



UNIFORM CIVIL CODE: A WAY TO THE FUTURE OR A DILEMMA OF INDIAN DEMOCRACY

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ABSTRACT

On January 27, 2025, Uttarakhand became the first state in independent India to roll out the Uniform Civil Code; with the chief minister of Uttarakhand, Mr. Pushkar Singh Dhami launching a portal for registration of marriage, succession, divorce, adoption, inheritance, and wills and releasing rules for its implementation of legislation. Shortly, Gujrat announced to become the second state after Uttarakhand to implement UCC. While the topic has always been a major highlight during election campaigns, especially after the 2014 elections, the same has been a controversial topic for debates and discussions nationwide, still; no single decision has ever taken place to implement UCC nationwide. While the controversial topic found its place during pre-independent India, the drafts, and legislation were still being developed, on one hand, the topic was a center for debate during the constituent assembly, which was responsible for drafting the constitution of India. But neither in 1947 nor today in 2025 we find a single legislation that can be firmly provided to the lawmakers of India to draft a set of specific civil guidelines for the people of India in matters of marriage succession, inheritance, and Adoption. The arguments and counterarguments for the implementation of a uniform Civil Code have their importance and views; it's nowhere to be denied that the endless debate on uniform Civil Code gives an insight into our country's societal approach. Finally, the implementation of UCC in Uttarakhand also points out the debates regarding the live-in relationship of same-sex couples, the conflict of personal and civil laws, and the perception of our society towards it.

Keywords: Uniform Civil Code, Constituent Assembly, Article 44, Hindu Marriage Act 1956, Muslim Law, Nikah Halala, Coparcenary Indigenous Tribes Of India, Triple Talaq.

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WHAT IS UNIFORM CIVIL CODE?

Article 44 of the constitution of India states that “The state shall endeavor to secure for the citizens a uniform Civil Code throughout the territory of India”. The code brings attention to the civil guidelines which need to be ‘uniform’ and not ‘common’ for everyone in the sense that uniform means are similar for anything for everyone while common means that things must be the same in a similar set of conditions hence, a set of civil guidelines, the word uniform was used to codify the rules. In a broader sense, UCC is the code of civil nature that applies to all the persons uniformly in that jurisdiction. The issues of a civil nature such as marriage, divorce, succession, adoption, and inheritance governed under UCC and are Implemented irrespective of the culture, and religion of an individual.

HISTORY OF UNIFORM CIVIL CODE

During the ancient and medieval period of India; the laws were mostly based on customs and traditions with ancient laws dating back to the Vedic era where religious textbooks such as shrutis 4 Vedas- Rigveda, Samaveda, Yajurveda, Atharva Veda, were the basic pillars of various customary laws and smritis such as Manu smriti form the backbone of civil suits, the king was the highest authority and his order was considered as final, while the same was practiced during the medieval age in Delhi sultanate and Mughal era where Islam became a dominant religion. Hence, the government and society were entirely based on the sharia (Islamic law), The Quran the holy book of Islam contains the whole of Muslim law of what should be done and what should not be done to be applied.

But for non-Muslims such as Hindus Jains Buddhists, and Sikhs the practice of laws was governed by their religious customs and continued. However, the jizya tax was the additional tax given by the non-muslims if they had to visit any pilgrimage site during Islamic rules such as Delhi sultanate and the Mughal era, and non-muslims work considered zimmi (Persons under Islamic law who were treated as protected subjects with limited rights compared to muslims) So, during the medieval times non-Muslims could only practice their religion and customs within their communities but were not given full legal equality with Muslims. With Diwan-- -Etisalat being the highest Court of Appeal in respect of civil cases and the king or Sultan being the apex judicial authority his decisions were ultimate. While during the colonial era is the time when the story of the uniform Civil Code started. Wherein in 1835 the British government submitted its first-ever report stressing the need for uniformity in the codification of Indian law relating to

civil laws and rules. However, the *lex loci* report of 1840 Suggested that the personal laws of Hindus and Muslims should be excluded from the codification. In 1941, the BN Rau committee was formed to codify Hindu law for the enactment of those acts that were enacted after independence such as the Hindu Marriage Act of 1956.

During the constituent assembly debates, the topic of a uniform Civil Code became one of the most important debate topics, with Mr. M Mohammad Ismail A member of the Madras legislative assembly and member of the constituent assembly for formulating the constitution of India advocating that right to stick and practice one's laws was one of the fundamental rights citing precedence of Yugoslavia, which had a treaty obligation to guarantee to Muslims being in minority and debated that article 35 of the draft constitution(which was inserted as article 44 in the constitution of India as in part 4 also known as directive principles of state policy)Must be avoided.

Meanwhile, Mr. M.A. Ayangar, a member of the constituent assembly debated that for a secular state like India the diversity being the beauty of this country, must have the freedom to practice their religion and culture and should be allowed to practice their laws while the first Prime Minister of India Shri Pandit Jawaharlal Nehru Ji stated that Muslims as a minority community were not ready for reforms of article 44. Mr. K.M. Munshi Stated that UCC could not be tyrannical towards minorities and pointed out that advanced Muslim countries did not regard personal law as untouchable and had implemented civil codes.

Finally, Dr. BR Ambedkar, the father of the Indian constitution stated in a debate of constituent assembly that Now I must confess the dive was very much surprised at the statement for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have several civil acts, such as transfer of property act, negotiable instruments act, uniform in its context and applicable to the whole of the country” but he also advocated that no social justice can be bestowed only by religious judicial overreach but also uniform Civil Code cannot be imposed on a person by the state.

Hence, originally drafted as Article 35 of the Indian constitution the UCC or uniform Civil Code finally renumbered as Article 44 and inserted in part 4 of the constitution of India which is directive principles of state policy, wherein in Articles 36 and 37 the Constitution itself declares that the provisions contained in part 4 are not enforceable by any court but the principles therein

laid down are nevertheless fundamental end the governance of the country and the state must apply these principles in making laws wherever necessary.

THE STATUS OF THE UNIFORM CIVIL CODE IN POST-INDEPENDENT INDIA

The debate for UCC did not come to a halt **and** started again in 1951 with the codification and implementation of Hindu laws such as the Hindu Marriage Act, the Hindu Succession Act, the Hindu Maintenance Act, and the Guardianship and Adoption Act. While senior leaders like Mr. Vallabhai Patel and Dr. Rajendra Prasad Opposed to codification of customary Hindu practices, Dr. B.R Ambedkar Was not satisfied with the codification of the Hindu code as it retained the supremacy of patriarchal bias leading to his resignation. So, after 1956 the codified Hindu laws and uncodified other religious personal laws were enacted.

It was not until 1985, the famous Mohammed Ahmed Khan versus Shah Bano Begum case (1985) That the wife filed a petition seeking maintenance under section 125 of the code of criminal procedure apart from what she got as par sharia or Muslim personal law. Wherein the Supreme Court in its judgement held that “UCC will help national integration by removing disparate laws Which have conflicting ideologies.

In Jorden Deingdeh versus SS Chopra (1985) Court noted that the Indian Divorce Act 1869 a judicial act and the Hindu Marriage Act 1956 are contradictory in nature wherein the Hindu Marriage Act 1956 allows marriage to be dissolved within one year of judicial separation whereas the Indian divorce act does not the court observed and quoted that an issue to be “Totally unsatisfactory state of affairs consequent on the lack of uniform Civil Code.

Whereas in Sarla Mudgal v Union of India (1995) The judgment saw strong statements in support of UCC. When more than 80% of citizens the Hindu population of India has already been through under codified personal laws, there is no justification whatsoever to keep in abeyance the introduction of a uniform Civil Code and justice one year after this case in Pannalal Bansilal Pitti versus State of Andhra Pradesh (1996) The court observed. The directive principles of the constitution visualize diversity and attempt to foster uniformity among people of different faiths, a uniform law, though is highly desirable, enacting it in one go perhaps may be counterproductive to the unity and integrity of the nation. In Shabnam Hashmi versus Union of India (2014) Involving adoption, the court observed that the Juvenile Justice Act is a small step to reach UCC.

The court held that personal laws and customs must be followed and honored but cannot be the basis for legislation. The recent judgment of Shayra Bano versus Union of India (2017) or the famous triple talaq case Again started the debate on religion, personal laws, and UCC where the court concluded that This leads to the clear understanding that the constitution requires the state to provide for a uniform Civil Code to remedy and assuage maladies. Hence, from time to time the judiciary of our country has stressed the importance and necessity of a uniform Civil Code throughout the country and the legislation has always been in a very perplexed situation about whether to implement UCC or not.

EXAMPLES OF UNIFORM CIVIL CODE IN INDIA

The Portuguese Civil Code of Goa

One of the most popular examples of a uniform civil code is the Portuguese civil code of Goa Which is in force in Goa, Daman, and Diu since 1867. Keeping in mind, during the Portuguese colonial era in Goa it was the Portuguese who enforced a uniform Civil Code over Goa and the surrounding areas; this tradition is followed till today even after Goa got its independence from Portugal's rule in 1961 at the time of the liberation of Goa from the Portuguese rule, the Goa and Daman and Diu administration act 1962 was passed whose Section 4 clause (1) reads Continuance of existing laws and their adaptation.

All laws in force immediately before the appointed day in Goa, Daman, and Diu or any part thereof shall continue to be in force therein until amended, or repealed by a competent legislature or competent authority. The Supreme Court in 2019, held that the Portuguese Civil Code, 1867 is now an Indian law that applies only to the people of Goa with a condition of who or whose parents or grandparents were governed by it before December 20, 1961.

With provisions for communion of assets which gives the wife half right in all the assets of the husband, who cannot dispose of them without his wife's consent, registration of marriage regardless of caste religion is necessary; equal treatment of sons and daughters in succession is a major highlight of goan Civil Code. The major factor behind the code in force in the state was perhaps it shaped the Society of Goa from generations with the laws of marriage commerce succession, divorce, inheritance, and adoption this makes this code more interesting than 165 years Society of Goa has incorporated discourse in their lives.

A ROAD TO THE FUTURE: THE UTTARAKHAND UNIFORM CIVIL CODE

In January 2025, Uttarakhand became the first Indian state which enforce a uniform Civil Code under Article 44 of the constitution of India post-independence. Which again started the debates around this issue. The uniform Civil Code of Uttarakhand gives key provisions relating to civil laws of society such as its applicability to all the residents of Uttarakhand whether they are domicile or not except for the tribal communities of the state, mandating the registration of marriages within 60 days of solemnization and mandatory registration of life in relationships whether the concerned couple are residents of the state or not.

The provision for the abolition of the coparcenary system is explained under the Hindu Succession Act of 1956 where a coparcenary is defined as the lineage of a male child of up to 4 generations in a Hindu joint family who is allowed to succeed the ancestral property. Banning certain marriage practices predominantly in the Muslim community Such as triple talaq (which is defined under Muslim law as an irrevocable form of divorce that comes under the power of the husband to give divorce to his wife on any valid or indifferent reason,).

And nikah halala (which is a customary practice in the Muslim community as per the Islamic law the Sharia, where if a couple has to reconcile after an irrevocable divorce that is talaq, the woman has to first marry another man and consummate her marriage with that man and after some days she can take the divorce from the second husband to solemnize the marriage with her first husband and to reconcile the first marriage.) Without mentioning the names about which the section 30 clause (1) of the code reads that -Individuals are now entitled to remarry their divorced spouse without preconditions eliminating the practice of nikah halala and men and women are granted equal rights concerning divorce will not be treated as divorce till the competent court has not declared the separation as divorce. Hence these are some of the main important provisions regarding the uniform Civil Code of Uttarakhand.

UCC: AS A DILEMMA FOR INDIAN DEMOCRACY

As every coin has 2 sides, while many arguments support the implementation of a uniform Civil Code certain arguments given by the experts and critics as UCC can become a dilemma for Indian democracy some of the basic points are First, India is considered as the land of 'unity in diversity' So practically it would be very challenging for the government to implement UCC throughout the country. India is the home of people from various castes, religions, And communities.

For instance, the Khasi Garo tribes of Meghalaya, as well as the Nayar tribes of Kerala, are matrilineal in their structure where the culture, wealth, and property are passed down through the female line; having a strong presence of women in household and mothers being the custodians of the family tribes it would be very egregious to forcefully implement UCC which mostly talks about the reforms in patriarchal mindset. Hence in some way, UCC here gives unequal treatment to the Indigenous tribes of India which have their distinct culture language laws, and identity and constitute about 8.6% or 10.4 2,000,000 people in over 705 Ethnic groups the constitution does not allow any unequal treatment with such a huge population of the country.

Secondly, taking into the context the Uttarakhand UCC where the Definition of live-in relationships as described in the Protection of Women from Domestic Violence Act 2005, confirms partners as only 'man' and 'woman', Whereas the code leaves out LGBTQ+ couples and restricts its ambit only 2 heterosexual relationships. Hence it leaves same-sex relationships entirely unprotected.

Thirdly the UCC encroaches on the right of sexual autonomy of an adult which was declared as a fundamental right in *Shakti Vahini versus Union of India* (2018) where the Supreme Court observed that it is an adult right to positive sexual autonomy encompassing the freedom to make one's own choices about and whether and with whom to have sexual interactions.

So the very importance of granting this right is that neither the state nor the adult family can interfere unreasonably with his /her Consensual sexual choices and the age for sexual consent in India is 18 years, but in uniform Civil Code of Uttarakhand it is prescribed that where either of the partner in the live-in relationship is younger than 21 years; the code states that the information of relationship will be sent to that partner's parent or guardian hence being an unjustified violation to the adults right to positive sexual autonomy. The above-mentioned provision can lead by alerting disapproving parents or guardians to enter cast or inter-religion relationships where violence and crimes remain frequent and common.

Lastly, the UCC can also be used for Encroaching on the religious rights of minorities observed by the Supreme Court when stayed the ban Imposed by a private College of Mumbai; where a private College of Mumbai allegedly without the concept of uniform in college imposed a ban on hijabs, caps, and badges of students. Which, the apex court observed that any person based on clothing cannot be prevented from attending college.

Therefore, UCC might be formulated to promote equality among different religious communities but may end up encroaching Rights of minorities can perceive UCC as an encroachment on their religious freedom guaranteed under articles 25 to 30 of fundamental rights in the constitution of India fearing that a common code will neglect their traditions an imposed rules that will be mainly dictated and influenced by majority religious communities.

CONCLUSION

In a nutshell, after covering and discussing all the aspects of uniform Civil Code it can be visualized why the topic of UCC was renumbered as article 44 from article 35 and was put in under part 4 of directive principles of state policy in the constitution of India and still after 78 years of independence and 75 years From the enactment of our constitution, the governments of our country were not able to implement the UCC one major factor comes out to be that, theoretically the concept of UCC gives a glimpse often utopia but in reality in the practical sense to maintain the unity in diversity on the ground the implementation of UCC is not possible as still the diverse society of our country is evolving. So, the time for accepting such a change is not yet suitable for this reform.

For example, Goa UCC's implementation is centuries old, hence the Society of the State accepted the code and followed the code wholeheartedly. Meanwhile upon the implementation of UCC in Uttarakhand post-independence for the first time, it is expected to wait for the time and for the code to show its effectiveness and the success rate in the state. Moreover, certain critics argue that plural democracy is an identity of modern India, therefore, efforts should be made to focus on promoting harmony in plurality rather than blanket uniformity in a flourishing democracy. Just as Justice RM Sahai in Sarla Mudgal versus Union of India Stated progressive laws are welcomed but a suitable atmosphere must be created in which all the sections feel secure enough to sit together and will out the most progressive of their laws, hence the idea of UCC can only be conceptualized and practiced when the code inculcates harmonizing the plurality of India.