

Name of the Article-Uniform Civil Code of Uttarakhand and Marriage Laws

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Abstract:

This paper is based on the areas of Constitutional and Personal Law. It shall address the reader on the relevance of the Uniform Civil Code in the Indian scenario. The paper sheds light on how the need for UCC for recognised in the Constitution of India itself, but due to reasons of diversity, development, etc. it was never applied. It shall also talk about the states in India that have this module working in the state. The reader shall also be made aware of the conflict between the application of the UCC in a land of religious beliefs. The researcher has addressed the importance and drawbacks of UCC, and also discussed the latest application of the Code in the State of Uttarakhand, in consonance with the marriage laws.

Keywords: Endeavour, Uniformity, diversity, conflict, outlook.

Literature Review:

The review of literature consists of various judicial judgements, and statutes. Other than this, the researcher has referred to various articles on Uniform Civil Code.

Research Papers:

1. Uniform Civil Code: A suggestion, D.C Manooja 2)Utility of Uniform Civil Code, Akhilendra Pratap SinghLegislations:
2. The Constitution of India
3. The Portuguese Civil Code act, 1867
4. The Uniform Civil Code of Uttarakhand, 20234)The Hindu Marriage act, 1955
5. The Hindu Minority and Guardianship act, 19566)The Hindu Adoption and Maintenance act, 1956
6. Shariat Application act, 1937
7. Special Marriage act, 1954

Statement of Problem:

The problem being addressed in the paper is the importance of the UCC in the backdrop of India, considering the presence of various personal laws, specifically their effect on marriage laws.

Objectives:

Objective 1: To understand the effect of UCC on Personals Laws(Marriage laws) in India. Objective 2: To understand how the UCC bill passed by the Legislature in Uttarakhand impacts the national outlook on this topic.

Research Question):

RQ1: What is the effect of UCC on Personal Laws(marriage laws) in India?

RQ2: Will the bill passed by the Legislature in Uttarakhand impact the national outlook on UCC?

Research Methodology:

The author has opted for a doctrinal mode of study in which references are drawn from various judgements and sources of law, through which an analogy has been made.

Introduction:

If we refer to the grundnorm of India, I.e our Indian Constitution, and refer to the Directive Principles of State Policy(Part IV), under which there is Article 44 that states, “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.¹ “

In common parlance, the government shall try to enforce a uniform civil code throughout all the States and Union Territories of India. Before, we dwell into the meaning of UCC or Uniform Civil Code or its applicability, it is important to understand the enforceability of the Directive Principles of State Policy. The apex court has had a plethora of opinions on this, starting from the case of State

¹ INDIA CONST. art. 44.

of Madras v Champakam Dorairajan², where Fundamental Rights were held to be at an higher pedestal than the latter, but with time, the court understood the significance of DPSPs. Finally, in the case of Minerva Mills v. Union of India³, the court stated that the doctrine of harmonious construction needs to be applied between the two, i.e the Fundamental Rights and DPSPs. Even though, a person cannot enforce the DPSPs before the court of law, the constitution rests an moral obligation regarding the same on the State.

Uniform Civil Code, means a set of rules that govern the society irrespective of any religious differences and applied to all sections of the society, on the principle of equality.

The problem with the application of such a code, is that India being a civilisation state, has been a land with a diversity of cultures, and within each culture, there have been various sub-sets. The various governments at the centre over the years, have given reservation to various minority groups which has led to people’s dependence on it. Now, if such an UCC is implemented, then such reservations will have to be removed. Other than this, there are problems of Applicability of Personal laws, in terms of marriage, adoption, etc.

Goa was the first Indian state, that passed a resolution on UCC, way back in 1867(during the colonisation period). Uttarakhand passed the bill and received assent on 8th February, 2024.

In this paper, we shall discuss the significance of UCC and its application of Indian subcontinent.

Uniform Civil Code:

Uniform Civil Code, as stated above, means a set of rules that govern the society irrespective of any religious differences and applied to all sections of the society, on the principle of equality.

Going by the Indian example, it was first discussed by K.M Munshi, in the constitutional assembly debates, in which he stated⁴:

“there are many factors - and important factors - which still offer serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is restricted to secular

spheres, must be unified in such a way that as early as possible, we may be able to say, Well, we are

² State of Madras v Champakam Dorairajan, AIR 1951 SC 226.

³ Minerva Mills v. Union of India, AIR 1980 SC 1789.

⁴ K.M.Munshi, 7 Constituent Assembly Debates at 11 (Nov. 23, 1948), available at: <http://parliamentofindia.nic.in/ls/debates/> (last visited on Feb. 11, 2024). *not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are a strong and consolidated nation*".

It is clear from his words which hint on how there should be a common nation identity, and how it is important to strive in a unified way towards a secular front.

It is clear from this that the will of the constitutional makers, was also to build a secular fabric around the nation and that UCC is the only best option towards it.

The Apex Court also, at instances has enumerated the need for the same. In the case of Shah Bano Begum v. Union of India⁵, the court on an issue of maintenance for divorced women, overruled the authority of the Islamic Law and went ahead with the claim for divorced women under Section 125 of the Criminal Procedure Code. It was beginning for the nation to strive towards a UCC.

Another landmark case, was Sarla Mudgal v. Union of India⁶, under which the court was dealing with an issue of bigamy where Hindu man converted to Islam to marry a second wife. The court over here expressed the need for a Uniform law for marriage & dissolution, to avoid such abuse of law and order.

There are three purviews to the backdrop of UCC in India:

1. The personal laws²)Gender equality
2. Caste based reservations

The first purview of personal laws, shall be discussed in details further towards the paper, but to have a common law for all religions for marriage, divorce, succession, etc. is a huge problem.

For example, currently a Hindu man cannot marry more than one wife and if he does so, it shall be punishable by law, whereas a Muslim man, has no such bar and can have up to four wives. Now, while making a unified bill, will the Muslim man give up his right or a new right will be uniformly given to all religions?

The problem with applying UCC is not drafting it but its application. This is due to centuries of religious continuation. The formal sources of all personal laws go way back in time and history. More than law, marriage, succession are more like traditions in India due to its look continuance. Even though our laws did expressly copy the Hindu texts, such as Manusmirti, Dharmashatras, etc.,

⁵ Shah Bano Begum v. Union of India, AIR 1985 SC 945.

⁶ Sarla Mudgal v. Union of India, AIR 1995 SC 1531.

an element of those are seen in all statues, such as the Hindu marriage act, 1955, Hindu Adoption and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956, etc.

Also, it's not that the State has not strived towards secular law but the adoption has not been as successful. There are secular statues for marriage, succession, adoption, Maintenance, but the Indian Community sticks to the religious laws.

The second purview of gender equality, is how the Uniform Civil Code can strive towards an gender neutral society. Today, the women in India face a lot of discrimination, even though the constitution has various safeguards to protect them, the very right given to religious groups through constitution, curtails those rights as well⁷. To elaborate, personal laws were brought in my government

to protect interest of the women, but still Child marriages are taking place, till date a marriage if solemnised between a minor hindu women and a major hindu man, is not voidable by virtue of the Hindu Marriage Act, 1955. Also, even for the Islamic law, there has always been a conflict about the age of marriage, as according to Islamic law, a girl can get married when she attains puberty (age of 15). Though, this stands in contravention with the Prohibition of Child Marriage Act, 2006, there have been various opinions in different High courts. The apex court still has to take a stance on this conflict.

Till 2005, women could not even inherit property under the Hindu Succession Act, which shows the discrimination. Other than this, even when it comes to the issues of guardianship or adoption, the views of the father are given supremacy. Bringing in a Uniform Civil Code, in this context seems fully justified.

Coming to the third purview, the caste based reservations. Caste has been an inherit problem of the Indian society, so much so that Article 18 of the Indian Constitution, expressly prohibits all forms of untouchability and the same grundnorm, provides for opportunities for individuals of disadvantaged groups and Scheduled Castes & Tribes.

In addition to this, there have been reservations given to various caste groups for educations, jobs, etc. and sometime these reservations even exceeded 50 percent. The 1990s was one such era, where the judgement of *Indra Sawhney v. Union of India*⁸, came to set up a cap on the number of reservation to 50 percent.

⁷ Archana Parashar, "Gender Inequality and Religious Personal Laws in India" 14 *Brown Journal of World Affairs* 103(2008).

⁸ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

Our country being a multi-religious State, has a majority group and various minority groups. The problem is the aid and support of State institutions in a neutral manner⁹. It is seen to the minority groups, that in name of national identity, the majoritarian aspect is being imposed on them which curtails their basic dignity and way of life. For example, in India even though Sikhs, Jains and Buddhists are different religions and have different practices, they are put under one umbrella term of Hindus¹⁰. Thus, this fear of minority interests need to be looked upon before a formal nationwide code is launched.

In countries like the United States of America, Pakistan, Bangladesh, Turkey, Malaysia, Egypt, Ireland, the makers of the constitution visioned an UCC in matters of marriage, divorce, inheritance, etc. and that is how their framework operates.

A civil code that has already been practice in India, is the Portuguese Civil Code, 1867 which was bestowed upon on Goa during its Portuguese colonial roots. The Indian government in 1961, when Goa was incorporated as a UT, allowed this act to apply in continuance to the Goa, Daman & Diu.

Under this, Hindus, Muslims and Christians are all subjected to same kind of rules on issue of personal laws.

Firstly, there is equitable distribution wealth.

Secondly, a muslim who registers his marriage in Goa, is prohibited to engage in polygamy and triple talaq.

Thirdly, all spouses have to keep their assets in pair. Fourthly, children cannot be disinherited.

The civil code in Goa, Daman & Diu is somewhat biased against Hxsindus, muslims. The only way to register marriage for them is through civil courts but a Catholic, can get it done in an church.

Divorce by a church for Christians is recognised but the same is not applicable to other religions, who

have to approach the court of law for the same.

Lastly, even though it is secular in nature, the beginning of the statute reads

*“DOM LUIZ, by the grace of God, King of Portugal and Algarves, etc. We hereby make known to all our subjects that the general courts have decreed and we want the law to be as follows:”*¹¹, Which shows the bias and unsecular nature of the statute.

⁹ Akeel Bilgrami, *Secularism, Identity, and Enchantment* (Harvard University Press, Cambridge, 2014).

¹⁰ The Hindu Marriage Act, 1955 § 2(1), No. 25, Acts of Parliament, (1955) India.

¹¹ Portuguese Civil Code, 1867.

The basic premise of a UCC, is uniformity which does not hold fit for the Portuguese Civil Code applicable in Goa, Daman & Diu. This preferential outlook only for a certain section of society by way of discrimination, is another violation of the basic nature of the UCC.

Till 2024, this was the only Uniform Code known to Indians, applicable on one of their territories. In later chapters, we'll in detail discuss about the Uttarakhand Civil Code.

Personal laws in India:

In the subcontinent of India, such laws have been followed historically. The significance of these laws is not only of legal significance but of emotional significance to people of various religions.

In India, each religion not only has their own rules and instructions, but each subsets of the religion, also has various customs and usages. Sticking to the Hindu Marriage Act, 1955, a custom has been defined under section 3(a). Also, the requirements to a Hindu Marriage under section 5, can be bypassed only through the application of valid customs. There is also a case, where in South India, a marriage between a maternal uncle and a girl was considered valid due to the custom governing it.¹² This act under section 29, also protects other form of marriage which are done through customs and recognises them to be valid.

Coming to the Islamic marriage, it is regarded as a contract between the two parties.¹³ The muslim marriage even furthers the Hindu law for customs, as most of the Islamic law is un-codified and based on precedents and primary sources of Islam. Therefore, many times a conflict is seen between the courts and Islamic law. For example, in the case of *Shah Bano Begum v. Union of India*¹⁴, the court on an issue of maintenance for divorced women, overruled the authority of the Islamic Law and went ahead with the claim for divorced women under Section 125 of the Criminal Procedure Code.

Similarly, the Parsi marriage and Christian marriages have similar base to the Hindu Marriage Act, 1955. The Parsi community and law, does not recognise converts to the Zoroastrian religion, therefore the ones who are Parsi and their children are the only zoroastrians recognised by law.

Lastly, there lies a secular law called the Special Marriage Act, 1954 that again has its base on the Hindu marriage act but it is purely secular in nature as it does not recognise any particular religion and allows any person to marry the other (irrespective of caste, creed or religion). It provides for monogamy, capacity to enter into marriage and not being in the degrees of prohibited relationship, but no where mentions about religion or caste or creed.¹⁵

Let us know, shed light upon the attachment of personal laws to the Indian Constitution through a legal mandate. Before, we saw how people are historically attached due to the cultural continuation of these rules of Religion in their daily life.

The constitution of India under part III guarantees to its citizens freedom of conscience, practice and propagation of religion under Articles 25-28. The same part III of the constitution also guarantees to its

citizens the right to equality before the law or equal protection of the laws, the prohibition of discrimination on grounds of religion, caste, sex etc and the right to liberty. This is where the domain of personal laws has always lied. Under article 25, subject to restrictions as to Health, Public Order and morality, an individual is free to profess, propagate and practice religion¹⁶.

¹² Venkata v. Subhadra, (1883)ILR 7MAD548.

¹³ Abdul Kadir v. Salima, (1886)ILR 8ALL149.

¹⁴ Shah Bano Begum v. Union of India, AIR 1985 SC 945.

¹⁵ The Special Marriage act, 1954 § 4, No. 43, Acts of Parliament, (1954) India.

¹⁶ INDIA CONST. art. 25.

These three words *profess, propagate and practice*, in its self has had a huge implication of the scenario of personal laws.

Personal laws for marriage have not always been equal for all religions. For example, under Islam more than one wife is allowed but the same is not allowed for other religions.

The practice of maintenance is also different for all religions and therefore, the court of law at numerous instances have supported Religious standing of laws but at times, such as in Shah Bano Begum¹⁷ and Sarla Mudgal¹⁸ case have gone ahead for welfare and against the principle inscribed in personal laws.

Although, there is one judgement in the Indian system of precedents that has been called out to be a bad precedent by many learned jurists, but till date remains and goes against the uniformity of laws.

The case is State of Bombay v. Narasu Appa Mali¹⁹, under which the Hindu bigamous marriages act was challenged for being discriminatory under articles 14, 15 and 25 of the Indian Constitution. This act expressly prohibited bigamy in Hindus. Though, bigamy was allowed for Muslims, Hindus by virtue of this legislation could not marry more than one wife. In this case, the court held that personal laws don't come under the definition of "Law in force" under article 13 and therefore cannot be subjected to the judicial review under the Indian Constitution. This judgement till date remains still, although it was very recently criticised in the Sabrimala verdict²⁰, by the current CJI DY Chandrachud, who stated that the precedent sets a rigidity upon the constitution.

In another case, the Supreme Court of India stated that the modern element cannot be applied to the personal laws²¹.

Therefore, a modern element of uniformity has seemed hard to apply for personal laws but the latter judgements of Sarla Mudgal, Sabrimala are taking a new turn towards welfare and striving for a code of uniformity.

In the end, such a code can only be brought in by the representative of people, i.e the parliamentarians.

¹⁷ Shah Bano Begum v. Union of India, AIR 1985 SC 945.

¹⁸ Sarla Mudgal v. Union of India, AIR 1995 SC 1531.

¹⁹ State of Bombay v. Narasu Appa Mali, AIR 1952 BOM 84.

²⁰ Indian Young lawyers Association & Ors. v. Union of India, AIR 2018 SC 243.

²¹ Krishna Singh v. Mathura Ahir, 1980 SCR (2) 660.

UCC in Uttarakhand:

India, after the constitution came into play, had passed no law in regard to UCC or for any particular state of India. It was only the Portuguese code of 1867, that applied in Goa.

On 8th of February, 2024 the Uttarakhand government passed the Uttarakhand Civil Code, 2024. First, let us see the constitutionality of this code. Since, all family law matters pertaining to marriage, divorce are a part of the concurrent list, the government of Uttarakhand have passed the act within the powers given to the State by the constitution.

When we start reading the Uttarakhand Civil Code, 2024²², just before the preliminary clause, the act states that this is a act to regulate marriage, live-in relationships and matters related to it.

This means that live-in relationship, that till date could not be registered, now can be done by those residing in this state.

Now, section 2 of the act states it shall not apply to Scheduled castes, again bringing up that question that whether the code is truly civil in nature.

It also very clear by the definition clause, that even this act defines a person to be he/him, meaning the rights of LGBTQ have again not been addressed.

If we refer to section 4, i.e the conditions for marriage, it is similar to the one under Special Marriage Act, 1954 but the area of change lied under section 5, where the marriages are not limited to be solemnised in accordance with the traditional practices(nikah, saptapadi, Ashirvad ceremony). Though, the problem here is that if the Civil Code is secular in nature, and is uniform then why are customs and usages are allowed to being applied.

Also, under section 18, non-registration of marriages, divorce can also lead to punishment and fine. One very problem that has existed to personal laws is the age of marriage. Under the Hindu marriage act, if there is a minor involved, then the marriage is not void, even though it is an essential requirement. After, the involvement of the Prohibition of child marriage act, 2006, there has still not been much deterrence. The case is similar for islamic law as well.

The point I am trying to make is that, if the legislators drafting the bill, had an intention, they could have made child marriage void per se but, by virtue of Sections 23 and 24 of the Uttarakhand Civil Code, a marriage where one of the parties is a minor, is not void but voidable.

This makes the very intent and nature of the UCC, to eliminate gender inequality, child marriages go away.

Another problem under this code, is section 28, which does not allow the parties to file for divorce before the expiration of a period of 1 year of marriage, which goes against the welfare principle. If a party to a marriage, is unhappy and the marriage is irrevocably broken, they should be allowed to set free from that bond.

Also, section 31 of the act, even protects those children and gives them the tag of legitimacy. Overall, just like the code in Goa, it prohibits polygamy to all individuals (Including muslims) and does not recognise practices of halala, iddat and triple talaq.

²² The Uttarakhand Civil Code, 2024, Acts of Uttarakhand State Legislature, (2024) India.

The uniqueness in this act comes where it allows for live-in relationships to be registered and imposes fine of those who do not register. This gives some form of legitimacy to such relationships and is a step that the entire country can adopt in their legal framework. Such legitimacy also recognises the child born out of such relationships and gives the children. The legitimacy to such relationship, also gives right of inheritance to the children born.

For the time being, we cannot say that the act is purely uniform for the reasons stated. Customs of religions and communities are still recognised.

Law is not often applied as it is written, it is only after some judicial decisions and proper application,

that we can know, how successful this code is.

Impact of UCC on personal laws:

It has not even been a week since the Uttarakhand Civil code, 2024 has been passed and it is facing backlash from various religious groups.

I have even at numerous times in this study, reiterated the significance of personal laws in our Indian framework and how they are inseparable.

The uniform civil code, as though by principle, is not how it is being applied, but the existence of a civil code in two states of India, is a sociological development that needs to be looked upon by the centre and other states.

I say this because personal laws as stated above are discriminatory against other personal laws, or sometimes even against their own followers. To curb this and bring a sense of uniformity, such a law is required.

To understand the impact, we need to first look through the problems posed by personal laws²³ and why have they been labelled to be discriminatory in various landmark judgements.

1. The basic understanding of marriage is different under Hindu Law(a sacramental union), whereas under Islamic law(a civil contract).
2. No personal marriage law allows polygamy except for the Islamic law.
3. For marriage in Islam, the value of a female witness is not equal to the male witness, which shows discrimination.
4. Extra judicial divorce as a remedy is not available to Hindu, Christians, Parsis but only to Mohammedan males.
5. Maintenance can only be taken a wife during the Iddat Period under Islamic law but under other laws, wives are allowed to claim it death or by the order of the court.
6. A husband abandoning a wife under Islam, leads to automatic dissolution but such is not the case, if the wife does the same.

These are just a few issues that need to be corrected.

Going by this, a uniform civil code is a must to ensure uniformity in application to law to all sections of the society, irrespective of the religion.

Speaking in a real sense, after reading the Uttarakhand Civil Code, 2024, the essentials of marriage are similar to that of the Special marriage act, 1954 and Hindu Marriage act, 1955. The act has not even stepped away in declaring child marriages to be void but has only made it voidable.

When we talk in purview of marriage and relationships, the bringing in of the Uniform Civil code in Uttarakhand, has not changed many things except for a compulsory compliance by the rules for all residents of the state and has recognised live-in relationships, which is great by the perspective of welfare.

²³ D.C Manooja, Uniform Civil Code: A Suggestion, Journal of the Indian Law Institute, Vol. 42, No.2/4,448-457(2000).

Even after all this hue and cry for uniformity, we still are allowing customs and usages, and are not governing Sts of the state under this act.

I, personally feel that the model of UCC can never be implemented in its true character, as it'll always have the element of Indian personal laws in it.

Conclusion:

To sum it all up, we'll refer to our research objectives which have been widely discussed through the paper. The first objective was to understand the effect of UCC on Personal Laws (Marriage laws) in India, and it is clear for the Uttarakhand example, that the on paper law is very similar to Hindu Marriage act, and has deterred much except for a few things.

The second objective to understand how the UCC bill passed by the Legislature in Uttarakhand impacts the national outlook on this topic.

The act has just been passed very recently, and is already facing a lot of backlash due to its partially secular nature.

Although, all the disadvantages being kept aside, a UCC is what we were meant to strive for constitutionally. It is already been seen through judgements, that a UCC needs to come in order to negate all complications.

All the discriminations present in the personal laws within them, and each other can only be eliminated through this.

The changes brought in through the Uttarakhand legislature, are transitory, as though it has brought in recognitions to live-in relationship, compulsory registration, legitimacy, etc., there are still some modifications which are required to be brought in to become a proper Uniform Civil Code.

That being said, religion can never be replaced in martial laws in India, and by analysing all the literature, it is clear that people also don't want that. Therefore, the State should strive to create a blend which is uniform, but also respects individual autonomy (For example, under the Uttarakhand UCC, parties are allowed to solemnise through their traditional ways but the act does not limit it to that and allows the parties to solemnise in a way desirable to them).

Lastly, a harmonious construction like is required between the Fundamental rights and DPSP; a similar approach needs to be undertaken to solve the problem of personal laws and adopt a Uniform Civil Code for India.