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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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DECODING THE UNIFORM CIVIL CODE: A CRITICAL ANALYSIS OF UTTARAKHAND'S LANDMARK LEGISLATION

AUTHORED BY - DR. MANOJ KUMAR SHARMA

Assistant Professor,
Government P.G. Law College,
Bharatpur, Rajasthan.

INTRODUCTION

The Uniform Civil Code (UCC) has been a long-debated concept in India, enshrined in Article 44¹ of the Indian Constitution which states “**The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.**”. Recently, Uttarakhand proposed a landmark legislation on the UCC, sparking discussions on its implications and potential benefits.

The Uniform Civil Code (UCC) encompasses a unified set of laws governing personal affairs like marriage, divorce, inheritance, and succession, applicable to all citizens irrespective of their religious background. During the formulation of the constitution, key figures such as Jawaharlal Nehru and Dr. B.R. Ambedkar advocated for the implementation of a Uniform Civil Code (UCC). However, due to resistance from religious fundamentalists and a lack of widespread awareness among the public at that time, the UCC was incorporated into the Directive Principles of State Policy (DPSP) under Article 44. It's worth noting that Article 162² of the Indian Constitution grants executive power to the State, allowing the Legislature to enact laws on certain matters. This authority is further supported by Entry 5 of the Concurrent List in the Seventh Schedule, which specifically addresses various aspects including marriage, divorce, adoption, and succession, among others, allowing for legislation concerning personal laws. Consequently, the establishment of a committee by the state government of Uttarakhand to introduce and enforce a Uniform Civil Code within its jurisdiction aligns with constitutional principles and legislative jurisdiction. In 2024, the government of Uttarakhand, under Pushkar Singh Dhama, demonstrated its commitment to establishing a comprehensive legal framework addressing personal matters, including marriage, divorce, live-in relationships, and succession, regardless of religious affiliation. A five-member

¹ The Constitution of India, 1950, Art 44

² The Constitution of India, 1950, Art162

expert committee, led by retired judge Ranjana Prakash Desai, was appointed by the state government to fulfil its electoral promise. Recently, the committee submitted its recommendations on the UCC to Dharam Singh after examining existing laws related to personal civil matters and suggesting amendments or drafting a new legislation. Subsequently, the UCC Bill draft was presented in the state assembly, following approval from the cabinet, and now has been passed. This article provides an in-depth analysis of the Uttarakhand UCC Bill, examining its features, advantages, and disadvantages and comparing it with the Goa Civil Code.

SUPREME COURT'S STANCE ON UNIFORM CIVIL CODE (UCC)

In the landmark *Shah Bano* case³ of 1985, the Supreme Court ruled in favour of a divorced woman denied maintenance, invoking the provision of Section 125⁴ of the CRPC and also emphasised the need for a uniform civil code applicable to all citizens, irrespective of religion. Subsequent cases like *Sarla Mudgal v. Union of India*⁵ (1995) and *John Vallamattom v. Union of India*⁶ (2003) reiterated this demand. In the 2019 *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira* case⁷, the Court lauded Goa's implementation of a uniform civil code and urged for its nationwide adoption.

LAW COMMISSION'S STANCE ON UNIFORM CIVIL CODE (UCC):

The 21st Law Commission⁸, led by Justice Balbir Singh Chauhan in 2018, stated that a uniform civil code wasn't necessary or desirable at that stage, emphasizing the coexistence of secularism with the country's plurality. It recommended amending discriminatory practices within existing personal laws instead. In acknowledgement of the lapse of time since the initial consultation paper, the 22nd Law Commission, under Justice (Retd) Rituraj Awasthi in 2022, sought opinions from various stakeholders, including the public and religious organizations, on the matter of UCC.

WHAT ARE THE ADVANTAGES OF A UNIFORM CIVIL CODE

1. **Promotes National Integration:** A UCC will foster greater unity and integration across India by unifying diverse religious, cultural, and tribal groups under a single national civil code.

³ Mohd. Ahmed Khan Vs. Shah Bano Begum and Ors. AIR 1985 SC 945, MANU/SC/0194/1985

⁴ The Code of Criminal Procedure, 1973, s 12

⁵ Sarla Mudgal and Ors. vs. Union of India (UOI) and Ors AIR 1995 SC 1531, MANU/SC/0290/1995

⁶ John Vallamattom and Ors. Vs. Union of India AIR 2003 SC 2902, MANU/SC/0480/2003

⁷ Jose Paulo Coutinho Vs. Maria Luiza Valentina Pereira and Ors 2019 20 SCC 85, MANU/SC/1257/2019

⁸ Law Commission of India, Reform of Family Law, 31 August 2018

2. **Reduces Vote Bank Politics:** Implementation of a UCC would diminish the tendency of political parties to engage in divisive vote bank politics during elections.
3. **Addresses Legal Loopholes:** Existing personal laws create a parallel judicial system based on outdated values. A UCC would rectify this by establishing a uniform legal framework.
4. **Symbolizes Progressiveness:** The adoption of a UCC reflects a shift away from caste and religious politics, signalling India's commitment to social progress and development as a modern nation.
5. **Empowers Women:** Religious personal laws often perpetuate gender discrimination and oppression. A UCC would enhance the rights and status of women in Indian society.
6. **Ensures Equality for All Indians:** Equality under the law, including in matters of marriage, inheritance, and land rights. UCC is essential to guarantee equal treatment for all citizens.
7. **Upholds True Secularism:** A UCC does not infringe upon religious freedom but ensures that all individuals are subject to the same legal standards, regardless of religious affiliation.
8. **Reflects Natural Evolution:** Personal laws are outdated and should evolve with changing societal norms and values to uphold human rights and promote justice.
9. **Compliant with Constitutional Provisions:** The principles of a UCC align with the freedom of religion guaranteed by Articles 25 and 26 of the Constitution, reinforcing India's commitment to secularism.
10. **Enhances Legal System Efficiency:** Codifying and unifying personal laws will streamline the legal system, reducing confusion and facilitating more efficient administration of justice by the judiciary.

EXISTING PERSONAL LAWS

Existing laws on marriage and divorce comprise the secular Special Marriage Act (SMA) of 1954, along with various personal laws such as the Hindu Marriage Act of 1955, the Indian Christian Marriages Act of 1872, the Indian Divorce Act of 1869, the Parsi Marriage and Divorce Act of 1936, and both uncodified (Shariat) and codified Muslim laws including the Dissolution of Muslim Marriages Act, the Muslim Women (Protection of Rights on Marriage) Act of 2019, and the Muslim Women (Protection of Rights on Divorce) Act of 1986.

Regarding parent-child relations, guardianship is regulated by laws where natural guardianship is determined by personal laws, while court-appointed guardianship falls under the secular Guardians and Wards Act (GWA) of 1890. These laws typically designate the father as the guardian with decision-making authority over the child and their property, relegating the mother

to the role of custodian. Additionally, children born out of wedlock are often considered "illegitimate" under personal laws, leading to the denial of certain rights, including inheritance. While the Supreme Court has intervened to address this discrimination by allowing mothers to be appointed as guardians in cases where the father fails in his responsibilities and granting inheritance rights in ancestral property to children born from void and voidable marriages, these reforms are primarily within Hindu law. Adoption laws vary, with Hindus, Buddhists, Jains, and Sikhs adopting under the Hindu Adoption and Maintenance Act (HAMA) of 1956, while adoption for all, regardless of religion, is covered under the secular Juvenile Justice (JJ) Act of 2015.

SUMMARY OF THE UTTARAKHAND UCC BILL

The bill encompasses provisions as to the registration of marriages and live-in relationships, polygamy, and certain extrajudicial divorce practices. Additionally, the bill addresses issues related to guardianship, adoption, and the legitimacy of children born out of wedlock or live-in relationships.

Key Features of the Uniform Civil Code (UCC):

1. **Prohibition of Polygamy, Halal, Iddat, Triple Talaq, and Child Marriage:** The UCC prohibits practices such as polygamy, halal, iddat, triple talaq, and child marriage across all religious communities.
2. **Uniform Age for Girls' Marriage:** It establishes a uniform minimum age for girls' marriage across all religions, setting it at 18 years.
3. **Equal Property Share for Women:** The UCC aims to provide equal property rights to women, including Muslim women, previously entitled to only a 25% share under personal laws.
4. **Marriage Ceremonies and Rituals:** Marriages can be solemnized through any ceremonies or rituals applicable to the parties involved.
5. **Prohibition on Bigamy:** Bigamy is prohibited for all communities under the UCC.
6. **Criminalization of Customs Imposing Conditions on Remarriage:** Any customs imposing conditions on remarriage between divorced spouses are criminalized.
7. **Penalization of Extrajudicial Divorce Modes:** Divorce through modes not prescribed under the UCC, such as customary divorce deeds or panchayat divorces, is penalized.
8. **Punishment for Different Forms of Divorce:** Various forms of divorce, including talaq-us-sunnat, talaq-i-biddat, khula, maba'arat, and zihar, are punishable with imprisonment.
9. **Recognition of Mehr and Dower:** Mehr and Dower are acknowledged as payable in

addition to any maintenance under the UCC.

10. **Guardianship and Custody:** The UCC remains silent on guardianship, continuing the prevailing positions under personal laws. The father is designated as the guardian, while the mother is the custodian, with custody of children up to the age of five ordinarily granted to the mother.
11. **Continuation of Certain Acts:** The Hindu Adoption and Maintenance Act (HAMA) and the Juvenile Justice Act (JJ Act) will continue to be applicable.
12. **Non-applicability on the scheduled tribes:** The proposed legislation will exclude individuals belonging to the Scheduled Tribes, constituting less than 3% of the state's populace, from its applicability.
13. **Registration of marriage and live-in relationships:** Under the Bill, while an unregistered marriage remains valid, the failure to register a marriage after the issue of notice by the sub-registrar attracts a fine of Rs 25,000. In the case of non-registration for live-in relationships, the punishment includes imprisonment.

Positive aspects of the Uttarakhand UCC:

The Uttarakhand UCC seeks to promote gender equality by ensuring equal rights for men and women in matters of marriage, inheritance, and divorce. It prohibits discriminatory practices and customs, providing a level playing field for individuals regardless of gender or religious background.

- **A Step Towards Equality:** The UCC Bill ensures that all children, regardless of their parents' marital status, are granted equal rights and legitimacy under the law. This provision eliminates discrimination against children born out of void or voidable marriages and acknowledges their rights on par with those born within wedlock.
- **Protection for Women in Live-in Relationships:** The bill recognizes the rights of women in live-in relationships by mandating maintenance for deserted partners. This provision offers financial support and safeguards their interests in cases of abandonment.
- **Clarity on Marital Status:** By defining live-in relationships as being "like marriage," the bill brings clarity to the legal status of such unions. Children born within these relationships are deemed legitimate, providing them with legal recognition and rights. However, since live-in relationships have been described as being in the "nature of marriage," offspring from cohabitation that doesn't meet this standard may still be considered illegitimate.
- **Prohibition of Polygamy:** The UCC Bill prohibits polygamy, ensuring that individuals

entering into marriage are not already married and are of legal age. This provision promotes monogamy and protects against exploitation or unfair treatment within multiple marriages.

- **Respect for Religious and Cultural Diversity:** The bill respects religious beliefs and cultural practices by allowing marriages to be solemnized according to various customs and rites. This inclusivity ensures that individuals can uphold their traditions while adhering to the principles of the UCC. Marriages can be conducted between a man and a woman according to their religious customs, rites, and ceremonies, such as "Saptapadi," "Ashirvad," "Nikah," "Holy Union," and "Anand Karaj," as specified in laws like The Anand Marriage Act 1909, The Special Marriage Act 1954, and the Arya Marriage Validation Act 1937, among others.
- **Streamlined Divorce Procedures:** The bill introduces a common procedure for divorce, simplifying the process and providing clarity on grounds for dissolution. This empowers individuals to seek divorce on valid grounds such as cruelty, adultery, or desertion, ensuring access to justice and fairness in marital disputes. 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.
- **Enhanced Legal Protection:** Legal experts argue that the registration of live-in relationships will reduce false cases and provide legal sanctity to such unions. This measure not only safeguards the interests of individuals but also contributes to a fair and just legal framework.

Problems with the Uttarakhand UCC Bill:

1. **Inequitable Parental Roles:** Since the UCC is silent on such matters the current law will prevail regarding guardianship. Under the current laws, parental roles are regulated differently based on personal laws and the secular Guardians and Wards Act (GWA), of 1890. The 2018 Law Commission recommendation for equal treatment of both parents in guardianship laws, aiming to address discrimination against mothers, is not incorporated into the Bill.
2. **Adoption Discrepancies:** While Hindus, Buddhists, Jains, and Sikhs can adopt under the Hindu Adoption and Maintenance Act (HAMA), 1956, and adoption is available to all under the Juvenile Justice (JJ) Act, 2015. The Bill mandates registration of live-in relationships but fails to address registration for adoptions under Hindu law, missing an

opportunity for reform.

3. **Enforcement through Criminalization:** The Bill relies on criminalization for enforcement, potentially disproportionately impacting minority communities and enabling misuse of the surveillance regime to harass inter-faith and inter-caste couples.
4. **Intrusive Registration Process:** The requirement for mandatory registration of live-in relationships entails significant intrusion into individuals' privacy and autonomy, with potential consequences including imprisonment for non-compliance, even though registration does not prevent crime. We know this well from data on dowry deaths, domestic violence, sexual abuse and innumerable other acts of physical cruelty that take place even within the protection of matrimony. Even individuals residing in Uttarakhand who are engaged in a live-in relationship outside the state must provide a declaration to the state registrar. Those currently in or considering a live-in arrangement must furnish a statement to the registrar, who will conduct an inquiry, possibly requiring the couple to provide additional evidence or appear for verification. Following the inquiry, the registrar must either register the relationship within 30 days and issue a certificate or decline registration, informing the partners in writing of the denial. Additionally, the bill mandates the registrar to share the live-in relationship statement with the local police station head for record-keeping and, if either partner is under 21, notify their parents or guardians. The bill stipulates penalties for individuals who remain in a live-in relationship for more than a month without submitting the required statement. Offenders, upon conviction by a judicial magistrate, may face imprisonment for up to three months, a fine not exceeding Rs 10,000, or both. Moreover, those found providing false information or withholding details during registration could receive a three-month jail term and a larger fine of Rs 25,000. Failure to submit the live-in relationship statement upon receiving notice may result in a six-month jail term and a Rs 25,000 fine. Additionally, while there are no penal consequences for non-registering a marriage, failing to register a live-in relationship could lead to imprisonment.
5. **Gender Bias in Maintenance Provisions:** Unlike marriage, where maintenance is gender-neutral and available regardless of divorce grounds, maintenance for live-in relationships is only accessible to women and specifically on grounds of desertion.
6. **Infantilization of Women:** Involving parents in the registration process for couples above the legal age of marriage undermines women's autonomy and agency, reinforcing patriarchal attitudes and denying them the right to make independent decisions. Frequently, parents falsely accuse individuals of forced conversions or misrepresenting their religious identity to terminate their daughter's consensual inter-faith relationship. The requirement for legal registration of live-in relationships, many of which may involve

inter-caste and inter-religious couples, raises concerns about increased susceptibility to honour killings and violence.

7. **Moral Policing and Privacy Invasion:** Section 386 allows third-party complaints and intrusive surveillance to perpetuate moral policing and violate individuals' privacy rights, particularly affecting women in inter-faith relationships. The legislation poses significant challenges for these couples, potentially preventing them from renting accommodations without providing their registration documents to landlords. Additionally, it opens the door for interference from neighbours, 'Romeo squads,' local religious groups, and numerous other individuals who may feel empowered to intrude on their privacy and act as moral enforcers. The discrepancy in age requirements between marriage and live-in relationships, where individuals can marry at 18 without parental involvement but must wait until 21 for a live-in arrangement, raises questions.
8. **Legal Lacunas:** Typically, live-in arrangements serve as a period of getting to know one another before considering marriage, if at all. By equating the seriousness of live-in relationships with marriage, the question arises: what distinguishes the two? If a man and a woman share accommodation as roommates, are they required to demonstrate that they are not in a relationship? Moreover, does the provision for a "legal" live-in relationship apply only to heterosexual couples, excluding same-sex couples?
9. **Exclusionary Approach:** The draft fails to address population control measures, excludes Scheduled Tribes, and overlooks the diversity of India's communities, potentially infringing upon fundamental rights and imposing a uniform code unsuitable for various customs and practices.

GOA UCC AND ITS IMPLEMENTATION

The Goa Civil Code stands as the lone instance of a Uniform Civil Code (UCC) in India, adopting a common family law system. Established in the 19th century under Portuguese rule, it persists to this day following Goa's liberation. Some key features include:

- Equal division of income and property between spouses and among children, irrespective of gender.
- Mandatory registration of births, marriages, and deaths, with various provisions for divorce.
- Prohibition of polygamy and triple talaq for Muslims who register their marriages in Goa.
- Joint ownership of all property acquired during marriage, with each spouse entitled to half in case of divorce or death.

- Inheritance laws prevent parents from disinheriting their children entirely, with at least half of their property mandated to be passed down, equally distributed among the children.

Despite its progressive aspects, the Goa Civil Code also has limitations and is not strictly uniform. For instance, Hindu men may have the right to bigamy under specific circumstances outlined in the Codes of Usages and Customs of Gentile Hindus of Goa. In contrast, other communities are prohibited from practising polygamy.

CONCLUSION

Achieving the objectives of the Directive Principles of State Policy (DPSP) and ensuring legal uniformity requires urgent attention and careful consideration. To this end, the following steps should be prioritized:

- Fostering a progressive and open-minded societal outlook through education and awareness programs to comprehend the essence of the Uniform Civil Code (UCC).
- Drafting the UCC with due regard for the interests of all religious communities, ensuring inclusivity and sensitivity.
- Establishment of a committee comprising eminent jurists to oversee the drafting process and maintain uniformity, while also respecting the sentiments of all communities.
- Encouraging proactive involvement from the concerned religious groups to initiate discussions on the UCC, recognizing the sensitivity of the matter.

India's diverse landscape of codified personal laws underscores the need for a cohesive family-related legal framework acceptable to all religious communities. While the majority acknowledges the desirability of a UCC in strengthening national unity, differences persist regarding its timing and implementation approach. Instead of exploiting the issue for political gain, leaders across political and intellectual spheres should prioritize consensus-building. Ultimately, the quest for a UCC is not merely about protecting minority rights or fostering national unity; it is about upholding the inherent dignity of every individual, a principle that personal laws have thus far failed to achieve.