
REDEFINING FAMILY IN INDIA: THE UCC AND LGBTQ+ RIGHTS

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INTRODUCTION:

The present-day evolution of family law is often categorized in terms of an inclusive family unit that aims to homogenize the differing personal laws while also retaining the inherent uniqueness amongst all of them. While the narrative is appealing, it often demands a quick reflection: Can one law truly protect everyone? The dilemma is between whether a uniform civil code that aims to ensure uniformity would modernize or rather marginalize LGBTQ+ unions?

The answer lies entirely in whether the UCC is drafted with its focus on outdated gender binaries or a modern inclusive queer friendly language. The UCC is an extremely powerful tool that can either empower LGBTQ+ unions by dismantling ancient patriarchal binary biases and pave the way for gender-neutral all-inclusive marriage unions or weaken their struggle altogether by locking them out simply by defining the marital unions through the traditional lens, hence technically pushing them out of the legal framework.

Through this paper, I try to traverse through a question of immediate relevance. Does the implementation of a uniform civil code align with the present-day struggle for LGBTQ+ inclusiveness or rather intends to set water-tight compartments eventually leaving them at the margins, concreting exclusivity?

A UNIFORM CIVIL CODE: BUT IS IT UNIFORM ENOUGH?

The need for a uniform civil code has etched the nation for a reasonably long time now. With the implementation of UCC in Goa from its very inception states like Uttarakhand, Gujarat have also adopted the same and now even Assam is moving towards effectively implementing a uniform civil code. The implementation of the same will eventually replace all religion specific personal laws and instead introduce a uniform law, common for all.

The idea of a uniform civil code finds its very essence in the original text of the Constitution of India itself. Article 44 of the Constitution states that *“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”* However, the very fact

that the same is enshrined as part of Directive Principles of State Policy, it is only an ideal the nation should seek to achieve but is not legally enforceable as a fundamental standard to be met with.

The Courts in India have over the years, through case laws established that UCC is an endeavour that all states shall seek to achieve. Some of these landmark cases are Mohd. Ahmed Khan vs. Shah Bano Begum (1985), Sarla Mudgal vs. Union of India (1995) and Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira (2019).

However, the implementation of the UCC in the two states apart from Goa, i.e. Uttarakhand and Gujarat have only brought to the fore the glaring inconsistencies this law possesses. Despite its mandate to make personal laws all inclusive, it deliberately ended up locking the queer community out of its realm. The Union Government also opposed petitions seeking legal recognition of same-sex marriages before the Supreme Court hence, excluding them from this so called “universal” framework. The law no longer stands for what the makers of the constitution had back then envisaged rather, it illustrates a real disconnect between the stated objective of inclusivity and the prevailing legal position of LGBTQIA+ rights. The introduction of the UCC does not only endanger the existing religious diversity of India by bringing under an umbrella all personal laws but also acts as a swaying dagger for all the sexual and gender minorities as well. The fear however is not unfounded. This administration has also in the past abstained from voting in favour of LGBTQIA+ rights at the United Nations Human Rights Council in a 2019 resolution that sought to renew the mandate of an independent expert on Sexual Orientation and Gender Identity (SOGI) rights. Additionally, the government passed the Surrogacy (Regulation) Bill, 2019 that same year, prohibiting same-sex and cohabiting couples from hiring surrogates. It is hardly surprising that LGTQIA+ Indians fear being legislatively excluded from the UCC's scope once more, since the BJP would be responsible for its implementation.

UCC: A UNIFYING NECESSITY OR A MAJORITARIAN AGENDA?

The implementation of the Uniform Civil Code is a double-edged sword. While its core aim is to promote national integration and secularism by removing the distinctions and contradictions based on religious personal laws, it risks becoming a majoritarian project used by the Hindu right to impose dominant cultural norms, and specifically Hindu legal norms, upon the diverse practices of Muslims, Christians, Sikhs, and other communities. The question then arises is that though our courts have repeatedly highlighted the desirability of a UCC in one or the other of

their judgments, and Article 44 of the Constitution also reflects this aspiration, is the UCC actually a desirable legislation for a diverse pluralistic nation like ours? While streamlining laws can ensure legal efficiency, it is certainly difficult to cull out the negative impacts it can entail. Despite being a law that aims to “*Celebrate diversity by strengthening unity*”, it may end up becoming a tool to enforce majoritarian agendas at best.

GENDER AND SEXUAL MINORITIES: LEGAL BATTLE FOR RECOGNITION

LGBTQIA+ often used as an acronym for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual refer to the gender or sexual minorities that usually do not align or recognise themselves under binary sexes or singular pronouns per se. The fight for LGBTQ+ recognition has a great ground of legal battle spread over the years. The battle was primarily against Section 377 of the IPC which stated as follows:

“377. Unnatural offences. —

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

With differing judgements over period, the Supreme Court of India has over the years worked towards giving a legal recognition and constitutional protection to these minorities.

The Supreme Court of India has struggled over the of recognising LGBTQ+ rights ever since 2009 from the inception of Naz Foundation vs. Govt. Of NCT of Delhi. It became the first case in Indian History where the Delhi High court upheld the challenge against Section 377 of the Indian Penal Code and recognised that consensual “carnal intercourse” amongst same sex couples in private cannot be criminalised. However, this relief was short-lived as the same was reserved by the Supreme Court in Suresh Kumar Koushal vs. Naz Foundation (2013).

Post these, several case laws like that of National Legal Services Authority of India (NALSA) vs. Union of India in 2014 and Justice K.S. Puttaswamy vs. Union of India argue for separate rights related to LGBTQ+. While the former emphasised on recognising transgenders as ‘third gender’, the K.S Puttaswamy judgement argued that sexual orientation is an integral realm of right to privacy and hence protected under Article 21 of the Constitution of India.

However, the same was finally set in stone when the Supreme court while delivering its judgement in the case of Navtej Singh Johar vs. Union of India in the year 2018 unanimously

decriminalised consensual same-sex relations between adults in “*private*”. There is no doubt inferring that this emphasis on differentiating the acts done in public from those done in private was highly influenced by the judgment passed in the Navtej Singh Johar case, which recognised Right to Privacy as a fundamental element of Right to Life under Article 21. The bench struck down Section 377 of the IPC as being violative of fundamental rights, The decision was based taking into ground violation of fundamental rights like Articles 14, 15, 19 and 21 of the Constitution of India. This became an important ground for future judicial pronouncements like that of Supriyo @ Supriya Chakraborty vs. Union of India (2023). Though the Supreme Court in this case refused to uphold same-sex marriages, it nonetheless recognised queer relations as normal and acceptable. The bench while delivering the judgement in this case reiterated that though queer couples enjoy the right to cohabit, they cannot be given the right to marry. The rationale being, the court felt that altering the gender specific language of Special Marriage Act, 1954 would amount to judicial overreach as it would be legislating from the bench. They also feared that such a decision may entail serious implications especially across family law and personal law regimes.

One of the most recent landmark judgements special related to recognition of transgender individuals is that of Jane Kaushik vs. Union of India. The Supreme Court of India while deciding this matter in 2025, expanded employment protections and civil rights for transgender individuals. The Court ruled that dismissing or denying employment to a transgender person based on their gender identity constitutes active discrimination. This stands as the most recent progress of the SC in matters related to Transgender empowerment.

HOW DOES UCC AFFECT LGBTQ+?

The current idea of uniform civil code does not recognise same sex relationships and as such, it excludes queer couples from legal protections which are otherwise available to heterosexual couples. The UCC model only recognises heterosexual marriages and live-in relations as valid and acceptable. Such interpretation leaves no room for recognition of homosexual queer couples.

Firstly, most queer couples find themselves excluded because of the traditional explanation of marriage that recognises merely binaries of man and woman as being eligible for marriage. This was however, taken into consideration by the Madras High in the case of Arun Kumar v. Inspector General of Registration (2019), where it recognised that even transgender people who recognise as woman can be a bride as the term ‘bride’ under Hindu Marriage Act 1955

also includes 'transgender woman'.

Secondly, the UCC does not provide any legal protection for same sex live-in relationships, just the way it does for heterosexual live-in couples. This increases the risk of state inflicted as well as family related interference and violence. For eg, considering how the UCC is in its current form as in Uttarakhand it requires mandatory registration of live-in couples. Compulsory registration would ultimately lead to grater state scrutiny and state surveillance. As such, it raises another major concern that when eve heterosexual consenting couples who engage in inter-faith and inter-caste unions are not safe under the UCC regime, how vulnerable would be the homosexual same-sex couples who do not even confirm to the orthodox gender specific language of the statutes.

Thirdly, not providing legal recognition to same sex relations and such special family units can lead to disinheritance as well. As usually all inheritance and succession laws are based along traditional gender lines, queer recognition and inheritance would often be sidelined by their natal families if they are not recognised as legitimate relations under UCC.

Lastly, a lost horizon for equality. Most people argue that UCC should aim at achieving equality amongst all gender and sexual minorities and majorities. It should focus on equal adoption rights, equal marriage and inheritance rights for all LGBTQIA+, so that UCC doesn't become a tool that widens the very disparities it was looked to narrow down.

At best, it is recommended that the state stays out of people's bedrooms altogether.

HOW CAN BE UCC MADE ALL INCLUSIVE?

The UCC needs an overhaul at best. The provisions should be amended in a way that it is made queer friendly. The first step should be recognising homosexual relationships and marriages to be at par with heterosexual ones. Further making an all-inclusive marriage and succession law that treats even queer individuals as equally eligible to marry and inherit from their ancestral properties. Making adoption laws easier for same sex homosexual couples and such other attempts to assert equality and normalcy could help achieve a uniform civil state that is uniform not only on paper, but also in its essence. The UCC can help achieve this uniform state that protects gender and sexual minorities as well as majorities alike but only if it defies the traditional binary lens and rather views everyone from a queer friendly one.

CONCLUSION:

The article aims to show that though the legal battle to recognise LGBTQ+ has garnered

immense attention, the swirling sword of UCC makes it a distant dream if not applied in a queer friendly language. In the end, equality, respect, and inclusion are at the heart of the discussion surrounding the Uniform Civil Code and LGBTQ+ rights. The UCC must acknowledge a variety of identities and connections in addition to its goal of establishing consistent personal laws. In order to promote substantive equality and legal consistency in India, a truly inclusive UCC should respect constitutional principles and guarantee equal rights for LGBTQ+ people.