



NAVIGATING GAPS: ANALYZING THE LOOPHOLES IN UTTARAKHAND UNIFORM CIVIL CODE

Anuj Gautam* Laxmi Saini*

ABSTRACT

About UCC, as stated in the Directive Principles section, Part IV, Article 44,¹ of the Constitution. UCC calls to unify personal law under a single legal framework, promoting national cohesion. UCC is a legal framework, though it is not enforceable by law. It is a proposal or aim in India to formulate and implement a personal law for citizens which applies to the entire citizens equally, irrespective of their religion, community. And the state has referred to the union law as a unified civil code, as a long-overdue aim of the government. According to the government, in one house, all members have different rules and laws, so how the family is run!? Same as how the country will run with a dual system? However, the final debate and criticism centre on Uttarakhand's Uniform Civil Code (UCC), which attempts to offer a uniform body of rules and regulations that regulate personal affairs, has come under fire for having the ability to restrict individuals' freedoms and rights. The UCC has been beset by defects, issues, and loopholes that undermine its effectiveness and equity, despite its intention to establish a uniform set of laws. In India, there has been discussion over the UCC, which attempts to establish a unified body of laws of all those regulating personal affairs and the influence of Uttarakhand's Uniform Civil Code (UCC) found on women's rights, cultural and religious, and many impacts on minority communities and others like India should have one law for all in matters like marriage, divorce, succession is investigated in this study. The doctrine of essential religious practice needs to address the challenges of the implementation of Article 25. The government's position is that "the first step towards instituting a uniform

*BA LLB, SECOND YEAR, SIDDHARTHA LAW COLLEGE, DEHRADUN.

*BA LLB, SECOND YEAR, SIDDHARTHA LAW COLLEGE, DEHRADUN.

¹ Constitution of India 1950.

civil code was taken in the mid-1950s with the introduction of the Hindu code bills, laws intended to codify and reform Hindu personal laws in India.’’²

Keywords: Constitution, Uttarakhand UCC, Personal law, Hindu law, Muslim law.

INTRODUCTION

In India, UCC has been a controversial topic, especially where many religious and cultural customs coexist. Despite the UCC’s goal of giving all citizens equal rights & protections and aiming to consolidate civil laws for all citizens, removing disparities related to personal laws based on religion. And also promotes gender equality, ensures uniformity in all civil matters, but its application frequently shows a number of flaws and difficulties. The problem and difficulties are that the lack of definitions, as in these provisions, is not clearly defined. And resistance from religious groups, such as religious communities, may resist UCC, arguing it infringes upon their laws. That was creating legal challenges and delays in this implementation. Another was Article 14, Right to Equality, Art 15, Prohibition of Discrimination, and Freedom of Religion, Article 25,³ of the Indian Constitution. Secularism, where the state does not favour any religion over another. It would ensure that all citizens are treated equally under a common set of laws. And the civil code is not being applied uniformly because scheduled tribes have been left out of its ambit, and no mention has been made of the third gender. And according to the 2011 census, the tribal groups make up 2.9% of the state population and, like other tribal communities across India, are protected by the constitution.⁴ As well as public employment norms. Aims of the Uttarakhand UCC include protecting individual rights, guaranteeing gender equality, and harmonising personal laws. Significant challenges are presented by the intricate local customs, religious beliefs, and the current legal system, and there are concerns about how it affects minority communities and their laws. Having a lack of consultation and infringement on Individual rights. The necessity for a critical analysis of the UCC’s practical implications, including problems like including the public’s lack of understanding of it, opposition from different minority community groups, and possible contradictions with current personal laws. Also, the Bill introduces contentious clauses regarding live-in relationships, and it does not replace the Parliamentary succession law governing Hindu Undivided Families, or

² <https://scroll.in/article/1065531/with-gaps-and-overreach-who-does-the-uttarakhand-uniform-civil-code-actually-help>.

³ Constitution of India 1950.

⁴ Constitution of India 1950, art 371 A to I.

HUF, implying that the gender weaknesses in the Hindu Succession Act, 1956, and its subsequent revisions that govern HUFs will prevail.

SIGNIFICANCE OF THE STUDY

This research uses a mixed approach and combines both qualitative and quantitative data. Also, it is significant because it aims to identify the defects, loopholes in the Uttarakhand UCC and their impact on women's rights, minority communities and individual freedom, and also religious as well. The findings of this research will employ a qualitative research design, and will contribute to the existing literature on the UCC and identify the changes that belong to them and inform policies about to need for revisions and amendments to the UCC.

RESEARCH QUESTION ARISES IN IT WAS LIKE

1. What are the defects, problems, and loopholes arising after the implementation of Uttarakhand UCC?
2. How do these defects impact women's rights and individual freedoms, and their rights as well?
3. Whether the Bill regulating Consensual Relationships, as well as Live-in matters, the bill requires live-in partners to submit a "statement" to the Registrar concerned. The registrar has the power to examine the statement and conduct an inquiry into the relationship.

INFRINGING ON INDIVIDUAL AUTONOMY

The bill ignores the foundational reason for a live-in relationship, which is that it lacks the formal structure and obligations of a marriage. Those who are living together enjoy their autonomy in their consensual partnerships, which a marriage cannot.

Live-in relationship: It features in the Uniform Civil Code, which mandates such arrangements to be registered within 30 days. And it proposes to penalise them by imprisoning or fining couples who did not register their live-in status within a month. The challenges faced by young couples who are in a living relationship and live in are found in finding housing for want of documentation covering their status. These provisions rely on the register for habitual criminals. And appear to be designed to promote family, communities, and state control over the personal choices of adults, but against society, India's supreme courts have included live-

in partners in the definition of wife for the interpretation of Section 125⁵ of CrPC. Defects come as if a couples register their live-in relationship status, then why cannot it be considered as a backdoor to court marriage?

And also, according to HMA, 1955, sec 5⁶, the age of the female was 18, and the male was 21. So, if they get married at the age of 18, then why do they need parental consent to register their relationship if they are under 21 years? Violates the right to life and personal liberty. Article 21, which ensures the liberty to make personal choices, including marriage, and any kind of relationship. Freedom to choose their partner, right to privacy, and Autonomy over personal decisions. It infringes on the free decision-making and expression of feelings, protected under Art. 21, which lays stress on the right to life. There is a provision in the UCC that if you do not register your living relationships, you will get the punishment, but on what grounds will be given? How government or even someone prove that you are in a living relationship?

Secularism: Under the 42nd Amendment in 1976, it states that the state remains neutral and respectful towards all religions. It means that the state shall have no religion of its own. It simply means that the government of India should not follow or favour any particular religion; rather, every religion should be favoured equally. The secular state shall not discriminate against anyone based on their religion. Hon'ble Justice Jeevan Reddy, while in this case, *S.R. Bommai v. Union of India*,⁷ held that religion is a matter of individual faith and it cannot be mixed with a secular activity, and also cannot be regulated by the state by enacting a law. But these personal codified laws are religious, not secular. This disparate legal system not only perpetuated division among citizens but also created disparities in rights and obligations.

There is a separation between religion and state, and secularism separates spiritualism from individual faith. The secular state was an anti-religious state. UCC administers the same set of secular civil laws to govern all the citizens of the country. It was not considered secular because it's all matters of religion in the provision of the UCC.

⁵ Code of Criminal Procedure 1973.

⁶ Hindu Marriage Act 1955.

⁷ *S.R. Bommai v Union of India* (1994) 3 SCC 1.

CONFLICT BETWEEN ARTICLES 25 & 26 OF THE INDIAN CONSTITUTION

Article 25 deals with freedom of conscience and free profession, practice, and propagation of religion. Its restrictions on religious rituals in marriage or inheritance law could violate the rights to practice one's faith. It upholds the individual's right to religious freedom and ensures that personal laws based on religion can exist.

The Bare Act states that it protects these rights and restricts the state from intervening in religious matters. Judicial interpretation of essential religious practice in India under Article 25. It safeguards the right of religious practice, stating that the state shall not interfere in such matters. Critics of a UCC argue that imposing uniform laws could infringe upon these individual rights, especially on the matter of religion, minority rights, and their traditional beliefs. Article 25(2)(a) allows the state to regulate any religious practice that has such freedom as is guaranteed by the constitution. Distinguish between religious practice and secular activities associated with a religious institution. The state can regulate or restrict secular activities with religious practice, as well as those unrelated to the religious core aspects.

Shah Bano case 1985, these cases was like brought the issue of gender justice and the need for uniformity in personal laws to the forefront. The Supreme Court issued a judgment in favour of Muslim women who were seeking maintenance from their husbands after divorce. Despite Sec 127 of CrPC (which provided that if a woman has received an amount under personal law, she would not be able to claim maintenance under Sec 125⁸ of CrPC, 1973, after divorce. It was based on Muslim personal law and showed how Muslim women have a low priority even for the secular state of India. Article 26 deals with the freedom to manage religious affairs. It also grants religious denominations the right to manage their religion, including institutions for religious and charitable purposes. And the state also regulates institutions in the interest of public order, morality, and other rights.

REPLACE PERSONAL LAW, WHICH WAS IN PART III OF THE INDIAN CONSTITUTION, ALSO CALLED AS EXISTING LAW, WHICH CAN ALSO BE DEFINED IN ART 372 OF THE INDIAN CONSTITUTION.

Against personal laws: It was which obtained leads to confusion, inconsistency, and injustice because India is a land of a variety of customs and communities, and this can be evident by the

⁸ Constitution of India 1950.

presence of numerous famous cultures and religions. The law and custom have ensured the prevalence of religious diversity, and they have established inter-community tolerance in the country. Concepts like secularism have been enshrined in the Constitution itself, and it is also interpreted particularly in comparison to the personal laws of different religions. It is a complex arrangement in the society that Hindu, Muslim, Parse, and others have their laws that govern matters like marriage, divorce, and adoptions, other related practices including maintenance, inheritance.

As codification of Hindu personal law:

- The Hindu Marriage Act 1955 was enacted and continues to be operative solely for those who are considered as Hindus. It only included those who included themselves as Hindus.
- Muslim Personal Law (Shariat) Act 1937 & dissolution of Muslim marriage act 1939 apply only to Muslims.
- Sikh Marriage Act 1909.

According to these, all the religions are governed under their laws and as per their customs.

CASE LAWS

In *Krishna Singh vs. Mathura Ahir*, the Supreme Court decides part III of the Constitution. They do not touch upon the personal law of parties, and the personal law of parties applies to the recognised authoritative source of personal law. Uttarakhand Uniform Civil Code wants all citizens to be governed under the same law, and they try to replace personal law and then every citizen with a standard set of laws. A country like India is heterogeneous in terms of religious cultures, language, and customs, so because of this, a country with different cultures will not be unified, which means they cannot be governed under the same law.

It is provided by the Article 13(1) of the Constitution of India: “All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.”

In the case of *The State of Bombay v. Narasu Appa Mali*, a question of immense importance was raised before the court that, ‘if at all, any Personal Law or any of its provision violates,

any of the Fundamental Rights guaranteed in Part III of the Constitution of India, whether such Personal Law or its provision, to the extent of such inconsistency, is void?’

The same stance was observed in the 21st law commission report, stating that the nation does not necessarily and not need any uniformity. The formulation of a unified Civil court is neither necessary or not desirable at this stage. To perceive the religious identity of these minority there were given protection under articles 25 to 28, and the constitutional provisions like the 6th schedule, and articles 371 (A) to (I).⁹ These protected states include Assam, Nagaland, Mizoram, Andhra Pradesh, and Goa. However, under the UCC, some exceptions were not included in this. They also attack for leaving the (ST) scheduled Tribes, and if UCC is uniform, then the tribes are left out? UCC also has not mentioned about HINDU UNDIVIDED FAMILY (HUF), which also plays an important role in paying taxes, which gives benefits to the Hindu Community. Also, they don't have any provisions with the third gender and for minority communities. That would mean that tribal women in polygamous relationships are also left unprotected for now in the UCC.

Complexity and Implementation Challenges: UCC is facing complexity because the provision-related implementation is not mentioned in it. And countries with different diversities are suffering from complexity, and also from disputes. This research was conducted to explore areas that aim to provide a comprehensive understanding and comparative study of UCC in India. They show a significant and contentious legal, social, and religious issue faced by the under it.

CONCLUSION

The same stance was observed in the 21st Law Commission report stating that the nation does not necessarily and not need any uniformity. In conclusion, the uniform civil code seeks to promote equality; its implementation must be in harmony with the core values of the Indian Constitution, particularly against Articles 21, 25, and 26. Legal reforms must balance uniformity with respect for individual freedoms, cultural diversity, and religious autonomy. Ensuring that the UCC adheres to constitutional principles will not only make it legally valid but also just and inclusive for all citizens.

⁹ Constitution of India 1950.