

IMPLEMENTATION OF UNIFORM CIVIL CODE- Youkteshwari Prasad¹**Abstract**

This Research Paper deals with the concept, detailed explanations, description, pros and cons as well as the arguments in favor and in opposition of the Uniform Civil Code if ever implemented. The Uniform Civil Code (UCC) is a set of laws and regulations that deals with marriage, divorce, adoption, birth, and inheritance of the citizens of India. The said concept can also be found mentioned in Article 44 of the Constitution of India. The UCC is independent of any discrimination with respect to religion, castes, etc., The UCC aims for a progressive country and strives to ONE NATION ONE LAW. In addition, this paper also includes some sort of evidence of somewhat near to successful planning and peaceful implementation, from the Goa Civil Code that may also be called the Goa Family Law or even Goa's Portuguese Civil Code. It can be also noticed that the Goa Civil Code is often praised by the Hon'ble Judiciary of the nation also and in addition, a Uniform Civil Code for a secular nation like India is the need of the hour as is said by them, therefore, a brief history and background of the mentioned code along with its functions in addition to some of its features are also provided in the said paper as well. Towards the end, this paper does not aim to harm any of the religious convictions or any sacred sentiments of the readers and exhaustively supports secularism for the sovereign state.

Introduction:

The UCC (Uniform Civil Code) in the Article 44 in Part IV of the Constitution of India which reads “**Uniform Civil Code for the citizens:** The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”²

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² Constitution of India.

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Be that as it may, Article 44 do not constitute the meaning of "uniform common code". The 'Uniform Civil Code' may be characterized as a bunch of rules administering the issue of the individual law identified with matrimony as well as estate/assets of each Indian resident, independent of their religion. It is a common code that is not at all administered by any particular religious convictions. It will in general separate individual laws from religion and to get the public uprightness and solidarity of the country.

As such, UCC implies having one bunch of indistinguishable individual laws material to all residents of India regardless of caste/creed/community managing the Right to Property, individuals' issues like marriage, maintenance, adoption, inheritance and divorce. It is in general established on the presumptions that there aren't any relation among the law and religion in present day scenarios.

The civil and personal Indian laws are different for different communities, unlike the criminal laws. Often, debates and disagreements take place, and the workload of the Indian Judiciary is often increased trying to decide those matters. The disputes often arise due to unequal gender biased traditional personal laws which often lead to the demand of UCC (Uniform Civil Code).

The implementation of the aforesaid concept is very controversial and is debated around the nation. This mainly is because of the difference in thinking, upbringing and religious perspectives towards traditional personal laws of the citizens and implementing the said law may cause anarchy or outbreak violence throughout the nation if not handled with proper attention.

Since Independence, the politicians and the political parties have treated the minorities as a mere vote bank which needs to be discontinued. Many governments have avoided amending the existing traditional personal laws out of fear of backlash from the affecting community. India requires a UCC, in the same way as other developed nations, with the goal that its residents across religions have similar arrangement of rules to cling to.

Features:

- The UCC (Uniform Civil Code) in Goa is a reformist law that permits equal distribution of pay and assets among a couple and furthermore among offsprings (irrespective of their sex).

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- Each birth, marriage and death must be obligatorily enrolled. Divorce provisions are separate.
- People following Islam having their relationships enrolled in the State of Goa cannot perform more than one marriage (polygamy) or separation (divorce) by the means of 'triple talaq'.
- Throughout a marriage, all the assets and wealth possessed or obtained by every mate is usually owned by the couple.
- Every life partner in the event of divorce remains qualified for one-half of the wealth and if there should arise an occurrence of death, the responsibility for property is split for the enduring partner.
- The guardians can't exclude their kids completely. None but half of their property must be given to the offspring. This acquired property should be shared equally among the siblings.

Background of the UCC (Uniform Civil Code)

- The beginning of the UCC (Uniform Civil Code) traces way-back to British-India when the Govt. presented its statement in the year 1835 focusing on requirement of consistency within the codification of the Indian law identifying with contracts, offences, and evidences, explicitly suggesting that individual laws of Muslims as well as Hindus be exempted from the aforesaid codification.
- The increment in enactment managing private matters at the furthest finish of British guidelines constrained the public authority to frame the 'B.N. Rau Committee' which were to codify Hindu law in 1941.
- In light of the aforesaid proposals, a proposal stayed thereafter embraced in the year 1956 as the 'Hindu Succession Act' to change and systematize the laws identifying with intestate or un-willed progression, among the people following Jainism, Hinduism, Sikhism, and Buddhism.
 - In any case, there were independent individual laws for the people following Christianity, Parsi and, Islam.

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- In many landmark judgments like ‘*Mohd. Ahmed Khan v. Shah Bano Begum and Ors*’³, ‘*Sharla Mudgal, President, Lakyani and Ors. v. Union of India and Anr.*’⁴, etc., the Supreme Court had said that the Govt. ought to look forward towards a UCC (Uniform Civil Code).
- By contending that practices, for example, ‘triple talaq and polygamy’ sway unfavorably on the rights and privileges of females to a life with dignity, the Center has brought up the issue of whether Lawful defense given to strict practices ought to stretch out even to those that are not in consistence with basic rights.

Separate Personal Laws:

- **Hindu Personal Laws:** Sruti, Smritis and Dharmashastras are considered to be the ancient sources of Hindu Laws. At many instances, they were found to be either clashing or confusing due to which in the British era, the government tried to codify them in certain acts passed by the British Legislature such as “The Hindu Widow’s Remarriage Act, 1856”, “The Hindu Gains of Property Act, 1930”, “The Hindu Law of Inheritance (Removal of Disabilities) Act, 1928”, etc. These acts were somehow discriminatory and unequal towards women as a result of which the Govt. of India appointed a Hindu Law Committee to set up and draft a ‘Hindu Civil Code’ in 1941 that was prepared by 1947 and presented in 1948 but was unfortunately unsuccessful in its implementation as it was opposed by the society anyhow. Later on, that was broken down into several acts that we see till date as “The Hindu Marriage Act, 1955”, “The Hindu Succession Act, 1956”, “The Hindu Minority and Guardianship Act, 1956”, “The Hindu Adoptions and Maintenance Act, 1956”, etc.
- **Muslim Personal Laws:** Nothing much was done to the Muslim Laws by the British Government. They did not take any steps for any uniform codes here but only passed some of the acts in the British Legislature that were “Wakf Act, 1913”, “Shariat Act, 1937”, “Dissolution of Muslim Marriage Act, 1939”, etc. The Muslim laws till date are mostly based on the Shariat Act and some more acts.

³ 1985 AIR 945.

⁴ 1995 AIR 1531; 1995 SCC (3) 635.

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The Constitution on the UCC (Uniform Civil Code):

The same as stated above, the term “Uniform Civil Code” is observed in the Article 44 but however, **Article 37**⁵ elucidate that Directive Principles of State Policy (DPSP) “shall not be enforceable by any court.” However, they are “fundamental in the governance of the country”. Therefore, one might say that albeit the Constitution convicts that UCC ought to be implemented in some way, it doesn't make it compulsory.

Arguments:**In favor:**

- a. Article 44⁶ laid down the same under DPSP.
- b. When minorities agreed to a common criminal set of laws for the nation then why not civil?
- c. Many countries like U.S., U.K., Australia have already implemented UCC (Uniform Civil Code).
- d. Why are there no set of secular laws for the citizens in a secular nation like India?
- e. Even the Article 25(2)(a)⁷ can be considered to be supporting the UCC in this scenario.

Opposition:

- a. A mere DPSP shall not be enforceable by any court⁸.
- b. If other DPSPs are not converted into laws till now then why this one?
- c. UCC is somewhat of an inconvenience by the larger community to preach reforms to the minority through amendments in individual laws.

⁵ *Supra* note 1 at 1.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Article 37, Constitution of India.

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Implications:

- The Code plans to give security to weak areas as Ambedkar visualized involving women as well as religious minorities, whilst additionally advancing nationalistic intensity by way of solidarity.
- Aforementioned code would work on the perplexing laws covering marriage rituals, succession, inheritance, adoption characterizing those as comprehensive in nature. A similar common law will then, at that point be material to every resident independent of their religious beliefs.
 - At the point when authorized the code would attempt towards improving the laws that are currently isolated being based upon religious convictions e.g., Hindu code bill, Sharia law, and others.
- ‘Secularism’ is the target cherished within the ‘Preamble’, a secular-republic requires some customary laws for all residents as opposed to separated principles dependent on sacred rituals.
- Independent arrangements of individual laws for every religion administering marriages, divorce, succession, adoption and maintenance is already available in India.
 - Be that as it may, the women rights generally are classified under traditional spiritual laws, be it for the people following Hinduism or Islam. The “Triple Talaq” remains one of such.
 - In the event that a UCC (Uniform Civil Code) is established, every individual law would no longer be in existence. This would get rid of discrimination based in sex under Muslim, Hindu as well as Christian laws that have been consistently examined by ladies that they are abused on the basis of their ‘right to equality’ and their ‘right to a dignified life’.

Major Challenges:

- The interest for a UCC (Uniform Civil Code) has been outlined with regards to collective legislative issues. An enormous segment of society considers it to be majoritarianism under the attire of social change.

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- Some say that UCC is against their religion or beliefs and to prove themselves right anyhow they argue that UCC is against the Article 25 (which is not true).
- The innocent citizens are also a major challenge to the implementation of UCC, as they are more often easily misguided by the so-called opposition leaders or politicians.
- The politics and the politicians of India will also act as a major challenge in implementing UCC. It is more often observed that the Indian politicians oppose any of the governments' welfare actions either just for publicity or for the vote bank politics.
- Maintaining the law and order will also be a matter which is required to be thought of as we all know that a peaceful protest can also initiate violence.
- Implementing the UCC will prove to be a very large scale, time taking and challenging task for the government as finding a midway among all the isolated pre-existing personal laws is not an easy task as well as convincing the citizens that the code is for their welfare is also not a child's play. Since India has previously gone through similar circumstances while implementing CAA and Agri Reforms also, the authorities will have to be prepared in advance in case if the UCC is ever implemented.

Case Laws:

1. In "*Sarla Mudgal v. Union of India*"⁹, Apex Court has directed the 'then Prime Minister' Late Mr. Narsimha Rao to take another glance at Article 44¹⁰ which charges the State to get a UCC (Uniform Civil Code) which, appropriately to the Court is basic in respect with the two, including, insurance of the abused as well as advancement of public solidarity along with trustworthiness. The court requested the then Union Govt. by way of the Secretary to 'Ministry of Law and Justice', to document an oath by August 1995 in which the means and endeavors of the public authority were given to guarantee a UCC (Uniform Civil Code) for the Indian residents.

⁹ 1995 AIR 1531; 1995 SCC (3) 635.

¹⁰ *Supra* note 6 at 3.

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- a. “When more than 80% of citizens have been placed under the personal law codified, there is no justification, so to keep whatever in the absence, even more, the introduction of the uniform civil code for all citizens on the territory of India” additionally said by the Apex Court.
2. In “*Mohd. Ahmed Khan v. Shah Bano Begum*”¹¹, inquiry was relating with the obligation of a Muslim spouse to keep up with his separated wife past the time-period of ‘Iddat’, if the female spouse couldn't keep up with herself. The Apex Court held for this situation that Section 125¹², that forces a commitment on all spouses, is common and applies to all religions. It applies to all Indians overall and supersedes the individual law if there should arise an occurrence of contention between the two. The court additionally discovered it lamented that article 44¹³ had stayed a dead letter. There is no proof for formal work for the plan of a UCC (Uniform Civil Code) in our country. The faith seems to be dead, regardless of whether it is for the Muslim com for getting a run on the issue of modifications of their own law. A UCC (Uniform Civil Code) will benefit the sense for public combination through disposing of the treacherous loyalties of the law that have opposing philosophies. It is the state, that is alleged of the commitment of a UCC (Uniform Civil Code) for all the citizens that too in a safe way.

The Goa Civil Code:

“The Goa Civil Code” or “The Goa Family Law” or “The Goa's Portuguese Civil Code, 1867” is essentially an outsider policy granted by Portuguese. Later the Parliament authorized the mentioned code by “Goa Daman & Diu Administration Act, 1962” as Goa became a state of India.

CJI S.A. Bobde as of late liked the UCC (Uniform Civil Code) of Goa, the solitary province to possess and enact it. Albeit the Law-Commission had disclosed in 2018 that a UCC (Uniform Civil Code) is neither charming nor possible. Not a board of trustees on the

¹¹ 1985 (3) SCR 844; 1985 (2) SCC 556; AIR 1985 SC 945.

¹² Code of Criminal Procedure, 1973.

¹³ Constitution of India.

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appearances of the 'Hindu Law Reforms Committee of 1941' had at any point remained established and nor has any outline for any Uniform Civil Code be there made ready.

“The CJI urged intellectuals to seriously study the Goa UCC. Even the Supreme Court, in its judgment on Jose Paulo Coutinho (2019), had referred to Goa as the “shining example of UCC”. Justice Deepak Gupta had preferred applicability of Goa’s Civil Code even in respect of properties situated outside Goa rather than apply the Indian Succession Act, 1925, the general law of the land, which was indeed applied in respect of Christians of Travancore & Kochi in Mary Roy (1986) and C J Simon (2012).”¹⁴

“Goa’s Civil Code has four parts, dealing with civil capacity, acquisition of rights, right to property, and the breach of rights and remedies. It begins in the name of God and Dom Luis, King of Portugal and Algarves. India’s Constituent Assembly had rejected H V Kamath’s proposal of a similar invocation of God in the Constitution. The Code has survived by virtue of Section 5(1) of the Goa, Daman and Diu Administration Act, 1962 that permitted its continuance.”¹⁵

Is ‘Goa Civil Code’ consistently implemented? (NO)

This could be understood after running eyes on some provisions of the code. It can be noticed that the code allowed the right of polygamy to the Hindu men and only permitted divorce in the situation of disloyalty by the spouse. Bigamy is also permitted under two circumstances:

- Inability of the first wife in delivering any child till she achieves 25 years of age.
- Inability of the principal spouse to deliver a male offspring till she achieves 25-30 years of age.

Polygamy among Muslim men is not allowed if the marital relationship is enrolled under the mentioned policy/code. Discrimination and injustice are also observed at several instances in

¹⁴ Faizan Mustafa, “Explained: Why Goa’s Civil Code is not as uniform as it is made out to be”, *The Indian Express*, April 20, 2021, Available at: <https://indianexpress.com/article/explained/why-goas-civil-code-is-not-as-uniform-as-it-is-made-out-to-be-7279365/> (last visited on Aug 14, 2021).

¹⁵ Ibid.

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the implementation and the rights of illegitimate children. Catholic Christians can formalize their wedding in their respective House of worship in the wake of taking authorization before the Civil Registrar. However, non-Catholics can just enroll their marriage before Civil Registrar.

The up-stated realities regarding the aforesaid Code explain that it consists of numerous such exemptions for the thing that make it's anything but a 'Uniform Code' in the real manner. Certain exemptions for the act of monogamy just for the people following Hinduism and rest coms are omitted from practicing the same are also present in the said code. The privileges of unlawful offsprings are likewise inconsistent when contrasted with real wards. The remedy for the relationships of Catholics as well as non-Catholics are likewise isolated. This makes it certain that the said code is enacted inconsistently and not to every person of the respective state. There are numerous escape clauses or loopholes in this Code.

Way Forward for the UCC:

- Synergistic Methodology: The public authority and society should strive to construct trust and harmony, however more significantly, do conventional cause with public activists as opposed to strict traditionalists.
- Stepwise Methodology: Instead of an collective methodology, the authority might lead to distinct perspectives like 'marriage, adoption, succession, divorce and maintenance' into a UCC (Uniform Civil Code) in phases.
- Sex Responsive Methodology: The authority would likewise work out good for supplementing the late step on the road to a UCC (Uniform Civil Code) through an extensive audit of a few different acts and laws with regards to the grounds of sex equity.
- "Pan-India" Methodology: Making the state of J&K into the nation's standard of personal laws is an activity which should remain embraced additionally for Goa, Daman and Diu, Puducherry, Nagaland and Mizoram.

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Conclusion:

The UCC (Uniform Civil Code) is a sort of compelling necessity for the nation. To implement the UCC with a conflict-free manner, a strong political will would be necessary with the feeling of acceptance and respect towards all the other religions across the nation. It is the personal thought of the author that the time has come for the nation to look forward for the aforementioned code which would boost up and manifest the spirit of secularism and make strong the bonds of solidarity among the citizens of different religions nationwide and also will undoubtedly reduce the workload of the Indian Judiciary. The UCC in simple words will support the slogan “ONE NATION, ONE LAW”.



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