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# **UNIFORM CIVIL CODE FOR INDIA: ANALYZING THE UTTRAKHAND LAW**

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## **1. INTRODUCTION**

Modi Government in the Centre, reminded of its election promise, is committed to the adoption of a Uniform Civil Code for all Indians. Towards the objective, BJP government in Uttarakhand has enacted its state law and is ready to enforce the same without losing time. This approach of the BJP expresses out its strategy of making UCC a state legislation instead of taking the risk of enacting a Central Act. UCC is a directive of the constitution-makers and its need has been emphasized by the Supreme Court in a host of judgments. The topic gains current relevance when the Prime Minister has announced of enacting such laws in all the BJP-ruled states. This article aims at identifying the need of UCC in the light of a diverse India. While doing so, the author takes support and substance from the historical background of the law. The paper also examines the Uttarakhand legislation to arrive at a conclusion.

## **2. INDIAN DIVERSITY**

‘Unity in Diversity’ is the hallmark of Indian society. It applies in its linguistic, cultural, religious senses. As per available statistics, we have 122 officially recognized languages of which 22 are listed in the Eighth Schedule of the Constitution, thereby admitting equal number of cultural varieties<sup>1</sup>. 2011 census identified religious diversity as well by projecting 79.8% of

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<sup>1</sup> Available at: <https://rajbhasha.gov.in/en/languages-included-eighth-schedule-indian-constitution> (Last visited on December 30, 2024).

population Hindus, 14.7% Muslims, 2.3% Christians. 1.7% Sikhs and the remaining 2% belonging to other religions or those falling in the unspecified category<sup>2</sup>. Again this is not the whole of this diversification. Each religion has its sub-categories which can be called denominations under the class of a particular religion. The difference of geographies, climates and distance of propagations and practices from the modern metropolitan approach further multiplies the cultural diversity of India into a large multitude – subscribing to different ceremonies and prescribed relations for marriages, adoption and other matters embraced in the personal laws. Such diversity exist not only inter-state but also intra-states. The cosmopolitan character of metropolitan and many other urban centers of India further adds to the numbers and complexities of such diversities. In this context, the cultural Indian societies detached by urban facilities of development are equally required to be borne in mind while discussing the need for UCC as a national or state law.

### **3. UCC THE HISTORICAL OVERVIEW**

Uniform Civil Code is different from the Uniform Criminal Code. Whereas the latter is acceptably required to be a *sine qua non* in all modern societies, the former is desirably needed to be adopted in all political systems wedded to the concepts of democracy and secularism. The difference of such approach is based on the variation of laws and/or matters to be covered under the Civil Code. It is more pertinent a question of discussion and debate in all societies having risen from traditions and practices of diverse religions and cultures. It is for this reason that the adoption of UCC in countries like France, Germany and Turkey etc. does not *ipso facto* justify its enactment in India.

A bird's eye view of the historical past of our laws along the yardstick of uniform codes in India, we are reminded of the Ancient Period when the source of law was Hindu Scriptures,

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<sup>2</sup> Available at: <https://pib.gov.in/newsite/printrelease.aspx> (last visited on December 30, 2024).

where under even criminal laws were not uniform. We note same facts constituting different kinds of offences, and more apparently different punishments prescribed for different class/caste of persons committing the same offence. (Manu Smriti) Even in the medieval period, the Mughal rule invoked Shariat law subscribing to such differences. The British rule in India was initially through East India Company. It is during this phase of legal history, however late, that the talk of uniform codes was realized. Under the Charter Act, a committee was constituted under the chairmanship of Lord Macaulay to suggest codification of laws. The committee submitted the report for codification of certain laws like criminal code (IPC and Cr.P.C.), Contract law and Evidence law. The first Four Law Commissions successfully undertook this task. The British rulers thought it apt to avoid codification in personal laws falling in the civil law category, and followed the policy of such governance by the religious practices and traditions of the large number of Indian communities. A futile attempt was made by Sir Henry Maine to introduce the Special Marriage Act in 1873. Nevertheless, some progressive uniform laws came on the statute book during this period viz; Age of Consent Act, 1891, Child Marriage Restraint Act, 1929, Hindu Inheritance (Removal of Disabilities) Act, 1928 and Indian Succession Act, 1925.

The actual debate on Uniform Civil Code began in the Constituent Assembly while deliberating the provisions of the Constitution to be adopted in independent India where there surfaced a large scale differences over the issue. Dr. B.R. Ambedkar, K.M. Munshi and Minoos Masani favoured UCC adoption for achieving gender justice, secularism and national unity. On the other hand, Ismail Sahib, Naziruddin Ahmad and Pocker Sahib Bahadur opposed UCC advancing arguments of religious freedom as a fundamental right, autonomy of communities and the possible risk of disharmony. The main objection was that it would amount to a tyranny to the minority. Mr. K.M. Munshi, as Member of the Drafting Committee responded to it as, "Nowhere in advanced Muslim countries the

personal law of each minority has been recognized as so sacrosanct as to prevent the enactment of a civil code. Take for instance Turkey or Egypt, No minority in these countries, is permitted to have such rights. But I go further, When the Shariat Act was passed, or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied”.<sup>3</sup> The result of this long debate was adopting a middle path i.e. putting UCC in the category of Directive Principles of State Policy (Draft Article 35 and adopted 44). As it exists today, Article 44 provides, “The State shall endeavour to secure the citizens a Uniform Civil Code throughout the territory of India”<sup>4</sup>.

The Supreme Court of India has also reminded of this obligation of the State in some judgments. In Shah Bano’s case (1985), the Apex Court observed that for application of s. 125 Cr.P.C., the law of maintenance shall equally apply to Muslims and other communities. The need for uniform law was also emphasized by the Court. The fall-out of this case was enactment of Central Act for Muslims, (The Muslim Women (Protection of Rights of Divorce) Act, 1986), making the coverage under personal law and Cr.P.C. at the option of the husband, which was again set aside by the Supreme Court<sup>5</sup>. The case of Sarla Mudgal v. Union of India<sup>6</sup> is an important case where the Apex Court underscored the need for implementing the directive on UCC enactment. The case related to conversion of Hindu husband to Islam for entering into another marriage with divorce to the Hindu wife under Muslim Law practices or without it, since Muslim Law permits more than one marriage. The Supreme Court rejected the plea declaring that such husband shall be governed by the Hindu law. In John Vallamattom v. Union of India<sup>7</sup>, the Supreme Court dealt with succession of a Christian and declared s. 118 of Indian Succession

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<sup>3</sup> VII, Constitutional Assembly Debates 547-48.

<sup>4</sup> Bare Act, The Constitution of India, Part-IV, p. 23

<sup>5</sup> Danial Latifi v. Union of India, AIR 2001 SC 3958

<sup>6</sup> AIR 1995 SC 1531

<sup>7</sup> (2003) 6 SCC 611

Act as *ultra vires* of the Constitution for the reason of its discriminating nature towards Christians. The judgment pointed out the discrepancies in personal laws of the country and reiterated the need for UCC. *Shraya Bano v. Union of India*<sup>8</sup> is another landmark judgment towards UCC enactment. In this case Triple Talaq under Muslim personal law was declared discriminatory and illegal. Juvenile Justice (Care and Protection of Children) Act can be named a step in the direction of UCC as it allows adoption across communities.

Law Commissions of India have addressed the issue of having UCC. 21st Law Commission headed by Justice Balbir Singh Chauhan observing that time demanded preserving the diversity of religions and cultures through separate personal laws. However, the Commission suggested that family laws across religions (Hindu coparcenary and succession rights and Muslim polygamy) need to be made more gender-just. The 22<sup>nd</sup> Law Commission, continuing the debate of its predecessor asked for large scale opinion of people. Nothing final has come out, however, the Report prepared by the Centre for Policy and Research for submission to the Commission found that majority of Indians belonging to all religions (including Islam) favor UCC to deal with personal legal matters like marriage, divorce, adoption and succession etc. if such a Code accommodates reasonable customs and ceremonies being practiced since long past.<sup>9</sup> Professor M.P. Jain similarly comments in the context of *Danial Latifi* judgment, “These problems can be eliminated only if a law is made in conformity with the present day social and economic realities. The orthodox Muslim opinion has

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<sup>8</sup> [(2017) 9 SCC 1]

<sup>9</sup> The Report of Survey Published in *Jalandhar Tribune*, June 29, 2023 entitled: “99.8% in favour of Uniform Civil Code, reveals survey.” The sample included 143 Hindus, 66 Sikhs, 10 Christians, 10 Muslims, 2 Buddhists and 2 Jains. 99.4% respondents, however, opposed Same Sex Marriages. 78% respondents expressed that only adoption through Court should be given recognition in the UCC.

characterized this ruling as anti- shariat while the liberal opinion accepts the ruling as progressive”.<sup>10</sup>

Goa is the only State of India which has the UCC in operation because it continued with it after becoming part of India in 1961. The State of Uttarakhand has recently enacted its State UCC and is ready to enforce it.

#### **4. UTTARAKHAND TAKING THE LEAD**

Uttarakhand is the first Indian State to enact the Uniform Civil Code entitled “The Uniform Civil Code of Uttarakhand, 2024 (Act 01 of 2024), having become the Act passed by the State Legislature and receiving the assent of the President of India on 7<sup>th</sup> February, 2024. The Act is enforced from 27<sup>th</sup> January, 2025 after completing all the requirements therefore, if we go by the statement of the Chief Minister, Mr. Pushkar Singh Dhami<sup>11</sup>.

The Act is quite exhaustive running into 392 sections and 7 Schedules. Four Parts of the Code embrace Marriage & Divorce, Succession- both Intestate and Testamentary, and also Live-in Relationships. Outlining the objective, the Code states, “To govern and regulate the laws relating to marriage and divorce, succession, live-in-relationships, and matters related thereto”. As such, the Code does not embrace Adoption and Guardianship. The Maintenance part has only been covered to the extent of Maintenance *pendente lite* and expenses of proceedings (section 33) and Permanent alimony and maintenance (under s. 34). The foundation on which the law has been placed is that of Hindu Marriage Act, 1955, Indian Succession Act, 1925 and Live-in-relationships as covered under the Protection of Women from Domestic Violence Act, 2005.

Dealing in brief the salient features of the Act, we note that the Code has been made applicable to all the residents of Uttarakhand including those who reside outside the state territories but to whom the Code extends (s. 1(3)). However, two categories of residents have been excluded from its application. These are: (i)

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<sup>10</sup> M.P. Jain, Indian Constitutional Law, 1512 (6<sup>th</sup> edition (2010).

<sup>11</sup> Published in Hindustan Times on 11 January, 2024.

The members of Scheduled Tribes covered under clause (25) of Article 366 read with Article 342 of the Constitution; and (ii) Persons and the group of persons whose customary rights have been protected under Part XXI of the Constitution, making temporary, transitional and special provisions (s.2 of UCC).

The conditions for marriage, as mentioned under section 4 are the same as under the Hindu Marriage Act viz; marriage between a man and a woman, boy having completed age of 21 years and girl of 18 years, capable of giving a valid consent and parties not within prohibited degrees of relationship as listed under Schedule 1. Like HMA, the Code recognizes the exception of such prohibition if the 'custom or usage governing one of them permits marriage between the two but with a rider that 'such customs and usage are not against the public policy and morality'. Similarly, section 5 provides for ceremonies of solemnizing/contracting marriage 'in accordance with religious beliefs, practices, customary rites and ceremonies' of the parties. These have been illustrated (u/s 5) but not limited to Sapatpadi, Ashirvad, Nikah, Holy Union, Anand Karaj and others covered (but not limited to) under the Special Marriage Act, 1954 and Arya Samaj Marriage Validation Act, 1937. The registration of marriage under the Code (s. 6) has been made mandatory if the marriage is solemnized within the State or even outside the State and at least one party to the marriage was/is resident of the state on the day of such solemnization with a Proviso that conditions of a valid marriage under sections 4 and 5 are fulfilled. The state had already enacted for compulsory registration of marriages in the year 2010 (Uttarakhand Compulsory Registration of Marriage Act, 2010). Apart from permitting registration of marriages after 26/03/2010, the Code mandates registration of all marriages after the commencement of this Code if the conditions of validity under it are fulfilled (s.6), however, section 20 provides that mere non-registration of such marriages, non-delivery of memorandum to sub-registrar and non-issuing of certificate of marriage do not invalidate the marriages.

On the point of divorce again, the format is the same as that of HMA. It permits divorce petition to be filed by either party on grounds viz; voluntary sexual intercourse by other party after marriage, treating with cruelty, desertion for a minimum of 2 years, conversion to another religion, incurably of unsound mind, incurable communicable venereal disease, renouncing the world, not heard of alive for at least 7 years, solemnized/contracted another marriage. The ground of 'failed to comply with an order of maintenance passed by a competent court' and a minimum of one year has passed thereafter has also been added. (section 25). However, adultery and incurable leprosy have not been mentioned as grounds in the Code. (s. 25) Section 29 of the Code further provides in unambiguous terms that all marriages solemnized or contracted after or before the Code coming into force can be dissolved only under the provisions of this Code and not under any custom, usage, tradition, personal law of any party or any other law contrary to the provisions of this Code. In the name of Incidental Proceedings, the Code gives relief to both spouses a right to get maintenance or permanent alimony and maintenance with suit expenses, if the petitioner is devoid of means. (ss. 33,34) covering even the multiple wives.

As regards the Code provisions on Succession, the significant change is its embracement of both Testamentary and Intestate Successions. Part 2 of the Code deal with it in an elaborate way in line with the HSA and the Indian Succession Act. Chapter 1 of this Part makes provision for Intestate Succession. Like HMA, it recognizes the preference of Class 1 heirs over the Class-2 heirs and computation of degrees and the right of the child in mother's womb. Source wherefrom the property came is not relevant under the Code.

Sections 49 to 60 in the Code provide for Intestate Succession along the principles adopted under the HSA. General Rules of such succession are that class –1 heirs equally take shares in the property in case of living relations and in case of a predeceased child, his/her branch shall take one share; and the Class-2 heirs succeed only if no one from class 1 heirs is alive. And in such a



case, first entry heirs shall have first right and those in second entry to succeed only if no heir is there from first entry; and similarly, third entry heirs come after non-existing first and second entry heirs. (Art 51) But, the general rule for each entry is that all heirs of the entry are entitled for equal shares. (Art 52) Rule of class 2 heirs also applies in case of intestate succession by 'other relatives' accruing the right in the total absence of 1<sup>st</sup> and 2<sup>nd</sup> class heirs i.e. "each one of the 'other relatives' of the nearest degree shall take one share each". (Rule under s. 53 explained with an Illustration.) Section 55 of the Code clarifies that child in womb shall have equal right to that of a born child. There is no disqualification to succession if the otherwise qualified heir suffers from any disease, defect or deformity. (60). Two types of disqualifications of a heir have been provided viz., the perpetrator or abettor of murder (58) and where widower or widow of any predeceased relative of an intestate successor has remarried in the lifetime of the intestate from whom succeeding. (57). Rule of property passing over to the Government subject to all obligations and liabilities of the heir under the principle of Escheat has also been recognized. [(49(iv))].

Chapter-2 under Part 2 of the Code with as many as 125 sections gives an exhaustive dealing to the Testamentary Succession in all its aspects, giving illustrations to the provisions as well. The concept and pattern adopted is that of Indian Succession Act, 1925. Section 61 opens the Chapter providing for the persons eligible to make wills, thereby making it unambiguously clear that every adult person with a sound mind may dispose of the property owned by him/her by making a will, making it further clear that person suffering from deafness, dumbness, blindness and an insane or under intoxication/illness may also make the will when he was of sound mind i.e. understanding the effects of his/her act while making the will. The will can be revoked or altered by the testator during all such times when she/he stands competent to dispose of the property by will. The language of the will, as described in more than one sections, must be clear to reasonably understand the property involved and the person(s) in whose

favor the will has been made (s. 81), although the admission of evidence to clear any ambiguity has also been recognized. The concepts of legacy and administration of estate etc. have also been retained in the provisions of this Part in tone and tenor of the Indian Succession Act.

The interesting part of the UCC is the coverage of Live-in Relationship under Part-3 with sections 378 to 389. The objective of so doing appears to be providing for maintenance, legitimacy of children and registration of such legal relations as in the case of marriages under the UCC and also making the law modern. Towards this end, section 378 provides for obligation of partners of the relationship to submit statements in this regard to the Registrar of the area of their living/ ordinarily residing. Section 380 prohibits registration of live-in relationships in any of the following cases:

- (a) The partners are in prohibited degrees of relationship applicable in case of marriage;
- (b) At least one partner is married or already in a live-in relationship;
- (c) At least one of the partners is a minor;
- (d) Consent of one of the partners was obtained by coercion, undue influence, fraud or force including the wrongful or mistaken statement of identity etc.

Section 379 declares children of such relation as legitimate of the couple. Section 384 further provides for termination of the live-in relationship by making a statement to that effect before the Registrar by both partners and by one of them where copy of such statement is given to the other partner for exercising his/her rights. Section 387 provides for punishments if statement of the relationship is not made after 30 days, statements being false or withholding any material fact etc. The punishment prescribed is imprisonment up to 3 months or fine up to Rs. 25,000/-. Section 388 gives right of maintenance to the woman partner if the male partner deserts her. For exercising this right provisions are the same as apply to the wife i.e. maintenance *pendete lite* and permanent alimony with maintenance u/ss. 33 and 34.

## 5. STATE vs. NATIONAL CODE

As we are discussing the need and form of UCC in the background of its enactment in the state of Uttarakhand, it becomes important to know as to whether the desirability of such Code is at the national level or the state units of mother India are free to make a choice for it in the given federal structure of the Constitution?

To find a satisfactory convincing answer, we may refer to the Seventh Schedule, provision of Article 44 as a Directive Principle of State Policy and its interpretation by the Supreme Court.

Article 246 explains the scope of the federal feature outlined in 3 Lists of legislative relations between the Union and the States. This constitutional provision clarifies that Parliament has exclusive right to legislate on matters enumerated in the Union List (List I), State Legislature enjoy exclusive jurisdiction to legislate on matters in the State List i.e. List II and both Union and State Legislatures can make laws on any matter given under List III i.e. the Concurrent List. In certain situations, however, Parliament can legislate on a matter enumerated in the State List and under the Concurrent List also the Union has an edge to legislate. This is why, we name our federation characterized 'with a unitary bias'. The Supreme Court in *State of Kerala & Others v. M/S Mar Appraem Kari Co. Ltd. & Anr.*,<sup>12</sup> clarified that the principle of federal supremacy of Article 246 can only be resorted when there exists a non-conciliatory conflict between the entries in Union and State Lists. The Apex Court has emphasized the liberal meanings of words for the items used. In the same tone, *TMA Pai v. State of Karnataka*<sup>13</sup> delineated the boundaries as these entries are not powers of legislation but fields of legislation i.e. only legislative heads demarcating the area of enacting laws. Referring to the three Lists, we find personal laws their place at entry 5 under the Concurrent List which includes marriage and divorce, adoption, intestacy and succession.

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<sup>12</sup> (2012) 7 SCC 106)

<sup>13</sup> ( 2002) 8 SCC 451

Now coming to Article 44 as a Directive of State Policy; it 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”. The plain language of the Article demands enactment of a national code, as can be made out from the words ‘throughout the territory of India’<sup>14</sup>. In this spirit, in *Shah Bano’s* case<sup>15</sup>, it was observed that under Article 44 the State ‘owes a duty of securing a uniform civil code for the citizens of the country’. Likewise, in other landmark cases on the point, the same spirit of such legislative power has been expressed. In *Sarla Mudgal v. Union of India*<sup>16</sup>, the Supreme Court recorded with regret that ‘successive governments in India have been wholly remiss in their duty of implementing the constitutional mandate under Article 44’. It urged the Government of India to have a fresh look at Article 44 and “endeavour to secure for the citizens a uniform civil code throughout the territory of India”. In *Lily Thomas v. Union of India*<sup>17</sup>, the Court clarified that it did not issue a direction in *Sarla Mudgal* but later in *John Vallamattom v. Union of India*<sup>18</sup>, after reviewing the earlier observations of the Apex Court reiterated, “It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies”. M.P. Jain, a celebrated author of Indian Constitutional Law commented, “With the enactment of a uniform civil code, secularism will be strengthened; much of the present-day separation and divisiveness between the various groups in the country will disappear, and India will emerge as a much more cohesive and integrated nation”<sup>19</sup>. An understandable opinion emerging from the Apex

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<sup>14</sup> Bare Act, The Constitution of India, Part-IV, p. 23

<sup>15</sup> *Mohd. Ahmad Khan v. Shah Bano Begam*, (1985)2 SCC 556

<sup>16</sup> AIR 1995 SC 1531

<sup>17</sup> AIR 2000 SC 1650

<sup>18</sup> (2003) 6 SCC 611

<sup>19</sup> (6<sup>th</sup> edition (2010) Lexis Nexis, p. 1511)

Court judgments is a UCC for the country as a whole, but a State level initiative deserves appreciation paving the way for the ultimate fulfillment of the directive as a UCC enacted by the Parliament.

## **6. CONCLUSION**

Uniform Civil Code at the national level is a direction of the constitution-fathers after due and detailed deliberations. It will not cause any discrimination or disharmony, but instead promote and cement national unity, integrity and fraternity as underscored by the highest court of the land. It will make our law modern matching with the present-day needs and requirements of a developed nation. The State owes a duty to enact the UCC for the citizens of India. It is the legislative duty of the secular State, not having any meaning of projecting a religion or tinkering, in any way, with the fundamental right of religious freedom. The well-meaning Indian Muslims and citizens belonging to other religions subscribe to this approach of legislation of a common personal law, allowing the continuance of prevalent practices and customs which are not opposed to public law and policy. The Uttrakhand initiative is a welcome step but the answer lies in enacting a national Uniform Civil Code that may also include adoption and guardianship, providing that maintenance is covered under the criminal procedure law. The circumventing attempt by the past government was not welcomed by intellectuals and the judiciary. The mature Indian draftsmen may take care of making the Code short, simple and showing consideration of personal laws of all religious communities of the country. Contra: Alok Prasana Kumar in his article ‘Uniform Civil Code: A Heedless Quest’<sup>20</sup>, gives the contrary view when he comments in context of Shyara Bano’s writ petition writing, “Perhaps, uniformity itself is no answer to the myriad problems of religion-based personal laws”. On the contrary, Saptarshi Mandal in “Do Personal Laws Get their Authority from Religion or the State – Revisiting

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<sup>20</sup> Economic and Political Weekly, Vol. 51, No. 25, 18 June, 2016

Constitutional Status'<sup>21</sup>, in the same situation pleaded for UCC arguing that 'the authority of personal laws does not come from religion, but from the secular state. She is of the view that the terms "Hindu and Mahomedan laws" were deliberate creations of the colonial state'.

Can 'we the people of India' expect the UCC from the Parliament after 75 years of the constitutional directive? However, it must come after undertaking full discussions and consultations with all categories of stake holders. Razia Patel in 'Indian Muslim Women, Politics of Muslim Personal', likewise suggested "Progressive movements must align their actions to provide reforms in laws that will be closer to the spirit of constitutional values"<sup>22</sup>.

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<sup>21</sup> Economic and Political Weekly, Vol. 51, Issue No. 50, 10 December, 2016

<sup>22</sup> Economic and Political Weekly, Volume 44 Issue No. 44, 31 October, 2009