



THE LAWWAY WITH LAWYERS JOURNAL

VOLUME:-15 ISSUE NO:- 15 , SEPTEMBER 10 , 2024

ISSN (ONLINE):- 2584-1106

Website: www.the-lawway-with-lawyers.com

Email: thelawwaywithlawyers@gmail.com

Authored By :- *Ganesh Natarajan*

IMPLEMENTATION OF UNIFORM CIVIL CODE – PROSPECTS AND CHALLENGES

ABSTRACT

Uniform Civil Code (hereinafter referred to as UCC) is a proposal in India to bring a common law replacing the personal laws that are based on religion, customs and traditions. The proposed UCC will cover topics like marriage, divorce, maintenance, inheritance and adoption which are currently governed by the respective personal laws for each religion. Even though the Constitution under Article 44 provides that the state shall endeavour to secure UCC for its citizens, this is just a directive principle for the state while making laws and are not enforceable by the Court. Whether, India with its wide spectrum of religion, with each religion having its own sub-sections and practices, be able to convince and implement UCC is a question that this article examines. It also examines the states and countries which have successfully implemented the UCC and track the progress of this common law. For understanding the possibilities and challenges of UCC, this article would analyse arguments in favour of UCC and against with an eye on legal aspects to better understand the law. For this purpose, the article would discuss relevant legal principles, theories, judgements and its

legal implications. The benefits of a common civil code outweigh the concerns yet how it is presented and implemented will play a crucial role in determining its success.

-Keywords: *Uniform civil code, Article 44, personal laws, common civil law, gender equality*
INTRODUCTION

Uniform Civil Code (hereinafter referred to as UCC) is a proposal to bring in common law covering topics like marriage, divorce, inheritance, and adoption, replacing the currently used personal laws i.e., the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956 applying to the Hindus and the Muslim Personal Law (Shariat) Act, 1937 applying to the Muslims and so on. The UCC would apply to all the people irrespective of religion, caste, creed or gender.

Article 44 of the Indian Constitution¹ provides that “The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.”

This is a directive principle for the state in forming laws and is not enforceable in the court. In simple words, the state is directed to bring in UCC but does not have any legal obligation to do so.

The Lex Loci Report of 1940 recommended that the laws related to crime, evidence and contract be codified and the personal laws of Hindus and Muslims be kept away from such codification. The Report was a by-product of fulfilling the objectives of the 1st Law Commission² set up in 1834 under the chairmanship of T.B Macaulay.

Based on the recommendations of the 1st law commission, another Act was enacted namely the Special Marriage Act in 1872 to facilitate inter-religious marriages. However, for anyone to marry under this act, they had to renounce their religion. The Special Marriage Act 1872 contained no provision for dissolution or nullification of marriage. It resorted to the Indian Divorce Act 1869 for these remedies.

The Special Marriage Act 1872, was amended in 1922 to make it available to Hindus, Sikhs, Buddhists and Jains for marrying within these four communities without renouncing their religion. This Act remained till 1954.

The Special Marriage Act, 1954 provides a more secular platform in terms of marriage by

allowing any citizen to marry under this act irrespective of religion. It is in fact a civil law and for the remedies of the marriage it relies upon the civil laws and the Indian Succession Act, 1925.

¹Legislative Department – Ministry of Law and Justice, 'The Constitution of India 2024' < [The Constitution of India](#) >

²Law, University of Kashmir, 'UNIT: 4 First Law Commission' < [First Law Commission](#) >

ARGUMENTS IN FAVOUR OF UCC

The arguments in favour of UCC can be broadly categorised under the below points:

(i) It brings unity in the society

One of the prime favourable arguments for the UCC is that it will bring equality before law in matters like marriage, divorce, inheritance, and adoption. Article 14 of the Indian Constitution³ states that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

When each religion follows its own personal laws, it becomes difficult for the state to maintain equality before law for these groups. For example, Polygamy is allowed in Muslim laws but Hindu law prohibits the same. Now, a Hindu man might feel constrained when he compares the laws applicable to him with the Muslim laws.

(ii) Provides a path for gender equality

Article 15 of the Indian Constitution⁴ provides that “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.” One of the basic tenets that arrives from this is gender equality. Everyone irrespective of their gender has to get equal opportunities and rights (except the exceptions made through Article 15(c)).

Time and again the Supreme Court has struck down such provisions in personal

laws that are in contravention to the constitutional rights like the triple talaq in Shayara Bano vs Union of India (2017)⁵.

UCC will remove arbitrary provisions against women in personal laws of each religion and implement equal inheritance and divorce rights for women in parallel to men.

³Legislative Department – Ministry of Law and Justice, 'The Constitution of India 2024' < [The Constitution of India](#) >

⁴Legislative Department – Ministry of Law and Justice, 'The Constitution of India 2024' < [The Constitution of India](#) >

⁵Manupatra, 'Shayara Bano and Ors. vs. Union of India (UOI) and Ors. (22.08.2017 - SC)' < [MANU/SC/1031/2017](#) >

(iii) Upholds constitutional values as envisioned by the makers

The makers of the constitution envisioned a nation with equality and justice for all its citizens without any discrimination on the basis of religion, caste, creed, sex or place of birth. To fulfil this vision, it directed the State to certain duties as it has directed the citizens. One among this is the UCC, mentioned in Article 44.

The Supreme Court has consistently supported the idea of UCC in several judgements from the Md. Ahmed Khan v. Shah Bano Begum (1985)⁶ to Lily Thomas v. Union of India (2013)⁷.

(iv) Simplifies laws and helps in reducing judicial burden

Personal laws are complex and requires deep review of the customary significance of the particular religion to understand and interpret its provisions. This increases pendency in cases. A simple common law applicable to all the citizens would reduce the burden on the judiciary to interpret different laws.

(v) Promotes modernity and progress

A society needs to adapt itself to the changing times. The personal laws are derivatives of the customary and traditional practices of the religions. To promote modernity and progress in the legal domain on civil matters it is imperative to implement a common civil law.

ARGUMENTS AGAINST UCC

While there are more favourable arguments for implementation of UCC, the arguments against UCC warrant a review as they are equally compelling. Below are few major arguments against UCC:

⁶ Manupatra, 'Mohd. Ahmed Khan vs. Shah Bano Begum and Ors. (23.04.1985 - SC)' < [MANU/SC/0194/1985](#) >

⁷ Manupatra, 'Lily Thomas vs. Union of India (UOI) and Ors. (10.07.2013 - SC)' < [MANU/SC/0687/2013](#) >

(i) Stifles religious freedom and violates Article 25

Article 25⁸ guarantees the freedom of religion to every citizen. They can practice any religion/faith of their choice. Critics of UCC argue that bringing in a common law can stifle the religious freedom guaranteed under Article 25 and would disrupt their traditional practices, especially of religious minorities.

(ii) Alters the cultural practices of the minorities and hence, violates Article 29

Article 29⁹ guarantees protection of minorities interests and rights. The critic of common civil law argue that such a law would alter the cultural practices of the religious minorities and hence, would be in contravention to the minority rights provided in the constitution.

IMPLEMENTATION OF UCC IN GOA

Goa, soon after becoming the part of India as a Union Territory in 1961, passed the Goa and Daman and Diu Administration Act, 1962 to retain the Portuguese Civil code of 1867. The UT for several decades now is under the common civil law which means that irrespective of the religion all Goans are subjected to the same laws on matters like marriage, divorce and succession.

Former attorney general of India, Carlos Alvares has reportedly said that under the UCC, every child was considered to be equal before the law, irrespective of caste, creed, sex and religion.

⁸Legislative Department – Ministry of Law and Justice, “The Constitution of India 2024” < [The Constitution of India](#) >

⁹Legislative Department – Ministry of Law and Justice, “The Constitution of India 2024” < [The Constitution of India](#) >

“Even a married girl who has taken dowry, is entitled to come back and take a share [of the property]. Only that the share will be reduced to the extent of the dowry taken.”

He added, however, that many couples opted for a prenuptial contract agreeing that the marriage would be governed by an absolute separation of assets. That is the husband would keep his properties and wife hers.¹⁰

The common civil code in Goa provides gender equality and simplifies procedures for the judiciary to review in cases of dispute. Wife is seen as an equal partner and has equal say in everything.

However, a few residents have also pointed to the negatives of this code wherein any alteration of property requires the assent of all the owners of the asset in case the property is passed on through succession.

IMPLEMENTATION OF UCC IN UTTARAKHAND

The Uttarakhand government passed the UCC Bill into law on 7th February 2024. The same has also received president’s assent and thereby, making Uttarakhand the first state to pass a UCC in India.

The common civil code has prohibited polygamy, halala, iddat, tiple talaq and have also made the age of marriage for girls across religions the same.

While, the age of marriage of men and women remain same at 21 years for the former and at 18 for the latter, the code introduced a mandatory registration of live-in relationships. Further,

the code has criminalised non-adherence to the laws specific to live-in relationship.

The same is highly debated as critics of this feature claim that it is a violation against personal liberty and have questioned state interference in personal relationships.

In *Joseph Shine v. Union of India* (2018) the Supreme Court held that “Treating adultery as an offence would tantamount to the State entering into a real private realm.” Moreover, it held that it is not for the state to interfere in the lives of individuals within the sphere of his or her

¹⁰ Jaiswal, Pooja Biraia. "What Goans Have to Say About Goa's UCC", *The Week*, 18 Feb. 2024 < [Goans on Goa's UCC](#) >

constitutionally protected rights of privacy and self-determination. The court struck down Article 497 on the above grounds.¹¹

Except the moral policing aspect, the common code has a positive outlook and looks progressive in providing gender equality and abolishing practices that were out-dated and discriminatory. The implementation of the same will have to be done by the state without arbitrary biases towards any religion as the same would become the model for other states keenly observing the developments.

UNIFORM CIVIL CODE OUTSIDE INDIA

Statesman reported that out of 193 members of United Nation, only 8 members are following a UCC – the United States of America, Pakistan, Bangladesh, Malaysia, Turkey, Indonesia, Egypt, and Ireland.¹²

Few countries who are renowned for their successful implementation of UCC are discussed below:

USA – Its legal system, based on common law, comprises both federal and state laws. Marriage and divorce falls under state jurisdiction. They neatly coexist with the unified legal structure, even though each state has its own civil law. These laws apply commonly on its subjects belonging to that particular state.

Turkey - Post modernization in 1920, the country implemented a new civil law with a secular

legal framework.

France – It is often cited as an example country for implementation of UCC. The Napoleonic code implemented in early 19th century replaced the religious laws with single civil code.

Egypt – In the 20th Century, it implemented a family code covering subjects like marriage, divorce and inheritance.

¹¹ Tulasi K Raj, “A chilling effect on the freedom to love”, The Hindu, 26 Feb. 2024 < [A chilling effect on the freedom to love](#) >

¹² A K Merchant, “An Interfaith Perspective on Uniform Civil Code”, The Statesman, 22 Feb. 2024 < [Uniform civil code outside India](#) >

Implementation of the common civil code in the above-mentioned countries have been successful and it has helped bring a more equitable and egalitarian society.

CONCLUSION

While UCC as proposed in the policy document is positive and promises to eradicate the discrimination and gender inequality that is caused from the personal laws stemming from the old customs and traditions, actual implementation needs to be carefully executed. If there is any discrepancy between the proposal and the ground level implementation, the common laws can come under heat from various religious groups and again put off for years.

Also, the state while implementing the UCC has to carefully study through the necessity of the other aspects that it wants to add in the bill. In an attempt to make it modern, it should not resort to moral policing, thereby infringing citizen’s personal liberty or his privacy. This would increase the friction among social groups for the code’s acceptance. The government must also actively involve in consensus building efforts across various religious groups and try to address their concerns.

UCC is the need of the hour to bring in gender equality and social cohesion. The benefits of a common civil code outweigh the demerits yet how it is presented and implemented will play a crucial role in determining its success.