslim people group India's biggest

minority-restricts it on grounds of religious obstruction; and the bigger however calmer voice of sexual orientation equity is dissipated, bringing about vulnerabilities and proceeded with segregation. In her exploration of study she contends that the administration was noiseless and proceeded as arranged and that it is as yet quiet even following fifty years after the fact. She said that a bold government could have guaranteed balance and equity for all Indian ladies then and that a dynamic government ought to guarantee balance and equity for all Indian ladies now by pushing through a uniform common code.

Shabbeer Ahmed (2006) wrote an article titled “the Uniform Civil Code of Article 44 of the constitution was just a dead letter”. In his article, he communicated his anguish about the unmoved government towards the Uniform Civil Code (UCC). He contends that even following 51 years; the parliament has not taken any official activity to execute the article 44. He said that the legislatures which have traveled every which way have so far neglected to endeavor towards bringing together the Indians. He pushed that a Uniform Civil Code will advance the national trustworthiness in the nation.

Panger Aonok (2015) conducted a study on “The Constitution of India with reference to Article 371(A), Vis-à-vis the Changki Village Customary Law”, he expressed that Article 371 A (1 A ii) gave an exceptional arrangement to Naga standard law however comes to struggle with the major rights as in the Changki Village standard law in Nagaland. In this review, he said that "the generally perceived laws in Changki town constitute a few elements of obstacle, preventive and reformative precept of discipline". Nonetheless, in his review he contends that "in the light of the key privileges of subject ensured by the constitution, the individual and private rights abrogate the above age-old standard law and rehearse and the final product the general population will undoubtedly oppose and challenge these chronologically erroneous town diktats is a courtroom". Subsequently implies does not legitimize closes. There is no governing of law which enables the customary town foundation to abrogate the arrangement of the Fundamental Rights of the constitution of India.

M. Alemchiba Ao (1974) wrote an article on “The need for compilation of Naga Customary laws and procedures”, here the writer discusses the significance of arranging all the Naga Customary laws under one book or book of law. He says that as in the various social orders, the relations between the individuals from the Nagas are controlled by a collection of recognition,

conventions, leads and acknowledged religious and good norms and these ethical benchmarks of conduct are not systematized but rather totally natural in the way of life as behavior and traditions. Here, for the most part the older folks of the town are held to be particularly gifted in information of law and are stores of law without a composed record. He additionally proposed that in the perspective of changed conditions in the state, and in perspective of the characteristic inconveniences with the framework, the rights over land everywhere throughout the State are to be recorded as ahead of schedule as would be prudent.

D.C Manooja (2000), in his article “Uniform Civil Code: A suggestion”, talks about how uniform civil code can be implemented without affecting any personal laws of different communities in the country. He says that the legislature of India neglects to apply its brain to satisfy article 44 as set down in the constitution of India on account of the way that it was not made order. He additionally says that the principle obstacle to actualizing uniform common code is the distinctive religious orders having diverse individual laws which have a solid bond in their lifestyle and none of different offices could meddle with it. The writer in his article proposed that the most ideal approach to get change the propensities and conventions are just through a steady procedure.

S.P Sathe (1995), conducted a study on "Uniform Civil Code: Implications of Supreme Court Intervention" here, he discusses the ramifications of Supreme Court intercession in Uniform Civil Code. He additionally discusses how the administration did not react to the steady request of their demand to change the law of marriage and separation with regards to Christianity however the Law Commission made a review and gave its report and the Supreme Court and other high courts too firmly bolstered it. On the opposite side, the administration had invalidated whatever has been done in the legal procedure towards sexual orientation treachery in the Muslim Personal Law and the Supreme Court guarantees that a Muslim separation are qualified for case the upkeep under the code of Criminal Procedure in Section 125.

1.3 Research Problem

The existing discourse, both academic and political, on the issue of Uniform Civil Code seem to be based on narrow interpretation of the law in question mostly with reference to the prevalent Muslim personal law alone. Such a syndrome is found to throw more heat and less light on the

broader implication of UCC on other customary laws including that of Nagaland. Moreover, most of the available literature on the subject are found to explicate the positive implications of the implementation of UCC in a country as complex as India.

Going beyond the rhetoric over UCC in India, the present study attempts to explore the implication of UCC for Naga customary law in particular.

1.4 Research Objectives

- To analyze the controversies and Constituent Assembly debates on Uniform Civil Code.
- To determine the rhetoric and reality on the politics of Uniform Civil Code and Naga Customary law.
- To analyze both positive and negative impact for implementing Uniform Civil Code.
- To critically examine the need for implementing Uniform Civil Code
- To analyze the impact of Uniform Civil Code on Naga Customary Law.

1.5 Research Methodology

- The study will be based on the descriptive and analytical review of the collected data which aims at understanding the need of Uniform Civil Code in India and its impact on Naga Customary law.
- Secondary data collection techniques will be used to find the results.
- Secondary data will be administered through internet source, articles, journals and newspapers.

CHAPTER-II

UNIFORM CIVIL CODE

2.1 Meaning and its Historical Background

The term 'Uniform Civil Code' is utilized to talk about the entire assemblage of laws which represents rights identified with individual matters like marriage, property, separation, support, adoption and legacy. The interest for a uniform civil code fundamentally implies binding together all these individual laws to have one arrangement of mainstream laws to manage these viewpoints that will apply to all residents of India independent of the different groups.

The interest for a uniform civil code in India saw its first upsurge at the beginning of the twentieth century, when the ladies extremist look to accomplish the objective of ladies' rights, correspondence and secularism, especially driven by the principal Indian Premier Jawaharlal Nehru. As the then law serve Dr. B.R. Ambedkar was responsible for this bill, he prescribed the selection of a Uniform Civil Code. He was against the Hindu laws as there were discriminations against the women.

And thus, he suggested for law reforms that could only bring about a change in the society and further recommended for the 'Code Bill'. There were lots of criticisms put forth; the fundamentalists called it "anti-Hindu" and "anti-Indian". Women MP's who initially supported this view reversed their position and backed the Hindu law reform, as they feared that collaborating with the fundamentalists would cause a further setback to their rights. Besides being the most important issue in the context of secularism in India, it is even recorded as one of the most controversial issues of the Twentieth Century in Indian Polity.

The massive diversity of the Indian society is one major challenge towards the implementation of the UCC, as the Indian society differs not only sect-wise, but also by culture, community, ethnicity, caste and region. Irrespective of the politicization of this issue, Women Rights Activists claims that this issue was mainly for the protection of their rights.

In a bill passed by the parliament in 1956, four separate acts namely the Hindu Marriage Act, Succession Act, Minority and Guardianship Act, and Adoptions and Maintenance Act were

passed. With this, the Uniform Civil Code was added in Article 44 of the Directive principles of State Policy. (Chavan & Kidwai, 2006).

Article 44 of the Indian Constitution reads: *“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”*

2.2 Constitutional Assembly and Uniform Civil Code

Uniform civil code turned into a mooted subject in the Constitutional Assembly in the year 1947. The sub-board of trustees on key rights wanted to include uniform civil code in the mandate guideline of state approach. The then Clause 39 of the draft of mandate strategy expresses: “The state shall endeavor to secure for the citizens Uniform Civil Code.”

Despite the fact that, provision 39(Present 44) was among the mandate rule of state arrangement; it was likewise firmly restricted by a few individuals in the Constituent Assembly.

Two objections raised at the Constituent Assembly include:

- It will abuse the flexibility of religion guaranteed in Article 25 of the Constitution of India.
- It will add up to oppression to the minorities.

It was said that the primary complaint was improper as the order given in the article 44 does not encroach the flexibility of religion ensured by article 25 under the Constitution of India. The answer as given by Shri M.N Munshi, individual from the drafting advisory group, to the second protest says that; “Nowhere in advanced Muslim countries has the personal law of each minority been recognized as so sacrosanct as to prevent of the enactment of the civil code. Take for instance, Turkey or Egypt. No minority is permitted to have these rights in these countries. But I go further when the Shariat Act, 1937 was passed, or when certain laws were passed at the central legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied.”

The European nation like France where UCC is connected is similarly material to every one of the minorities and to any individual who goes into such nations in any piece of the world.

Munshi felt that the nation requires a UCC in the event that we need to bring together and mainstream nation. Dr. Ambedkar said that he was amazed to hear that India was a nation excessively inconceivable, making it impossible to have on one law. He attested that India had a uniform code in 11 matters, for example, contract, exchange of property, discretion and restriction, offer of merchandise, organizations, debatable instruments, violations, common methodology, Criminal technique and a large group of other statutory laws spare those of marriage, progression, reception and support. He likewise called attention to that it was wrong to state that the Muslim Law was permanent and uniform all through India till 1935. The Shariat Law does not cover North West Frontier areas, which took after the Hindu progression law. Similarly, the Hindu Succession law was pertinent to different parts of the Muslims areas. In North Malabar and Marumakkathayam, both Hindus and Muslim law were administered by matriarchal law of progression.

He further concluded by saying that; “It is therefore no use making categorical statement that the Muslim Law has been and immutable law which they have been following from the ancient times. That law was not applicable as such in some parts and it had been made applicable ten years ago. Therefore, if it was found necessary that for the purpose of evolving a single code to all citizens irrespective of religion, certain portion of Hindu Law, not because they were found to be most suitable were incorporated in to the new civil code projected in Article 35. I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim Community. Parliament may provide that in the initial year; however the application of the uniform civil code may be absolutely voluntary as how it was done in the case of Shariat Act, 1935.” (D.C Manooja, 2000)

2.3 Goa Civil Code

Goa, by far, is the only Indian state which has enforced the Uniform Civil Code. The Goa Civil Code which is also called the ‘Goa Family Law’ is a set of civil laws that governs and regulates the residents in Goa. Although the UCC is a Constitutional Provision under Article 44, it is not enforceable in nature. Most Indian states follow religious-based civil codes rather than the UCC. For instance, the Hindu-civil code was passed to maintain a harmony within the community. However, Goa remains an exception to that rule as it follows a single code, i.e., the uniform civil

code that governs all Goans (a term used to refer to the residents in Goa), irrespective of the differences in religion, culture, ethnicity or tradition.

The GCC took after the Portuguese Civil Code of 1867, which was presented in Goa in 1870. In any case, alterations were later made in view of the following:

- The Portuguese Gentile Hindu Usages Decrees of 1880
- The Portuguese Decrees on Marriage and Divorce of 1910 after the establishment of the First Portuguese Republic, the civil code was liberalized to give women more freedom. (Gracias, 1996)
- The Portuguese Decrees on Canonical Marriages of 1946 (Decreto, 2014)

GCC was retained after it emerged with the Indian Union in 1961, even though the original Code was replaced by the new Portuguese Civil Code of 1966 in Portugal. In 1981, the Government of India appointed a Personal Law Committee to examine if the non-uniform laws of the Union could be extended to Goa. The Goa Muslim Shariah Organization supported the movement; however there were also some opposition from the Muslim Youth Welfare Association and the Goa Muslim Women's Associations.

Some ways in which GCC vary from the Indian laws include:

- A married couple together holds ownership of all the assets they owned (before the marriage) or acquired (after the marriage) by each mate. In the case of divorce, both husband and wife are entitled to a half share of the assets. However, the law also allows ante nuptial agreements (an agreement signed before marriage), which may assigned a different division of assets. These agreements also allow the couple to possess the assets acquired before marriage separately. Such agreements are unchangeable. A married person cannot sell the property without the permission of his/her spouse. (Gupta, 2014)
- The parents have no right to disinherit their children entirely. Minimum half of their property has to be passed on to the children which is mandatory. This inherited property must be shared equally without any bias among the children. (Gupta, 2014)

- Muslim men who registered their marriage under Goa jurisdiction cannot practice polygamy and provision for a verbal divorce does not exist. In other words, the practice of Triple Talaq is not prevalent in Goa. (Gupta, 2014)

2.4 Importance of Uniform Civil Code

The term Uniform Civil Code has turned out to be a standout amongst the most disputable subjects in India. Be that as it may, it likewise has a few benefits or significance which can be examined beneath:

1. It promotes real secularism: India is a specific mainstream state which implies that India is common just in some specific regions and does not have any significant bearing to the entire of India. A uniform civil code implies that all citizens shall follow the same law irrespective of being Muslims, Hindus, Christians or Sikhs. It does not mean that it will hinder the liberality of religion; it actually means that everyone shall be treated equally under one Uniform civil law.
2. All Indians should be treated same: Currently, every religion has its own personal laws where the Muslims are allowed to marry multiple times whereas the Hindus and Christians are prohibited which doesn't seem like equality. With the implementation of uniform civil code, laws such as marriage, divorce, inheritance, land, family etc will be governed under one civil code which is the only way to ensure equality in India.
3. More rights to women: Uniform Civil Code will help the state of ladies in India. There are some malicious practices still pervasive in some religion which can be put to end just through uniform civil code. India is a patriarchal society where ladies are sentenced to enslavement and abuse. A uniform common code can get change the general public as ladies merit level with treatment and equivalent rights.
4. Every Modern nation has UCC: Each current country has UCC which is the reason they are more created and more progressed. Uniform civil code is an indication that the nation has moved in the opposite direction of standing practice and religious governmental issues. A UCC will help the country to go ahead in turning into a created country.
5. Individual laws are an escape clause: The individual laws are the proviso which abuses the general population by people with great influence. Routine of individual laws, for example, honor killings and female feticide abuses human rights. By permitting all these

individual laws and other legal framework has been constituted which is as yet working in a nation. A uniform common code is an answer for this escape clause.

6. It will help to reduce vote bank politics: India is a nation where most of the political parties indulge in vote bank politics and it is uniform civil code which will help to reduce it. If all religions come under one law, then the political parties will have no place to offer to minorities for their vote.
7. It will also integrate India: A considerable measure of antagonism is brought on because of particular treatment in light of the religious group and this can be avoided through the implementation of uniform civil code. It will help India to be more integrated in spite of different caste, religion, creed and gender under one civil code. (Aditya Thakur, 2013)

CHAPTER-III

NAGA CUSTOMARY LAW

3.1 Origin of the name Naga

Nagaland is a state in Northeast India circumscribing the condition of Assam toward the west, Arunachal Pradesh toward the north, Burma toward the east, and Manipur toward the south. The state capital is Kohima and the biggest city is Dimapur. It has a region of 16,579 square kilometers with a populace of 1,980,602 for each 2011 Census of India, making it one of the littlest conditions of India.

The origin of the name Naga is still hidden in esoteric condition. The fallacy of the name ‘Naga’ has become one of the most sought after hypotheses among the scholars. Generally, the term Naga is a generic term to refer an agglomeration of tribal groups living in Nagaland, Assam, Manipur, Arunachal Pradesh and West Myanmar. In Manipur, the term Naga includes Tangkhul, Mao, Maram, Maring, Kabui, Koira, Koireng, Tarao. Etc. In Arunachal Pradesh, we have Nocte and Wancho groups while in Assam, they are Rengma and Zeme Nagas and in Myanmar they are Konyak, Khiamniungan, Chir, Tikhir and Makware.

There have been endless speculations on the intriguing name ‘Naga’ and decoding of the name how it came into existence. John Butler believed that the people who lived in the plains used to call the people living in the hills as Nagas. The ancestors of the Nagas had begun intercourse with the people of the plains for a long time, and they began to acknowledge the term ‘Naga’ but the Nagas were entirely unknown about the derivation of the term ‘Naga’ as ‘naked’ or ‘snaked’.

The connotation of the name ‘Naga’ ascribed by Butler seems to be delusive and inconsistent by the fact that many hill people are living in around the Naga country but they are never called as Naga, as ascribed to the Nagas. In the past, the Nagas used to identify themselves through the name of their village or the name of the particular place from where they emerged. Practically, most of the Nagas used their identity by mentioning that they belong to the men of such and such village.

The phenomenon of using the village name has become the custom of the Nagas till they came in contact with the outsiders, who by fair or foul means ascribed the name 'Naga' and tribal names according to their own appellation and comforts of observation. Later appellation of the name 'Naga' was used as the generic term for all the Naga races. (A.Nshoga, 2009)

3.2 Meaning of Naga Customary Law

Naga Customary law exists where there is no written law. Naga Customary law is unwritten law which varies from tribe to tribe and village to village. Customary law is the highest authority in the village and it is obeyed by all individuals, groups, clans and tribes. There is no authority and power above the customary law. In the village, the Chief and his Councilors are the custodians of the law.

The authority of the village acts as the agent of the customary law, and they interpret on the basis of this law. Naga Customary law originated from the remote past and it is handed down to the succeeding generations. This law is not enacted or amended by prophets, chiefs, priestess or the members of the villages, but it is a wise decision of common agreement adopted during the distant past. Customary law cannot be rectified or amended. It is a fixed decision making law, which does not possess any shortcomings. The ancestors of the Nagas governed the village through the interpretation of this law. Customary laws emerged from the inter conscience and knowledge of virtuous men. This is framed according to the lores, mores, customs, cultures, traditions and the local environment of the people that it is to vary from place to place and from tribe to tribe. Customary law is simply a code of conduct of the people living within the jurisdiction of a governing body.

It cannot be mis-interpreted, since it is the tradition of the people. Every society is controlled by certain rules and regulations, codes of conduct, principles and mores, which are incorporated into customary laws. The customary laws regulated the social code of behavior in their daily life activities and usages. It may be defined as governing body to enforce the laws composed of social rules and regulations, where the society is bound to abide by implication upon them.

The customary laws are basically dealt with the subjects pertaining to human life, personal behavior, social institutions, chieftainship, successor, social obligations, inheritance, marriage,

religious ceremonies, conventions, mores, disputes, thefts, crimes, breach of laws, rules and regulations and any subject which is involved with the humanity.

Customary laws are the keys of adjudication, through which the aggrieved party avails justice from suppression and oppression. (A.Nshoga, 2009)

As in all other societies, the relations between the members of the Nagas are regulated by a body of observance, traditions, rules, and accepted religious and moral standards. These standards of behavior are not codified but merely inherent in the culture of manners and customs. Generally elders of the village are held to be especially skilled in knowledge of law and are regulated as repositories of law in the absence of any written record.

The diversity between tribes is so apparent that one would be tempted to emphasize on it at first sight. Among the Konyak Tribe, the Chief exercise great authority over his village. The Sema Chiefs though exercises autocratic powers are not sacred as those of the Konyak Chiefs. This autocratic system seems to have little in common with the extreme democracy of the Angami Village or the intricate Constitution of an Ao Village Council composed of elders representing clans and kindred for fixed period.

3.3 Evolution of Naga Customary Law

The customary laws are recorded for the purpose of assisting the memory of the law-givers. Educational and political development has inspired people to know the law and to assist upon those laws being inscribed in a more or less public form. These codified laws are the manuals for the use and guidance of the learned men. In case of Nagaland when the Britishers came, they wrote a number of monographs and studied Naga Customary Laws.

More than hundred years ago, Christian Religion was introduced in Nagaland. This religion set in motion a process through which values and customs and customary rights changed. Primitive savage customs yielded place to benevolent and charitable customs.

British administrative officer introduced a number of regulations incorporating procedures through which the village authorities were allowed to try civil suits and criminal cases which were not reprehensible. These were the rules for the Administration of Justice and Police in the Naga Hills District 1937 and the Assam Frontier Regulations 1945. These guidelines and

direction vested powers in the town specialists to attempt cases as indicated by Naga Customary Law, laid down the procedure and provide Appellant authorities in respect of civil and criminal justice.

The old order has changed yielding place to the new which is nowhere more prominent in Naga life than in the department of custom and customary law. The Nagas have to adjust their laws with accordance to the laws of the State. As a result, in certain matters the old customs of the various tribes have practically died and new rules have come to existence. The Nagas in the olden times had developed village governments. Each Naga village had a number of village officers who looked after affairs of the village. They also formed a judicial council of the village. However, in the case of Sema, Konyaks, etc, they had Ahogs and village chiefs.

These village courts could decide civil, criminal, religious and other cases. In olden days punishment included death, mutilation, slavery social ostracism, confiscation and fine. But today, only fine is left with the village authorities. In case of any violation of the village authority, the violator has to pay a fine in cash or kind to village authority which then may be used for village welfare fund.

Since the customary law has changed, a lot of new rules and acts have been introduced. It is therefore essential that these customary laws should be codified so that the courts could have at least a manual to guide them or the students of law to depend on for learning and research. This will also help villagers to remove ambiguity, confusion and ignorance which in turn will bring uniformity in the society.

In olden days, each village or clan or tribe developed their own customary laws according to the local genius, local conditions, local politics, and peculiar tribal needs. The reasons for such narrow growth were lack of communication, cultural and language barriers. But today when Nagas are within one democratic political set-up and Naga judicial system of laws and procedure have explore a long way towards an enlightenment society, the customary laws should confront to the changing needs. Today the growth of the society will be through codification, legislation, interpretation, judicial notice, precedents and case law. (R.S Bedi, 1976)

3.4 Common Practice of Naga Customary Law

Land Tenure: A dissimilar to in different part of the nation, the land by and large has a place with the general population, not the legislature and no plot is without a proprietor. Every tribe has a very much characterized region. The town domain can be isolated into four possessions:

1. *Common Village Land:* In every village subsidiary area, there are some plots which are specially kept for public institutions like Morung and its premises, worshipping place and grave yards etc. The village land is the joint property and the right to use them rests with the village council.
2. *Clan Land:* Almost every clan has sites for construction of house etc, in the subsidiary and plots for cultivation in the primary areas. The eldest member of the clan is the custodian of the clan land and he exercises a titular right over the land.
3. *Lineage Land:* There are certain lands in the village owned by a kin group, which neither can be termed as clan land nor as individual.
4. *Individual Land:* In all the villages individuals have lands either inherited or acquired. The individual has supreme directly over his property. He has ideal to share of the delivery of the land, to exchange property, to estrange and to concede right of utilization to others.

Generally, the various classes of lands within the village territory are demarcated either by stone pillars or natural boundary like streams and rivulets.

In the case of Chieftainship society, a good portion of the land within the village territory belongs to the Chief. It is his duty to see that plots are allotted to those persons who have no plot for cultivation.

Marriage: Monogamy is the socially accepted norm of marriage. Polygamy is however, practiced in the society where the Institution of chieftainship exists. In such society the Chiefs being the privileged class requires a privileged treatment in matters of having plural wives. The practice of Polygamy is mostly found among the tribe of Konyaks and Semas in the earlier days. Laws regulating marriage:

1. *Exogamy:* Marriage within the same clan is universally prohibited in Naga society.

The rule of exogamy applies to all the Naga tribes. However, in the case of inter-tribal marriage, the rule does not apply, the name of the clans being different. In the case of breaking these rules, the couples are punished in the form of expulsion from the village.

2. *Incest*: There are some rules prohibiting incestuous union among some tribes both as to sexual intercourse and recognized marriage. The punishment for the breach of the rule of incest is rectified by paying live pigs to the village elders.
3. *Divorce*: Divorce is allowed and common. Incompatibility of temperament and adultery are the chief reasons for divorce. If a husband commits adultery, the wife's relatives can demand a fine from the husband; the same rule applies to a wife too.

Administrative of Justice: In its widest sense, the organization of a Naga Village is a political organization embracing on the one hand, the whole complex of institutions by which law and order are maintained in the society, and on the other, all the institutions by which the integrity of the groups is maintained in relation to neighboring communities of a similar kind and protect against the attack from misbehavior. Cases like homicide and bodily injury, incest, adultery, rape, breach of laws of exogamy, theft, damage to property etc. are brought to village court.

Most disputes are settled by the payment of a cow or a pig. But for certain offences particular punishment are assigned. For instance, in the case of homicide, the customary practice was to demand the life of the slayer. If public opinion did not allow this to happen, the aggrieved party had to content themselves by looting the property from the murderer's house and driving him out of the village for a fixed period. For theft, the value of property stolen had to be restored to the victim, whose property is also returned to him if recovered and a fine to the councilors.

Disputes are settled by the Village Council or the Chief and their advisors as the case may be. In deciding disputes, questions of customs are referred to the old men of the village and their decisions in regard to matters of customs are usually accepted. Many disputes used to be settled by oath. The usual procedure being for each side to deposit an amount as a wager, together with a price of pig or a fine, the fee of the elders for the part they play in the proceedings. In recent years, this is not practices in most places. (M Alemchiba Ao, 1974)

CHAPTER-IV

DEBATES ON UNIFORM CIVIL CODE

4.1 Background of the debates on Uniform Civil Code

The open deliberations on the issue of the Uniform Civil Code have begun since the time India accomplished Independence as right on time as 1948. The open deliberations were seen by some solid resistance from the Muslim fundamentalists like Pocker Saheb and different individuals from different groups. Despite the fact that there were backings from the Chairman of the Drafting Committee Dr B.R Ambedkar alongside some vital writers G.S Iyengar, K.M. Munshiji and Alladi Krishnaswamy Iyer.

Despite the fact that the Congress deciding gathering guaranteed that it would give the Muslims the opportunity to rehearse their Islamic laws, there was a dread among the Muslims that it would inevitably meddle with their Muslim laws and that India would turn into an alternate state if Uniform Civil Code is presented. Nonetheless, some recognized individuals demonstrated their contradiction that the way of nationhood has been influenced because of the presence of the religion-based individual laws.

The Apex court on different occasions has guided the administration to understand the Directive Principle given in the Constitution of India as to Uniform Civil Code (UCC). The Supreme Court was hearing a case which was to be a straightforward scenario simply because the court was unhappy with the nonappearance of the uniform common code. The Muslims overwhelmed to the lanes and people like Z.A Ansari and Syed Shahabuddin approached to set up Muslim conventionality which was the popular Shah Bano case. Another comparative case was the remain of the zenith court in a 2003 case to strike down Section 118 of the Indian Succession Act which kept Christians from willing property for altruistic and religious purposes thus referring to the powerlessness of the Government to authorize UCC, the Supreme Court proclaimed the Section illegal. (Sattwik Shekhar, 2010).

The other group that has been continuously demanding UCC includes the proponents of Hindutva to which the Prime Minister Modi originates. For most of the part, their attack has

been on the Muslim personal law. They have interrogated the right of Muslim men to marry four women and the right to divorce by uttering the word 'Talaq' three times.

The country has been told that if these practices failed to stop, the Muslims will definitely one day take over the country. The uniform civil code, for the Hindutva brigade, is to attack the Muslim community for their narrow political gains by making use of stereotypes. Truth does not matter when the group desires to benefit. The fact is that given the sex ratio of 922 women for 1000 men, Muslims cannot afford to get even one wife. And yet the propaganda against the community continues to exist. (Ambrose Pinto, 2016)

4.2 Debates on Uniform Civil Code in the Constituent Assembly

The Uniform Civil Code has been the most warmed verbal confrontation with the All India Muslim Personal Law Board charging the legislature for endeavoring to sneak into under the appearance of advancing sexual orientation correspondence through its resistance to triple talaq in the Supreme Court. Undoubtedly, Article 44 was constantly begging to be proven wrong in the Constituent Assembly as it tries to draft another constitution for the as of late free sovereign country of India. The Constituent Assembly saw a division along the common lines among the individuals and the provision was received simply after Dr B.R Ambedkar; Chairman of the Drafting Committee guaranteed the minorities that the article would not push onto them.

On November 23, 1948, when the article was talked about, Mohammad Ismail, an individual from the Constituent Assembly recommended that if such law or UCC is to be included, any gathering, segment or groups must settle on surrendering individual laws in the event that it had such law. Ismail additionally attested that it was the basic right of the gathering or groups to take after the individual laws of their own and that meddling with the individual laws will radically influence the life of the general population who have been rehearsing their laws for a great many generations. He was trailed by Naziruddin Ahmad of West Bengal, who contended that it was not simply Muslims but rather every religious group has certain religious laws, certain common laws indivisibly associated with religious convictions and practices.

At the point when Mahboob Ali Baig Sahib Bahadur from Madras guaranteed that to the extent the Muslims were concerned, 'their laws of legacy, progression, marriage and separation are totally needy upon their religion', M Ananthasayanam Ayyangar, who went ahead to wind up

noticeably the second Speaker of Lok Sabha, said relational unions among Muslims are a 'matter of agreement'.

To this, Mahboob Ali Baig reacted that this agreement is charged on the Mussalmans by the Quran and on the off chance that it is not taken after, a marriage is not a legitimate marriage by any stretch of the imagination. Backing the movement moved by Mohamad Ismail, B Pocker Sahib Bahadur alluded to the inquiries raised by some Hindu Members to the proposed Article. (Maneesh Chhibber, 2016)

The Indian Parliament enacted the secular law for marriages back in 1954; however the number of marriages that took place under this system is very few. Different Communities have different customs and traditions that they do not want to give up and therefore it is not easy to adopt uniform civil code since communities are guided and protected by their religious, social and customary laws.

If a set of rules violated the customary law or religious practice it would amount to the violation of the fundamental right of freedom of conscience of a person. Democracies need to learn to respect both individual and community rights of the people and therefore it is required to broaden the debate of uniform civil code beyond four wives or triple talaq to caste discrimination, honour killings, khap panchayat and devadasi system which is still prevalent inspite of their abolition. These are the concerns need to look into rather than uniform civil code.

India is a multicultural society and the country needs to be tolerant about all communities. Sadly, instead of reforming the evil practices of some majority community like child marriage, dowry system, human trafficking, and temple prostitution and so on, making use of the uniform civil code to bash the minorities is not right.

When we talk about uniform civil code, we are talking about uniform laws for all. Laws related to crimes and punishment, trade and commerce, taxation and education, laws relating to evidence are all uniform.

Nonetheless, the Indian Constitution has permitted family illicit relationships like marriage, separation, legacy, guardianship and appropriation to be represented by traditions or principles relevant to the people and groups as it was thought as to be shrewd not to meddle with the social

and religious diversities of the different groups. All things considered, the composers of the Indian Constitution did not seek for solidarity in consistency rather solidarity in differing qualities. (Ambrose Pinto, 2016)

4.3 Difference between Equality and Uniformity

In order to understand the implications of enacting a uniform civil code (UCC) the centre asked the law commission to examine its impact on the life of the citizens of India. Eventually, the commission released a questionnaire, covering a gambit of issues, to collect the comments from the public. Predictably, some minority organizations was against the enacting such code saying that a UCC would affect on their right to freedom of religion.

Currently, there are two chief reasons put forward for a uniform civil code. The first is, a secular republic should have a common civil law for its citizens, irrespective of their religion. And secondly, to achieve gender justice as the personal laws of almost all the religions are discriminatory against the women. A uniform criminal law desires to establish the principle of equality before law. However, applying the same principle in civil matters may not be the right thing to do as this might infringe individual choice and override legitimate religious practices.

One issue that that has not been addressed in the current debate on the uniform civil code is the practical difficulty in applying a uniform code for a country as large and diverse as ours. Some elements like inheritance and maintenance, it may be practical to come up with such a common law or rule, but for subjects like marriage would be difficult to reconcile different religious practices and arrive at a universally applicable law. For example, Section 5 of the Hindu Marriage Act prohibits marriage between two individuals to get married if they are relatives, whereas some others like Islam are allowed to marry their cousins according to their personal law.

Section 7{2} of the Hindu Marriage Act says that the service of the Hindu Marriage incorporates the (Saptapadi implies the procedure of the lady of the hour and the prepare making seven stages by before the sacrosanct fire to finish their wedding function) and the marriage ends up plainly total when the seventh strides is taken.

However, a Christian marriage ceremony is completely different, which in most cases, includes the bride and groom in exchanging rings. How will the UCC deal with such issue? Will it mandate that non-Hindus follow saptapadi or for non-Christians to exchange rings?

Thus, the demand for a UCC stems from a completely lack of understanding between equality and uniformity. It's absolutely necessary to treat its citizens equally irrespective of their religion, caste and gender which essentially means that it should not discriminate against any citizens and ensure that all citizens get uniform rights. However, should it ensure uniform procedure, that too, in personal matters? The answer is a clear no.

To address the real problem; gender justice should be the main focus to make our personal laws non-discriminatory as most of them do not have provisions to provide justice to women. The way to solve this discrimination against women is to identify the provisions of all the personal laws that are discriminatory and to amend them suitably, irrespective of their religious sanction. Only then, non-discriminatory civil code which is constitutionally complaint will come to an end. (Jayakumar Selvaraj, 2017)

4.4 Triple Talaq Vs Uniform Civil Code

There is also a debate over Uniform Civil Code and Triple Talaq. Some people felt that Uniform Civil Code is not required to be imposed in India but Triple Talaq which has to be abolished. Prime Minister Narendra Modi in his speech on 24th October, 2016, showed his concern for the Muslim sisters over Triple Talaq at Mahoba in Uttar Pradesh. Over the past half century, the political parties such as BJP and Jan Sangh have made a UCC as one of their important election manifesto. Prior to the India's parcel, Muslims were given promises of respect and regard for their very own law by Mahatma Gandhi on 25th October, 1931, Jawaharlal Nehru on sixth April, 1937 and the Congress in October in 1937.

Gandhi gave "assurance by particular arrangements" in the Indian Constitution. In any case, Article 44 was included the Constitution which says "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India." However, B.R Ambedkar argued and said to the Constituent Assembly that this should not be made a mandatory at the Legislation. It was said that the statement National Integration through uniform civil code is misleading as in the country of Sri Lanka has their own personal law and yet well united and

integrated which has the support of the Supreme Court. Even other countries Singapore and Israel accepts the Muslim laws and live with it without any controversy.

There is no doubt that that proper protection of the culture and traditions of the minorities requires preservation which will contribute to the integration of the way of people's life. Justice V.R Krishna Iyer in 1971, who managed in the Kerala High Court, expressed that the view that the Muslim spouse appreciates boundless control over the separation, for example, utilization of Triple Talaq does not count with Islam laws and request. To be sure, an intensive investigation of the subject demonstrates a shockingly sensible, reasonable and present day law of marriage as to separation specifically. It is a mixed up conviction that a Muslim spouse appreciates under the Quranic Law which unchecked the expert to break up the marriage. Muslim laws now in Iraq manage under the court and are required to express a purpose behind their separation. In any case, in India a similar law does not have any significant bearing to the Muslim Indians, rather the act of Triple Talaq is in opposition to the lessons of the Holy Quran and a similar misguided judgment disheartens the law which manages the ladies' entitlement to separate. As indicated by the quote given in the Quran, the separation is allowable just in the instances of crisis with the assent of his accomplice. At the point when all endeavors neglected to accommodate with each other, the couple may continue to the deterioration of the marriage by "Talaq" or "Khula".

Justice Baharal Islam who was from the Guwahati High Court had a similar view in 1978. His view was that the right law of talaq as given in the holy Quran is that talaq ought to be connected just with a sensible cause and endeavors ought to be made for compromise between the couple by two family judge one from the spouse's family and the other from the wife's family. In the event that these endeavors neglect to achieve at exactly that point the couple may continue to Talaq. The perspectives of Justices Khrishna Iyer and Baharal Islam were endorsed at the Supreme Court in Shamim Ara's Case in 2002. (A.G. Noorani, 2016)

Therefore, it is important to review the book Holy Quran and practice according to it and stop the misconception of the application of triple talaq.

CHAPTER-V
IMPACT OF UNIFORM CIVIL CODE
ON
NAGA CUSTOMARY LAW

5.1 Discourse on the impact of Uniform Civil Code in Nagaland

Uniform Civil Code is a proposed law by the Union government to supplant the individual laws of the different groups with a typical common law. However, when we look into the context of Naga Customary law, the public discourse on such proposal states that it would infringe Article 371(A) of the Indian Constitution which grants Nagaland with a special provision regarding to Naga customary law. The discussion was organized by Dimapur Bar Association (DBA) which was witnessed by various representatives from 14 Naga civil organizations. According to Senior Lawyer A. Zhimoni, Article 371(A) was “our link to India” and that the Naga People’s opposition to Uniform Civil Code should be registered with the Law Commission.

It was decided that the task for representing the Naga People’s opposition of Uniform Civil Code to the Law Commission would be tackled by the Naga Tribes Council (NTC). Tali Ao, the President of Dimapur Bar Association (DBA) during his explanation on “Uniform Civil Code vis-à-vis Naga social customs and practices” further stated that a law unknown to us and unknown to our forefathers will be imposed on the Naga people.

According to the data of 2011 census, approximately 80.5 % of the populations of India are Hindus, 13.5% are Muslims and 2.3% are Christians. NK Nuikham, the former President of Dimapur Bar Association also stated that the execution of Uniform Civil Code would influence the individual and social existence of each native when all is said in done and the Nagas specifically. The DBA also had written a letter to Prime Minister Modi stating that Uniform Civil Code would definitely bring social disorder in Nagaland. In the letter, it stated that “If a Uniform Civil Code is introduced covering the entire country, it shall cause so much of hardships and social disorder to the Nagas as the personal and social life of the Nagas are quite distinct from the rest of the people in the country”.

At the discourse, the silence of the government on this issue was also questioned saying that it is the sixty elected representatives led by the Chief Minister should be defending the Nagas on not the Bar Association. A representative from Muslim community also called the proposed Uniform Civil Code as a “Political Conspiracy” and asserted that the Muslim Community was also with the decision of the Naga Organizations.

The representatives from various Naga Civil societies at the discourse include: Naga Council Dimapur, Eastern Nagaland People’s Organization, Naga Women Hoho Dimapur, Dimapur Urban Council Chairman federation, Nagaland Tribes Council, Central Nagaland Tribes Council, Muslim Council Dimapur, Dimapur District GBs Association and so on. (Staff Reporter, Eastern Mirror, 2016).

5.2 Questionnaire to the Public Opinions on Uniform Civil Code in Nagaland

A survey was additionally led in Nagaland to inspect the feelings of people in general on actualizing Uniform Civil Code where the question says “Is Uniform Civil Code applicable and acceptable in Nagaland State? Why? Choice was given as Yes or No or Others.

The result came with the majority people voted for option (No) with 86% and 2% for option (Yes) while 12% for option (Others).

People voted for Yes stated their reason as:

- Yes, Since Nagaland is a part of the Indian Union; it will have no choice but to accept uniform civil code. The Constitution has to supersede Article 371(A).
- Yes, to recognize the identity.

People voted for No stated their reason as:

- No, in a diverse and democratic country like India, you cannot force a uniform civil code. It goes against all democratic norms and principles.
- No, it’s not applicable and acceptable anywhere in India. The Uniform civil Code violates the basic essence of democracy and is not tenable in modern society that is full of diversity.
- No, because it will nullify Article 371(A)

- No, where will our customs go?
- No, Not applicable unless Nagaland Legislative Assembly (NLA) decides so under 371A protection. What worries us is our elected members who will do anything for money, even otherwise, the law once forced will directly or indirectly impact us as we cannot live in isolation. We must join a group that opposes the move to introduce UCC.

People voted for Others stated their reason as:

- A uniform civil code is a very crucial task for any democratic and secular country. It should strive and be able to help, guide and lead people towards the path of positivity, tolerance, respect, unity, progress for all -irrespective of -religion, caste, color, political affiliations etc.
- If the contents of the code, in any way, tend to intrude, corrupt, control or negate other religions, cultures, traditions, values, practices or their adherences and posses to have any harmful implications, it should not be applied in any state.
- In India Uniform Civil Code is not possible without consensus. So there's no point of talking about a particular state. To be precise Nagaland is distinct from other Indian States moreover as long as the special provision to Nagaland state under Article 371(A) is in place then the UCC is not possible. (Morung Express, 2016)

Thus, from the above result of a questionnaire it can be clearly seen that majority of the people in Nagaland opposes against the implementation of Uniform Civil Code in India as they strongly feel that it would infringe their constitutional right as given in Article 371(A) and that it is not practicable and applicable in a diverse country like India.

5.3 Article (371)-Special provision to Nagaland State

As to usage of the Uniform Civil Code, Article 371(A) in the Indian Constitution has specified a unique arrangement for the Nagaland State for the insurance of standard law. In such manner, not just the standard law, social practice and conviction of Nagaland additionally the assets of the state are newly remain defended from the intercession of the union government and its approaches unless the state legislative so chooses it.

The part XXI of the Indian Constitution Article 371(A) {Special provision with respect to the State of Nagaland} states that –

Notwithstanding anything in this Constitution, –

(a) no Act of Parliament in respect of –

(i) religious or social practices of the Nagas,

(ii) Naga customary law and procedure,

(iii) administration of civil and criminal justice involving decisions according to Naga customary law,

(iv) ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution decides.

This arrangements can be best comprehended when we altogether look at the related issues includes in drawing of characteristic assets by the state which has been incorporated into the constitution of India under Article 371(A) in the thought of the sixteenth Point of Agreement.

(Ningreikhan Wungkhai, 2016)

With the sixteenth point understanding (16-PA), the previous Naga Hills area of Assam turned into a state on first December, 1963 and turned out to be a piece of the Indian Territory. A segment of the Naga individuals deliberately and formally acknowledged the Indian Constitution and joined the Union of India. However some gathering of individuals did not acknowledge the 16-PA and kept on battling for Naga power.

After the state was made, Nagaland was given an uncommon status under Article 371(A) of the Indian Constitution. At the point when Article 371(A) was incorporated into the Constitution, the NLA was offered 3 years of time to make changes or remove any difficulty from the provision. But the NLA accepted the provision as and how it was framed from the beginning. Nagaland on becoming the union of India has become vulnerable just as the other states which was so as there was precedence. At first, Nagaland was under the Ministry of External Affairs (MEA) which was later shifted to Ministry of Home Affairs (MHA) in 1972. Later, the funding for Nagaland state as a special state was also removed in 1989. The case of Naga Customary Law and procedure was also taken to precedence steadily in the criminal cases. Under such circumstances, in no time the special provision given in Article 371(A) in the constitution may also be affected.

On the off chance that the Uniform Civil Code is actualized by the National Democratic Alliance (NDA) government as guaranteed by the BJP's Election Manifesto, Article 371(A) will likewise turn into a characteristic setback. The center target of the BJP on UCC is to elevate the status of the minorities. On the off chance that that is the level of goal, does it imply that the subjective biased laws, for example, Armed Forces Special Powers Act (AFSPA) 1958, Disturbed Area Act 1955, and so on will consequently wind up plainly void? Will the NDA government ready to cross over any barrier between the monetary improvement and business openings? Parallel open doors ought to mean giving equivalent social, financial and political treatment to every person from the grass root level to the top level. As unmistakably observed those guarantees are just in principle and are not practical in all actuality. Imbalance exists in formative circle as well as in the outlook of the higher position or area. Could they treat the tribal and the minorities with uniformity? For whatever length of time that the mentalities of the higher ranks neglect to change, the usage of uniform common code will never be a win explore. (EMN, 2014)

5.4 Naga Customary Law Vis-à-vis Uniform Civil Code

Many Naga philosophers aspired that a uniform customary law be codified for the good of the society but the challenge could be bigger than ever thought out with the fact that there are technical implications in various customs and practices in the Naga Society. If the Nagas really wanted a uniform customary law then it is not different from the unsuccessful Uniform Civil Code proposed which wants the supports of the civil society.

However, uniform civil code is a term which starts from the possibility of civil law code which has a different arrangement of mainstream common laws which administers distinctive individuals independent of different religions and districts. This UCC are expected to get fairness and solidarity the Nation State which covers individual status, rights identified with obtaining and organization, marriage, separation and adoption. However there was a massive opposition from the Muslims, Christians, INC, CPI (M) and in consonance to that the “The Times of India” published on 13th October, 2016 said that “A Uniform Civil Code is not good for the Nation”.

Now, with the historical background of the Naga tribal culture, customs and traditions, each tribe has a unique customs and traditions. No doubt that the ancient Nagas lived in a sovereign status of nation immoderate to any external influence or force. On reviewing of the past events or

situations of the forefathers, they happen to embraced the faith of paganism and animism setting their own ethical rules and regulation. The Custom and practice is pervaded with the fear of natural phenomenon recurrence such as curse for the bad and rewards for the good people. These laws are purely rigorous and the elders who administers have these laws in their palm and apply what is most appropriate for a crime committed and deals accordingly without any bias or prejudices. The institution of the Naga customary law is based on the fundamental of the village council consisting of GBs and trusted elders who are trained in handling the village laws. Unlike those LLB in Indian conventional laws, they do not charge any fees for settling cases.

However, that doesn't mean that the Naga customary law in the ancient days were flawless, it has survived the test of time. And even today most rural folks opted for this simple but effective set of customary law which attributes to just and fair settlement with less or no expenditure. Furthermore, when the Indian Constitution recognized a special provision as given in Article 371 (A) for the Naga people with regard to customary law, it is important to protect and claimed its rightful provision in the best interest of the Naga community as a whole. The Naga ancestors were very much attached to their customary laws which are passed from generation after generation till the present Nagas. (N. Haisoyi N dang, 2017)

5.5 33% reservation for women in Nagaland against Naga Customary Law

The recent controversy with regard to 33% reservation for women in Nagaland clearly shows why uniform civil code is neither possible nor desirable in India. The Nagaland State's decision to hold municipal elections with 33% reservation for women in Nagaland, after a court, resulted in widespread disturbances, deaths and finally the resignation of the embattled Chief Minister, TR Zeliang. The breakdown of law and order was so severe that mobs even torched the office of the district collector in the state capital Kohima on February 2, 2017. The 74th amendment of the constitution in 1992, among other things, provided for 33% reservation for women in municipal bodies. Naga groups strongly objected to this saying it interfered with customary laws and the protections guaranteed to them under Article 371(A) of the constitution. Under this constitutional provision, no Act of parliament that interfered with Naga customary laws would be implemented in Nagaland unless the State Assembly passed resolution allowing it. The opposition to reservation for women in local bodies in Nagaland was so strong, that even elections to be held were declared null and void.

That customary law had enough force of sentiment to allow Nagaland to effectively overrule the 1992 constitutional amendment should be a reality check for anyone advocating for a UCC. While the UCC debate in India is usually stereotyped as one that concerns Muslims alone, the events in Nagaland show just how widespread the resistance to a one size-fits-all, top-down law really is. India has separate laws not only for major religious groups like Hindus, Muslims and Christians but also for many states and indigenous groups. While perfectly uniform laws are common in the nations of Europe, in a country of India's size and diversity, this issue becomes near intractable. In fact, since the prospect of a uniform civil code is close to zero, shrill demands to implement it are often seen as a majoritarian imposition and actually end up harming the progressive cause. The question of reservation has brought Naga tribal bodies in direct confrontation with women's groups. Tribal bodies claim that reservations disrupt Naga Customary law, distinct from state laws and sheltered under Article 371(A) of the Indian Constitution.

The current debate is rooted in the Nagaland Municipal Act of 2001, amended in 2006 to provide for 33% reservation for women in keeping with Article 243(T) of the constitution. It also empowers municipal bodies to collect land and building taxes. Both provisions, tribal bodies argue that it goes against customary laws. Some tribal bodies argue that reservations disrupt customary division of responsibilities between men and women. It has also been said that village council functioning under customary law have never had women on them. While others argue that women should participate in polls, not through reservation but through nominations. The percentage of women could be even higher. They say why give reservation when there is no discrimination against women? It would only create a rift between Naga men and Women. (Samudra Gupta Kashyap, 2017)

And thus, from the above fact or incidents happened it can be clearly seen that to implement a civil code such as uniform civil code in a country like India with diverse culture, customs and traditions particularly in the context of Nagaland it is something impossible to implement or put into reality as the people of Nagaland strongly feels uniform civil code would ultimately infringe their right or provision as given in the constitution in Article 371 (A). Customary law is the root of their unity and survival and that it is important to protect their customary laws.

CHAPTER-VI

CONCLUSION

6.1 Conclusion

Uniform civil code is the proposition to supplant the individual laws in view of the sacred writings and traditions of each real religious group in India with a typical set overseeing each state. Individual laws are recognized from open law and cover marriage, maintenance, divorce, legacy, and adoption. India is a nation with assorted religion, culture and customs and in a portion of the act of the different groups, separation have a tendency to win in the general public. In this way the framers of the Constitution wanted to execute Uniform Civil Code in the nation with the goal to convey balance among the nationals and to elevate the discrimination of women's status.

Since the season of nation's autonomy, the subject of uniform civil code wound up noticeably a standout amongst the most begging to be proven wrong and questionable theme ever. The subject became one of the most intensive debates with the All India Muslim Personal Laws blaming the government for trying to creep in to beneath the outward show of promoting gender fairness in the course of its resistance to triple talaq in the Supreme Court.

On the other hand, there are also a group of people who accuse the government for not implementing uniform civil code even after long six decades and called the Article 44 as a dead letter which will never come to reality in India.

However, the supporters of uniform civil code trust that such a code can possibly join India and likewise its sanctioning is constantly highlighted in reference to national integration. The rhetoric disregards the embodiment of individual matters viz. marriage, support, divorce and so forth in one's life. Marriage and religion, separation and religion, support and religion are profoundly interlinked and can't be separated for the sake of solidarity and trustworthiness of the country. The strict devotion to these laws can't allow consistency of any kind.

When we investigate the talk of uniform civil code, there are tons of supporters who represent the need of actualizing uniform civil code in India and come in camouflage sousing the word national trustworthiness as its move down which is quite rhetoric in nature.

In any case, when we thoroughly investigate the reality for executing uniform civil code particularly with uncommon reference to Naga society, it can be found through the exploration that it is something difficult to actualize in a nation like India with different culture, religion, traditions and customs. The general population of Nagaland is emphatically fortified in their standard laws and conventions. Besides the unique arrangement allowed in Article 371(A) of the Indian Constitution would be encroached.

Thus, through this research study it can be best presumed that since it can be obviously observed that uniform common code is not something simple to execute in a nation like India, the segregations rehearse in any religion can be look upon and change what should be finished. In that way it can bring uniformity and national trustworthiness through reorganizations of abhorrence practices of some religion.

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