



“Uniform Civil Code In India: The Need Of The Hour”

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The implementation of the Uniform Civil Code in India is one of the important agendas of the Government of India. Recently Uttarakhand has become the first state in India to implement the Uniform Civil Code. Uniform Civil Code means a Common Civil Code for all the religions dealing with Marriage, Divorce, Inheritance and Adoption. It is one of the Directive Principles of State Policy¹ enshrined in Part IV of the Constitution of India.

Article 44 of the Constitution of India specifically deals with the concept of Uniform Civil Code. It states that the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India. It is one of the matters listed in the Concurrent List² which empowers both the Central Government and the State Governments to make the laws for its implementation.

Presently all the religions have their respective personal laws. For example, the Hindus have their respective Hindu Laws like the Hindu Marriage Act, Hindu Succession Act, Hindu Adoptions and Maintenance Act and The Hindu Minority and Guardianship Act. On the other hand the Muslims have respective Muslims Laws like the Shariat Act, 1937 and the Muslim Women (Protection of Rights on Marriage) Act, 2019 to name a few. Christians and Parsis have their respective Personal Laws.

Uttarakhand has become the first state in India to implement the Uniform Civil Code in exercise of the power mentioned under Article 44 of the Constitution of India. Legislative Assembly of Uttarakhand has enacted Uniform Civil Code. On February 7, 2024, the Legislative Assembly of the State of Uttarkhand in India passed the Uniform Civil Code (UCC) Bill. On March 13, the bill was granted assent by the President of India Droupadi Murmu. The Uniform Civil Code of Uttarakhand Act, 2024 is a legislation to establish a common set of personal laws governing matters like marriage, divorce, adoption, inheritance, and maintenance for all citizens of Uttarakhand, irrespective of their religion, gender, caste, or sex.

The Uttarakhand Uniform Civil Code Act consists of 392 Sections divided into 7 Schedules. The Uttarakhand UCC Act is laid out in four parts. The first refers to laws relating

¹Directive Principles of State Policy – Know India: National Portal of India. (n.d.). <https://knowindia.india.gov.in/profile/directive-principles-of-state-policy&text=These%20lay%20down%20that%20the%20all%20institutions%20of%20national%20life>.

²Constitution of India >> List III-Concurrent List. (n.d.). http://constitutionofindia.etal.in/schedule_7_3/

to marriage and divorce. The second relates to succession, divided into intestate and testamentary succession. Part 3 deals with live-in relationships, and Part 4 with repeals. It applies not only to the whole of Uttarakhand but also to residents of the State who are living outside its territories.

As the bills of the State Government need the assent of the Governor to be converted into legislation, the Uttarkhand UCC Bill must have been sent for the assent of the Governor. But instead of the Governor's assent, the bill was sent for the assent of the President of India and this is one of the unique feature of the Uttarkhand Uniform Civil Code Act. This can be understood with the help of relevant provisions of the Constitution of India.

Article 162 of the Constitution of India indicates that the executive power of a State extends to matters with respect to which the State Legislature has power to make laws. In view of the provisions of Entry 5³ of the Concurrent List of the Seventh Schedule, the Constitution of a Committee to introduce and implement Uniform Civil Code (UCC) per se cannot be challenged as ultra vires.

Governors may reserve the bill for the consideration of the President. The reservation is obligatory where the bill passed by the state legislature endangers the position of the State High Court. However, the Governor can also reserve the bill if it is of the following nature:

- Against the provisions of the Constitution
- Opposed to the Directive Principles of State Policy borrowed from the Constitution of Ireland
- Against the larger interest of the country
- Of grave national importance
- Deals with compulsory acquisition of property under Article 31A of the Constitution

In this case, the bill overrides several national laws such as Special Marriage Act, 1954, Hindu Marriage Act, 1955, Shariat Act, 1937 etc, and hence was sent for the President's approval before implementation.

There is a long history behind the implementation of the Uniform Civil Code in India. The Supreme Court of India had through its various landmark judgments stressed on its

³Analysing Uttarakhand's UCC Bill. (n.d.) Drishti IAS. <https://www.drishtias.com/daily-updates/daily-news-editorials/analysin-uttarakhand-s-ucc-bill>

implementation. Of these landmark judgments, one is the Mohd. Ahmad Khan v. Shah Bano case.⁴ In this case the Supreme Court held that the Section 125 of the Code of Criminal Procedure, 1973 applies to all irrespective of their religions and is secular in its character in application. Section 125 of the Code of Criminal Procedure, 1973 deals with the order for maintenance of wives, children and parents. It is enacted

by the Parliament of India to deliver speedy justice to the aggrieved persons as the Judicial Magistrate of First Class or the Metropolitan Magistrate is to dispose of the application for interim maintenance within a period of 60 days. Certain persons are also restrained from claiming maintenance under the aforesaid provision. Underlining the religion-neutral character of the provision, Justice Masih said: Numerous decisions of the Court went on to state that Section 125 of the Code of Criminal Procedure, 1973 is a measure for social justice to protect the weaker sections, irrespective of applicable personal law of the parties. The Court said that the right to seek maintenance under Section 125 of the Code of Criminal Procedure, 1973, is invokable even during the sustenance of marriage and thereby is not contingent upon divorce. If Section 125 of the Code of Criminal Procedure is excluded from its application to a divorced Muslim woman, it would be in violation of Article 15(1) of the Constitution of Indian which states that the State shall not discriminate against any citizen only on the ground of religion, race, caste, sex, place of birth or any of them. Section 125 of the Code of Criminal Procedure states: “ If any person having sufficient means neglects or refuses to maintain

- a) his wife, unable to maintain herself, or
- b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance at such monthly rate as such Magistrate thinks fit.

Further, there is a case of *Sarla Mudgal v. Union of India*.⁴ In this landmark case, the

³AIR 1985 SC 945

⁴AIR 1995 SC 1531

Court held that all the four ingredients of Section 494 of the Indian Penal Code are satisfied in the case of a Hindu husband who marries for the second time after conversion to Islam. He has a wife living, he marries again. The said marriage is void by reason of its taking place during the life of the first wife. There are several instances where people convert their religion to take advantage of one religion over the other. *Sarla Mudgal v. Union of India* is one those cases where one of the spouses converted to the Muslim religion to tie the knot with another woman without dissolving their first marriage which was solemnized under Hindu marriage laws.

On one hand, Hindu marriages are governed by the Hindu Personal law which applies to Hindus, Jain, Sikhs, and Buddhists. Hindu Personal laws are secularized and modernized by the statutory enactment. On the other hand, Muslim marriages are governed under the archaic provisions of Shariat law, 1937. Hindu marriage laws allow monogamy whereas Muslim individuals are allowed to marry as many as four women at a time.

The Supreme Court of India is also known as the guardian of the Indian Constitution. Since India's independence, the Supreme Court of India has never failed to protect the integrity and sovereignty of the Constitution. The doctrine of dissolubility of marriage under traditional Hindu marriage law does not give any effect on the conversion of religion. The conversion of religion and marrying another woman will not result in the dissolution of the previous marriage solemnized under Hindu marriage law.

Marriage is the foundation of civilized society. Once the relationship of marriage is formed, it binds the parties to various obligations and liabilities. On one hand, monogamy is the law for Hindus. On the other hand, Muslim law permits four wives for a Muslim male in India according to the Shariat law of 1937. Hindu man embraces Islam to solemnize his second marriage without dissolving his first marriage and escape from the liabilities which were imposed upon him under section 494 of the Indian Penal Code, 1860.

A marriage can be dissolved under the provision of the Divorce Act. A marriage can also be dissolved on the death of either of the spouses. According to Hindu Marriage Act, a marriage cannot be dissolved except on the grounds of Section 13 of the Hindu Marriage Act, 1955. The second marriage of an apostate husband under Muslim law would be a marriage in violation of the provisions of the Act by which he would be continuing his first marriage.

As a result, a second marriage is illegal in the eyes of the law. The second marriage of an apostate husband is against natural justice. It is arbitrary to allow individuals to solemnize their marriage without dissolving their prior marriage after conversion to Islam. It is a clear way out to circumvent the provision of section 494 of the Indian Penal Code, 1860.

The Supreme Court of India emphasizes the enforcement and implementation of the Uniform Civil Code in India to regulate matters relating to marriage, divorce, adoption, inheritance, custody of the child, and other matters related to matrimonial disputes under a uniform law applicable to all religious communities uniformly. The objective of the Uniform Civil Code is to govern all the religious communities in India uniformly.

Section 494 of the Indian Penal Code, 1860 deals with the offences against valid marriages in India. According to section 494 of the Indian Penal Code, 1860 whoever once already married under a valid marriage contract with a living person, shall not be eligible to solemnize another marriage with another person.

The essential ingredients for committing the offence relating to marriages under section 494 of the Indian Penal Code, 1860 are as follows:

- The first marriage must be legal.
- The second marriage must be solemnized.
- The first marriage should not be dissolved as per the provision of law and still exist in nature.
- The spouse from the first marriage must be alive.

- Both marriages must be valid.

Section 494 of the Indian Penal Code, 1860 does not extend to any person whose marriage has been declared void by the court of competent jurisdiction. It is not extended to the person who has contracted marriage with a man or a woman who has been continuously absent from such person for more than seven years and shall not have heard of such person being alive within that time.

It is a non-cognizable and bailable offence tried by the Magistrate of the First Class. A person who is liable under section 494 of the Indian Penal Code, 1860 shall be punishable with imprisonment up to seven years or fine, or both.

Article 44 of the Indian Constitution requires the State to strive Uniform Civil Code to secure for its citizen throughout the country. Uniform Civil Code aims to replace personal laws based on the customs and beliefs of major religious communities in Indian with common rules governing every citizen in the subject related to marriage, divorce, custody of a child, adoption, and inheritance.

Uniform Civil Code promotes the elimination of discrimination among people in terms of different religions and different sexes in Indian society. Uniform Civil Code promotes women with equal rights and access to justice in the court of law.

It establishes a secular society integrated with the simplification of laws. It promotes national integrity, solidarity, and sovereignty. It ensures gender justice between men and women in patriarchal domination. It supports women to liberate them from a patriarchal society and ensures equality and liberty for women.

The implementation of the Uniform Civil Code is no piece of cake for the legislatures. It is subjected to Constitutional challenges such as conflicting with fundamental rights and maintaining public order, health and morality. The Uniform Civil Code is subjected to socio-political challenges where cultural diversity and patriarchal mindset are major setbacks in the enforcement of Uniform Civil laws.

There are certain practices being followed by a particular religion which require to be abolished. Some of them are Polygamy, Triple talaq and Halala among the Muslims Community. Triple Talaq was recently held unconstitutional by the Supreme Court of India in the case of Shayara Bano v. Union of India.⁵ The practice of Triple Talaq is also made an offence through a legislation passed by the Parliament of India. The legislation is the Muslim Women (The Protection of Rights on Marriage) Act, 2019.⁶ The Supreme Court's judgment in Shayara Bano v. Union of India marked a landmark moment in Indian constitutional law and gender justice. By declaring the practice of triple talaq unconstitutional, the Court established important legal precedents on gender equality, religious freedom, and personal law reform.

The SC established a 5-Judge Constitution Bench on 30 March 2017 to hear the case. J.S. Khehar, the Chief Justice, and Justices Kurian Josph, R.F. Nariman, UU. Lalit and Abdul Nazeer formed the Bench. The Bench considered the case 11 May to 19 May 2017, and the judgment was handed down on 22 August of that same year. The majority of the 3:2

⁵AIR 2017 9 SCC 1 (SC)

⁶Factsheet Details: (n.d.). <https://pib.gov.in/FactsheetDetails.aspx?Id=148565>

vote determined that the talaq-e-biddat custom was “manifestly arbitrary” and unlawful. Justice Nazeer and Chief Khehar dissented because the right to Religion protected talaq-e-biddat, and Parliament should have drafted legislation to control the practice.

Triple Talaq was declared unconstitutional under Article 14 r/w Article 13(1) of the Indian Constitution. The Court determined that the Muslim Personal Law (Shariat) Application Act, 1937, had penalised the practice as a matter of personal law. The punishment for committing this crime is imprisonment for up to 3 years.

The Court clarified that “an arbitrary action must include negation of equality” and found that the triple talaq’s provision that “the marital tie can be broken capriciously with no attempt at reconciliation to preserve it “constitutes an arbitrary act that violates Article 14 of the Indian Constitution.

The SC found that practice of Triple Talaq or Talaq-e-biddat⁷ is not protected by the exception outlined in Article 25 since it is not an essential practice of Islam. The Court argued that even though the Hanafi School⁸ engages in it, doing so is wrong. Triple Talaq is against the fundamental principles of Islam, and since Shariat contradicts the Quran, what is evil in theology cannot be good in legislation. After the Shayara Bano judgment, the Indian government passed the Muslim Women (Protection of Rights on Marriage) Act, 2019, commonly referred to as the Triple Talaq Act. This Act criminalises the practice of instant triple talaq, making it a punishable offence. It prohibits the pronouncement of Talaq by a Muslim husband upon his wife through any means, be it spoken, written, or electronic. The Act provides imprisonment and a fine for those violating its provisions. Therefore, the enactment of the Triple Talaq Act was a legislative response to the Supreme Court’s judgment in the Shayara Bano case, which aimed to provide additional legal protection to Muslim women by explicitly criminalising the practice of Triple Talaq and preventing its use.

The UCC in Goa follows the Portuguese Civil Code of 1867. The Goa, Daman and Diu Administration Act of 1962, which was passed after Goa became part of India as a Union Territory in 1961, gave it the permission to retain the Portuguese-era Civil Code.

⁷James, S., & Law, L. (2024, March 22). Live Law. Live Law. <https://www.livelaw.in/high-court/madhya-pradesh-high-court/madhya-pradesh-high-court-ruling-talaq-ahsan-and-instantaneous-talaq-muslim-women-protection-act-2019-253180>

⁸Robinson, K. (2021, December 18). Understanding Sharia: The Intersection of Islam and the Law. Council on Foreign Relations. <https://www.cfr.org/background/understanding-sharia-intersection-islam-and-law>

The registration of marriages is made compulsory under the Goan Code so that the disputes which may arise can be resolved by the law. Consent of men and women is required before marriage. The Goan Code allows for a prenuptial agreement which can alter the ratio of the distribution of assets.

The main opposition following the adoption of the Uniform civil Code is that it clashes with India's secularism. Many believe that adopting the Uniform Civil Code will lead to the domination of one religion. India is a secular country. This means that there is no State religion and the State seeks to protect the freedom of religious beliefs of all the citizens. The Preamble of the Constitution states that India is a "Sovereign Socialist Secular Democratic Republic". It implicates that the State will be neutral while dealing with different religious matters. Article 25 and 26 of the Constitution gives the right of freedom of religion to every person subject to public order, morality and peace. Uniform Civil Code is not opposed to secularism and is against Articles 25 and 26. Article 44 basically is that the religion, their customs, their personal laws can prevail. Marriage, Succession, and other matters related to the secular nature of the State. The purpose of Uniform Civil Code is not to interfere with the customs and their tradition. The basic purpose behind it is equality, which should be given to each and every citizen of India. It would not cover the "matters of religion" and would only lay down a common civil code which will simplify the civil laws and ensure equality amongst all.

Applying a set of uniform laws that govern everyone has many advantages. Some of them are as under:

1. The application of uniform laws amongst all citizens promotes the feeling of national integration as the same laws are applied to all the citizens and no exception is made in any matter.
2. UCC will ensure the establishment of a secular society as the matters relating to marriage, adoption, etc. will be detached from religion completely.
3. The personal laws in India are divergent and often confusing. This can be eliminated by applying one set of laws to all citizens. It will also reduce the overlapping of different laws. It will also help in the efficient administration of laws by the Judiciary.
4. Under a Uniform Civil Code, all the citizens are treated equally. Under the present personal laws, matters relating to marriages, adoption are treated differently under the respective personal laws, this is inconsistent with Article 14 which ensures equality before the law.
5. The personal laws are largely patriarchal and discriminatory against women. The implementation of UCC will ensure that more women get liberty and equality. It will no longer bind them to religious and cultural beliefs.
6. UCC will help in reducing vote bank politics that form the major part of India's political system. It is used by every political party during the election to gain votes.

We are in the twenty-first century and the State of Uttarakhand has paved the way to other states by implementing the Uniform Civil Code in its territory and becoming the first state in the country to do so. The ruling party has the Uniform Civil Code on its priority list and soon going to implement it through a legislation in exercise of the power given to it under the Directive Principles of State Policy enshrined

under Part IV of the Constitution. It can be concluded by emphasizing on the fact that the implementation of the Uniform Civil Code in India is the need of the hour.⁹ UCC would eliminate discrimination on religious grounds, ensuring that every religion is treated equally. It would grant all women equal rights and help stop religious atrocities against them. UCC will ensure that the Indian Constitution's fundamental rights are upheld consistently, regardless of religion.

Most contemporary countries have such laws in existence. UCC is followed in many countries, such as Pakistan, Bangladesh, Malaysia, Turkey, Indonesia, Sudan, Egypt, America, Ireland, etc. All these countries have uniform laws for all religions, and there are no separate laws for any particular religion or community. UCC is an indication that the country has moved away from caste and religious politics. It would eliminate the practices that are against the human rights and values enshrined in the Constitution of India, such as triple talaq, polygamy, child marriage, etc.

⁹Goyal, Shikha. "What is Uniform Civil code?" Jagranjosh.Com, February 6, 2024. <https://www.jagranjosh.com/general-knowledge/why-uniform-civil-code-is-necessary-for-india-1477037384-1>.

