

Uniform Civil Code and Uniformity in Legal Prospective in India: An Analysis

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Abstract:

In India Uniform Civil Code(UCC) comes under article 44 of the constitution ,which offer a unified set of laws to it's citizens within the Indian boundaries. UCC is long pending poll promise by BHARTIY JANTA PARTY(BJP).This Paper focused on current states of UCC in India and recently implementation of UCC in Uttarakhand state. Making live -in-relationship legal recognition by registration ,how will impact on Uttarakhand and Indian culture? The detail analysis has been done in this paper.

Keywords: Uniform Civil Code, Article 44, Constitution, BJP, Uttarakhand.

Introduction

Uniform Civil Code (Hereinafter referred to as UCC) That is mention in article 44 of our constitution under Directive Principles of State Policies Part-4 is long pending poll promise of BJP. There are two type of Law in India, Criminal Law and Civil Law, in criminal matter law is same for all regardless their religion, gender, caste, race etc. while in civil matter each religion has its own personal law, marriage, devotion and succession.

Under UCC civil code all citizens regardless of gender, sex orientation, their religion, affiliation would be bound by the same set of law. It is based on the premise that there is no connection between religious and the law in advance society. This is because the majority of personal laws are based on religious scriptures and other material from numerous communities, which creates a great deal of social division. Consequently, the UCC mandate that everyone follow the same common law.

The concept of UCC represents a pivotal and often contentious aspect of legal, social, political discourse in many countries around the world. Essentially, a UCC is a legal framework that seeks to replace our harmonize diverse personal laws that governed matters such as marriage, divorce, inheritance and succession with a single uniform set of civil laws applicable to all citizen. This concept raised a plethora of complex questions and challenges, touching upon issues of individual rights, culture diversity of societal norms.

The Indian constitution provides four personal laws based on religion, which has led to disparities in various areas, especially with regard to gender right. The debate over implementing a UCC in India has sparked intense discussion and polarized opinions.

Constituent assembly debates on UCC

The apprehensions and questions raised in the constituent assembly have over the years engaged many legal minds, and arguments both in favour of it, and opposition to it have remained relevant. And therefore, the voice of wisdoms heard in assembly need to be revisited in our to understand and appreciate what

founding father thought about it, and how they wished it to be. Such and important provisions of the constitution having social political implication cannot be debated about with revisiting the foundational movements that saved the control and content of article 44 of the constitution.

In constituent assembly, apprehension were raised as to the impact and need of such a civil court. The apprehension were primarily expressed by the members belonging to minority communities. Many questions were put forth in the assemblies. One such question was “whether it was possible and desirable to have uniform code of law for a country so vast as this is.” Ambedkar, to quote him extenso replied thus *“We have in this country a uniform code of law covering almost every aspect of human relationship. We have a uniform of complete criminal code operating through out the country which is contained in the penal code and criminal procedure code. We have the law of transfer of property which deals with property relations and which is operative through out the country. Then there are negotiable instrument act; and I can cite innumerable enactments which would prove that this country has practically a civil code, uniform in its content and applicable to the whole of the country. The only province the civil has not been able to invade so far is marriage and succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have Article 35 (Article 44 under the constitution of India) as part of the constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to be some what misplace for the simple reason that we had, as a matter of fact covered the whole of lot of field which is covered by Uniform Civil Code in this country. It is therefore, too late now to ask the question whether we could do it as I say we have already done it.”¹*

In order to assuage the apprehension and fear of the members belonging to minor community, Ambedkar observed : (Article 44) merely proposes that the state shall endeavor to secure a civil code for the citizen of the country. It does not say that after the code is framed the state shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may take a provision by way of making a beginning that the code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in initial stage the application of the code may be purely voluntary. Parliament may feel the ground by such method².

As regards the question of uniform civil code *vis-à-vis* personal law, Mahboob Ali Baig speaking on the issue in the assembly observed that:the words civil code do not cover the strictly personal law of a citizen. The civil court covers laws of this kind: Law of Property, Transfer of Property, Law of Contract, Law of Evidence Act etc. The law as observed by particular religious community is not covered by Article 35...if for any reason the framers of this Article have got in their mind that the personal law of the citizen is also covered by the expression civil code” I wish to submit that they are overlooking the vary important fact of the personal law being so much dear and near to certain religious communities³.

Mr. Mohamad Ismail Sahib speaking on the draft article 35, which later was to be article 44 under the constitution of India, said : the right to follow personal law is part of the way of life those people who are following such laws; it is part of their religion and their culture. If anything is done affecting the personal law, it will be tantamount to interference with the way of life of those people who have been observing this laws for generation and ages. This secular state which we are trying to create should not do anything to interfere with the way of life and religion of the people. The matter of retaining personal law is nothing new. We have precedent in European countries⁴.

Therefore he suggest a proviso to be added to the article which read thus : “provided that any group, section or community of people shall not be obliged to give up its own personal laws in case it has such a law.” Ismail Sahib while acknowledging the fact that the idea behind a uniform civil code was to secure

harmony through uniformity, observed that bringing such uniformity did not require regimentation of the civil laws of the people including the personal laws. He believed that “such regimentation will bring discontent and harmony will be effected. But if people are allowed to follow their own personal law, there will be no discontent or disaffection. Every section of the people, being free to follow his own personal will not come in conflict with others⁵.

Be that as it may, as Mohamad Ghouse concludes, the constituent assembly refused to make the Muslim Law immutable and inviolable and that in its opinion the state could enact laws to reform and replace the personal laws by a common civil code, under article 25(2), as a major of social welfare and reform⁶.

1. Supreme Court and High Court’s Landmark judgment that supports UCC

When the judiciary has rendered progressive ruling on issues pertaining to personal laws of religious matter of any community, there have been times where the public has either protest or refuse to fully recognize or accept the ruling.

1.1 Shabanu Judgment.

In Mohamad Ahmed Khan versus Shabanu Begum, the Supreme Court upheld the judgment delivered by the Madhya Pradesh High court granting maintenance to Shabanu Begum by her husband under section 125 of the Code of Criminal Procedure, 1973. But according to muslim personal law, a husband must only provide for his divorced wife the “iddat”. The muslim community perceived the ruling as challenge to their religious and personal laws. Following the ruling, the muslim community and organisations, such as the muslim personal law board, have begun to demonstrate. The pacify muslim community and addressing this issue effectively, the government of India has passed the muslim woman (protected of right on divorce) act 1986⁷. The act has nullified Shahbano case to a very large extend and found a midway by providing an option under section 5 of the Act, to the party’s as to whether they are willing to be governed by section 125 of the code of criminal procedure 1973⁸ The legislation was passed with sole intention to pacify muslim minority community. It is clear example where the people were not ready to accept the judgment saying that it was not less than interference in their personal laws guaranteed by the Indian constitution.

1.2 Sandhara Judgment

In Nikhil Soni versus Union of India,⁹ A petition was filed by Nikhil Soni in High court of Rajasthan under article 226 of the Indian constitution. The petitioner prayed before the court seeking a banned on santhara practice. It is religious Vow in Jain community where aged people stop eating in order to achieve salvation. The petitioner contained that the practice of santhara an offence under section 309 of Indian Penal Code and the same time violative of article 21 of the Indian constitution. It was further submitted before the court that voluntary fast unto death amount to attempt to commit suicide under section 309 of Indian Penal Code. The High Court was unable to accept the santhara practice is an essential religious practice to be protected under article 25 and 26 of the Indian Constitution.

After careful examination of matter, the High Court of Rajasthan declare that the practice of santhara amount to an offence of attempt to commit suicide under section 309 of Indian Penal Code. The Code further directed further government to take initiative to stop this practice. However, a group of Jain community filed an appeal in the Supreme court of India and challenged the High Court Ruling on ground of being violative of religious rights protected under article 25 and 26 of Indian Constitution. Three judge bench supreme court headed by H. N. Dattu CJI has a stay the High Court Judgment. The petitioner has claimed the practice of santhara is an integral part of Jain religion¹⁰. It must also be noted that the member

of Jain community have protest against the judgment delivered by Rajasthan High Court and people were not happy with such ruling. The community got pacified only after the top court could not stop the practice of santhara which is a clear offence under criminal laws, rather the court was more inclined to make the Jain community happy.

1.3 Tripple Talaq Judgement

The Supreme Court of India in Shayara Banu versus Union of India¹¹ has struck down the practice of instant talaq and declare the same as unconstitutional and unislamic. The constitutional bench was divided by 3:2 to summarize, the majority judgment was of the view that instant talaq (triple talaq) is not part of basic tenets of Islamic law. Moreover, this practice is also not sanctioned by Holi Quran. Various muslim organizations including All India Muslim Personal Law Board have criticized the ruling saying that the judgment is interference in religious right of muslim community.

However, minority opinion delivered by J.S. Kehar, CJI, and Abdul Nazeer, J. disagreed with the majority view and rule that “religion is matter of faith, and not of logic. It is not open to a court to accept an egalitarian approach, over a practice which constitute an integral part of religion.” The minority opinion, understanding the importance religion in people’s life further observed as, we cannot accept the practitioner’s claim, because the challenge raises is in respect of an issue of personal law which has constitutional protection. Hence, the minority opinion has accorded constitutional protections to personal laws including the practice of instant talaq.

The parliament of India has passed Triple Talaq Act¹² criminalizing the practice of triple talaq which enables the muslim man to instantly pronounced talaq. But, again calling the passing of the bill as a black day of India’s democracy, the muslim personal law board challenged the legislation before the apex court¹³.

1.4 Sabrimala Judgment

Another instance where judgment dealing with personal law was passed and the same was opposed to a vary large extent was Indian young lawyer association versus the state of Kerala¹⁴. Where the court has allowed the entry to woman in Sabarimala Temple. A five judge constitution bench headed by Justice Deepak Mishra remarkably observed that the provision of Kerala Hindu Place of public worship rules 1965¹⁵ Which has authorized the restrictions, amounts to gender discrimination and violated the right of hindu women to enter into Sabrimala Temple. D.Y. Chandrachud, J., who was also part of the same bench, described the old age practice of denying entry to woman of menstruating age as untouchability, his lordship further observed that, “social exclusion of woman, based on menstrual status, is a form of untouchability which is an anathema to constitutional values.”

1.5 John Vallamattom versus Union of India (2003)

In this case the supreme court of India discussed the concept of UCC and its constitutional validity. While it did not mandate the implementation of UCC, the court emphasis the need for a common civil code, particularly in matter of marriage, divorce and succession¹⁶.

1.6 Sarla Mudgal versus Union of India 1995

This case highlighted the issue of bigamy in India and conflict between personal laws and Indian Penal Code. The supreme court held that a hindu man who converted to islam solely for the purpose of contracting a second marriage without divorcing his first wife would be guilty of bigamy under the Indian Penal Code. The case underscores the need of uniformity in laws related to marriage and bigamy¹⁷.

1.7 Denial Latifi versus Union of India 2001

This case addressed the issue of maintenance of muslim woman after divorce. The supreme court of India

clarified that Muslim woman, like woman from other religions, have the right to maintenance under section 125 of the Code of Criminal Procedure. The judgment touched upon need for gender equality and uniformity in maintenance laws¹⁸.

1.8 Ahmedabad Woman Action Group (AWAG) versus Union of India 1997

This case involved a challenge to the practice of tripal talaq among muslim. The supreme court emphasized that the practice violate the fundamental right and principles of gender justice. While the case did not mandate a UCC, it highlighted the need for a legal reforms in personal laws¹⁹.

This cases illustrate the ongoing debate in India over the need for a uniform civil code and challenges posed by persona laws based on religious and customary practices. While this case have not led to the immediate implementation of UCC, they have contributed to discussion on gender equality, individual rights, and legal pluralism in the country.

2. Law Commission Report on UCC

The law commission of India after receiving public views in its report on reform in personal laws²⁰ concluded that the UCC is neither necessary nor desirable. Discarding the possibility of implementing the UCC in present time, B.S. Chauhan, the chairman of Law commission remarkably observed that “cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integration of the nation”. However, he said that “the enactment of the UCC in piecemeal manner would be in tuned with the spirit of Article 44, the attempt here is to invite attention to one particular consideration that must weigh with the commission as it undertakes this exercise denovo”. It further went on to say that “ a unified nation did not necessarily need to have uniformity and that efforts have to be made to reconcile our diversity with universal and indisputable argument on human rights. Differences did not always imply discrimination in a rubust democracy²¹.

Hence, the law commission of India has also not supported the idea of implementing the uniform civil code at this stage.

3. Current status of UCC

The UCC reinforced India’s commitment to secularism and constitutional ideals by bridging religious divides and guaranteeing uniformity in civil laws. A more just and egalitarian society is the end goal and its essential is to promote inclusion equality and the protection of individual right.

In a progressive development, the Uttarakhand became the first state in India which passed a UCC, titled *The Uniform civil code of Uttarakhand, 2024 (Act No. 03 of 2024)*. It is a watershed moment in India’s post independence history and served as model for other states. The Uttarakhand government had formed a committee led by retired supreme court judge Ranjana Prakash Desai to prepare a draft for the UCC in 2022. The committee consisting of retired judge Pramod Kohli, social activist Manu Gaur, former Uttarakhand chief secretary Shatrughan Sinha, and vice chancellor of the Doon University, Surekha Dangwal, compiled a draft report spanning over 740 page, divided into four volume²².

In exercise of the powers conferred by subsection (2) of section 1, 48, 389 and 391 of the uniform civil code, Uttarakhand 2024 (act no. 03 of 2024) appoints the date of 27 January, 2025 as the date on which the said court come into force. The code, in its opening statement is stated “to govern and regulate the law relating to marriage and divorce, succession, living relationship, and matter related thereto”. The jurisdiction of the act extend to the whole of the state of Uttarakhand and applies also to the resident of Uttarakhand who resides outside the territory. The act excludes the member of schedule tribes and the

group of persons who customary rights are protected under part XXI of the constitution of India. The whole act is organized into four separate part. The first deals with legislation regarding marriage and divorce. The second pertain to succession, further divided into intestate and testamentary succession. Part three deals with live in relationship while part four cover miscellaneous issue including repeal and saving clause.

Part 1 : Provision regarding marriage and divorce

Part 1 of the UCC Uttarakhand exclusively focused the provision of marriage and divorce. Regardless of the religion professed by the party, this act is uniform for all. Section 4 of the code mention the condition of marriage. Conditions of marriage are stated to in relation to a man and woman. Hence, the court does not recognize a same sex marriage, sub clause 1 of section 4 stated neither party has a spouse living at the time of marriage, so the polygamy stand prohibited. Age for marriage is fixed to be 21 years for man and 18 years for woman mentioned in sub clause iii of section 4. Marriage is not permitted within the degree of prohibited relationship unless the customs or usage governing one of them permits marriage between the two, provided that such customs and usage are not against the public policies and moralities stated in sub clause iv of section 4. At the same time of marriage party should be capable of giving a valid consent and must not suffer from a mental disorder of such a kind or an extent so as to be unfit for marriage and should not be subject to recurrent attack of insanity²³.

Any marriage procured in contravention of the provision of the code is made punishable with 6 months imprisonment and a fine. Section 5 of the code stated the marriage may be solemnized between a man and woman in accordance with the religious belief, practices, customary rights and ceremonies including but not limited to Saptri, Ashirwad, Nikah, holy union, anand karaj Aryan marriage act 1909 as well as under, but not limited to the special marriage act, 1954 and Arya Marriage validation act 1937.

All marriages solemnized in the state or outside the state, if one of the parties is resident of the state is required to be compulsorily registered under section 6 of the code. Provided that the conditions under section 4 and requirements of section 5 should be fulfilled. Registration is also necessary from the date of commencement of Uttarakhand compulsory registration of marriage act 2010 (Uttarakhand Act No. 19 of 2010). If already registered under the same act, a declaration of the same effect is required to be filled under subsection 1 of section 7 of UCC Uttarakhand 2020 within a period of six month from the commencement of this code before the sub registrar.

Under section 8 of the code, registration is also mandatory of any decree of divorce or nullity of marriage. Registration of such decree passed by a court outside the jurisdiction of the state of Uttarakhand, where at least one of the parties is resident of Uttarakhand is mandatory as well under subsection (2) of section 8. The state government shall appoint a person as it considers appropriate not below the rank of secretary to the government of Uttarakhand to be the Registrar General for the state and shall also appoint Registrar for any areas as it considers appropriate under sub section (1) of section 12.

Under sub section (1) of section 25, divorce can be obtained on ground of adultery, cruelty, desertion of period not less than two years, conversion to another religion, being accruable of unsound mind or mental disorder of such a kind, or extent that the petitioner cannot reason able leave with the respondent. Under sub section (3) of section 5, a wife can also present a petition for dissolution of marriage on additional ground of husband has been guilty of rap or any other kind of unnatural sexual offence, husband had more than one wife from marriage solemnized before the commencement of this court.

No divorce/ judicial separation can be obtained in any other manner except in accordance with the provision of this code, not with standing any uses, custom, tradition, personal law of any party to the

marriage under section 29 of the code. Any dissolve of marriage, which is not in accordance with code, is made punishable with imprisonment of three years and fine under sub section (2) of section 32.

After analyzing the condition of marriage and ground for divorce, it is observed the code seek to prohibit polygamy, child marriage, tripal talaq, practice of nikah halal, iddat etc. regardless of the religions or belief of the party. It is also mandatory for all to follow the provision of the code, by making provision of compulsory registration.

Part – 2 Succession

Part 2 of this code is devoted to the provision regarding succession. The UCC applicable if any individual dies without making a WILL (intestate succession) if there is a WILL then testamentary succession will be applied. The UCC introduced a concept of class I and class II legal heir as well as introducing two residual category of other relatives under section 49 of the code. Under sub section (1) of section 49 of UCC envisages development of estate first among the class I heir who would enjoy equal share in the estate. If there is no heir of class I, then upon the heir being the relative specified in class II of schedule II of this code under sub clause (ii) of section 49. In case there are no class I and class II surviving legal heir, estate will be passed on to other relatives.

The succession laws of Hindus and Christians are already codified under the Hindu Succession Act, 1956, and the Indian Succession Act 1925 respectively²⁴. By analyzing the code, it is clear that UCC the impact inheritance law of muslim. Muslim personal laws are not codified and not enacted by the central government. The muslims are governed by the muslim's personal laws (Sariayat) application act 1937 enacted by the parliament. The act itself states that muslims will be governed according to their customary practices, hence, there is no codified central law that governed the intestate succession²⁵.

In Hindu Succession Act 1956, the father is included in class II heir. In case the deceased is a hindu male. The class I heir of the hindu male, as per hindu law, are son; daughter, widow, mother, son/daughter of a pre-deceased son/daughter among others²⁶. In UCC both parents the mother and father are elevated as class I heir under rule 6 section 51 provided that in case both the parents have to be the taken one share and one of them subsequently dies, his/ her interest in that one share shall devolve upon the other. Further the class I heir of the male and female are same under UCC.

According to the Hindu Succession Act 1956, the class I heir of a married Hindu Female do not include her own parents where as class I heir of hindu male include his mother but not father.

Under muslim law on intestate succession, inheritance rights are governed by the principles of fixed share, often resulting in unequal distribution that particularly favour male here. However, there are no fixed share under UCC; it allowed individual to distribute property freely without adhering to any fixed proportion dictated by Islamic law²⁷.

In the Indian succession Act 1925, that governed Christians, under section 33(a), widows are entitled to one third of the deceased's property with the remaining two-third allocated to other lineal deceased's property. If no lineal decedents exists, half of the property would be allotted to the widow. The UCC categorize a widow as class I heir and specifies that all class I here will receive equal share in property. Under section 37 to 40, the Indian Succession Act, parents of deceased do not inherit any share of the property unless there are no lineal decedents under section 42 to 48 of the act. However, the UCC gives parents class I legal heir status. They get a collective share and in case one dies, the other get the full share under rule 6 of section 51.

Part 3 : Live-in relationship

The Uniform Civil Code Uttarakhand is first of its kind of legislation in India to regulate the live-in relat-

ionship in part 3 of this code. Under sub section (4)(b) of section 3 define live in relationship of this code as “ a relationship between man and woman (herein after referred to as partner), who cohabit in a shared household through a relationship in nature of marriage, provided such relationship is not prohibited under the part 3 of this act. Shared household means live-in under one roof accommodate, or in a household owned jointly or by one of them or any other accommodation.

Under subsection (1) of section 378 of this code, it shall be obligatory for partner to a live-in relationship within a state whether they are resident of Uttarakhand or not, to submit a statement of live-in relationship to the registrar. Under section 380, registration of live-in relationship not permitted where the partner are within the degree of prohibited relationship provided that the prohibition will not apply to person whose custom and usage permit the relationship, provided further that such custom and usage are not against the public policy and morality. Where at least one of the persons is married or is already in live-in relationship, at least one of the persons is minor, where the consent of the one the partners was obtained by force, coercion, undue influence or fraud, the live-in relationship may be terminated by both or either of them. For that purpose, they are required to submit a signed statement of termination in a prescribed format to the concerned registrar under section 384. Section 382 is stated that registration under this part is only for record purpose, but the statement of live-in relationship is to be forwarded by the registrar to the local police station again for the record purpose under sub section (1) of section 385. If both of any partner failed to submit statement of such relationship, the registrar, either of his or her on motion or all receipt of complaint or information in this regard, shall be notice required such partner to submit the statement in prescribed manner within 30 days under section 386. Live-in relationship for more than one month without submitting the statement shall be punished on conviction by a judicial magistrate with imprisonment for a term which may extend to a three month or with fine not exceeding 10,000/- or with both under subsection (1) of section 387. If failed to submit the statement of live-in relationship being required by notice shall be punished on conviction by a judicial magistrate with imprisonment for a term maximum to 6 month or a fine of 25,000/- or with both.

Any child of live-in relationship shall be legitimate child of a couple under section 379 of the code.

Section 388 describe that, if a woman get deserted by her live-in partner, she shall be entitled to claim maintenance from her live-in partner for which, she can approach an appropriate court in the same way as prescribed for a married couple.

Conclusion:

If any contradiction between UCC and Central Law, Hindu and Christian community can escape from the UCC applicability on account of article 254 of the constitution which gave supremacy of central law in occupied fields because in heritage laws of Hindu and Christian are codified. In case of Muslim, there is no central codified law. So there intestate succession will happen according to UCC. In India, till now there was no any legislation, rule, custom on the matter regulating live-in relationship. While India is known for its cultural diversity, live in relationship is totally new concept for our culture. This is the effect of globalization and westernization. UCC Uttarakhand is the first piece of legislation in India which provide legal recognition to the live-in relationship. This recognition will change the societal norms in modern day in India. The positive and negative aspect of this recognition, judicial application, response of the society and impact on youth need to be observed. It is necessary to ensure that the provision of this code, particularly the claims of maintenance, should not be misused as being done in many legislations like dowry case, domestic violence case, rape case, etc.

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