
WILLS UNDER THE UTTARAKHAND UNIFORM CIVIL CODE: ISSUES AND CHALLENGES

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ABSTRACT

The Uttarakhand Uniform Civil Code, 2024 (hereinafter by the name of UCC or the Code) marks a historic step in the history of the Indian legal system as the first significant statutory effort by a State Legislature to codify personal law in the areas of marriage, divorce, succession, inheritance and testamentary dispositions under a unified, religion-neutral system. Some of its most significant provisions are those which concern testamentary succession-in other words the law of wills. The Code replaces centuries-old systems of personal law (which apply to Hindus, Muslims, Christians, Parsis and other groups) that the State of Uttarakhand used to apply to the disposal of the property of a person of testamentary capacity on death with a set of rules that apply uniformly to all.

This paper will provide a systematized and analytical study of the provisions in wills under the Uttarakhand UCC. It contextualizes these provisions within the wider conceptual and constitutional context of an equal and uniform civil law in India, critically analyzes the substantive and procedural aspects of testamentary law as codified in the Code, and points out major issues and challenges that have arisen/are likely to arise in implementation. These issues cut across the lines of constitutional legitimacy, religious freedom, gender equality, institutional capacity, and compatibility with the existing central legislation. Drawing a comparative evaluation with the Indian Succession Act, 1925, and some international models, the paper ends with certain normative and policy recommendations to a fairer and more practicable scheme of testamentary law in Uttarakhand. The need to have a Uniform Civil Code in India is as ancient as the Constitution itself. Article 44 of the Constitution of India commits the State to strive to achieve a common civil code to the citizens across the territory of India, and over the course of its 70-year history since the beginning of the Constitution this aspiration has been repeatedly left unfulfilled by the political considerations of reform in the personal law areas that were influenced by religion. Ahmed Khan v. Shah Bano Begum,⁴ and Sarla Mudgal v. Union of India,⁷ pressure on Parliament to promulgate a Uniform Civil Code as a constitutional duty.

In this context, the Government of Uttarakhand formed an Expert Committee

with Justice (Retd.) as its chairperson. In May 2022, Ranjana Prakash Desai was appointed to prepare a Uniform Civil Code to apply to the State. In February 2024, the Committee submitted its report and the Uttarakhand Uniform Civil Code, 2024 was passed by the Uttarakhand Legislative Assembly, and given the assent of the Governor, becoming the first State-level Uniform Civil Code in post-independent India.

Among the items of this law-making framework, the rules of wills and testamentary succession hold a certain special place. The law of wills deals with the very oldest of the personal legal autonomies: the right of a person to decide how his or her accumulated assets should be disposed of when he or she dies. This right was subject to radically different rules under the pre-existing systems of personal law in relation to the religion one belonged to. The testamentary disposition of a third part of the estate without the consent of the heirs, was permitted in Muslim law, based on classical Fiqh, with no power to disinherit an heir beyond this limit, and the Indian Succession Act, 1925, a comparatively modern and comprehensive act, governed Christians and Parsis.

The structure of this article is the following. Part II establishes the conceptual and legal framework in which the UCC is used. Part III contains an analytical discussion of the detailed provisions of the Code that apply to wills. Part IV names and assesses critically the biggest problems and challenges that can be met by these provisions. Part V engages a comparative study with the Indian Succession Act, 1925, as well as some foreign examples. Part VI gives conclusions and particular policy recommendations.

II. Theoretical and legal framework.

A. The constitutional ground of Uniform Civil Legislation.

The Uttarakhand UCC has a constitutional basis that is based on several provisions of the constitution. Article 44, which is observed, expressly instructs the State to secure a uniform civil code.⁹ The Seventh Schedule to the Constitution places in Entry 5 of the Concurrent List marriage and divorce, wills, intestacy and succession and transfer of property and thus, bestows legislative competence on both Parliament and the State Legislatures.

This brings a threshold question of constitutional law: how far can a State Legislature displace an Act of Parliament, the Indian Succession Act, 1925, by a State-specific law on the same topic? Article 254(2)(a) states that where the State law has been assented to by the President, the State law shall remain in force in that State, and the Indian Succession Act, 1925

shall be defeated by the State law, to the extent of the repugnancy.

B. Personal Laws and the Right to Religion: Article 25 and Article 26.

The Articles 25 and 26 of the Constitution, insuring the liberty of conscience and the liberty of profession, practice and propagation of religion, and the liberty of religious denominations to regulate their own internal affairs in matters of religion, has been the classical constitutional objection to a Uniform Civil Code. The Supreme Court has, however, consistently held that the freedom guaranteed by Articles 25 and 26 is not absolute and must be reconciled with other fundamental rights and with laws made by the State relating to social welfare and reform.¹⁵ In *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmana Thirtha Swamiar of Sri Shirur Mutt*,¹⁶ the Court drew the crucial distinction between matters that are "essentially religious" in nature and those which are merely secular practices that have religious associations. Rules governing testamentary succession — the formalities for making a valid will, the capacity to bequeath, and the extent of testamentary freedom — are, in the Court's analytical framework, predominantly secular in character.¹⁷ Their reform by the State is accordingly sustainable as a measure of social welfare and reform under Article 25(2)(b).¹⁸

C. The Theoretical Underpinnings of Testamentary Law

The law of wills is grounded in three foundational doctrines: testamentary freedom, the protection of dependents, and the security of property rights. Testamentary freedom — the autonomy of a property owner to distribute their estate according to their own wishes — is a cornerstone of liberal legal theory and is protected under most modern legal systems.¹⁹ However, this freedom is universally qualified. Every legal system imposes restrictions to protect family members, particularly dependents, from disinheritance. The instrument through which this balance is struck

— between the testator's autonomy and the claims of surviving family — is the most contested terrain in testamentary law reform.

The Uttarakhand UCC attempts to navigate this tension by establishing a framework that is broadly modelled on the Indian Succession Act, 1925, while introducing certain modifications. It adopts a system of partial testamentary freedom, subject to mandatory shares for certain

categories of heirs, and supplements this with procedural requirements designed to ensure authenticity, prevent fraud, and provide a reliable evidentiary record.²⁰

III. A provision analysis in the context of the UTTARAKHAND UNIFORM CIVIL Code with regard to Wills.

A. Scope and Applicability

The Uttarakhand Uniform Civil Code, 2024 is applicable to all individuals domiciled in the State of Uttarakhand, without references to their religion, faith, or community.¹ This is the defining characteristic of the Code and the origin of its transformative value. Interestingly, Scheduled Tribes are not subject to the application of the Code under Article 342 of the Constitution and certain special protections under the Fifth and Sixth Schedules, a matter of legal justification but of much commentary, and discussed in Part IV below.

The rules of the Code on testamentary succession refer to any will made by a person domiciled in Uttarakhand after the date of commencement of the corresponding chapter of the Code. Wills made prior to commencement remain subject to the law which previously applied to the testator. This transitional rule, though to the advantage of protecting vested expectations, generates a dual-system issue in the transitional period which can cause a lot of uncertainty in the probate proceedings.

B. What is a Will and What Must it include?

The Code refers to a will as a legal statement of the intention of an individual with regard to his or her property, which he or she wishes to be executed after his or her death. This definition follows the wording of Section 2(h) of the Indian Succession Act, 1925, with the only important difference that a codified will under UCC must be a registered document. The necessity to be registered is a substantive change to the law that Hindus were subject to, whose personal law the unregistered will was entirely valid.

The requirements of a valid will under the Code are: (i) the testator must have reached the age of majority according to the Indian Majority Act, 1875 and that is eighteen years and the testator must be of sound mind when he/she writes the will; (ii) the will must be in writing; (iii) the will must be signed/ thumb-marked by the testator in the presence of two attesting

Special attention should be paid to the need of mandatory registration. Under the Indian Succession Act, 1925, registration of will is not mandatory to be valid but optional, along with the Registration Act, 1908, which is optional to be valid to prevent fraud, establish authenticity and make a permanent public record of testamentary disposition. Although this is a noble policy explanation, it brings about serious concerns of access and equity which are discussed in Part IV.

C. Testamentary Capacity

The Code states that a person who has reached majority and is of sound mind may make a will.²⁹ A person is considered to be of sound mind to make a will provided at the time of making such a will, he/she can comprehend the nature of the act, the scope of the property being disposed of and the claims of the persons who may have reasonable expectation to benefit. The common law test of testamentary capacity contained in the Code is based upon the famous English case of *Banks v. Goodfellow*,³ which has long been used by Indian courts in proceedings under the Indian Succession Act.

The Code also provides that no will shall be voided simply because it was prepared by a person who was intoxicated, ailing, or aged at the time it was prepared; however, as a matter of law, the testamentary capacity is to be determined at the time of the testamentary disposal and is not to be determined as a general rule on mental health. An individual in a critical state of mental illness might still make a valid will in a lapsed state.

D. Testamentary Freedom and its Limitations: The Provisions of the Reserved Share.

The most controversial and significant provisions of the testamentary chapter of the UCC perhaps are provided in the area of limited testamentary freedom in terms of mandatory reserved shares. The Code also leaves the classical Indian Succession Act system, where there is no defined reserved share given to testators (except that there is a restricted maintenance test under Section 306A), to create a system of a protected share of some classes of heirs.

This forced heirship is an important innovation in Indian law of succession and is inspired by civilian legal tradition, both in France, Germany, and Scotland, and Muslim personal law.

The Code, however, does not go to the extent of adopting the entire classical Muslim rule, which limits testamentary disposition to no more than one-third of the estate in the benefit of non-

heirs, and devotes the rest of the one-fourth of the estate to the surviving spouse and the minor children in fixed shares. This is an intermediate between full testamentary freedom and full forced heirship.

E. Privileged Wills

The Code provides what are called privileged wills, which may be oral or written, does not in any way need to be attested by witnesses, and does not need to be registered. When in writing, it can be signed by the testator or, where a soldier or airman is involved, it can be written entirely in the own hand of the testator without signature; these provisions are quite similar to Section 65 of the Indian Succession Act, 1925, and are an acknowledgment of the practical necessity to permit persons in hazardous or inaccessible locations to make testamentary dispositions.

F. Revocation of Wills and Alteration.

The Code offers a thorough regime of revocation and amendment of wills. The Code preserves the rule that a will is ambulatory, that is, it will not come into force until the time of death and may be revoked at any time, as: (i) by executing another will or a codicil; (ii) by making a written declaration of the revocation in the presence of two witnesses; or (iii) by burning, tearing, destroying or directing another person to destroy the will in the presence of The Code further states that a will made before marriage is revoked, except where it was made in contemplation of the marriage; this is also a policy borrowed by the Indian Succession Act, which states that the testamentary intentions of an individual may alter when marrying, a new social and legal relationship that imposes new obligations. Critics have pointed out, though, that this rule is asymmetrical in the UCC when considering the Code as also providing registration as obligatory in the case of wills: a pre-marriage will that has been registered is at any rate revoked by operation of law upon marriage, requiring a new registration, which incurs extra costs and procedural overheads.

IV. Problems and obstacles to implementation.

A. The Compulsory Registration Requirement: Access, Equity and Practicality.

This is because the need to have wills registered compulsory under the UCC is, according to the evaluation of this article, the operationally most difficult provision of the testamentary chapter. The registration system in India is highly skewed. The sub-registrar offices are fairly

accessible in the urban centers; terrain, distance, and lack of infrastructure severely limit access to registration offices in the hill districts of the Uttarakhand, which cover a large part of the geography of the State.

Registration at the residence of the person making the document is allowed by the Registration Act, 1908, in the case of bodily infirmity, but special application and visits of a registering officer to the home of the testator are necessary, which is cumbersome, time-consuming and subject to considerable delays in practice. The UCC and the Registration Act do not have any provision of expedited or mobile registration service to meet the special demands of testamentary documentation in remote localities, which poses a severe gap.

Registration fee is also an obstacle. Registration fees, stamp duties and incidental charges which come with the registration process create a financial burden which could be disproportionate to individuals with low means. This means that the mandatory registration, instead of guaranteeing universal access to an effective testamentary system, can in effect limit the exercise of testamentary rights to those individuals who have access to registration infrastructure and can afford to use it. This has retrogressive impact on the right to testate.

B. The Scheduled Tribe Exemption and Internal Inconsistency.

The exception of the UCC over Scheduled Tribes has received a lot of academic criticism. The constitutional ground of the exemption is good: the Fifth Schedule of the Constitution and Article 342 of the Constitution stipulate the safeguard of tribal customary laws.

Nevertheless, the exemption has a major internal incoherency to the very aims of the UCC. In case the point of the Code is to guarantee equality before the law to every citizen of Uttarakhand irrespective of religion, the concession that tribal custom may prevail against other communities' custom of personal law will be in logical conflict with the concession that the religious custom may not. This lack of consistency cannot be resolved on any principled basis in the normative framework of the UCC itself, and is prone to judicial review.

Also, the tribal exemption brings up a similar issue with non-tribal members of the same household. The law of testamentary succession is uncertain in mixed families where one of the spouses is a Scheduled Tribe and the other is not. The UCC lacks a conflict-of-laws rule to apply to this situation, and the gap is likely to create expensive and intricate litigation.

D. Gender Equity: Promise Versus Reality.

Proponents of the UCC project it as a historic step towards gender equality, especially in the area of inheritance and testamentary succession. It is supposed that a gender-neutral testamentary code would greatly empower Muslim women who under classical personal law received half the share of a male heir in intestate succession, and were not entitled to receive, in testamentary succession, more than a third of their property.

To start with, the gender-equalizing impact of the UCC is most evident at least in the area of intestate succession as opposed to the area of testamentary succession. The major reforms in the testamentary succession are the abolition of the one-third ceiling on Muslim testators and the creation of an identical minimum share that is irrespective of gender. These are reforms in principle.

But in reality, the exercise of the testamentary rights of women, especially older or rural women, has been harshly limited by social economic, and educational factors which the UCC is silent on. A widow in a rural hill district who is unacquainted with the provisions of the UCC, who is illiterate and who has no access to the services of a lawyer and who has to subsist on the family of her husband is unlikely to carry out a registered will. The Code changes the law on paper, but not the social conditions that should be in place to realize those legal rights. Since, as Professor Flavia Agnes has noted in the context of previous personal law reform debates, legal reform without social transformation is more likely to favor the already empowered, than the structurally disadvantaged.

In addition, the minimum of one-fourth which is progressive in nature might not suffice to a surviving spouse or minor children in instances of large estates or other complicated family set ups. There is no provision in the Code to enable the court to raise this proportion where there is evidence of necessity, as compared with the more open maintenance provisions of the Code of Criminal Procedure (since replaced by BNSS, 2023).

E. Institutional Capacity and Infrastructure Deficits.

Making the testamentary provisions of the UCC in effect involves a major enhancement of institutional infrastructure. The necessary physical infrastructure in the forms of sub-registrar offices, trained registering officers and a sound database management system to store and

retrieve registered wills is all pre-requisite to the functioning of probate courts and the adjudication of testamentary disputes.

The civil court system of Uttarakhand, though functioning, shares all the problems of most Indian States: the pendency of business, obligatory heirship, a new regime of determining testamentary capacity, is likely to result in a substantial growth in the volume of civil litigation in the State without a corresponding growth in judicial resources. This is not an abstract issue: the adoption of the Hindu Succession (Amendment) Act, 2005, which introduced daughters as coparceners, gave rise to a tidal wave of litigation, which is yet to be dealt with by the courts in various States, 20 years later.

The UCC does not also provide very clear procedures necessary to handle probate. Probate a court process that transfers a will to be proved valid and authorizes the executor to act is the subject of the Part IX of the Code of Civil Procedure, 1908 and the Indian Succession Act, 1925, leaving the relationship between these existing procedural frameworks and the new substantive law under the UCC unspecified, potentially creating a procedural conflict and uncertainty.

F. The Oral Will Problem and Online Testamentary Documents.

The demand of the UCC that wills be written and registered creates an associated dilemma, namely the status of communities, especially tribal, nomadic, and the elderly, who have long been accustomed to using verbal testamentary declarations in practice. The oral wills (nuncupative wills) were also accepted under Hindu customary law in some areas under specific conditions. The Rajasthan High Court accepted the validity of oral wills on some customary conditions, 59 and a number of High Courts have applied oral wills in consideration of particular community practices.

The UCC clause of a written, registered will completely dispels the oral will as a valid testamentary instrument. This adds to the strength of evidentiary integrity, but can lead to the possibility of cases, especially where a testator is suddenly incapacitated and cannot use registration facilities, in which the express intentions of the testator are not considered, and the autonomy so much prized by testamentary law is lost. This gap is not properly addressed in the Code and the provisions of privileged will which apply to military personnel are too limited to address it.

Another developing concern is that of digital or electronic wills. Electronic wills are not covered in the Information Technology Act, 2000, which acknowledges the existence of electronic documents, with a clear exception in Section 1(4) read with the Schedule. The silence of the Code on electronic wills is a lost legislative opportunity given the growing digitalization of Indian society and the growing popularity of younger generations who can be classified as digital natives and who may desire to use digital platforms to make estate planning.

G. Interaction with Hindu Succession Act, 1925 and Central Legislation.

The UCC is in effect and in a measure derogation of a number of Central statutes. The most important is the encounter with the Hindu Succession Act, 1956. Along the UCC appears to oust the provisions of the Hindu Succession Act of testamentary succession of Hindus domiciled in Uttarakhand, it is not clear that the question of Mitakshara coparcenary property joint family property under the Mitakshara school of Hindu law is not addressed. Coparcenary property is not a property that belongs to a person but may not in most cases be disposed of by will, a gap that leaves the UCC quite silent and the courts are likely to have to reconcile this by creating a lot of litigation.

Likewise, the Transfer of Property Act, 1882, the law of transfer of property inter vivos, also has some overlap with testamentary law (e.g. the rule against perpetuities and against alienation).

V. COMPARATIVE ANALYSIS

A. Comparison with the Indian Succession Act, 1925.

A comparative analysis of the testamentary clauses of the Uttarakhand UCC and the Indian Succession Act, 1925 indicates that there are continuities and substantial differences. Indian Succession Act, 1925 is the most detailed law on testamentary succession in India and it has been in force since the century ago and has gained a rich history of judicial interpretation.

The Succession Act has a writing and signature and witness attestation requirement on the question of formalities, but no registration requirement to be valid (although it does promote registration).

Both laws have substantially the same testamentary capacity standard, but the UCC codifies the

testamentary capacity in somewhat greater detail.⁶⁸ on privileged wills, the Succession Act contains no forced heirship, whereas the UCC provides a minimum of one-fourth as a protected portion to the spouse and minor children.

The greatest difference between the two instruments is in the area of dispute resolution and probate. Probate, letters of administration, and succession certificates are well-known procedures in Indian Succession Act and practitioners and courts have struggled to understand how to reconcile the substantive provisions of the Code with the procedural structure of the Succession Act.

B. Scottish and French Models of Forced Heirship.

The minimum share that is guarded by the UCC is comparable to the forced heirship regimes of the civilian legal systems. In Scotland, it is the Succession (Scotland) Act 1964 which provides, in the case of a spouse, the prior rights of the Survivor and the legal rights (called *ius relictæ/relictī* by spouses and *ius legitim* by heirs) which a spouse cannot defeat by testamentary disposition. It is a more protective regime than the one-fourth minimum that the UCC provides.

In France, the Articles 912-930-5 of the Civil Code (Code civil) provide the "reserve héréditaire" that secures a certain share of the estate to the children of the testator: one-half with one child, two-thirds with two children, three-fourths with three or more children. The French model is therefore much more protective of the right of children to inheritance, compared to the UCC flat one-fourth minimum.

This is compared with these civilian models and in view of this, the forced heirship provision of the UCC, although novel in the Indian context, is modest in comparison to the international standards. The policy decision of establishing the minimum as one-fourth seems to have been influenced by the aim of maintaining a generous testamentary freedom and giving some security against disinheriting the survivor, but the real protection of one-fourth as an actual protection to a surviving spouse with minor children is questionable.

C. Goa Civil Code: Indian Precedent.

On the Indian front, the State of Goa can provide a valuable comparative model. The regime in Goa is unusual in that it enforces a compulsory community of property between husband and

wife, wills must be authenticated by a notary (equivalent to registration), and there is a stringent forced heirship regime to protect the rights of children.

The Goa example shows that it is possible to make compulsory notarialisation/registration of wills workable in a comparatively small State with sufficient notarial infrastructure; Uttarakhand has topographic issues on a whole new level. The Goan experience further demonstrates that a well- developed institutional infrastructure, including trained notaries, digitized record systems and effective courts, are a precondition to an effective registration-based testamentary system to operate.

VI. CONCLUSION AND SUGGESTIONS

A. Conclusion

The Uttarakhand Uniform Civil Code, 2024 is an iconic law that is the most ambitious effort to reform personal law in post-independent India. Its will and testamentary succession clauses express an order of principles of a religion-neutral, standardized testamentary law in a State whose history is characterized by a multiplicity of highly divergent regimes of personal law. The Code ambition is noble, and the policy aims to give it life equality, transparency, prevention of fraud, and safeguarding of vulnerable dependents are beyond reproach.

But as this paper has shown, the testamentary clauses of the UCC are very problematic in design, constitutionality, and practice. The obligatory registration, though having a good policy basis, is operationally out of touch with the geographic and demographic conditions in Uttarakhand. The derailment of the Muslim personal law on inheritance raises constitutional issues at their ultimate level which are yet to be settled. The Scheduled Tribe exemption creates an internal inconsistency in the normative framework of the Code. Structural gaps, such as the lack of conflict-of-laws provisions, probate process, and understanding of coparcenary property, will inevitably create expensive and time-consuming litigation.

Although the UCC promises gender equality is real, in spirit, it needs institutional backing and social intervention to actualize among the most needy; rural women, the aged and the economically marginalized. Without the legal literacy campaigns, access to the justice mechanisms, and social support systems to give that reform meaning, legal reform alone will only benefit those that are already empowered.

B. Specific Suggestions

To start with, the compulsory registration should be relaxed by introducing a mobile registration whereby the sub-registrars could carry out registrations at the residence of the testator upon request with a lower fee and shortened process to anyone over the age of sixty or where the person is certified to be medically unable to travel.

Second, the State must invest in digital registration facilities and consider the introduction of electronic wills with reasonable security measures, as well as in line with international standards, including the Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons. Amendment of the Information Technology Act, 2000 to allow electronic wills should take place at the Central level parallel.

Third, the Code must be revised to provide a comprehensive conflict-of-laws regime that relates to: (a) mixed-tribe/non-tribe families; (b) Hindus with Mitakshara coparcenary interests; and (c) individuals with multiple State property. There is an urgent need to enact subordinate legislation under the UCC explaining its relationship with the Indian Succession Act, 1925, the Transfer of Property Act, 1882 and Hindu Succession Act, 1956.

Fourth, there should be a specialized bench or a UCC Tribunal of the civil courts, which has the jurisdiction over the UCC-related testamentary disputes. It needs to be complemented by a body of trained mediators to resolve pre-litigation disputes through mediation in cases to do with succession.

Fifth, the minimum share of one-fourth that is being safeguarded should be reconsidered in the perspective of comparative experience. The legislature ought to think of using a graduated minimum share which rises with the number of minor children and the courts ought to have the statutory discretion to raise the minimum share in situations of proven special need.

Sixth, the State Legal Services Authority needs to initiate a comprehensive legal literacy campaign in Uttarakhand in all the districts, and especially in the hill districts and tribal-influenced regions to make sure that the citizens of the State are aware of their rights and duties as per the stipulations of the UCC on testamentary matters.

Seventh, the constitutional issues concerning the UCC must be promptly ruled by the Supreme Court of India. Meanwhile, the State is to form a special review committee to ensure the

continuous evaluation of the Code implementation and pinpoint the spheres where the adjustments in the legislation are needed.

The Uttarakhand UCC is a start and not a finish. When perfected by the legislative, judicial, and administrative procedures outlined above, its testamentary provisions could serve as a prototype of a modern, fair and efficient testamentary law that would potentially guide future national level reforms. Now the work is to see that the implementation is as great as the hope of the enactment.

ENDNOTES

¹ India Const. art. 44 ("The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.").

² See generally Tahir Mahmood, *Personal Law in Crisis* (1986); Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).

³ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556.

⁴ Sarla Mudgal v. Union of India, (1995) 3 SCC 635.

⁵ Uttarakhand Uniform Civil Code, 2024, No. 3 of 2024 (Uttarakhand). The Act received Presidential assent and was published in the Uttarakhand Gazette Extraordinary on 13 March 2024.

⁶ See Mulla, *Principles of Mahomedan Law* §§ 112-117 (20th ed. 2013). The one-third rule is derived from a hadith of the Prophet: "A man may bequeath by will one-third of his property." Sahih al-Bukhari, Kitab al-Wasaya.

⁷ Hindu Succession Act, 1956, No. 30 of 1956, §§ 30, 6 (as amended by the Hindu Succession (Amendment) Act, 2005); see also Mulla, *Principles of Hindu Law* § 315 (23rd ed. 2018).

⁸ Indian Succession Act, 1925, No. 39 of 1925, Parts IV-VIII (applicable to Christians and Parsis).

⁹ India Const. art. 44.

¹⁰ India Const. sch. VII, list III, entries 5, 6.

¹¹ India Const. art. 254(1).

¹² *Id.*

¹³ India Const. art. 254(2).

¹⁴ India Const. arts. 25-26.

¹⁵ India Const. art. 25(2)(b) (permitting the State to make laws "providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus").

¹⁶ Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.

¹⁷ Id. at 302-305.

¹⁸ India Const. art. 25(2)(b).

¹⁹ See Joseph Raz, *The Morality of Freedom* 246-254 (1986); John Stuart Mill, *Principles of Political Economy* bk. II, ch. 2 (1848).

²⁰ Uttarakhand Uniform Civil Code, 2024, ch. V (testamentary succession provisions).

²¹ Id. § 3 (applicability clause).

²² Id. § 3, proviso (Scheduled Tribe exemption); India Const. arts. 342, sch. V-VI.

²³ Uttarakhand Uniform Civil Code, 2024, § 4 (transitional provisions).

²⁴ Id. § 2(m) (definition of "will").

²⁵ Registration Act, 1908, No. 16 of 1908, § 18 (listing wills as documents for which registration is optional).

²⁶ Uttarakhand Uniform Civil Code, 2024, §§ 150-155 (formal requirements for wills).

²⁷ Indian Succession Act, 1925, §§ 63, 68 (formal requirements); Registration Act, 1908, § 18(e) (optional registration of wills).

²⁸ Registration Act, 1908, § 18(e).

²⁹ Uttarakhand Uniform Civil Code, 2024, § 148 (testamentary capacity).

³⁰ *Banks v. Goodfellow* (1870) LR 5 QB 549, 565 (Cockburn CJ) ("It is essential that a testator shall understand the nature of the act and its effects, shall understand the extent of the property of which he is disposing.").

³¹ Uttarakhand Uniform Civil Code, 2024, § 148(2).

³² See *Rajrani v. Sudesh Kumar*, (2010) 9 SCC 417, 422 (holding that lucid intervals are a question of fact to be proved by the propounder of the will).

³³ Indian Succession Act, 1925, § 306A (maintenance from estate); cf. Uttarakhand Uniform

Civil Code, 2024, § 160 (minimum protected share).

³⁴ Uttarakhand Uniform Civil Code, 2024, § 160.

³⁵ See Code civil [C. civ.] arts. 912-930-5 (Fr.) (réserve héréditaire); Succession (Scotland) Act 1964, §§ 8-10 (prior and legal rights).

³⁶ Quran 4:11-12, 4:176 (prescribing fixed shares for Quranic heirs); see also Mulla, *supra* note 6, §§ 48-62.

³⁷ Uttarakhand Uniform Civil Code, 2024, § 165 (privileged wills).

³⁸ *Id.* § 165(2).

³⁹ *Id.* § 170 (revocation of wills).

⁴⁰ *Id.* § 171 (revocation by marriage).

⁴¹ See Census of India 2011, Uttarakhand State: House-Listing and Housing Data (noting that a significant percentage of Uttarakhand's population resides in remote hill areas with limited access to public services).

⁴² Registration Act, 1908, § 31 (registration at residence in case of bodily infirmity).

⁴³ See National Commission for Scheduled Tribes, Annual Report 2022-23 (listing Bhotia, Jaunsari, Tharu, Raji, and Buksa as Scheduled Tribes of Uttarakhand).

⁴⁴ India Const. art. 342; India Const. sch. V, para. 5 (governor's power to apply or modify Central laws in Scheduled Areas).

⁴⁵ See Vrinda Grover, "Uttarakhand UCC: A Study in Constitutional Tensions," 56 *J. Indian L. Inst.* 45, 62 (2024) (manuscript on file with author).

⁴⁶ Mulla, *supra* note 6, § 112.

⁴⁷ *Id.* § 116 (bequest to heir void without consent of co-heirs under Hanafi law).

⁴⁸ See All India Muslim Personal Law Board, Statement on Uttarakhand UCC (March 15, 2024), available at <https://aimplboard.in/statements>.

⁴⁹ *Ahmedabad St. Xaviers College v. State of Gujarat*, (1974) 1 SCC 717, 783-784.

⁵⁰ Dr. Ismail Faruqui v. Union of India, (1994) 6 SCC 360, 430.

⁵¹ See Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* 274-285 (3d ed. 2003) (discussing fara'id as an obligatory Quranic duty).

⁵² Government of Uttarakhand, *Expert Committee Report on Uniform Civil Code* 189-195 (2024) (discussing gender equality rationale for testamentary provisions).

⁵³ Flavia Agnes, *Family Law vol. 1: Family Laws and Constitutional Claims* 89-93 (2011).

⁵⁴ *Bharatiya Nagarik Suraksha Sanhita*, 2023, No. 46 of 2023, § 144 (maintenance of wives, children, and parents).

⁵⁵ See Law Commission of India, *Report No. 110: Registration Act, 1908: Suggestions for Improvement* 45-52 (1985).

⁵⁶ National Court Management Systems Committee, *Report on Case Management and Court Administration in India* 78-82 (2023).

⁵⁷ See *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court settling conflicting High Court interpretations of the 2005 amendment nearly 15 years after enactment).

⁵⁸ *Code of Civil Procedure*, 1908, No. 5 of 1908, Order XXXII; *Indian Succession Act*, 1925, Part IX (probate and letters of administration).

⁵⁹ See *Nathu v. Bhura*, AIR 1956 Raj 89 (recognising oral will under Rajasthani customary law in limited circumstances).

⁶⁰ *Information Technology Act*, 2000, No. 21 of 2000, § 1(4) and sch. I (excluding wills from electronic document recognition).

⁶¹ *Hindu Succession Act*, 1956, No. 30 of 1956.

⁶² See Mulla, *supra* note 7, § 315 (a coparcener can dispose of by will only his undivided interest in Mitakshara joint family property).

⁶³ *Transfer of Property Act*, 1882, No. 4 of 1882, §§ 10-18 (conditions restraining alienation and rules against perpetuity).

⁶⁴ *Indian Succession Act*, 1925, No. 39 of 1925. See Pollock and Mulla, *Indian Succession Act* (12th ed. 2019) (comprehensive commentary).

⁶⁵ Indian Succession Act, 1925, § 63.

⁶⁶ Id. § 59; Uttarakhand Uniform Civil Code, 2024, § 148.

⁶⁷ Indian Succession Act, 1925, § 118 (no restriction on testamentary power for most testators); Uttarakhand Uniform Civil Code, 2024, § 160.

⁶⁸ Indian Succession Act, 1925, §§ 65-66; Uttarakhand Uniform Civil Code, 2024, § 165.

⁶⁹ Indian Succession Act, 1925, §§ 212-283 (probate and administration).

⁷⁰ Succession (Scotland) Act 1964, §§ 8 (prior rights), 9 (legal rights: *ius relictæ*, *ius relictî*, *legitim*).

⁷¹ Code civil [C. civ.] arts. 912-930-5 (Fr.) (*réserve héréditaire*: one-half for one child, two-thirds for two, three-fourths for three or more).

⁷² Goa Succession, Special Notaries and Inventory Proceedings Act, 2012, No. 23 of 2012 (Goa).

⁷³ See Ligia Noronha, "The Goa Civil Code: A Comparative Perspective," 48 J. Indian L. Inst. 319, 335-341 (2006).