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# Exploring the Uniform Civil Code: From Historical Roots to the New Code in Uttarakhand

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## ABSTRACT

*After independence, Uttarakhand became India's first state to enact and implement a Uniform Civil Code (UCC) for its residents. Article 44 of the Constitution of India, a directive principle of state policy, incorporates the unequivocal intention of the Constitution maker "to secure for the citizen a Uniform Civil Code throughout the territory of India." Although the UCC of Uttarakhand is not applicable throughout the territory of India, it is a crucial law and serves as a blueprint for a UCC for the entire country. The goal of the Code of Uttarakhand is to establish a uniform personal law that applies to all residents of Uttarakhand, regardless of their religion. This article seeks to explore the journey of codifying personal law in India, underscoring the hurdles in implementing a Uniform Civil Code across the country. What were the concerns of the British and the Constituent Assembly? The article also highlights the pros, cons, and salient features of the Uniform Civil Code in Uttarakhand in 2024. What could the future path look like regarding personal law?*

**Keywords:** *Uniform Civil Code, Personal Laws, Legal pluralism, Live-in-relationship, Fundamental right*

## I. INTRODUCTION

On 27<sup>th</sup> January 2025, the State Government of Uttarakhand enforced the first Uniform Civil Code (UCC) in India by an official notification. This move is based on the Directive Principle in Article 44 of the Constitution of India, which provides that 'The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India'. The Code is enacted based on a Draft submitted by a five-member expert committee headed by Justice Ranjana Prakash Desai (retired). The Committee was formed in June 2022. It aims to replace and harmonies the personal laws of various religious communities with a common set of provisions related to marriage and divorce, succession, live-in relationships, and related

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matters. Key provisions include compulsory registration of marriages, equal inheritance rights for sons and daughters, prohibition of polygamy, and the novel requirement that live-in couples register their relationship within a stipulated timeframe.

The British initiated the codification of law in India to ensure smooth administration. However, due to the sensitivity of various communities in India regarding personal law, they only codified non-personal laws and refrained from codifying personal laws. After independence, there were vehement protests whenever there was an attempt to codify the personal law of any community. The debate on the topic of the Uniform Civil Code centres on the struggle between legal uniformity and legal pluralism. It is often seen as a struggle between secularism and the right to religion. Some people view it as a forward step toward protecting women's rights.<sup>3</sup>

The concept of the Uniform Civil Code is interpreted and understood differently. For the minority community in India, the concept of the Uniform Civil Code is seen as an intrusion upon their personal law. For civil rights activists, it is a crucial reform for the upliftment of marginalised groups as it treats people equally. For nationalists, it is considered a law necessary for national integrity.

Since the Uniform Civil Code encompasses the personal laws of various religions, it sparks robust debates. This article explores the long journey of the UCC from the British era to its current form in Uttarakhand. It underscores the salient features, pros, and cons of the Uniform Civil Code in Uttarakhand, 2024.

## II. HISTORICAL CONTEXT

Before the Colonial Rule, i.e., before 1612, most of the part of India was ruled by the Mughal emperor. They applied Muslim law to Muslims, but Muslim criminal laws were applied uniformly to all people.<sup>4</sup>

The foundation for the unification of the Indian legal system was laid down during the British colonial era. The First Law Commission in the Lex Loci Report of October 1840 proposed the codification of substantive laws, leaving procedural law and personal laws relating to marriage, divorce, and adoption untouched to avoid resistance and instability due to religious

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<sup>3</sup> M. P. RAJU, *UNIFORM CIVIL CODE: A MIRAGE*, (MEDIA HOUSE 2003).

<sup>4</sup> D. C. Manooja, *Uniform Civil Code: A Suggestion*, 42 JOURNAL OF THE INDIAN LAW INSTITUTE 448, 449 (2000).

and cultural sensitivity.<sup>5</sup> Also, the Second Law Commission emphasised that personal laws should not be codified.

Due to the protests of progressive sections against the discriminatory features of personal laws, several legislations for Hindus were passed, such as the Hindu Widow Remarriage Act of 1856, Married Women's Property Act of 1874, the Hindu Inheritance (Removal of Disabilities) Act of 1928 and the Hindu Women's Right to Property Act of 1937. These laws were significant as they assured the right to property to women.

In 1941, the B.N. Rau Committee was appointed by the Government of India to examine and recommend reform of Hindu personal law according to the need of a common Hindu Law. The committee, in its report, proposed a Code of Hindu Law which focused on the upliftment of the status of Hindu women. Its report comprehensively dealt with succession, Marriage and Divorce, Minority and Guardianship, and Adoption. It laid the groundwork for significant legislative changes, eventually influencing the Hindu Code Bills passed in the 1950s.<sup>6</sup>

After independence, India's approach to legal reform was cautious rather than radical. The Constituent Assembly enshrined the Uniform Civil Code (UCC) in Article 44 of the Indian Constitution as a directive principle, which states that the state shall endeavour to secure a uniform civil code for the citizens throughout the territory of India. It shows the historical ambition of the Constitution makers to build a secular nation, so that all citizens could be treated equally. However, the complete legal uniformity could not be achieved at once, so they put it as a non-justiciable directive principle so that it could be achieved gradually. India has developed a harmonised personal law by selectively adapting and aligning religious laws rather than abolishing them outright.<sup>7</sup> This harmonization has been achieved through landmark progressive court decisions and piecemeal enactments.

After the independence, the first attempt was to codify the Hindu law. However, this attempt was not successful due to vehement protests inside and outside the house of the provisional Parliament by several members of the house, one of whom was Naziruddin Ahmed, and several sections of the public. Several objections were raised, like it was violative of a fundamental right. It is discriminatory as it applies only to Hindus against the provision of the Constitution, which requires a civil code for the whole population. Many members were not

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<sup>5</sup> ANIL CHANDRA BANERJEE, *ENGLISH LAW IN INDIA* (Abhinav Publications 1984).

<sup>6</sup> C. K. Mathew, *Uniform Civil Code: The Importance of an Inclusive and Voluntary Approach*, (Oct. 26, 2019), <https://www.thehinducentre.com/the-arena/uniform-civil-code-the-importance-of-an-inclusive-and-voluntary-approach/article64931357.ece>.

<sup>7</sup> Werner Menski, *The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda*, 9 GERMAN LAW JOURNAL 211, 213 (2008).

confident about the reaction of the people of the country because they felt that the changes sought by the law were far-reaching in nature. Even after numerous meetings and long debates, only some clauses of the bill could be passed. After the fresh election for the Lok Sabha in 1952, the bill lapsed on the dissolution of the provisional Parliament.<sup>8</sup>

The experience in the provisional Parliament regarding the Hindu Code bill had convinced the government to take a better and wiser approach would be to pass the bill in separate self-contained bills. These were the Hindu Marriage and Divorce Bill 1952, the Hindu Succession Bill 1952, the Hindu Minority and Guardianship Bill 1953, and The Hindu Adoptions and Maintenance Bill 1956. In the Hindu Code Bill, Part II, dealing with marriage and divorce, contains the provisions for both dharmic (sacramental) and civil marriage. But before the introduction of the Hindu Marriage and Divorce Bill 1952, the Special Marriage Bill was introduced in the Council of States. dealing with the laws related special form of marriage for all citizens of the country, irrespective of religion and caste of the parties of marriage. So, the new Hindu Marriage and Divorce Bill didn't contain provisions for civil marriage.<sup>9</sup>

In the new parliament, the Congress Government came with a very large majority, which changed the atmosphere of hostility of the provisional Parliament. Members had felt the public pulse and were now ready to discuss the bill's provisions on its merits. The Minister of State introduced all the Bills in the Law Ministry, H.V. Pataskar. He played a great role in the discussion with various stakeholders to pass all these Bills. There was much discussion and debate on the Hindu Succession Bill on the rights of daughters to inherit and the share to be given to them. After the enactment of these Acts, the Hindu law was codified to a great extent, replacing the traditional law based on different schools of thought and scriptural laws.

After independence, the Muslim law remained untouched until the landmark judgement of the Supreme Court in *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556. In this case, the Supreme Court confirmed the verdict of the local court, allowing maintenance to the Muslim wife from her husband till the wife's death or remarriage and for the *Iddat* period only, who was divorced by her husband, under section 125 of the Criminal Procedure Code (CrPC), 1973. The Court held that the provision of the CrPC applies to all citizens of India irrespective of religion.<sup>10</sup> The Court also emphasized taking steps to make Article 44 of the Constitution of India functional. The Court observed that:

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<sup>8</sup> G. R Rajagopaul, *The Story of the Hindu Code*, 17 JOURNAL OF THE INDIAN LAW INSTITUTE 537, 544 (1975).

<sup>9</sup> *Ibid.*, at p. 546.

<sup>10</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.

“It is also a matter of regret that Article 44 of our Constitution has remained a dead letter..... There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so.”

Muslim conservatives opposed this judgment and accused the then Rajiv Gandhi Government of attempting to impose Hindu dominance over every citizen. They viewed Section 125 of the CrPC as a violation of their rights, which were protected under the right to religion and culture within the fundamental rights enshrined in the Constitution of India. In response to widespread protests and communal tension from Muslim conservatives, the Rajiv Gandhi Government passed the Muslim Women (Protection of Rights in Divorce) Act, 1986, to nullify the impact of the Supreme Court's decision in the Shah Bano case. According to this Act, a Muslim wife can claim maintenance during the *Iddat* period. Consequently, the Act limited the application of Section 125 of the CrPC to Muslims.

The Supreme Court had taken another significant step in reforming the Muslim Personal Law in the landmark judgement of *Shayara Bano v. Union of India* (2017).<sup>11</sup> Earlier, Muslim Personal Law provided an unfettered right to the Muslim husband to dissolve his marriage by pronouncing the word ‘talaq’ three times in one sitting; this type of talaq is ‘Talaq-e-biddat or ‘Triple Talaq’. This type of talaq was controversial due to its arbitrary and unilateral nature. It often leaves the wife vulnerable without any opportunity for reconciliation due to its instantaneous and irrecoverable nature.

The Supreme Court in the *Shayara Bano* case on 22nd August 2017 declared the practice of Talaq-e-biddat (Triple Talaq) unconstitutional with a majority of 3:2. The Court held that the practice of triple talaq is not protected under Article 25 of the Constitution of India as it is not an essential religious practice in Muslim religion. The Court ruled that the triple talaq is arbitrary, as a Muslim man can dissolve the marriage capriciously and whimsically without any attempt to reconcile and save it. So, it violates Article 14 of the Constitution of India. Therefore, the Court struck down the Muslim Personal (Shariat) Application Act, 1937 to the

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<sup>11</sup> *Shayara Bano v. Union of India and Ors.* AIR 2017 SC 4609.

extent that it recognizes and enforces Triple Talaq.<sup>12</sup> The judgment also led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the practice, providing legal safeguards for Muslim women.<sup>13</sup> After this judgment, the Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the practice, providing legal safeguards for Muslim women. Thus, the decision and the enactment marked a significant step toward ensuring gender justice and upholding constitutional values. The Islamic orthodox have always opposed any reform in Muslim personal law and any forward step toward the Uniform Civil Code. They consider personal law as part of their religion.<sup>14</sup> Many writers found that neither reform in Muslim Personal Law nor UCC violates their religious or cultural rights guaranteed, respectively, in Articles 25 and 29 of the Constitution of India.<sup>15</sup>

Mr. Tahir Mohammad observed that “A progressive codification of the Muslim personal law-in stages if not practicable at a stretch-is desirable in the interest of a smooth transition from the era of traditionalism and separatism to that of secularism and uniformity in the realm of family law in India”.<sup>16</sup>

### III. FORM OF UCC AT THE STATE LEVEL IN INDIA

Before the UCC of Uttarakhand, Goa was the only state in India where the UCC was in practice. It was enacted in 1867 and continued to be enforced after Goa's annexation to India in 1961. It was drafted by Viscount Antonio Luis de Seabra, a High Court Judge and promulgated by King Luiz Augusto Rebello da Silva. It consists of 2538 articles, divided in four parts. The first part deals with civil capacity covers topics like citizenship, domicile, legal incapacity, and civil rights. The second part deals with unilateral and bilateral rights, contracts, property rights, and succession. The third part deals with ownership, servitudes, and restrictions on property. The fourth part focuses on civil liability and restitution of rights.

All the laws in force in Goa, Daman, and Diu or any Part thereof immediately before the appointed day continued to remain in force by Section 4 of the Goa, Daman and Diu (Administration) Act, 1962. Due to this provision, several laws like the Indian Contract Act

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<sup>12</sup> *Id.* "It is clear that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution of India. In our opinion, therefore, the 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression “laws in force” in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq.”

<sup>13</sup> The Muslim Women (Protection of Rights on Marriage) Act, 2019, No. 20, Acts of Parliament, 1949 (India)

<sup>14</sup> Manooja, *supra* note 4 at 455.

<sup>15</sup> Tahir Mahmood, *Islamic Law in Modern India* (Indian Law Institute, New Delhi, 2015).

<sup>16</sup> *Ibid.* at p. 98.

1872 and the Indian Transfer of Property Act 1882 were extended to Goa, Daman, and Diu, and the corresponding provisions of the Civil Code were repealed.

#### IV. IMPLICATIONS OF UCC UTTARAKHAND

The Code applies to the territory of the State of Uttarakhand and to all the residents of Uttarakhand who reside outside its boundaries. The Code exempts the Schedule Tribe from its application.

The Code is divided mainly into three parts dealing with marriage and divorce, succession, and live-in relationships.

The first part dealing with marriage and divorce mentions conditions for marriage that are the same as those mentioned in the Hindu Marriage Act, 1955, except that the concept of *Sapindas* relationship is not mentioned specifically. However, if marriage is prohibited under any other law, then such prohibition is also applicable.<sup>17</sup> Section 5 of the Code recognizes ceremonies of marriage; it states that marriage may be solemnized or contracted between a man and a woman in accordance with religious beliefs, practices, customary rites, and ceremonies like “Saptapady,” “Ashirvad,” “Nikah,” “Holy Union,” and “Anand Karaj.” It also recognise the marriage ceremonies under the Special Marriage Act, 1954 and the Arya Marriage Validation Act, 1937.<sup>18</sup>

It is mandatory to register marriages, decree of divorce, and nullity under the Code, including those performed before the commencement of the Act.<sup>19</sup> The Sub-Registrar may impose a penalty of up to ten thousand rupees for failing to deliver a memorandum for the registration of marriage within a period of sixty days from the date of the marriage or for a decree of divorce or nullity.<sup>20</sup> A fine of up to twenty-five thousand rupees or three months imprisonment for false statements in that memorandum.<sup>21</sup> The Sub-Registrar also has the power to issue a notice *Suo moto* or on receipt of a complaint or information to the parties of marriage in case they fail to deliver the memorandum of the marriage.<sup>22</sup> However, the Code does not invalidate any marriage only on the ground that the procedural requirement of registration of marriage, the memorandum of the marriage was not delivered, or a certificate of marriage was not issued, or the particulars in such document were not correct.

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<sup>17</sup> *The Uniform Civil Code, Uttarakhand, 2024*, No. 03, Acts of Uttarakhand Legislative Assembly, 2024 (India)

<sup>18</sup> *Id.* at § 5.

<sup>19</sup> *Id.* at § § 6, 7, 8, 9.

<sup>20</sup> *Id.* at § § 10, 17(1).

<sup>21</sup> *Id.* at § 17(2).

<sup>22</sup> *Id.* at § 18.



Section 15 of the Code allows any person to inspect the registers of marriage and divorce open for inspection for any person and to obtain certified copies. Section 16 of the Code provides evidentiary value to the certified copies of the register to establish the factum of a marriage, divorce, or nullity of marriage.<sup>23</sup>

The Code has introduced the Concept of Restitution of Conjugal Rights and Judicial Separation in Sections 21 and 22, respectively. The Code provides a uniform framework for the nullity of marriage and divorce that is similar to those mentioned in the Hindu Marriage Act, 1955. Some differences, like marriage, are void if either party to the marriage is incapable of giving consent due to unsoundness of mind, mental disorder, or insanity. The code incorporates provisions for grounds for void and voidable marriage, the grounds of divorce, and divorce by mutual consent. The Code provides legitimacy to the child born out of void and voidable marriage.

The Code does not specifically deal with adoption and maintenance. However, it incorporates provisions for maintenance during the pendency of the proceeding or permanent alimony, which can be provided as either a gross sum or periodical payments.

The second part of the Code deals with succession. The Code incorporates common provisions of the succession of the estate of male and female dying intestate. It classified the relative of the person dying intestate in Class-1, Class-2 and other relatives for devolution.

The third part of the Code deals with live-in relationships. Section 378 of the Code mandates partners to live-in relationship within the State, whether they are residents or not, to submit a statement of their relationship. The Code provides legitimacy to the child born out of live-in relationship.

### **Positive aspects**

The UCC of Uttarakhand upholds the principle of secularism enshrined in the Constitution of India. It is a forward step toward the unification of personal laws, eliminating discriminatory elements of personal laws like unfettered rights to dissolve the marriage of men under Mohammedan law, polygamy, iddat period, etc. One of the essential condition the Code provide is that neither party should have a living spouse at the time of the marriage, thus it prohibits bigamy.<sup>24</sup> Earlier, bigamy was not Islamic personal law, so this is a positive change. promotes gender justice by providing equal rights to women in matters of divorce and

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<sup>23</sup> *Id.* at § 16.

<sup>24</sup> *Id.* at § 4.

inheritance. It simplifies the legal system by reducing the complexity of religious rules in personal laws, thereby making it easier for both the judiciary and common people to navigate.

### **Concerns**

With bright spots, there are also some concerns regarding the UCC. The diverse and pluralistic nature of Indian society makes the implementation of a UCC a complex and contentious issue. One of the contentious issues is that it invades the right to privacy of partners of live-in partnership relations by involving local police stations and guardians in case of partners under twenty-one years of age. It discourages the live-in relationship by imposing up to three months imprisonment if the partners stay for more than one month without forwarding the statement for registration to the registrar.

## **V. CONCLUSION**

The concept of the Uniform Civil Code is not new in India. The vision of the framers of the Constitution to implement the UCC is unequivocally mentioned as a directive principle of state policy in Article 44 of the Constitution. This paper discusses the journey of the UCC in India. The discussion highlights the hurdles to implementing the UCC during British rule and after India's independence. While the UCC of Uttarakhand is a forward step toward the codification of uniform personal laws, it is essential to engage in informed and respectful discussions on the UCC. Its provisions must align with the provisions and principles of the Constitution of India and the judgments of the Constitutional Courts. The stipulation for mandatory registration of live-in relationships is a clear violation of the right to privacy and individual liberties. It must protect the right to privacy recognised by the Supreme Court of India in *K.S. Puttaswamy v. Union of India* (2017). The codification of personal laws in the form of a Uniform Civil Code is not only an opportunity to create uniform personal law but also to eliminate all discriminatory laws and practices in different personal laws. Ultimately, the goal should be to create a legal framework that upholds the principles of justice, equality, and secularism.

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