



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Uniform Civil Code: Implementation & Complexities

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Received 15 July 2024; Accepted 16 August 2024; Published 20 August 2024

The government's determination to enact the Uniform Civil Code (UCC) has sparked diverse opinions and raised questions about its implementation strategy. This study aims to assess the preparedness for UCC implementation, whether on a state-by-state basis or nationwide. It explores the challenges and obstacles to adopting the UCC on a national scale, providing insights and recommendations to address them. By examining these complexities, the study seeks to contribute to a more informed and productive public discourse on the UCC in India. This research paper focuses on the implementation of a Uniform Civil Code in India, specifically examining issues related to marriage laws and inheritance laws. The paper argues for a staged strategy in implementing the code and emphasizes the importance of maintaining gender equality and harmonizing all legislation with constitutional principles. In this analysis, we will critically examine the implementation of the Uniform Civil Code (UCC) at the state level, focusing on two significant states: Goa and Uttarakhand. By closely studying the provisions within their respective civil codes, we can gain insights into the potential pathway for nationwide UCC adoption. Furthermore, understanding these provisions will inform the necessary adjustments and considerations for successful implementation by the government.

Keywords: *personal laws, inheritance, succession, fundamental rights, directive principles, goa code.*

INTRODUCTION

The majority of civic affairs in a nation are regulated by laws, namely the civil code, which applies universally to all religions, communities, castes, and genders without any exclusions.¹

The idea behind the notion of the Uniform Civil Code (UCC) is the equitable treatment of persons, wherein individuals of the same class are subject to equal regulations. Article 14² of the Indian Constitution upholds equality before the law, assuring a consistent set of regulations for a particular cohort of citizens.³ The provision of personal laws in entry number 5 of the concurrent list confers jurisdiction to the state and the union to enact legislation concerning this particular subject.

It is important to comprehend that the notions of standard civil code and uniform civil code are distinct from one another since the former pertains to the implementation of identical regulations for all individuals. The common civil code is broader in its scope and more comprehensive in its purposes. Its overarching objective is to incorporate all of the state's legislation. A uniform civil code aims to end the diverse personal laws based on different religious views and to stop certain privileges based on religion.

The term civil refers to two specific legal concepts that are right in rem and right in personam. The notions of right in rem and right in personam are separate from one another.⁴ A Right in Rem, additionally referred to as Jus in Rem, is a moral obligation claimed by an individual or entity against the entire world. It is an adverse advantage that has the primary goal of keeping anyone from infringing on the holder's utilization of the right. For Instance, If X buys an automobile, he or she acquires the Right in Rem. Nobody else can disrupt X's possession of the automobile. The 'right in rem' concept encompasses equality and equal opportunity rights. The

¹ Siddhartha Makhija, 'Uniform Civil Code And Conflicts Of Personal Laws' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-12974-uniform-civil-code-and-conflicts-of-personal-laws.html>> accessed 07 July 2024

² Constitution of India 1950, art 14

³ Zoya Hasan, 'Gender, Religion and Democratic Politics in India' (2010) 31(6) *Third World Quarterly* <<https://www.jstor.org/stable/27896590>> accessed 07 July 2024

⁴ Aishwarya Agrawal, 'Right in Rem and Right in personam' (*Law Bhoomi*, 27 June 2024) <<https://lawbhoomi.com/right-in-rem-and-right-in-personam/>> accessed 07 July 2024

term 'right in personam' pertains to conflicts that arise between two persons, such as divorce, contract disputes, custody battles, and similar cases. This constitutes a breach of personal rights.

The term 'code' does not always refer to a singular statute. The Hindu Code Bill encompasses many legislations, such as the Hindu Marriage Act⁵, Hindu Adoption Act⁶, and Hindu Succession Act⁷, among others, inside a unified legal framework. However, it is essential to note that there is now no one comprehensive law governing these matters. For example, while Hindus observe several personal regulations, they also recognize the customs and practices of various populations in numerous states. The Muslim personal law is also not altogether universal - certain Sunni Bohra Muslims, for example, follow the foundations of Hindu law in terms of succession. Therefore, the code does not need the presence of only one legislation. The Indian Penal Code⁸ is not the sole legislation governing criminal law in India. Other laws, such as the Foreign Exchange Management Act, the Food Adulteration Statute, and the Prevention of Corruption Act, also significantly regulate criminal activities.^{9 10 11} The Supreme Court has asserted in several judicial rulings that it is the state's responsibility to ensure the implementation of a uniform civil code for all residents.

RELIGION & UCC

According to KM Munshi, the Constitution grants the government the authority to enact legislation about secular aspects of religious practices, provided that such measures are aimed at effecting social change. He campaigned for the Uniform Civil Code (UCC), asserting its advantages, such as fostering national unity and encouraging gender equality.¹² The individual also asserted that if the personal laws about inheritance, succession, and related matters were seen as integral components of religion, it would impede the eradication of several discriminatory practices against women within Hindu Personal law.

⁵ The Hindu Marriage Act 1955

⁶ The Hindu Adoptions and Maintenance Act 1956

⁷ The Hindu Succession Act 1956

⁸ The Indian Penal Code 1860

⁹ The Foreign Exchange Management Act 1999

¹⁰ The Prevention of Food Adulteration Act 1954

¹¹ The Prevention of Corruption Act 1988

¹² Hasan (n 3)

FUNDAMENTAL RIGHTS & DIRECTIVE PRINCIPLES

According to Article 44¹³ of the Constitution, the state must make efforts towards implementing a Uniform Civil Code (UCC) throughout the various areas of the nation. Article 44¹⁴, a component of the directive principles, falls under the category of non-justiciable provisions, implying its lack of enforceability by legal means.¹⁵ However, it is essential to note that fundamental rights are subject to judicial review and can be enforced by legal proceedings in the courts. For example, in its right-to-privacy decision in August 2017, the Supreme Court of India decided that the right to privacy is an essential component of the right to life and personal liberty protected by Article 21 of the Indian Constitution. The inclusion of phrases such as 'in particular strive', 'shall, in particular, direct its policy' and 'shall be the obligation of the state' inside the directive principles signifies that these principles impose a policy-level requirement rather than being subject to judicial interpretation.

However, whereas Article 43¹⁶ states that the state should make efforts through appropriate legislation, Article 44¹⁷ does not include the requirement for adequate legislation, rendering it non-binding on the legislature.¹⁸ The fundamental rights hold greater significance in comparison to the directive principles. In its ruling on the *Minerva Mills* (1980) case¹⁹, the Supreme Court stated that the Indian Constitution is based on the fundamental principle of maintaining equilibrium between Parts III (Fundamental Rights) and IV (Directive Principles). The court determined that FRs have precedence over DPSPs and that DPSPs must be implemented in a manner that does not infringe on FRs.

The Supreme Court also decided that Parliament cannot alter the Constitution's basic structure. In this decision, the court declared Section 4 of the 42nd Constitutional Amendment Act of 1976, which granted DPSPs priority over FRs, invalid as it undermined the fundamental framework.

¹³ Constitution of India 1950, art 44

¹⁴ *Ibid*

¹⁵ H.M. Seervai, *Constitutional Law of India* (4th edn, Eastern Book Company 2023)

¹⁶ Constitution of India 1950, art 43

¹⁷ Constitution of India 1950, art 44

¹⁸ Seervai (n 15)

¹⁹ *Minerva Mills v Union of India* (1980) 1 SCR 206

The court determined that the authority to destroy the Constitution's identity extends outside the limits of Parliament's amendment power.

Disturbing the harmony of the Constitution occurs when one grants ultimate supremacy to one element over another.

MINERVA MILLS V UNION OF INDIA

Fundamental rights are basic for individual existence, while Directive Principles guide governance. Courts interpret the balance between them, termed 'Conscience of the Constitution'. The Minerva Mills case clarified their interrelationship, but the issue remains contentious.

The divergence in opinions between the majority and minority views in the Supreme Court of India's *Minerva Mills Ltd. & Ors. v Union of India & Ors.* presents intriguing jurisprudential queries. These include the balancing act of conflicting interests, the decision-making process of judges in areas without set rules, and the unique status of Part IV (Directive Principles of State Policy) within the right-duty framework, being non-enforceable under the Constitution of India. To destroy the guarantees given in fundamental rights in order perpetually to achieve the goals of directive principles is plainly to subvert the Constitution by destroying its basic structure. In the name of the Uniform Civil Code, no one can take away the right to religion or the right to culture of people because fundamental rights are superior to directive principles. The Court harmoniously stated.²⁰

As stated in Article 26²¹ of the Constitution, even denomination groups, the constitutional goals bind section, and they must abide by the law.

MARRIAGE LAWS

To facilitate the implementation of the Uniform Civil Code, it is imperative to perceive marriage as a contractual arrangement rather than a sacramental institution. The Hindu Code Bill²², also

²⁰ *Ibid*

²¹ Constitution of India 1950, art 26

²² Hindu Women's Rights to Property Act 1937

known as the Hindu Marriage Act²³, is predominantly grounded on Brahmanical Hindu Law and conceptualizes marriage as a sacrament rather than a contractual arrangement.²⁴ Consequently, this personal law about Hindus necessitates special reforms. It is essential to clearly define even the most basic rituals to reform the institution of marriage. Providing clarification on the definition of marriage and who can legally participate in it is crucial to avoid complicating personal laws. This clarification should answer questions about marriage in society and the individuals eligible to enter into such a union, as asked by the jury.²⁵

Additionally, addressing the issue of second marriages in India is imperative in the context of implementing a Uniform Civil Code. It would be necessary to prove the rights of the second wife. As previously mentioned, Brahminical Hindu Law predominantly governs the Hindu Marriage Act²⁶. According to the Manusmriti, the marriage is considered fully accomplished only during the completion of the seventh *fera* (*satpadi*). In certain instances, particularly within the Hindu community, second weddings may deviate from the customary practice of completing seven *feras* during the wedding ceremony. Instead, a reduced number of five *feras* may be undertaken, among other variations.²⁷ The Supreme Court, in the case of *Bhaurao v State of Maharashtra*²⁸, established a connection between the anti-bigamy provisions of the act and the requirement for a ceremonial solemnization of marriages as outlined in Section 7(2) of the HMA.²⁹

The Court determined that if a marriage is legally nonexistent due to the improper or unfulfilled performance of the customary ceremony, it would not be governed by the anti-bigamy provisions of the act. In a separate case, the Supreme Court rendered a decision wherein the burden of proof about the second marriage is with the claimant, namely the initial spouse.³⁰

²³ Hindu Marriage Act 1955

²⁴ Bhimrao Ramji Ambedkar, *Annihilation of Caste* (first published 1936, General Press 2021)

²⁵ Pardeep Inder Kaur, 'Towards a Uniform Civil Code in India: Challenges, Prospects, and Stakeholder Perspectives' (2024) 9(3) *International Journal of Novel Research and Development* <<https://www.ijnrd.org/papers/IJNRD2403497.pdf>> accessed 07 July 2024

²⁶ Hindu Marriage Act 1955

²⁷ Law Commission of India, *Report on Reforms in Family Law* (2008)

²⁸ *Bhaurao v State of Maharashtra* (1985) 3 SCC 621

²⁹ Hindu Marriage Act 1955

³⁰ Nidhi Rao, 'Consequences of Uniform Civil Code on integrity and Social Life of India' (2022) 2(4) *Jus Corpus Law Journal* <<https://www.juscorpus.com/wp-content/uploads/2022/07/70.-Nidhi-Rao.pdf>> accessed 07 July 2024

However, it is commonly seen that second weddings are often conducted clandestinely. Hence, it is unreasonable to demand that the woman substantiate the existence of this marriage, particularly given the husband's cohabitation with another individual and lack of official marital recognition. To mitigate the imposition of the second marriage penalty on a Hindu individual in the absence of any other legal matrimonial options, the presence of two marriages becomes necessary. The denial of rights to a significant number of Hindu women can be attributed to the complexity of the legal framework. In an unexpected pronouncement at a Supreme Court hearing, Justice Markandey Katju asserted that the second wife should be regarded as a concubine or mistress and, therefore, does not possess the right to receive financial support.³¹

In a manner akin to the scenario mentioned above, it is noteworthy that live-in relationships are not legally proscribed in India. However, an intriguing question arises: what are the implications if one individual initiate such a relationship while still being engaged to another individual of the opposite gender? In the scenario mentioned above, it is important to note that under the provisions of the Hindu Marriage Act³², the husband cannot be held liable for the offense of bigamy. Furthermore, the woman's sole recourse for seeking a divorce would be to present compelling evidence of the husband's act of adultery before a court. The necessity of reforming polygamy legislation and establishing a definitive limit on the number of cohabiting partners is evident.

Child marriage is a significant issue of concern within our society, necessitating not only the theoretical prohibition of such practices but also the implementation of more robust enforcement measures. Currently, child marriage remains unconditionally illegal, with legal consequences limited to the individual responsible for facilitating the marriage of minors. This individual may face a relatively lenient punishment with rigorous imprisonment which may extend to two years or a fine of up to which may extend to one lakh rupees, as determined by the Court³³. However, the marriage would still be deemed valid (voidable) and recognized as authentic according to

³¹ Padmini Swaminathan, 'The Elusiveness of Gender Equality/Gender Justice' (2022) 57(31) Economic and Political Weekly <<https://www.epw.in/journal/2022/31/comment/elusiveness-gender-equalitygender-justice.html>> accessed 07 July 2024

³² The Hindu Marriage Act 1954

³³ Prohibition of Child Marriage Act 2006

legal standards. Consequently, any child born from such a marriage would be entitled to all inheritance rights concerning parental property and would be appropriately referred to as a legitimate offspring. Currently, laws aligned with the PCMA³⁴ have been implemented in just 24 states and union territories.³⁵

Furthermore, the appointment of CMPOs³⁶ has been carried out in only 20 states and union territories. Despite the demands made by India's Ministry of Women and Child Development (MWCD), state administrations still need to provide information regarding implementing these laws.³⁷ According to a research study, it was found that a significant proportion of girls, around 47 percent, were married at a young age between the years 2005 and 2013.³⁸ However, it is noteworthy that only a limited number of these cases were reported to the PCMA³⁹ (name of the organization).⁴⁰ Furthermore, the PCMA⁴¹ has a very high proportion of cases now pending resolution.

Moreover, a mere 40 individuals were convicted for the offense of child marriage, around 25% of the total number of cases concluded.⁴² Another essential consideration pertains to the treatment of children born outside of marriage and the potential impact on their inheritance rights about property following the implementation of reforms facilitated by the Uniform Civil Code and the strict prohibition of child marriage within society.⁴³ Within the Hindu community, a multitude of cultural practices exist, resulting in a significant prevalence of child marriages in some areas of India.⁴⁴ It is noteworthy to mention that this discussion does not encompass the

³⁴ The Prohibition of Child Marriage Act 2006

³⁵ Ministry of Women and Child Development, 'Child Marriages' (PIB, 11 August 2023) <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1947773>> accessed 07 July 2024

³⁶ The Prohibition of Child Marriage Act 2006

³⁷ Ministry of Women and Child Development, *Annual Report 2017-18* (2018)

³⁸ Aarushi Khanna and Sahaj, 'Generational Change in India: How might raising the legal age of marriage from 18 to 21 change the lives of girls?' (*Equal Measures 2030*) <<https://equalmeasures2030.org/story/generational-change-in-india-how-might-raising-the-legal-age-of-marriage-from-18-to-21-change-the-lives-of-girls/#>> accessed 07 July 2024

³⁹ The Prohibition of Child Marriage Act 2006

⁴⁰ Swaminathan (n 31)

⁴¹ The Prohibition of Child Marriage Act 2006

⁴² Ministry of Women and Child Development (n 37)

⁴³ Rao (n 30)

⁴⁴ Uditia Prakash, The evil of child marriage : provisions, loopholes, and challenges (*iPleaders*, 10 September 2021) <<https://blog.iplayers.in/evil-child-marriage-provisions-loopholes-challenges/>> accessed 07 July 2024

topic of marriage age within the Muslim community.⁴⁵ Following the Hindu Marriage Act of 1955⁴⁶ weddings between direct family members are prohibited; however, an exception exists in certain regions of southern India.⁴⁷ Hence, it is imperative to develop suitable solutions for these issues while simultaneously upholding the immense variety within our nation.

INHERITANCE

The lack of consistency in inheritance laws is evident due to the existence of religious organizations that have established their own rules about inheritance and succession.⁴⁸ These laws exhibit varying degrees of gender equality and prioritize certain family members. Determining succession and inheritance is contingent upon applying diverse personal laws, which vary based on religious affiliations. In the event of an accident resulting in the demise of both parents and grandparents, the allocation of assets would be contingent upon the religious affiliation of the individuals involved, as each group in India adheres to its own distinct set of personal laws.⁴⁹ There exists a misconception that personal laws about inheritance are exclusively adhered to by the Muslim community. However, it is essential to note that other communities in India also observe their respective personal laws in matters of inheritance, similar to the Muslim community.⁵⁰ In contemporary times, in the event of a matrimonial union between a Hindu male and a Hindu female, the regulations about inheritance would be dictated

⁴⁵ The Muslim Personal Law (Shariat) Application Act 1937

⁴⁶ Hindu Marriage Act 1955

⁴⁷ Faizan Mustafa, 'An Expert Explains: The issues in uniform civil code' *The Indian Express* (15 February 2022) <<https://indianexpress.com/article/explained/expert-explains-issues-in-uniform-civil-code-7771828/>> accessed 07 July 2024

⁴⁸ 'From the India Today archives (2022) | How a Uniform Civil Code could change inheritance laws' *India Today* (30 June 2023) <<https://www.indiatoday.in/india-today-insight/story/from-the-india-today-archives-2022-how-a-uniform-civil-code-could-change-inheritance-laws-2400267-2023-06-30>> accessed 07 July 2024

⁴⁹ Aneesha Mathur, 'Explained: How a Uniform Civil Code will impact succession and tax laws' *India Today* (29 June 2023) <<https://www.indiatoday.in/law/story/uniform-civil-code-impact-on-hindu-undivided-family-tax-exemption-succession-laws-2399830-2023-06-29>> accessed 07 July 2024

⁵⁰ The Muslim Personal Law (Shariat) Application Act 1937

by the Hindu Succession Act⁵¹ or Hindu Personal Law, as opposed to the Indian Succession Act⁵² after its revision in 1976.^{53 54 55}

According to Muslim Law, it is mandated that both sons and daughters are entitled to receive equal rights in family property.⁵⁶ Although daughters and sons are guaranteed equal proprietary rights, some provisions in Hindu law allow fathers to create a will for property distribution.⁵⁷ Consequently, this provision often results in depriving a daughter of proprietary rights. Contrary to the absence of testamentary provisions in Muslim Law,⁵⁸ the drafting of a will does not permit bias toward any specific successor, and it also restricts the allocation of more than one-third of the property's part in the will. In several jurisdictions, even in contemporary times, legislation about the abolition of zamindari has been enacted, stipulating that in cases where a male heir exists, female heirs shall not be entitled to any portion of agricultural property. This policy was implemented after attaining independence with the promulgation of the Constitution.⁵⁹ The rationale for placing this provision under Schedule 9 was to prevent its challenge, as it violates Article 1460 of the Constitution.^{61 62} Therefore, to promote gender equality, it is necessary to make adjustments to both the revenue law and the land code.

The antiquated concept of daughters being seen as 'Paraya Dhan' has persistently influenced significant decisions about the inheritance rights of females, favouring males.⁶³ When addressing the allocation of a deceased family member's property and assets, two options are

⁵¹ The Hindu Succession Act 1956

⁵² The Indian Succession Act 1925

⁵³ P.V. Kane, *Hindu customs and modern law* (University of Bombay 1950)

⁵⁴ *Ibid*

⁵⁵ Ranjit and Sunil Malhotra, 'Loopholes in personal law' *The Economic Times* (19 January 2004)

<<https://economictimes.indiatimes.com/news/economy/policy/loopholes-in-personal-law/articleshow/431253.cms?from=mdr>> accessed 07 July 2024

⁵⁶ *Ibid*

⁵⁷ Kane (n 53)

⁵⁸ Bhadra Sinha, 'Child custody to inheritance, how personal laws shape family dynamics in India' *The Print* (11

July 2023) <<https://theprint.in/judiciary/child-custody-to-inheritance-how-personal-laws-shape-family-dynamics-in-india/1662788/>> accessed 07 July 2024

⁵⁹ Kane (n 53)

⁶⁰ Constitution of India 1950, art 14

⁶¹ The Indian Succession Act 1925

⁶² The Hindu Succession Act 1955

⁶³ Sinha (n 58)

often considered: the presence of a legally recognized will or the application of personal laws.⁶⁴ Nevertheless, there may be instances when a will is ruled unacceptable or void. Within the realm of personal laws, several statutes regulate the distribution of property among various classifications of recipients.

According to Islamic personal law, no differentiation exists between ancestral and self-acquired property. This implies that the individual with the property is regarded as its unequivocal proprietor, with no entitlement of any lawful successors being acquired until the owner's demise. According to legal provisions, individuals adhering to the Islamic faith are restricted from allocating more than one-third of their remaining assets by testamentary disposition after the settlement of burial costs and outstanding obligations.⁶⁵ In matters of inheritance, girls are recognized as legitimate legal beneficiaries of their parent's estate, but with a part that is half the size of that allocated to male heirs.⁶⁶ Under Islamic law, a Muslim woman is eligible to receive a portion of her husband's assets. If the couple has children, she is entitled to one-eighth of his property. However, she is entitled to one-fourth of his property if they do not have children.

Furthermore, it may be necessary to include clauses such as dower or 'nikahnama' (prenuptial contracts) within the framework of the Uniform Civil Code (UCC).⁶⁷ Muslim females were denied their rightful portion of agricultural land when the Shariat Law was enacted.⁶⁸ Promoting the concept of 'jurist-given law' is crucial to establishing a favourable atmosphere for applying the Uniform Civil Code (UCC) practically.

⁶⁴ Klaus Deininger et. al., 'Women's Inheritance Rights and Intergenerational Transmission of Resources in India' (2013) 48(1) Journal of Human Resources <<http://dx.doi.org/10.1353/jhr.2013.0005>> accessed 07 July 2024

⁶⁵ Law Commission of India (n 27)

⁶⁶ Rao (n 30)

⁶⁷ Sinha (n 58)

⁶⁸ The Muslim Personal Law (Shariat) Application Act 1937

A SHINING EXAMPLE OF UCC?

The Goa Civil Code⁶⁹ has been hailed by certain journalists, intellectuals, and notably our former Chief Justice of India, S.A. Bobde, as a prominent illustration of a Uniform Civil Code⁷⁰ by stating 'Goa has what Constitutional framers envisaged for India – a Uniform Civil Code'.

It is considered a potential model for a uniform civil code due to its inclusion of several provisions that reflect a progressive legislative approach. In 1867, the nation of Portugal implemented a civil code of Portuguese origin, which was subsequently expanded in 1869 to encompass the overseas provinces under Portuguese jurisdiction, including Goa.^{71 72} The legal framework mandates the obligatory registration of marriages under the supervision of a civil authority. This requirement safeguards the equitable inheritance rights of wives, who are entitled to an equal share, precisely half, of the jointly owned assets, including those acquired by the husband through inheritance, in the event of a divorce.^{73 74} This entitlement remains valid unless a prenuptial agreement stipulates otherwise.

Additionally, the law compels parents to distribute at least fifty percent of their property, including assets, to their children, including daughters.⁷⁵ The regulations about succession exhibit a considerable degree of progressiveness. Although total consistency is not observed in the context of marriage and adoption, it is widely acknowledged that these rules exhibit a higher degree of gender equity compared to other legal frameworks within the nation. The Continuity of the Portuguese Civil Code⁷⁶ in Goa, India was ensured through Section 5(1) of the Goa, Daman, and Diu Administration Act, 1962.⁷⁷ This act, enacted by the new Indian

⁶⁹ Portuguese Civil Code 1867

⁷⁰ Faizan Mustafa, 'Explained: Why Goa's Civil Code is not as uniform as it is made out to be' *Indian Express* (20 April 2021) <<https://indianexpress.com/article/explained/why-goas-civil-code-is-not-as-uniform-as-it-is-made-out-to-be-7279365/>> accessed 11 July 2024

⁷¹ 'Common civil code of Goa' (*IASbaba*, 13 August 2022) <<https://iasbaba.com/2022/08/common-civil-code-of-go/>> accessed 11 July 2024

⁷² Law Commission of India (n 27)

⁷³ *Ibid*

⁷⁴ Rity Dewan, 'Patriarchy and property rights: Goa's 'Uniform Civil Code' (*The Leaflet*, 13 July 2021) <<https://theleaflet.in/patriarchy-and-property-rights-goas-uniform-civil-code/>> accessed 11 July 2024

⁷⁵ *Ibid*

⁷⁶ The Portuguese Civil Code 1867

⁷⁷ F. E. Noronha, *Portuguese Civil Code, 1867 (The Goa Succession Special Notaries and Inventory Proceeding Act, 2012) (Laws of Marriage, Divorce and Children)* (Eastern Book Company 2020)

Administration, stipulated that all laws in effect before the appointed day (December 19, 1961, when Goa was liberated) in Goa, Daman, and Diu, or any of its parts, would remain in force until modified or revoked by a competent legislature or other authorized body. Despite being superseded by a more contemporary version in its nation of origin, Portugal, the Portuguese civil code remains in effect in Goa.

PROVISIONS

In the context of matrimonial unions, it is a universally established legal requirement that a sequential procedure must be followed, often known as the initial and subsequent endorsement. The initial component is the declaration of intentions, accompanied by an invitation for any objections, while the subsequent element is the formalization of the marriage by the signing of documents. The legal framework has several universally applicable requirements, like the requirement to allocate fifty percent of the property to a daughter and the necessity for spousal approval to formulate a will.⁷⁸ The consistently applicable provisions contain a positive provision. The subsequent topic of discussion is the distinctive notion of marriage property rights, a feature that is absent within the personal laws of the remaining regions of India⁷⁹.

In the state of Goa, in the absence of explicit provisions, the prevailing legal framework for matrimonial unions is the regime of the communion of assets.⁸⁰ Under this regime, when entering into marriage, partners assume joint ownership of all assets acquired or inherited individually or collectively before or after the marriage. In the event of a divorce, it is often recognized that each spouse is entitled to an equal division of marital assets.

Nevertheless, it is worth noting that the legal framework also permits the use of antenuptial agreements, which have the potential to establish an alternative allocation of assets in the event of a marital dissolution. Furthermore, these agreements allow the spouses an opportunity to maintain separate ownership of assets acquired before the commencement of their marriage.⁸¹

⁷⁸ Sarita Kumari, 'Women Inheritance Rights In India: Some Reflections' (2019) 6(1) International Journal of Research and Analytical Reviews <http://ijrar.com/upload_issue/ijrar_issue_20544306.pdf> accessed 11 July 2024

⁷⁹ Dewan (n 74)

⁸⁰ Mustafa (n 70)

⁸¹ *Ashwini Kumar Upadhyay v Union of India* (2023) SCC Online Del 43

These agreements are immutable and irrevocable. In the context of marriage, the sale of property needs the approval of both spouses.

It is not legally permissible for parents to completely disinherit their children. A minimum of fifty percent of their assets must be transferred to their offspring. The distribution of this hereditary asset should be divided equitably among all offspring.⁸² Polygamy is not permissible for Muslim men, even if their marriages are recorded in Goa⁸³. Furthermore, it is important to note that there is no provision within the existing legal framework for the dissolution of a marriage by verbal means.

The legal framework mandates the obligatory registration of marriages under the supervision of a civil authority. This requirement serves to guarantee equitable inheritance rights for wives, entitling them to a fifty percent share of the 'common assets,' which includes any assets inherited by the husband in the event of a divorce, unless a prenuptial agreement stipulates otherwise. Additionally, the law compels parents to share at least half of their property, including assets, with their children, including daughters.⁸⁴⁸⁵

UNIFORMITY MODEL

However, as the famous adage suggests, the intricacies of a matter can often be of great significance, and this principle holds in the context of the Portuguese Civil Court in 1867. Goa's Uniform Civil Code⁸⁶ still may exactly be called a shining example of a progressive law or uniform, given the fact that it discriminates based on gender,⁸⁷ even in allowing polygamy for Hindus, amongst other things.⁸⁸ After the Hindu's demand, just two years after the establishment of the Goa Civil Court, they have provided that if, after a certain period of years, the couple is not able to procreate, especially a boy, the parties to the marriage can get married

⁸² Kumari (n 78)

⁸³ Mustafa (n 70)

⁸⁴ Deininger (n 64)

⁸⁵ *Ibid*

⁸⁶ The Portuguese Civil Code 1867

⁸⁷ Albertina Almeida, 'Lesson from Goa's uniform civil code: Uniformity can be unjust to women' *The Indian Express* (11 July 2023) <<https://indianexpress.com/article/opinion/lesson-goas-uniform-civil-code-uniformity-unjust-women-8817832/lite/>> accessed 11 July 2024

⁸⁸ Noronha (n 77)

again. Even the registration of marriage procedure is different for Hindu couples than for catholic couples. Hindu couples are required for two-step verification to give legal validity to their marriage, i.e. firstly, they are required to give 15 days prior notice, and signatures would be done then after 15 days. Again, after a couple of weeks, the couple's signatures after they get married are required to consider their marriage valid in the eyes of the law.⁸⁹⁹⁰

On the other hand, for Catholic Christians, the second signature event would be done by the couple in the Church itself, which would become the final basis for providing the marriage certificate. In the same way, the Goa Court has been given the power to annul marriage, but this rule is not enforced on Christian Catholics. Christian couples get an annulment of their marriage from the Catholic Church, and the High Court mechanically abides by the decision of the Church and gives it official recognition in the eyes of the law.⁹¹ So, there is a lack of uniformity in registration as well as termination of marriage.

Article 1204 of the Goa Civil Code⁹² provides the reasons for separation. In cases when a husband seeks to initiate divorce proceedings, infidelity, as a standalone factor, might serve as a valid cause for divorce. If a wife seeks a divorce from her husband, she must provide evidence of adultery accompanied by public scandal, abandonment by the husband, or the husband's maintenance of a mistress, in addition to other grounds.⁹³ The criteria for divorce for women are considerably more stringent in comparison to those applicable to husbands. Regarding sexual orientation, a male can divorce his wife if she has a relationship. Nevertheless, a woman may only obtain a separation for her husband's adultery if it has resulted in a public scandal, and a divorce if he takes his mistress to their married home. If her partner abandons her, she has the right to a divorce.

In the context of prenuptial agreements, it is observed that property allocation is often stipulated, wherein a 50-50 distribution between spouses in the event of divorce or death is

⁸⁹ The Portuguese Civil Code 1867

⁹⁰ Gerard de Souza, 'Explained: The Goa civil code, the new model for a uniform civil code' *Hindustan Times* (12 May 2022) <<https://www.hindustantimes.com/india-news/explained-the-go-civil-code-the-new-model-for-a-uniform-civil-code-101652304333768.html>> accessed 27 August 2024

⁹¹ Noronha (n 77)

⁹² The Goa Civil Courts Act 1965

⁹³ Noronha (n 77)

specified. However, it is noteworthy that the management and administration of this property are typically entrusted solely to the husband.⁹⁴

Before 1955, Hindu men were not subject to any restrictions regarding the number of wives they could have or the frequency of their marriages. In contrast, in the sixth to seventh century, Muslim law imposed a limitation on men, stipulating that they could not have more than four wives. However, this restriction was accompanied by the provision that such an allowance would only be granted if the husband could ensure fairness and justice among his wives. It was acknowledged that achieving such justice would be exceedingly difficult for any man to accomplish. Therefore, Islamic law generally prohibited the widespread practice of polygamy.⁹⁵ However, it is worth noting that Hindus residing in Goa have historically been granted the privilege of limited polygamy under specific circumstances. This privilege is extended to Hindu men if their wives are above the age of 25 and are unable to conceive a child or if the wives have reached the age of 30 or have been married for ten years without bearing a male child. In such cases, Hindu men may enter into a second marriage with the consent of their wives.⁹⁶

The legal system in Goa, which is based on French Law, has demonstrated a progressive trajectory during its historical evolution. Nevertheless, when analyzed from a modern standpoint, it is challenging to categorize it as a definitive or all-encompassing system of gender coding. In recent times, India has experienced the implementation of several current legislations, including the Hindu Succession Act, Hindu Marriage Act, and Indian Succession Act.⁹⁷⁹⁸ The primary objective of these laws is to expand their provisions to encompass the people of Goa, guaranteeing that the inhabitants of Goa are eligible to receive their respective entitlements.

⁹⁴ Kumari (n 78)

⁹⁵ Amita Tyagi *History of Marriage in India* (2023)

⁹⁶ Kumari (n 78)

⁹⁷ Deininger (n 64)

⁹⁸ *Ibid*

UTTRAKHAND UNIFORM CIVIL CODE

The government of Uttarakhand has established a committee comprising specialists to conduct a comprehensive examination of the pertinent personal laws.⁹⁹ About various aspects such as marriage, divorce, property rights, succession and inheritance, adoption, maintenance, custody, and so on.¹⁰⁰

No significant measures have been undertaken to implement coding education in the country. During a committee address in Ahmedabad in 1971, Indira Gandhi, the nation's leader, and her political party encouraged the populace to contemplate the implementation of a Uniform Civil Code. After 1971, the administration has yet to undertake any significant measures, resulting in a lack of a comprehensive plan for deliberation.¹⁰¹

One may raise the question of whether the Uniform Civil Code (UCC) may be formulated and enforced by individual states and what precisely constitutes the term 'state' as defined in Article 44 of the Indian Constitution.¹⁰² The UCC, or Uniform Civil Code, encompasses the entirety of the nation. In contrast, the term 'state' refers to the government and Parliament of India, the Government and the Legislature of each state, all local authorities, and other entities within the territorial boundaries of India or under the jurisdiction of the Government of India.¹⁰³ Local government authorities do not possess the authority to establish a Uniform Civil Code (UCC), and a state is limited to enacting laws just for its jurisdiction rather than for other states. The laws about personal matters, such as intestacy and succession, wills, joint family and partition,

⁹⁹ Jahnvi, 'TNM Explainer: Impact of UCC on marriage, inheritance, divorce and adoption' *The News Minute* (7 July 2023) <<https://www.thenewsminute.com/news/tnm-explainer-impact-ucc-marriage-inheritance-divorce-and-adoption-179447>> accessed 11 July 2024

¹⁰⁰ 'UCC Uttarakhand' (*ucc.uk*) <<https://ucc.uk.gov.in/>> accessed 11 July 2024

¹⁰¹ 'After Uttarakhand, Gujarat seeks to bring Uniform Civil Code: what is it?' *The Indian Express* (31 October 2022) <<https://indianexpress.com/article/explained/everyday-explainers/what-is-uniform-civil-code-gujarat-uttarakhand-8238306/>> accessed 11 July 2024

¹⁰² Kumari (n 78)

¹⁰³ Diksha Munjal, 'Explained | The Uniform Civil Code' *The Hindu* (3 July 2023)

<<https://www.thehindu.com/news/national/explained-the-uniform-civil-code/article66105351.ece>> accessed 11 July 2024

marriage and divorce, fall under Entry 5 of List-III-Concurrent List of the Seventh Schedule to the Constitution.^{104 105}

Article 12¹⁰⁶ of the Constitution consequently, the States are also authorized to enact legislation concerning these areas. The committee was furthermore assigned the responsibility of producing a report for implementing a Uniform Civil Code in Uttarakhand.¹⁰⁷ According to the committee leader, former Supreme Court judge Justice Ranjana Desai, our primary aim is to promote gender equality, with particular attention given to the well-being of women, children, and disabled individuals.¹⁰⁸ Upon its implementation, Uttarakhand will become the first state in post-independence India to adopt such a code. According to the panel leader, the draft of the Uniform Civil Code (UCC) has placed particular emphasis on the rights of gender equality, inheritance, polyandry, and polygamy. The approach used by the Government of Uttarakhand is commendable since applying the Uniform Civil Code (UCC) on a state-by-state basis allows for a systematic evaluation of its impact. This phased implementation strategy enables a clearer understanding of the potential outcomes and increases the likelihood of achieving successful results. Moreover, fostering consensus and promoting comprehension of the code will effectively address the concerns of those who feel insecure about expressing their religious beliefs and cultural practices.¹⁰⁹ Suppose the legislation in Uttarakhand effectively addresses gender inequality and establishes consistent legal standards without infringing upon individuals' rights to religion or culture. In that case, it might serve as a viable prototype for other governments.

¹⁰⁴ Deininger (n 64)

¹⁰⁵ 'Uniform Civil Code and its effect on the Marriage in India' (*Lead India*) <<https://www.leadindia.law/blog/en/uniform-civil-code-and-its-effect-on-the-marriage-in-india/>> accessed 11 July 2024

¹⁰⁶ Constitution of India 1950, art 12

¹⁰⁷ Kumari (n 78)

¹⁰⁸ Ishita Mishra, 'Uttarakhand government forms 9-member panel to draft UCC rules' *The Hindu* (11 February 2024) <<https://www.thehindu.com/news/national/other-states/uttarakhand-government-forms-9-member-panel-to-draft-ucc-rules/article67833193.ece>> accessed 11 July 2024

¹⁰⁹ Avaneesh Mishra and Liz Mathew, 'Ban polygamy, exempt tribals, fix marriage age: Uttarakhand UCC draft' *The Indian Express* (5 February 2024) <<https://indianexpress.com/article/political-pulse/uttarakhand-ucc-draft-pushkar-singh-dhami-tribals-9140788/>> accessed 11 July 2024

CONCLUSION

The enduring nature of our Constitution has exemplified its effectiveness in aiding the operation of the democratic system and safeguarding its fundamental ideals. The Uniform Civil Code is an extra-constitutional objective. Using a staged strategy to implement the Uniform Civil Code (UCC) might be considered a more strategic and cautious approach, in contrast to a simultaneous and comprehensive implementation. An illustration of continuous changes may be observed in the Hindu Code Bill, enacted during 1955-56. In 2005, a notable amendment was made to the Hindu Act, which bestowed upon women the entitlement of co-parceners within the Hindu Joint Family. Forming an expert group dedicated to implementing a Uniform Civil Code is an imperative and vital action that should be considered. The involvement of expert committees representing distinct religious groups, such as Christian experts for reforming Christian law and Hindu experts for developing Hindu law, is of utmost importance in this process. The decision of the Uniform Commercial Code (UCC) is a subject of policy that falls under the government's jurisdiction. The legal systems of Hinduism, Islam, Parsi, and Christianity are based on personal laws, leading to the presence of separate legal frameworks for different religious communities.

Nevertheless, it is crucial to prioritize the maintenance of gender equality and the harmonization of all legislation with constitutional tenets. The prohibition of enacting any rule that opposes the principle of equality implies that although unique Hindu laws may be present, they are not permitted to engage in discriminatory practices based on a person's gender. The establishment of consensus has significant importance in the pursuit of attaining gender equity. The presence of a patriarchal mindset requires specific and focused actions to bring about a slow and progressive change.