
THE FEASIBILITY, COMPLICATIONS, AND CONTRADICTIONS WITH INDIA'S CURRENT UCC FRAMEWORK

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PREFACE

Uniform Civil Code has been a question since the time of the formation of the Constitution of India. This was added as a Directive principle of state policy under Article 44 of the Constitution by the lawmakers to ensure that once India achieved a level of social well-being and all communities came together, one uniform law could be made to govern everyone, but in a country with 75 hindus, 5 percent christines, 2 percent Sikhs where laws Lex loci the members belonging to one religion have laws based on their own Indigenous law that have been going on for hundreds of years, it would be very difficult to create a law that would be acceptable to all and not contradict with other religions's customary practices. This especially poses a problem within the muslims, where practices change intra religion, such as the Hanafi school of thought and the Sharia school of thought, having different Consensus ad Idem ages. Law Commission of India in its 185th Index (2002)¹ said that a Uniform Civil Code (UCC) is neither necessary nor desirable at this stage. Since then, the social and political outlook has changed substantially, and as of 6 February 2024, a Uttarakhand Uniform Civil Code had been tabled, which on 7 February 2024, was passed by the Uttarakhand legislative assembly. Post this, many UCC bills have been tabled in many state legislative assemblies and have a very large consensus over their passing. The UCC reinforces the principle of equal citizenship, aligning with our democratic values. Legal scholars such as Granville Austin have discussed the importance of this principle in our constitutional framework. India's social fabric is intricately woven with threads of diversity. Disparate personal laws can sometimes lead to social conflicts. Legal scholars like Upendra Baxi have argued that a UCC can contribute to social harmony by eliminating disparities arising from different personal laws. In a country like India, it is very difficult to maintain the concept of secularism, but the uniform civil code shall provide a streamlined way by which we will be able to unite the country, and no one shall be able to discriminate against another person on the basis of religion. Also, in the cases

¹ Law Comm'n of India, 185th Report on Review of the Indian Evidence Act, 1872 (2002).

of State of Bombay vs Narasu Appa Mali² and Lily Thomas vs the Union of India³, the court was clear that UCC would make India more secular.

Abstract

This paper discusses how the model UCC that has been passed by the Uttarakhand legislative assembly, even though it has managed to provide a very strong framework, is still not enough to include all religions and create a clashfree law. The paper goes on to highlight some of the issues in the Uttrakhand UCC and some violations that can be seen in the Uttrakhand UCC with the general and specific laws. It focuses on solutions that can also be implemented with respect to the UCC as it stands to take place as the model UCC for the entire country.

Main Body

The term Uniform Civil Code has three words with a very vast individual meaning. "Uniform" means something that is similar without exception. This means that there will be one general law governing all people irrespective of their community, caste, area, etc.

The term "Civil" holds a very flexible meaning. It can be used in several situations with several meanings. According to dictionaries, it means relating to individuals. In Black's Law Dictionary, it is defined as relating to private rights and remedies sought for by civil actions as contrasted with criminal proceedings".⁴

The term "Code" has been derived from a Latin word meaning codex, which translates to a book. "Code" can also be used as a collection of a system of laws.

The addition of the uniform civil code in the DPSP of the constitution was done in the hope that one day India would become a secular state free from discrimination, and one law governing all religions could be created. India has already had a civil code, though it has not been deemed a "uniform" one. Various judgments by the Goa High Court and the Supreme Court have ensured that the "Portuguese Civil Code" is indeed not a uniform one. This was properly established in Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira⁵.

² State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84 (India).

³ Lily Thomas v. Union of India, (2000) 6 SCC 224 (India).

⁴ Civil Law, Black's Law Dictionary (11th ed. 2019).

⁵ Jose Paulo Coutinho v. Maria Luiza Valentina Pereira, (2019) 9 S.C.C. 538 (India).

In India, most laws have been made according to customary practices belonging to a particular religion; these have been called as personal laws. There is a reason these laws are called personal laws, as they have been made to accommodate all customs that are being followed by a group of people belonging to a particular religion. Hence, it becomes rather difficult for the drafting committees of the Uniform Code to inculcate all customary practices in a manner that would not contradict the personal laws of two different religions. There are laws in a country that have been made to ensure that all communities get a fair chance of equal representation. This was also added as a rule in the Uttarakhand Uniform Civil Code that no customary practice shall be stopped or violated with respect to the things written in the act, yet in muslim personal law, polygamy has been allowed, whereas in the Hindu personal laws, it has been barred and has also been declared as a ground for divorce with complete liability exemption. In the Uttarakhand UCC, which has been said to be the model UCC for the entire country, polygamy has been completely banned along with child marriage. In several schools of thought in the muslim subcategorisation, it has been seen that the age of consent differs with different schools, such as the Hanifa school of thought presumes the age of maturity to be when the female child achieves the first menstrual cycle, which can vary from 13-15 years on average which is in clear contradiction with the Indian Majority Act, 1875 section 3(1)⁶ which defines the age of majority to eighteen or above. The same age of consent and majority is followed by the Hindu personal law. Similar issues can be seen with tribal populations that have been the constitutional protection of customary practices under Articles 371A to 371J of the Indian Constitution⁷. This will also pose a huge problem, as they will still be governed by their customary laws or will be governed by the Nagaland Village and Area Councils Act, 1978, which will pass all judgments on the basis of socially accepted customary practices.

Under the Registration Act 1908⁸, according to the Act, it clearly says that the registration jurisdiction is determined by the location or the residence of the parties involved, not their residence at the time, but rule 378 of the Uttarakhand UCC⁹ makes it mandatory for the registration in UCC even while not being residents of Uttarakhand. There is no clear jurisdiction defined as to what the regulations would be if someone decides to renounce their domicile rights. This creates a potential breach of the doctrine of territorial nexus, which

⁶ Indian Majority Act, No. 9 of 1875, § 3(1), INDIA CODE

⁷ India Const. arts. 371A–371J.

⁸ The Registration Act, No. 16 of 1908, India Code (1908).

⁹ Uttarakhand Uniform Civil Code Act, Rule 378, Uttarakhand UCC Rules, Uttarakhand (2025).

derives its powers from Article 245 of the Indian Constitution¹⁰. This is clearly a breach of jurisdiction, and if CSR rules¹¹ are to be applied to the registrar like all registrars, he can be suspended, fined or punished for this breach as well. This would also potentially lead to a violation under the Contempt of Courts Act, 1971¹², which could lead to a jail term to be prescribed to the registrar for acting out of his scope of employment.

The Hindu Marriage Act, section 5¹³ says that the bride and groom shall not be in sapindas of each other, which says that the bride and groom shall not have a common relative for five previous generations, but when we see the NSS 76th round 201 report¹⁴, it says that over 16% marriages happening in Andhra Pradesh and Tamil Nadu seem to be happening within blood relatives of the bride and groom even though it has not been a customary practice which shows that there are clearly problems in the implementation of the current laws which needs to be fixed before a UCC can be imposed as the constituent assembly said that once all laws are being followed properly and once India has achieved complete secularism, only then will a Uniform Civil Code be of use and make sense in its implementation.

Section 6(2) of the Uttarakhand Uniform Civil Code¹⁵ allows the registrar to conduct an enquiry in the manner prescribed under clause (a) of rule 7(1)¹⁶; before registering a manner which is a clear breach of privacy and a violation of Article 21¹⁷ as established in K.S. Puttaswamy v. Union of India, 2017¹⁸. Further in clause 3(b) of the principal act, the registrar is allowed to reject the application made by the applicants for the registration of their marriage. This can only be raised when the registrar is deemed that one of the applicants can not marry the other. This violates the principle established in Shafin Jahan v. Asokan K.M¹⁹, which said that the right to choose a person for marriage is a fundamental right. These violations can lead the Uttarakhand Uniform Civil Code to be declared void under the ambit of Article 13 of the Constitution of India²⁰. The power to reject a marriage application has been given to the

¹⁰ India Const. art. 245.

¹¹ Central Civil Services (Classification, Control and Appeal) Rules, 1965, India.

¹² The Contempt of Courts Act, No. 70 of 1971, India Code (1971).

¹³ The Hindu Marriage Act, No. 25 of 1955, § 5, India Code (1955).

¹⁴ Ministry of Statistics & Programme Implementation, Gov't of India, Nat'l Sample Survey Office, Drinking Water, Sanitation, Hygiene and Housing Condition in India, NSS 76th Round (July– December 2018) (Nov. 2019).

¹⁵ Uniform Civil Code of Uttarakhand Act, § 6(2), Act No. 1 of 2024 (Uttarakhand).

¹⁶ Uniform Civil Code Rules (Uttarakhand) 2025, r. 7(1)(a).

¹⁷ India Const. art. 21.

¹⁸ K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., (2017) 10 S.C.C. 1 (India).

¹⁹ Shafin Jahan v. Asokan K.M., (2018) 16 S.C.C. 368 (India).

²⁰ INDIA CONST. art. 13.

registrar under section 381(3) of the Uttarakhand UCC, which violates the principles of the mentioned judgment.

Section 17(1) imposes a fine for not registering the marriages, but doesn't specify a punishment for not paying the fines. It also says that not paying a fine would not invalidate a marriage. In other words, this essentially means that a fine can be imposed on a person, and it is entirely up to their discretion to pay it or not, and even if they do not pay it, there would be no harm done. This concludes that the fine is nothing but a bureaucratic error and has no real-world application. There is a single doctrine called Testamentary rules for Hindus and Christians. The Indian Succession Act under Section 57²¹ gives the testator absolute testamentary capacity. The same provision has been made for the Hindus in the Hindu Succession Act. However, in Muslim personal Law, testamentary capacity is limited to one-third of the property. UCC would not be able to overthrow these existing provisions, as these are all ruled out as customary practices by the Supreme Court in its several judgments preceding the UCC.

In *Madhu Kishwar v. State Of Bihar*²² it was held by the court that where they succeed as heirs by intestate succession to their father's, brother's or husband's estate and inherit said property equally with male heir according to the general provisions of Hindu Succession Act 1956, therefore why are we talking about a UCC for tribals when they have their rights from Supreme Court? This is a question that has been raised as a question upon the validity of the opinion given for the UCC on tribals and is yet to be answered. Their constitutional protections provide a strong and bulletproof framework to protect the tribal rights, but a law governing all religions except for a particular group would also not fall under the protections of Article 14, reasonable restrictions or intelligible differentia.

Conclusion-

The discussion about the Uniform Civil Code (UCC) is not just about laws; it touches the deeply socio-political concern of India's identity. The constitution's Article 44 puts the UCC as one of the Direct Principles of State Policy. It is meant as a goal to achieve equality and secularism by having one civil code for everyone. The Constitutional framers understood India's cultural, religious, and tribal diversity and therefore saw the need for flexibility. Over the past seventy years, this discussion has heated up, especially after the Uttarakhand UCC was

²¹ The Indian Succession Act, No. 39 of 1925, § 57 (India).

²² *Madhu Kishwar v. State of Bihar*, (1996) 5 S.C.C. 125 (India).

passed and has since been a point of reference for other states.

The Uttarakhand UCC has been a shift as it has introduced termination of polygamous marriages, abolition of child marriages, and the registration of marriages. These changes, although they appear progressive, have constitutional issues and complications. For example, the provisions under Sections 378 and 381 of the Uttarakhand UCC seem to breach the doctrine of territorial nexus under Article 245 and infringe on the rights guaranteed under Articles 14 and 21. The case of *K.S. Puttuswamy v. Union of India* and *Shafin Jahan v. Asokan K.M.* underscores that the right to privacy and the right to choose one's partner are inviolable aspects of personal liberty.

Tribal populations in India pose yet another layer of complexity due to constitutional protections afforded to them under Articles 371A to 371J. The case of *Madhu Kishwar v. State of Bihar*, for instance, illustrates how the judiciary has been protective of the preservation of customary domain, particularly in matters of succession and property. Excluding tribals from the UCC proposal may violate the principle of equality under Article 14, and incorporating them may infringe on autonomy, which is guaranteed constitutionally. This is the tension between the constitutional principle of equality and the principle of accommodation.

Those for the UCC argue that the proposed UCC will further gender justice and secularism by the abolition of discriminatory personal laws. Scholars such as Granville Austin and Upendra Baxi argue that legal pluralism is a threat to the meaning of citizenship. However, there is a critique that India's secularism is substitutionary difference - difference is not erased, but difference is accommodated. Lack of consultation in the case of the UCC, which is more the case of the UCC, is what deepens the social divides rather than bridges them.

A more detailed approach, amendments in a piecemeal manner that are more reflective of cultural attitudes, may provide a framework that will guide us. The problem of personal laws that relate to gross inequality, constitutional guarantees, and the need for inter-community agreement may provide partial fulfilment of a UCC. Only when there is a collective effort from the population as a whole.