

THE UNIFORM CIVIL CODE: SAME-SAME; BUT DIFFERENT

A CRITICAL ANALYSIS OF UCC IN GOA AND UTTARAKHAND

AUTHORS – SHASHYAK ROY, ARYAN AGARWAL & DIYA NARESH CHANGWANI, STUDENTS AT WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES

BEST CITATION – SHASHYAK ROY, ARYAN AGARWAL & DIYA NARESH CHANGWANI, THE UNIFORM CIVIL CODE: SAME-SAME; BUT DIFFERENT, A CRITICAL ANALYSIS OF UCC IN GOA AND UTTARAKHAND, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (1) OF 2025, PG. 849-860, APIS – 3920 – 0001 & ISSN – 2583-2344.

1.Introduction

The concept of a Uniform Civil Code (herein referred to as UCC) is not a new concept for India, in fact it has been a part of the vision of our forefathers.¹⁵³⁷ An Uniform Civil Code creates a singular law governing all personal matters in the country, i.e. marriage, inheritance etc.¹⁵³⁸ This would be opposed to the status quo, which involves different codes for different religions practiced in our country. Therefore, one of the benefits to introducing such a Code on a nationwide level involves uniformity for all religions in the eyes of law. There are, however, several issues with the implementation of the same. Much of the population has expressed concerns for the same, including but not limited to, curbing the right of citizens to freely practice religion. The concept, thus, is one that remains a hotly debated one. The Uniform Civil Code aims to make personal laws less patriarchal if implemented in different states.

¹⁵³⁷ The Constitution of India, 1950, Art. 44.
¹⁵³⁸ *Id.*

2. Defining Uniform Civil Code

This article aims to effectively contrast the patriarchal norms, present in two states of India which have implemented the UCC, Goa and Uttarakhand. To do so, an analysis of the relevant provisions of the code has been done, and the patriarchal norms have been explored. On the face of it, the Uttarakhand Code seems to be a step towards gender equity, but on closer inspection it has its own drawbacks. The Goa Code, on the other hand, contains several problematic provisions.

This article has been divided into seven parts. Part 2 of the article shall define the UCC. Subsequently, Part 3 explores the historical evolution of the UCC. Additionally, Part 4 of the article examines the patriarchal norms in Uttarakhand. Part 5 of the article examines the patriarchal norms in Goa. Part 6 of the article provides a comparative analysis between the Uttarakhand and the Goa civil code. Last, Part 7 shall provide a brief conclusion to the article.

Some of the topics that have been explored include inheritance and marriage laws, and how property ownership can vary between the two genders. These have been explored on a deeper level by individually analysing the Goa and Uttarakhand Codes and also summarising by a detailed comparative analysis. It seeks to highlight the inherent differences between the codes.

While both the codes have several aspects to it, in this article, it has been preferred to explore the patriarchal aspects of the same, due to its relevance and impact in today's context. As a country, India has made strides towards gender equality, and has been recognised for the same on the global stage. Therefore, the recently implemented Uttarakhand Code plays a significant role in setting a precedent for the future implementation of the Uniform Civil code in the country, while the Goa Civil Code serves as a contrast due to its implementation in the earlier stages.

India's dream of having a Uniform Civil Code has been written in Article 44 of the Constitution¹⁵³⁹, producing a predicament for lawyers and legal systems. It forms a part of the Directive Principles of State Policy.

The rationale behind the UCC can be thought to be twofold. Firstly, legal uniformity would help overcome religious differences and achieve national unity, and secondly, it would be a step in the direction of modernization of the country. Although UCC was a principle that was sought to be fulfilled during the time of Independence, it was not possible then, considering the ever-rising communal tensions during the time.¹⁵⁴⁰ Therefore, it could only be added as a directive principle and not enacted as a law.

In 2018, the Law Commission of India advised that a UCC is "*neither necessary nor desirable at this stage*".¹⁵⁴¹ The Commission highlighted that preserving the diversity of personal laws is ideal so long as the Legislature ensures that the fundamental rights are not impugned. It was also emphasised that all inequalities in personal laws should be amended. The Commission stated that the primary motive should be first to establish "*equality within each community*" rather than "*equality between different communities*".¹⁵⁴²

However, the UCC is a contentious issue in the country, considering the multiplicity of religions practiced. The UCC is thus criticized on the grounds that the enforcement of the UCC could pose a severe threat to the fundamental rights of citizens.¹⁵⁴³ The Supreme Court, however, supports the implementation of the UCC and has time and again expressed the same.

¹⁵³⁹ *Id.*

¹⁵⁴⁰ Sunder Rajan, R, *Women between Community and State: Some Implications of the Uniform Civil Code Debates in India*. Social Text 18(4), 55-82 available at <https://muse.jhu.edu/article/31888>. (Last visited on January 7, 2025).

¹⁵⁴¹ Government of India, Law Commission of India. *Consultation paper on reform of family law* available at <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf>. (Last visited on January 8, 2025).

¹⁵⁴² *Id.*

¹⁵⁴³ Narayan CL, Narayan M. Uniform Civil Code, Uttarakhand, 2024—Uniformizing Marriage Laws and Legalizing Live-in Relationships. *Journal of Psychosexual Health*. 2024;6(3):220-223. doi:10.1177/26318318241279140 (Last visited on January 8, 2025)

Goa, therefore, stands out as the only Indian state to have a UCC, called the Goa Civil Code (herein referred to as GCC). Interestingly, this has been in force since 1867 after the annexation of Goa into the Indian Union, which was made applicable by the Goa, Daman, and Diu (Administration) Act of 1862.¹⁵⁴⁴

3. Historical Evolution of the Uniform Civil Code

The concept of a UCC has been discussed as a part of development and progress in India during the drafting of the Indian Constitution.¹⁵⁴⁵ However, the various personal laws that have been established for different religions, for example, The Hindu Succession Act¹⁵⁴⁶, Muslim Personal Law (Shariat) Application Act¹⁵⁴⁷ has been drafted keeping in mind the gender discriminations and the interests of the respective communities. The story of the UCC in the constituent assembly begins at the committee stages of the Indian Constitution making process.¹⁵⁴⁸ The sub-committee on Fundamental Rights was tasked with drawing up a list of fundamental rights that were to be incorporated into the Constitution of India.

This sub-committee requested its members to come up with submissions of their own personal drafts for fundamental rights. Ambedkar, Munshi and Minoo Masani called for an adoption of the UCC in their respective personal drafts. In this committee, the UCC was categorized into non justiciable rights. The rights were split into two parts, justiciable rights and the non-justiciable rights. The former would be enforced by courts whereas the latter would not be. However, all the sub-committee members did not agree with categorizing the UCC as a non-justiciable fundamental right. In a dissent note to the report – three members – M.R Masani, Hansa Mehta and Amrit Kaur expressed their views on the UCC as being non-justiciable in the following way: “One of the factors that

has kept India back from advancing into nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a uniform civil code should be guaranteed to the Indian people within a period of 5 to 10 years.”¹⁵⁴⁹ The need for a UCC was addressed in various landmark cases over the years, for example, in the *Shah Bano Begum* (1985) case, the Supreme Court of India, in its judgment, observed that the personal laws of any community should not be above the laws of the land. It emphasized that personal laws, including Muslim personal law, should be consistent with the principles of justice, equality, and dignity guaranteed by the Constitution, thus strongly advocating for the implementation of a Uniform Civil Code (UCC).¹⁵⁵⁰

Historical Evolution Of The Law In Goa

In 1961, Goa became a part of India through the Goa, Daman, and Diu (Administration) Act, after 450 years of Portuguese rule.¹⁵⁵¹ At the time, provisions under the Portuguese Civil Code¹⁵⁵² (herein referred to as GCC) governed personal matters. The surviving provisions of the GCC and The Code of Gentile Hindu Usages and Customs of GOA, 1880 are still governing Goa.¹⁵⁵³ This provided exceptions to the code's provisions on Family and Succession Law. Hindus and sometimes Muslims, residing in this territory were governed by this act.¹⁵⁵⁴

Historical Evolution Of The Law In Uttarakhand

On February 7, the draft bill entitled “*The Uniform Civil Code of Uttarakhand, 2024*” was passed by the Legislative Assembly of Uttarakhand, and the assent of the President was given on March 13. The Code aims to achieve uniformity in

¹⁵⁴⁴ Goa, Daman, and Diu (Administration) Act, 1862.

¹⁵⁴⁵ The Constitution of India, 1950, Art. 44.

¹⁵⁴⁶ The Hindu Succession Act, 1956.

¹⁵⁴⁷ Muslim Personal Law (Shariat) Application Act, 1937.

¹⁵⁴⁸ CLPR's 4-part PODCAST series on the Uniform Civil Code in India (November 15, 2017).

¹⁵⁴⁹ Dileep P Chandran, *How Constituent Assembly debated Uniform Civil Code*, The Indian Express, 1 February 12, 2025 (New Delhi).

¹⁵⁵⁰ Mohd. Ahmed Khan v. Shah Bano Begum & Ors., 1985 AIR 945, 1985 SCR (3) 844.

¹⁵⁵¹ The Goa, Daman and Diu (Administration) Act, 1962.

¹⁵⁵² Portuguese Civil Code, 1867.

¹⁵⁵³ The Code of Gentile Hindu Usages and Customs of Goa.

¹⁵⁵⁴ Shah, Advait. (2021). *Goa civil code: an evident hoax to uniformity and gender* available at <https://www.ijlr.com/post/goa-civil-code-an-evident-hoax-to-uniformity-and-gender-equity-in-go> (Last visited on January 8, 2025)

personal laws, i.e., laws governing marriage, divorce, inheritance of properties, adoption, and guardianship. The jurisdiction of the Code extends to the residents of Uttarakhand, who reside outside its territory, but excludes the members of Scheduled Tribes and the group of persons whose customary rights are protected under Part XXI of the Constitution.¹⁵⁵⁵

4. Patriarchal Norms In Uttarakhand

The Uttarakhand Civil Code, 2024 (herein referred to as UCC), recently passed by the Uttarakhand Legislature, has come into effect following Presidential assent and official notification.¹⁵⁵⁶ This legislation establishes a uniform civil code applicable to all residents of the state, irrespective of religion, caste, or creed, with the exception of Scheduled Tribes.¹⁵⁵⁷ It poses a refreshing contrast to the patriarchal PCC. The provisions in the Code favour women, with an express ban on polygamy, child marriage, triple talaq (instant divorce), practices of nikah halala, iddat, gender equality, etc., regardless of the religions or beliefs of the parties.¹⁵⁵⁸

The Code also serves as the first legislation in the country concerning live-in relationships. Maintenance can also be given to the women at par with a married woman in case of desertion by her partner. The common procedure for divorce also provides a much more streamlined process for the parties involved. It is now possible to file a divorce petition on the grounds of adultery, cruelty or desertion. Furthermore, a wife has the right to file a petition to the court seeking divorce on grounds including the husband's involvement in rape or other forms of unnatural sexual offences since the marriage began or if the husband had

multiple wives from marriages conducted before the implementation of the UCC.¹⁵⁵⁹

Similarly, there is also a step forward for women in the case of property laws. From the previous 25% of share in property for Muslim women, there now exists a uniformity of women's share in property. However, as it would be further explained, the UCC is not faultless, and the Code can be considered rigid and unnecessarily technical in some areas, especially concerning the registration of marriages and divorces.¹⁵⁶⁰

The UCC can definitely be said to be a step in the direction of achieving gender equality.¹⁵⁶¹ The Code aligns the conditions for marriage and grounds for divorce with those outlined in the Special Marriage Act, 1954.¹⁵⁶² It mandates the compulsory registration of all marriages solemnized or contracted within the state, as well as those performed outside the state where at least one party is a state resident.¹⁵⁶³ Additionally, it requires the registration of decrees of nullity, divorce, or judicial separation.¹⁵⁶⁴ The Code prohibits and penalizes any form of divorce not prescribed by its provisions, as well as the act of compelling or abetting divorce or remarriage under unauthorized conditions.¹⁵⁶⁵

A distinctive feature as discussed above is the legal recognition of live-in relationships, with mandatory registration of such arrangements ensuring that women in such relationships are granted rights on par with those of married women and provides legal legitimacy to children born from such relationships.¹⁵⁶⁶

It introduces several significant reforms aimed at creating uniformity across religious communities while challenging entrenched patriarchal norms. It prohibits practices such as

¹⁵⁵⁵ Narayan CL, Narayan M. *Uniform Civil Code, Uttarakhand, 2024—Uniformizing Marriage Laws and Legalizing Live-in Relationships*. available at <https://journals.sagepub.com/doi/10.1177/26318318241279140?icid=int.sj-full-text.citing-articles.1> (Last visited on January 8, 2025)

¹⁵⁵⁶ Rules of Uniform Civil Code, Uttarakhand, 2025.

¹⁵⁵⁷ *Id.*

¹⁵⁵⁸ Rules of Uniform Civil Code, Uttarakhand, 2025.

¹⁵⁵⁹ Dr. Pankaj Dwivedi, *Uniform Civil Code* (Vayu Education of India, (2020)).

¹⁵⁶⁰ Rules of Uniform Civil Code, 2025.

¹⁵⁶¹ *Id.*

¹⁵⁶² M.S. Ratnaparkhi, *Uniform Civil Code: An Ignored Constitutional Imperative* (2018).

¹⁵⁶³ *Id.*

¹⁵⁶⁴ Rules of Uniform Civil Code, Uttarakhand, 2025.

¹⁵⁶⁵ *Id.*

¹⁵⁶⁶ Rules of Uniform Civil Code, Uttarakhand, 2025.

polygamy, halal, iddat, triple talaq, and child marriage, which are often critiqued for perpetuating gender inequality, and establishes a uniform minimum marriage age of 18 for girls, addressing the systemic disadvantage faced by young girls in patriarchal societies. It also allows marriages to be solemnized through any ceremonies or rituals chosen by the parties, signalling a move toward inclusivity and personal agency, while prohibiting bigamy for all communities, a practice often tied to male privilege in patriarchal systems.¹⁵⁶⁷

Furthermore, the UCC criminalizes customs that impose conditions on remarriage between divorced spouses, highlighting a shift toward recognizing individual autonomy over societal control.¹⁵⁶⁸ Extrajudicial divorce methods, including talaq-us-sunnat, talaq-i-biddat, khula, maba'arat, and zihar, are penalized, emphasizing the importance of institutional oversight in protecting women's rights.¹⁵⁶⁹ By recognizing mehr and dower as valid but supplementary to maintenance, the UCC balances tradition with modern legal frameworks. However, it retains patriarchal elements by maintaining existing laws on guardianship, where fathers are considered guardians, and mothers are limited to custodial roles, reinforcing traditional gender roles in parenting and showcases a continued drawback of the UCC.

While certain laws, such as the Hindu Adoption and Maintenance Act (HAMA)¹⁵⁷⁰ and the Juvenile Justice Act (JJ Act)¹⁵⁷¹, continue to apply, the exclusion of Scheduled Tribes from the UCC raises questions about its universal applicability and whether such exclusions perpetuate other forms of inequality¹⁵⁷². The mandatory registration of marriages and live-in relationships, with penalties for non-

compliance, represents a progressive step but also raises concerns about excessive state interference in personal lives.¹⁵⁷³ Though the UCC marks a bold attempt towards modernizing personal laws and challenging patriarchal norms, a proper analysis of its provisions reveal areas where deeper reforms are needed to ensure true gender equity and dismantling of all remnants of systemic patriarchy.¹⁵⁷⁴

By eliminating discrimination against children born out of void or voidable marriages and granting them equal legitimacy, the UCC challenges societal stigmas surrounding illegitimacy, which have long been perpetuated by patriarchal structures.¹⁵⁷⁵ It further protects women in live-in relationships, mandating maintenance for deserted partners and providing financial safeguards—an acknowledgment of the socio-economic vulnerabilities women often face due to patriarchal dependency models. However, defining live-in relationships as being "like marriage" reflects an implicit bias toward traditional marital frameworks, limiting the recognition of alternative relationship models that do not conform to these standards.¹⁵⁷⁶

The prohibition of polygamy under the UCC represents a progressive step against practices that historically prioritized male privilege and contributed to the subjugation of women. Yet, while it respects religious and cultural diversity by permitting marriages to follow traditional customs and rites, this inclusivity inadvertently reinforces the societal primacy of marriage as an institution, a concept deeply embedded in patriarchal ideology. Similarly, the streamlined divorce procedures empower individuals by simplifying legal recourse, but the framing of certain grounds for divorce, such as rape or unnatural sexual offenses within marriage, highlights the persistence of gendered harm in

¹⁵⁶⁷ *Id.*

¹⁵⁶⁸ *Id.*

¹⁵⁶⁹ Shruti Yadav, *Decoding the Uniform Civil Code: A Critical Analysis of Uttarakhand's Landmark Legislation* available at <https://articles.manupatra.com/article-details/Decoding-the-Uniform-Civil-Code-A-Critical-Analysis-of-Uttarakhand-s-Landmark-Legislation>. (Last visited January 8, 2025)

¹⁵⁷⁰ Hindu Adoption and Maintenance Act, 1956.

¹⁵⁷¹ Juvenile Justice Act, 2015.

¹⁵⁷² *Id.*

¹⁵⁷³ Rules of Uniform Civil Code, Uttarakhand, 2025.

¹⁵⁷⁴ *Id.*

¹⁵⁷⁵ Rules of Uniform Civil Code, Uttarakhand, 2025.

¹⁵⁷⁶ *Id.*

intimate relationships—a reflection of broader patriarchal dynamics.

The registration of live-in relationships, though aimed at reducing false cases and providing legal sanctity, raises concerns about state intrusion into private lives and the reinforcement of patriarchal oversight in personal relationships.¹⁵⁷⁷ In addition, it also raises concerns with regard to the fundamental rights of citizens, in particular, the right to privacy under right to life. While the UUCB is undeniably a progressive move toward equality, a deeper look reveals that certain aspects, such as its reliance on traditional marital norms and gendered assumptions, indicate the lingering influence of patriarchal structures.¹⁵⁷⁸ True equality will require a more nuanced approach that not only reforms laws but also addresses the underlying social and cultural norms perpetuating systemic patriarchy.

The UUCB Bill, while aspiring to create a uniform legal framework, raises significant concerns about its approach to addressing entrenched inequalities, privacy, and cultural diversity.¹⁵⁷⁹ Its silence on guardianship laws defaults to existing provisions under personal laws and the secular Guardians and Wards Act, 1890, which often favour fathers as guardians while relegating mothers to secondary roles.¹⁵⁸⁰ This neglects the 2018 Law Commission's recommendation to ensure equal treatment for both parents, perpetuating gender discrimination and undermining progress toward equitable parental rights.¹⁵⁸¹ Similarly, the Bill's failure to address the discrepancies in adoption laws—where Hindus, Buddhists, Jains, and Sikhs can adopt under the Hindu Adoption and Maintenance Act (HAMA), 1956, while others rely on the Juvenile Justice Act—misses a crucial opportunity to establish consistency and inclusivity in adoption processes.¹⁵⁸² This lack of reform reflects a deeper patriarchal reluctance

to question norms that prioritize male-centric control over familial decisions.

The Bill's reliance on criminalization as a means of enforcement raises serious concerns about its disproportionate impact on marginalized communities.¹⁵⁸³ By introducing harsh penalties for non-compliance with the mandatory registration of live-in relationships, it risks enabling the misuse of surveillance mechanisms, particularly to harass interfaith and inter-caste couples who are already vulnerable to societal backlash. The intrusive registration process—requiring couples to provide declarations, undergo inquiries, and submit evidence—constitutes a significant invasion of privacy and autonomy.¹⁵⁸⁴ This approach infantilizes women by involving their parents in the process, even for couples above the legal age of marriage, reinforcing patriarchal attitudes that deny women the right to make independent choices about their relationships.¹⁵⁸⁵ This interference also exacerbates the risks of honour-based violence, as parents may use legal provisions to disrupt consensual interfaith or inter-caste relationships, often under the pretext of protecting their daughters from "forced conversion" or misrepresented religious identities.¹⁵⁸⁶

Moreover, the Bill fosters a culture of moral policing by allowing third-party complaints and intrusive surveillance, empowering local communities, religious groups, and even neighbours to interfere in personal lives.¹⁵⁸⁷ This disproportionately affects women in interfaith or unconventional relationships, making them more vulnerable to societal judgment, harassment, and privacy violations. The provision requiring live-in relationships to be registered, while marriages remain unregistered

¹⁵⁷⁷ The Uniform Civil Code, Uttarakhand, 2024, § 3 (4) (b).

¹⁵⁷⁸ *Id.*

¹⁵⁷⁹ *Id.*

¹⁵⁸⁰ *Id.*

¹⁵⁸¹ *Id.*

¹⁵⁸² *Id.*

¹⁵⁸³ *Id.*

¹⁵⁸⁴ *Id.*

¹⁵⁸⁵ *Id.*

¹⁵⁸⁶ *Id.*

¹⁵⁸⁷ Shruti Yadav, *Decoding the Uniform Civil Code: A Critical Analysis of Uttarakhand's Landmark Legislation* (Jagran Lakecity University, 2024). available at <https://articles.manupatra.com/article-details/Decoding-the-Uniform-Civil-Code-A-Critical-Analysis-of-Uttarakhand-s-Landmark-Legislation>. (Last visited January 8, 2025)

without penalty, highlights a troubling double standard.¹⁵⁸⁸ It imposes stricter scrutiny on live-in arrangements, equating them to marriage without recognizing their distinct nature. This conflation fails to acknowledge the fluidity of live-in relationships, which often serve as a period for partners to understand compatibility before committing to marriage, if at all. By treating these arrangements as formal and binding, the Bill risks undermining the autonomy and intent of such partnerships. Furthermore, the failure to explicitly include same-sex couples in its provisions reinforces the exclusionary nature of the Bill, ignoring the rights and realities of LGBTQ+ individuals.

The gender bias within the Bill's maintenance provisions is another area of concern. While maintenance in marriages is gender-neutral and available regardless of the grounds for divorce, maintenance for live-in relationships is restricted to women and only on grounds of desertion. This reinforces the stereotype of women as economically dependent and fails to consider the diverse dynamics of modern relationships. Additionally, the age discrepancy between marriage (allowed at 18) and live-in relationships (permitted only after 21) reflects an inconsistency in the legal framework and further infantilizes individuals seeking autonomy in their personal lives.¹⁵⁸⁹

The Bill's exclusion of Scheduled Tribes and its failure to account for India's immense cultural and social diversity reveal an exclusionary approach that risks imposing a homogenized code unsuited to the nuanced realities of various communities.¹⁵⁹⁰ While the Bill aspires to create equality, a deeper self-analysis reveals that it inadvertently upholds patriarchal norms by perpetuating control over women's choices, enabling societal surveillance, and enforcing rigid definitions of relationships. True progress requires not only a uniform legal framework but also an acknowledgment of the diversity and

autonomy of individuals, along with reforms that actively challenge the deeply ingrained patriarchal structures that continue to shape societal and legal attitudes.¹⁵⁹¹

5. Patriarchal norms in Goa

The law followed in the state of Goa, the Goa Civil Code, based on the Portuguese Civil Code of 1867, is unique in the sense that it is the only region in the entire nation that ensures de jure i.e. equal property rights in both marital and parental property.¹⁵⁹² The Goa Daman Diu Act of 1962 allowed the state of Goa to use the Portuguese Civil Code as their primary law.¹⁵⁹³

One of the most debated and disputed issues affecting global gender equality has been the matter of resource control. This conflict regarding the means of production fundamentally focuses on the access, ownership, and control of the primary source of livelihood. As a result, achieving gender equality in particularly developing countries primarily centres on matters related to land and property rights. To acknowledge this matter, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) established the United Nations General Assembly in 1979.¹⁵⁹⁴ Article 15 of the same focused on granting rights to possess and manage properties without discrimination to women.¹⁵⁹⁵ ¹⁵⁹⁶ Additionally Article 14(2) ensured equal treatment in land and agrarian reforms. Furthermore, Article 16 guaranteed that both partners would possess equal rights in the 'ownership, acquisition, management, administration, enjoyment, and disposition of property'.¹⁵⁹⁷ Resolution 15 (paras 1 and 3) (1998) of the Sub Commission on the Promotion and Protection of Human Rights on the topic 'Women and the Right to Land, Property and Adequate

¹⁵⁹¹ *Id.*

¹⁵⁹² Portuguese Civil Code, 1867.

¹⁵⁹³ THE GOA, DAMAN AND DIU (ADMINISTRATION) ACT, 1962

¹⁵⁹⁴ Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

¹⁵⁹⁵ Dewan, R. (2023). Patriarchy and Property: Goa's Uniform Civil Code.

¹⁵⁹⁶ The Indian Economic Journal, 71(1), 247-255. available at <https://doi.org/10.1177/00194662221146655>. (Last visited on January 9, 2025)

¹⁵⁹⁷ *Id.*

¹⁵⁸⁸ Rules of Uniform Civil Code, Uttarakhand, 2025.

¹⁵⁸⁹ *Id.*

¹⁵⁹⁰ M.S. Ratnaparkhi, *Uniform Civil Code: An Ignored Constitutional Imperative* (2018). (Atlantic Publishers & Dist)

Housing' states that all forms of discrimination against women with regard to acquisition and access to land are in violation of human rights law and urges governments to review and/or abolish laws and policies that are discriminatory and at the same time encourage the change of prejudiced customs and traditions that prevent the realization of rights to gender equality.¹⁵⁹⁸

Now, taking a glance at India's perspective regarding this, Gender equality, especially in terms of resource ownership and management, is a key factor in the development of any economy, with land being an important one. However, historical and regional influences shape the degree and nature of this equality. Nowhere is the link between gender equality and property rights as complex as it is in Goa, the only state where women have equal rights to property.

However, entitlements differ from couple to couple. Couples whose marriages have been declared annulled, whose marriages have ended through divorce or death, or have separated by a decree concerning separation of persons or assets. Assets are split in case of a divorce whereas in cases of separation if both individuals and their properties are to be separated, the properties are divided equally. There still remains a lack of proper clarity in this matter because marriages that have been annulled indicate that their marriages never existed and thus the question of marital property rights does not exist either. Thus, when the civil law is bypassed by using the Patriarchal Tribunal, which provides annulments based on reasons like non-consummation of marriage an invalid basis for annulment under Goa's Family Laws, it is the Tribunal's criteria for assessing fault that will be accepted for the distribution of properties.

The main concern in the GCC is the ownership and control of land and assets within marriage, to be specific, it is about whether the property within marriage belonged to the marriage as a

whole and the couple as a unit, neither to the husband nor to the wife. The civil code of 1867 was drafted in a feudal-patriarchal era.¹⁵⁹⁹ Even though it specifies that equal rights for inheritance and ownership of marital property would be available to the male and the female, the reality is far from this. Males are prioritized in the rights of management and administration unless there is an impediment. This management and administration of properties by the male, despite the law stating that the properties would be jointly owned, reflects a patriarchal structure in Goa with respect to marital property rights. This management dynamic often places women in subordinate positions regarding property control. Additionally, the GCC also recognizes prenuptial agreements in which the property holding rights and entitlements of the parties entering the agreement can be modified or restricted.¹⁶⁰⁰ This provision could lead to problems for females as they are forced to sign these agreements that place them in a disadvantageous position, typically by fraud or coercion.

The GCC has been widely appreciated for the various provisions that provide equal inheritance rights by daughters and sons upon the death of one of the parents. However, unfortunately, these provisions are only on paper and not a practice.¹⁶⁰¹ *"Very often, daughters get a certain amount of gold at the time of their marriage and are asked to sign off their rights to the family property. It is not common that daughters fight for their share of the parental property and if there are such cases invariably it will be because of an informed son-in-law who wishes to claim his share."* was quoted by Shaila De Souza, the head of The Centre Of Women Studies at the Goa University.¹⁶⁰²

¹⁵⁹⁹ Portuguese Civil Code, 1867.

¹⁶⁰⁰ *Id.*

¹⁶⁰¹ Namita Kohli, *All in the family: Goa Civil Code a model for the rest of the country*, HT (Sep. 13, 2016), available at <https://www.hindustantimes.com/india-news/all-in-the-family-is-the-go-civil-code-a-model-for-the-rest-of-the-country/story-4lmvwp0OrAST2hUnsZxtiL.html>. (Last visited on January 9, 2025)

¹⁶⁰² POONAM PRADHAN SAXENA, FAMILY LAW 540 (LexisNexis).

The relinquishment of rights provision in the GCC allows an heir to voluntarily give up their claim to inherited property. This provision is often manipulated in a patriarchal context where brothers often pressurize their sisters into renouncing their legal share in familial property giving the argument that dowry covers their share of inheritance. Due to undue familial or societal pressure, women are forced to formally relinquish their claims at the Sub-Registrar's office, making this process legally binding and eventually reinforcing gender inequality.¹⁶⁰³

Patriarchal bias is clearly exhibited not only in the substantive provisions of the GCC but also in its language. The document is consistent in referring to the head of the family as "*he*" and not "*the eldest member of the family*" which implies that this role is male dominated. Beyond these linguistic and structural biases, many discriminatory laws within the Code remain unaddressed.¹⁶⁰⁴

6. Comparative analysis between the Uttarakhand and the Goa Civil Code.

Marriage and Live-In relationships

The UCC's objective is to set personal laws to be uniform across all religions by banning the practices of polygamy, child marriage, and extrajudicial divorces such as talaq-e-bid'ah.¹⁶⁰⁵ In doing so, it seeks to provide equality before law and on top of that, gender equality. Moreover, the UCC acknowledges the legal status of live-in relationships, therefore protecting women in such relationships with rights at par with married women.¹⁶⁰⁶ However, the live-in arrangement and marriage registration requirement under UCC provides a basis for criticism for breaching privacy, since it allows an undesirable level of government intrusion into personal relationships.¹⁶⁰⁷

On the other hand, the GCC covers nullification of marriage and allows these to be decided on

patriarchal parameters like nullus in sacra consumata, which relativize the marriage in question to broader civil law norms.¹⁶⁰⁸ Although the GCC gives equal shares to all spouses in the property acquired during the marriage, the patriarchy is still alive and well and attempts to circumvent it by controlling property in his name unless he is legally prohibited from doing so.¹⁶⁰⁹ Also, prenuptials in marriage are valid but can be weaponized against women's financial rights and independence within marriage and so these women are trapped. This tells us that the GCC does provide some legal measures to protect equality but as seen, deeply rooted social norms and legal protections do not guarantee the same.¹⁶¹⁰

Property and Inheritance Rights

The UCC establishes equal property rights for women, eliminating religious restrictions that previously limited Muslim women's property shares to 25%.¹⁶¹¹ By implementing a uniform property division framework, the Code aims to address historical economic disparities that have disproportionately affected women. However, despite its progressive stance on property rights, the Code retains patriarchal elements within guardianship laws, which continue to prioritize fathers as primary guardians while relegating mothers to custodial roles. This reinforces traditional gender hierarchies within familial structures, limiting the extent to which the UCC can be considered a fully equitable legal framework.¹⁶¹²

The GCC on paper provides equal inheritance rights to sons and daughters, ensuring that property is shared among all legal heirs.¹⁶¹³ However, in practice, societal and familial pressures frequently compel women to relinquish their inheritance rights in favour of male relatives. This is often justified under the pretext that daughters receive gold or dowries at marriage, thereby "*compensating*" for their

¹⁶⁰³ *Id.*

¹⁶⁰⁴ *Id.*

¹⁶⁰⁵ The Uniform Civil Code, Uttarakhand, 2024.

¹⁶⁰⁶ The Uniform Civil Code, Uttarakhand, 2024, §3 (4) (b).

¹⁶⁰⁷ *Id.*

¹⁶⁰⁸ Portuguese Civil Code, 1867.

¹⁶⁰⁹ *Id.*

¹⁶¹⁰ *Id.*

¹⁶¹¹ *Id.*

¹⁶¹² *Id.*

¹⁶¹³ Portuguese Civil Code, 1867.

share in family property. The provision allowing the voluntary relinquishment of inheritance rights has been widely misused within patriarchal contexts, as brothers and extended families exert coercive pressure on sisters to sign away their legal claims.

Furthermore, the GCC recognizes prenuptial agreements that allow couples to modify property ownership and management rights before marriage.¹⁶¹⁴ While this theoretically ensures financial transparency, in practice, it disproportionately disadvantages women. Many women, especially those in economically or socially vulnerable positions, are coerced or deceived into signing prenuptial agreements that limit their property rights. This perpetuates male control over marital assets and diminishes women's financial independence.

Another concern is the management of joint marital property. While the GCC states that property acquired during marriage belongs equally to both spouses, administrative rights often default to the husband unless specific legal interventions occur. This reinforces male dominance in property decisions, limiting women's agency in financial matters.¹⁶¹⁵

Gendered Language and Societal Perception

The UCC aims to adopt gender-neutral language in its legal provisions, reflecting a formal commitment to gender equality.¹⁶¹⁶ However, despite this linguistic neutrality, the Code still aligns with traditional marital norms that reinforce gendered assumptions. For instance, while the UCC provides equal property rights, its approach to guardianship laws continues to prioritize fathers as primary guardians, implicitly reinforcing the notion of male authority within the family.¹⁶¹⁷ Additionally, gendered assumptions in divorce laws, particularly in relation to financial maintenance and fault-based divorce grounds, continue to reflect traditional expectations of women as

caregivers and men as providers. This undercurrent of patriarchal influence suggests that merely neutralizing legal terminology does not necessarily translate into substantive gender equality, as underlying biases persist in legal interpretations and enforcement.

In contrast, the GCC explicitly incorporates gendered language, reinforcing male dominance within family structures.¹⁶¹⁸ Legal provisions refer to the head of the household as "he," implicitly designating men as the default authority figures within families.¹⁶¹⁹ This linguistic framing perpetuates the societal expectation that men are the primary decision-makers, both within the household and in legal matters. Furthermore, the enforcement of prenuptial agreements under the GCC often reflects deep-seated patriarchal norms.¹⁶²⁰ While such agreements theoretically allow couples to determine financial arrangements before marriage, in practice, women—especially those in economically vulnerable positions—are often pressured into signing contracts that disadvantage them.¹⁶²¹ This legal tool, instead of promoting equality, frequently serves as a mechanism for male consolidation over property and financial decisions.

The issue extends beyond legal language to societal perception and enforcement. Even when laws formally establish gender equality, deeply ingrained cultural practices often undermine their practical impact. Women face social and familial pressure to conform to traditional roles, whether in relinquishing inheritance rights, accepting male authority in marital property decisions, or complying with gendered divorce norms. Consequently, while the UCC attempts to appear progressive by adopting gender-neutral terminology, its retention of patriarchal legal structures diminishes its transformative potential. Meanwhile, the GCC's explicit reinforcement of

¹⁶¹⁴ *Id.*

¹⁶¹⁵ *Id.*

¹⁶¹⁶ The Uniform Civil Code, Uttarakhand, 2024.

¹⁶¹⁷ *Id.*

¹⁶¹⁸ Portuguese Civil Code, 1867.

¹⁶¹⁹ *Id.*

¹⁶²⁰ *Id.*

¹⁶²¹ *Id.*

male authority further entrenches gender biases in both law and society.¹⁶²²

Impact On Marginalized Communities

The groups that are marginalized include women, religious minorities, and indigenous communities. Systemic legal and social disadvantages are experienced by these groups. The Uniform Civil Code, when implemented in different regions, for example, Goa and Uttarakhand, varies in its impact on these groups.¹⁶²³

The GCC theoretically grants men and women equal property rights. If one reads in between the lines, it contains inherent patriarchal biases.¹⁶²⁴ According to this codification, women and men can theoretically be accorded equal status in property possession in the married and parental domain, but, in terms of management and administrative control, males are predominant over females. In addition, prenuptial agreements, which are usually signed under duress, further disadvantage women by limiting their rights within marriage.

On the other hand, the UCC is an active challenge to patriarchal structures, as it does not allow polygamy, child marriage, and triple talaq. It also grants equal inheritance rights to women of all religions. However, it still upholds some patriarchal norms, like the preference for fathers as guardians, which further cements traditional gender roles.

Property and Economic Rights

One of the most crucial struggles that marginalized people face is regarding economic resources. The GCC officially gives both men and women equal property rights.¹⁶²⁵ Yet, in everyday life, pressure from societal mores usually pushes women to renounce their claims to inheritance. Families usually do this by making a justification through the fact that dowry becomes a share that a woman acquires in a family's riches. This consequently leads to

economic dependency and enforces gender differences.

The UCC ensures a uniform share for women in property, rectifying the earlier discrimination where Muslim women were restricted to a 25% share.¹⁶²⁶ This is an important step towards economic equality. However, its strict regulations on marriage and live-in relationships impose additional state oversight, which may restrict personal autonomy, especially for marginalized women who lack familial support.

State Intervention and Personal Autonomy

The need for mandatory registration of marriages and live-in relationships under the UCC points to undue state interference.¹⁶²⁷ This would adversely affect families, especially interfaith and inter-caste couples, who suffer at social and legal levels. The law also allows third-party complaints and community oversight, which enables moral policing, potentially going against alleviating social discrimination.

God's legal system does not impose any such registration requirements but indirectly confines women's autonomy through economic and legal constraints. The patriarchal structure embedded in the Civil Code results in women often lacking decision-making power over their own financial assets.

The UCC and the GCC integrate provisions for economic rights, including rights to maintenance, as well as inheritance of property.¹⁶²⁸ Their practical implications, however, reflect a mix of both progressive and regressive features, particularly in respect of women's achievement of economic independence.

Maintenance provisions

The UCC has provided rights to women living together, and maintenance is given as it is provided for a married woman but under

¹⁶²² *Id.*

¹⁶²³ The Constitution of India, 1950, Art. 44.

¹⁶²⁴ Portuguese Civil Code, 1867.

¹⁶²⁵ *Id.*

¹⁶²⁶ The Uniform Civil Code, Uttarakhand, 2024.

¹⁶²⁷ *Id.*

¹⁶²⁸ Portuguese Civil Code, 1867.

limitations.¹⁶²⁹ Maintenance is allowed only in the case of desertion. The restriction on the extension of financial support to non-marital relationships also only in the case of desertion portrays a restrictive approach. Additionally, while the UCC recognizes and provides for live-in relationships, its enforcement mechanisms—including mandatory registration—raise concerns about privacy and autonomy.¹⁶³⁰

Although the GCC promises to grant women de jure rights in property and equality in their ownership, economically, women suffer a lot of constraints.¹⁶³¹ It is still practiced unequally because men get more power to manage property than women, and prenuptial agreements let them alter or restrict the women's rights on property. They are mostly exploited in such deals. The GCC also makes provision for the renunciation of inheritance rights, which, in practice, is often used as a pressure tool to make women surrender their share of family inheritance under the guise that a dowry compensates for the inheritance.¹⁶³²

Property and economic control

It equalizes property rights across all religious communities under the UCC.¹⁶³³ Earlier, Muslim women used to get only 25% of their inheritance under personal law. Now, all of that has been made equal under the UCC.¹⁶³⁴ It's one big step forward toward economic equality. However, patriarchal norms still exist, especially in guardianship laws, where fathers are the primary guardians and mothers are custodians, which indirectly limits women's control over property and family wealth.

GCC claims to distribute equal inheritance between sons and daughters but, practically speaking, often ends up in its opposite way.¹⁶³⁵ Daughters are often threatened into relinquishing inheritance rights over their male

siblings. Additionally, marital property might be technically common, but women usually have to abide by what their husbands think they should. Women are further disadvantaged in case of annulment, for patriarchal tribunals might override civil law and result in an unfair disposition of property.

7. Conclusion

Despite the theoretical advantages of both legal frameworks, the practical realities in Uttarakhand and Goa demonstrate that legal provisions alone are insufficient to dismantle deeply ingrained patriarchal norms. While the UCC explicitly codifies gender equality in property rights, its retention of patriarchal guardianship laws limits its effectiveness.¹⁶³⁶ Meanwhile, the GCC, despite its historic equal inheritance provisions, remains hindered by cultural and societal practices that continue to privilege male heirs.¹⁶³⁷ True gender equality in property and inheritance laws requires not only legal reforms but also shifts in societal attitudes and enforcement mechanisms to ensure women's rights are upheld in practice.

The persistence of gendered language and patriarchal assumptions within both legal codes highlights the limitations of legal reforms that do not actively challenge entrenched social hierarchies. Achieving true gender equality requires not only changes in legal wording but also shifts in societal attitudes, enforcement mechanisms, and access to legal recourse to protect women's rights effectively.

¹⁶²⁹ *Id.*

¹⁶³⁰ The Uniform Civil Code, Uttarakhand, 2024, §3 (4) (b).

¹⁶³¹ *Id.*

¹⁶³² Portuguese Civil Code, 1867.

¹⁶³³ The Uniform Civil Code, Uttarakhand, 2024.

¹⁶³⁴ *Id.*

¹⁶³⁵ *Id.*

¹⁶³⁶ *Id.*

¹⁶³⁷ *Id.*