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UNIFORM CIVIL CODE: A COMPREHENSIVE STUDY- Gautam Sanjay¹

“Well, we are not merely a nation because we say so, but also by the way we live, by our law, we are a strong and consolidated nation”.

K.M. Munshi

Constituent Assembly 23rd November 1948**Introduction**

The year was 1924, almost a century ago, when the women of the newly created Republic of Turkiye decided to appeal to the National Assembly to abolish polygamy. This resulted in the adoption of the Turkish Civil Code in the year 1926, which penalised polygamy with a two-year imprisonment. This begs the question as to why a Uniform Civil Code has been opposed in the name of Islam even though a Muslim-majority state reformed its law a century ago. It is argued that it is easier to reform the laws of the majority; still, for the minority, the initiative should come from the minorities themselves so as not to be accused of “majoritarianism”². This could have been the thought process of the Congress when it reformed the Hindu personal law with the Hindu Code Bill in 1955 but not the Muslim personal law. However, the difficulty in achieving a goal or fear of being labelled as something should not be a reason for not performing it. The Constitution was formed with a defined objective; though the maker of the Constitution did not put the Uniform Civil Code under Part III, they did, however, place it under Part IV. Directive Principles may not be enforceable by Court, but they cannot be ignored. The Apex Court, in the landmark judgment of *Minerva Mills v. Union of India*,³ held:

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²Apurva Vishwanath, *UCC or not, a law saying no one will have two wives at the same time should not be opposed*: Faizan Mustafa, Indian Express (1st April, 2024 18:33 IST) <https://indianexpress.com/article/india/ucc-or-not-a-law-saying-no-one-will-have-two-wives-at-the-same-time-should-not-be-opposed-9244113/>

³*Minerva Mills v. Union of India*, 1981 SCR (1) 206

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“the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. Giving absolute priority to one over the other disturbs the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.”

Therefore, it can be said that Directive Principles are the goal, the destination that the Constitution wishes the nation to reach. The Constitution says Directive Principles are fundamental in the country's governance and that the State must apply this principle in framing laws. This leaves no doubt that the directive principles are of great constitutional significance and cannot be cast aside. Therefore, the State should aspire to achieve principles, including a uniform civil code.

A Uniform Civil Code seeks to create a uniform set of laws to replace the distinct personal laws of every religion regarding the subjects of civil law, such as marriage, divorce, adoption, and inheritance. The purpose of uniform, personal law is national consolidation. It operates under the presumption that there is no essential relationship between religion and personal law in a civilised society. Religion and legislation must be kept apart⁴. While the Constitution guarantees freedom of conscience and religion under Article 25, it seeks to divest religion from personal law and social relations and laws governing inheritance, succession and marriage, just as it has been done even in Muslim countries like Egypt or Turkey, as seen above.

Legislative History of the Uniform Civil Code

During the British Raj, there was the codification of almost all aspects of Indian Law, such as law relating to crimes, the law of evidence, the law of contract, the law relating to transfer of property, etc., but the personal laws were kept out of this purview⁵. However, the British, with social reforms like Ishwar Chandra Vidyasagar and Raja Ram Mohan Roy, were able to bring some reformative and progressive laws such as the Bengal Sati Regulation of 1829, Hindu Widow Remarriage Act of 1856, Married Women's Property of 1923, and Hindu Inheritance (Removal of Disabilities) Act 1928. The passage of the Indian Succession Act of 1865 was one of the first legislative attempts to bring personal laws under civil law. The British Government

⁴M.P Jain, Indian Constitutional Law, 7th Edition (LexisNexis 2016)

⁵UNIFORM CIVIL CODE BILL, 2019 Bill No. 266 of 2019 introduced by Shri Krupal Tumane

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also passed the Shariat Act in 1937 for the Muslim community⁶; however, it was not as strictly enforced as the Hindu Laws.

Before discussing the debate in the Constituent Assembly, an important fact to be noted is that the early exponents of the provision were women. The most significant of these women was Hansa Metha, who tried to make uniform civil code justiciable. Along with Dr Ambedkar and other female members of the Fundamental Right Sub Committee, namely Rajkumari Amrit Kaur and M R Masani, she emphasised the necessity of forging a unified Indian identity as opposed to several religious identities and the responsibility of the State to implement this idea. However, the other Drafting Committee members believed that adopting a single code in India may be perceived as breaking a pledge made to minorities, which could exacerbate an already unstable situation; therefore, their motion lacked support and failed⁷.

In their dissenting note to the report, the three female members expressed their views in the following way:

“One of the factors that has kept India back from advancing into nationhood has been the existence of personal laws based on religion, which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a uniform civil code should be guaranteed to the Indian people within a period of 5 to 10 years.”⁸

Constituent Assembly Debates on Uniform Civil Code

The framers of the Constitution were coherent on the topic, and a vigorous debate ensued in the Constituent Assembly when the provision was called up for discussion. The main opposition to Article 35, as it was in the draft constitution, was by the Muslim community members, namely Mr Mohamad Ismail, Mr Naziruddin Ahmad, Mr Mahboob Ali Baig, Mr B. Pocker and Mr Hussain Imam. The main contentions of these members were that a proviso should be added to

⁶ Arija Roychowdhary, *Shariat and Muslim Personal Law: All your questions answered*, Indian Express (22nd August 2017 08:26 IST) The Indian Express. <https://indianexpress.com/article/research/shariat-muslim-personal-law-sharia-history-shayara-bano-shah-bano-triple-talaq-personal-laws-religious-laws-uniform-civil-code-2784081/>

⁷Lekshmi Permaweswan, *Debates in the Constituent Assembly and thereafter on Uniform Civil Code*, (India Policy Foundation 2020)

⁸ Livemint, “Why India needs a Uniform Civil Code” Livemint (04th July, 2016 01:45 AM IST) last viewed 04th April, 2024 <https://www.livemint.com/Opinion/YJFZY1zt2IN3lkOlljLjfo/Why-India-needs-a-uniform-civil-code.html>

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the main article, stating that the given Uniform Civil Code would not affect the personal laws of citizens. A uniform law for all was seen as a violation of the fundamental right to profess, practice and propagate religion freely. On the question of marriage, Mr Baig, responding to Shri M.A. Ayyanagar, said, *“It is interpreted as a contract, while the marriage amongst the Hindus is a Samskara and that among Europeans it is a matter of status. I know that very well, but this contract is forbidden by the Mussalmans by the Quran, and if it is not followed, a marriage is not a legal marriage at all. For 1350 years, this law has been practised by Muslims and recognised by all state authorities. If today, Mr Ananthasayanam Ayyangar says that some other method of proving the marriage will be introduced, we refuse to abide by it because it does not conform to our religion. It is not according to the code laid down for us for all times”*.⁹

This member vehemently opposed the proposal, but many reasons were given for a standard civil code. Shri K.M. Munshi, Shri Alladi Krishnaswamy Ayyar and Dr. B.R. Ambedkar came to the Article's defence.

Shri K.M. Munshi dealt with two main arguments: first, it was an infringement of fundamental rights, and second, it was considered tyrannous to the minority. Regarding fundamental rights, he stated that the Constituent Assembly had already acknowledged the premise that Parliament may pass legislation about religious practice provided it covers a secular activity, falls under the purview of social reform, or pertains to social welfare without violating the minority's fundamental right.¹⁰

He was enraged at the accusation that a uniform code for all would be regarded as “tyrannical” and expressed his discontent in the following way:

“A further argument has been advanced that the enactment of a Civil Code would be unjust to minorities. Is it tyrannical? Nowhere in advanced Muslim countries, the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a Civil Code. Take, for instance, Turkey or Egypt. No minority in these countries is permitted to have such rights...If you look at the countries in Europe that have a Civil Code, everyone who goes there from any

⁹ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

¹⁰ *ibid*

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part of the world, including every minority, has to submit to the Civil Code. It is not felt to be unjust to the minority.”¹¹(emphasis implied)

According to the member, the objective of a standard civil code was the separation of religion from personal law. Shri A.K. Ayyar also responded to the Uniform Civil Code against inclusiveness, causing disharmony between religious communities. He said, “ *The second objection was that religion was in danger; that communities cannot live in amity without a uniform civil code. The article aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. It aims to arrive at a standard measure of agreement regarding these matters.* ”¹²

Dr. Ambedkar was an ardent supporter of the UCC as well. He refuted the argument that it would be impossible to establish a single civil code in such a large nation as India. He stated, “ We have a uniform code of laws covering almost every aspect of human relationships in this country. We have a uniform and complete Criminal Code operating throughout the country, contained in the Penal and Criminal Procedure Code. The Law of Transfer of Property deals with property relations and is operative throughout the country. Then there are the Negotiable Instruments Acts, and I can cite innumerable enactments that would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole country. The only province the Civil Law has not been able to invade so far is Marriage and Succession ”¹³In this regard, he was different from Mahatma Gandhi; he believed that the legal and social structures of the West provided a suitable framework for implementing social changes in the Indian system. Although he favoured the communities gradually being included with their voluntary consents until the legislature complies with its commitment to have a UCC, he did not want to add the proviso to the already unenforceable article.

Constitutional Relevance and Judicial Pronouncements

Fundamental Rights and Directive Principles

¹¹ibid

¹² ibid

¹³ibid

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The provision which discusses the Uniform Civil Code is Article 44 of the Constitution of India, which reads as follows:

“The State shall endeavour to secure a uniform civil code for the citizens throughout the territory of India.”

Although the directive principles are non-justiciable, they have guided the parliament and the state legislature in enacting social reform legislation, and the courts have cited them in support of their interpretation of the constitutional provision¹⁴. The Supreme Court has dramatically valued both directive principles and Fundamental rights. Fundamental rights are not an end but the means to the end, as specified in the Directive Principles¹⁵. In *Unnikrishnan v. State of Andhra Pradesh*¹⁶, the Apex Court held that the Fundamental rights and Directive principles are supplementary and complimentary to each other and not exclusionary of each other and that the Fundamental Rights are but a means to achieve the goals indicated in Directive Principles and that the Fundamental rights must be construed in the light of the Directive Principles¹⁷.

Shri K.M. Munshi brought up the idea of the realisation of fundamental rights through the Uniform Civil Code during the discussion in the Constituent Assembly; he debated that:

*“But you have already passed a Fundamental Right to that effect, and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law; you get any amount of discrimination against women, and if that is part of Hindu religion or Hindu religious practice, you cannot pass a single law which would elevate the position of Hindu women to that of men. Therefore, there is no reason there should not be a civil code throughout the territory of India.”*¹⁸

In contemporary times, the judiciary and legislature have considered both of great constitutional significance in forming socioeconomic laws and have seen directive principles as the destination; therefore, a uniform civil code must also be a destination.

The approach of the judiciary

¹⁴Subhash C. Kashyap, *Our Constitution*, (National Book Trust India 2014)

¹⁵*Minerva Mills v. Union of India* AIR 1980 SC 1789

¹⁶*Unnikrishnan v. State of Andhra Pradesh* (1993) 1 SCC 645

¹⁷M.P Jain *“Indian Constitutional Law”* (LexisNexis 2016)

¹⁸ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948

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Over the years, the Supreme Court has deliberated upon the UCC in several judgments but has refused to issue any directive to the government since law-making falls within the exclusive domain of Parliament. The Supreme Court of India has always been an ardent supporter of the UCC—the Apex Court is at the landmark of Mohd. Ahmed Khan v. Shah Bano¹⁹ expressed its discontent regarding the condition of uniform civil code reforms in India; it stated that “It is a matter of regret that Article 44 has remained a dead letter” and said for it to be implemented. The Apex Court applied the secular provisions of the law, i.e., Section 125 of the Code of Criminal Procedure, 1973. It held that even though under Muslim personal law, she was entitled to maintenance only till the period of iddat, the maintenance provision under Cr. P.C. entitled her to maintenance even after the completion of her iddat period.

The application of the common law to provide a remedy to Shah Bano proved to be the more straightforward way for the Supreme Court to uphold and protect the fundamental rights of women. If the Supreme Court had resorted to personal laws, then it would have been left shirt-handed in providing justice to women and would have failed to recognise the predicament of women. The court has stated:

“Section 125 was enacted to provide a quick and summary remedy to a class of persons who cannot maintain themselves. Whether the spouses are Hindus or Muslims, Christians or Parsis, Pagan or Heathens, is wholly irrelevant in the application of these provisions. The reason for this is axiomatic, in the sense that section 125 is a part of the Code of Criminal Procedure, not of the Civil Laws, which define and govern the rights and obligations of the parties belonging to particular relations, like the Hindu Adoptions and Maintenance Act, The Shariat, or the Parsi Matrimonial Act. It would make no difference as to what is the religion professed by the neglected wife, child or parent.” (Emphasis Supplied).

Another landmark judge for gender justice is Sarla Mudgal & others v. Union of India²⁰. In this case, a man had converted to Islam and solemnised a second marriage without dissolving the first marriage. The Apex Court held that the second marriage would be considered void as the first marriage, under Hindu Law, was never dissolved. The court made a critical observation regarding Article 44 of the Constitution:

¹⁹ AIR 1985 SC 945

²⁰(1995) 3 SCC 635

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“Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom, whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal laws of the Hindus, such as those relating to marriage, succession and the like, have all a sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus, along with Sikhs, Buddhists, and Jains, have forsaken their sentiments for the cause of national unity and integration; some other communities would not, though the Constitution forbids the establishment of a "common civil Code" for the whole of India.”

In *John Vallamttom and Anr. v. Union of India*²¹, the Chief Justice of India at the time, Justice V.N. Khare, observed, *“Before I part with the case, I would like to state that Article 44 provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The provision above is based on the premise that there is no necessary connection between religious and personal law in a civilised society. Article 25 of the Constitution confers freedom of conscience, profession, practice and propagation of religion. The two provisions above, viz. Articles 25 and 44 show that the former guarantees religious freedom, whereas the latter divests religion from social relations and personal law. It is no matter of doubt that marriage, succession and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution.”*

There is a catena of judgments in which the Supreme Court has shown strong support for implementing the Uniform Civil Code.

Opposition to the Uniform Civil Code

Uniform civil code a threat to the diversity of the nation

It has been long argued that a uniform civil code is a threat to the diverse identity of different minorities, and the majority would dominate the others with their custom. The opposition on this ground is ill-founded; a common civil law would not interfere with the customs of any religion. For instance, a law on marriage would provide a minimum age, make monogamy mandatory,

²¹AIR 2003 SC 2902

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make marriage and divorce registration compulsory or even recognise the concept of a live-in relationship. These are progressive steps that should be taken. Prof. Faizan Mustafa, in a recent interview, commented on the issue of polygamous marriage, stating, “Whether you have a UCC or not, if a government comes up with a law that says that nobody will have two wives at one and same time. I think nobody should oppose it.”²²

A uniform civil code is opposed to secularism.

The word ‘secular’ has been interpreted differently from the Western philosophies. This is considered equal treatment of all religions, and the State has no religion. Therefore, the state should treat all religions equally; however, this has not been the case. It can be argued that the codification and secularisation of the civil code of one community by the Parliament poses a more significant threat to the country's secular fabric. Parliament, way back in 1955, decided to codify the personal laws relating to the Hindu community, which includes Jain, Sikhs and Buddhists. However, no attempt has been made to codify the laws of other communities equally; only minor aspects have been codified, like the Muslim Women (Protection of Rights on Marriage) Act, 2019, which prohibits triple talaq.

According to the Hindu customary law, a marriage is a sacrament²³, a sacred bond between a man and woman that cannot be broken. The Hindu Marriage Act of 1955 altered the whole nature of marriage by introducing the concept of divorce. If reforms can be introduced for the Hindu community, even at the cost of changing customs and religious practices, the same should be done for the communities. The codification and secularisation of Hindu personal law place the burden solely on the Hindu community to be secular while the rest can act according to their faith. This practice is discriminatory against Hindus and a clear violation of secular ideas, which is taken to be one of the basic structures of the Constitution.

Shri K.M. Munshi, during the debates, even reasoned as to how a common civil law would be a step towards a more secular society, said: “*The point, however, is this, whether we are going to consolidate and unify our law in such a way that the way of life of the whole country may over*

²² Apurva Vishwanath, *UCC or not, a law saying no one will have two wives at the same time should not be opposed*: Faizan Mustafa, Indian Express (1st April, 2024 18:33 IST) <https://indianexpress.com/article/india/ucc-or-not-a-law-saying-no-one-will-have-two-wives-at-the-same-time-should-not-be-opposed-9244113/>

²³ Dr. Paras diwan, *Family law*, (Allahabad Law Agency 2018)

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time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What do these things have to do with religion? I fail to understand.”

Uniform Civil Code in the present times

The Apex Court recently stressed the importance of a Uniform Civil Code. In the case *Jose Paulo Coutinho v. Mria Luiza Valentina Pereira & Others*,²⁴ the Court ruled that in Goa, succession to a Goan's property outside of Goa will be governed by the Portuguese Civil Code, 1867, rather than the Indian Succession Act, 1925. It further noted that even though Hindu laws were codified in 1956, the Supreme Court said that “despite this Court's exhortation, no attempt has been made to frame a Uniform Civil Code applicable to all citizens of the country.”²⁵

As stated above, a positive step towards realising the aim of a standard civil code was the Muslim Women (Protection of Rights on Marriage) Act, 2019, which outlawed the practice of Triple Talaq. The Court said that arbitrary personal laws cannot find sanctuary in the rights given by Freedom of Religion and Equality before the Law is supreme in its ruling upholding the validity of the ban on Triple Talaq.

In a way, a uniform civil code already exists: the Special Marriage Act of 1954. Under this act, people of different faiths or people who do not believe in any faith can marry. The Special Marriage provided the citizens and all Indian nationals in foreign countries with a particular form of marriage, regardless of the religion or faith practised by either party. Under the Special Marriage Act, a marriage official must register a marriage and perform solemnisation. The marriage officer in whose jurisdiction at least one of the parties has resided for at least 30 days before the date of the notification must be notified by the parties to the proposed marriage. Copies of the notice for comparable publishing should be given to any other Marriage Officer who may reside in the same region as either party. The marriage may be formally solemnised one

²⁴Jose Paulo Coutinho v. Mria Luiza Valentina Pereira & Others (2019)12 SCALE 338

²⁵Anubhuti Vishnoi, *SC support for legislation on UCC prompted by cases involving gender justice*, Economic Times (July 15th 2023, 10:41 PM IST) https://economictimes.indiatimes.com/news/politics-and-nation/sc-support-for-legislation-on-ucc-prompted-by-cases-involving-gender-justice/articleshow/101787948.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

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month from the notice's publication if no objections are raised. If there are any objections, the marriage officer must investigate them and decide whether to solemnise the marriage or reject it. Following the solemnisation of the marriage, registration will take place.

Uniform Civil Code at State level

The Concurrent list under the seventh schedule of the Constitution provides that both the Parliament and State legislatures can legislate on matters relating to family laws.

With the passing of Uttarakhand's Uniform Civil Code, it became the second state to implement a common civil law for all after Goa. In 2019, the Supreme Court observed that "*Goa is a shining example of an Indian State which has a uniform civil code applicable to all, regardless of religion except while protecting certain limited rights.*"²⁶

A) GOA

Until recently, Goa was the only state in India with a uniform civil code regardless of religion, gender, or caste. The 156-year-old law, which runs over 647 pages, cuts across religions and has rules that govern everything from gender equality in marriage to personal inheritance. The Portuguese Civil Code, enacted in Ajuda Palace in Lisbon, the capital of Portugal, continues to govern Goa and the Union Territories of Daman and Diu and Dadra and Nagar Haveli. When Goa became part of the union territory in 1961 by the Goa Daman and Diu Administration Act of 1962, the Parliament authorised the Portuguese Civil Code of 1867. It shall be amended and repealed by the competent legislature.

In Goa, a marriage is a contract between two persons of opposite gender. It is performed to live together and constitute a legitimate family. Such marriages are to be registered before the office of civil registrar. Inheritance under this Code is quite similar to that in the Muslim law, including lineal ascendants and descendants as legal heirs. However, unlike the Muslim law, daughters and sons are treated equally.²⁷

The Goa Uniform Civil Code is also not strictly uniform. It is different for Hindus and Catholics. And women's rights are also not perfectly equal to men's. The Portuguese Civil Code carves out

²⁶Jose Paulo Coutinho v. Mria Luiza Valentina Pereira & Others AIRONLINE 2019 SC 1035

²⁷ S. Sadhana & S. Bhuvanewari, *A Contemporary Study on the Uniform Civil Code*, IJPAM, pg. 4638 (2018)

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crucial exceptions for Hindus and Catholics. In 1867, the Code drafted by António Luiz de Seabra, a judge at the Oporto Court of Appeal, had created several exemptions for the “gentile” population in Portuguese colonies. These exclusions included the "moral or public policy" of Indians in the New Conquests, which included Daman and Diu, and the Chinese traditions in Macau, the Baneanes, Bhatias, Parsis, and Muslims in Mozambique. Ten years after the civil code was implemented in 1880, the Code of Gentile Hindu Usages and Customs of Goa was enacted to formalise the benefits to Hindus. The tax benefits for a Hindu Undivided Family, or "partnership sociedade," is a significant exemption from 1880 that is very important under Indian law. The head of a Hindu family, known as the "maioral" or "karta," is likewise recognised by the Code.²⁸

B) Uttarakhand

In June 2022, the government of Uttarakhand established an expert group to look at potential methods for implementing a uniform civil code. Justice Ranjama Prakash Desai, a former judge of the Supreme Court, chaired the committee. The bill was passed by the State Assembly in February 2024, and the president got permission in March 2024.

The Code will apply to those living in Uttarakhand and those of Uttarakhand residing elsewhere in India. Further, it will only apply to state citizens who identify as male or female and are in heterosexual partnerships, thus leaving most LGBT persons outside its ambit²⁹. It does not affect the customs surrounding family law that the Constitution safeguards, nor does it apply to members of the Scheduled Tribes. This covers the traditional ways of life every day in states like Mizoram and Nagaland. The Code is heavily influenced by non-religious statutes like the Indian Succession Act of 1925 and the Special Marriage Act of 1954. It repeals all family laws to the degree that family laws conflict with them.

²⁸ Apurva Vishwanath, *Goa is the only state with a Uniform Civil Code. Here's what it looks like*, Indian Express (18th August 2013 1:54 IST) <https://indianexpress.com/article/india/goa-is-the-only-state-with-a-uniform-civil-code-heres-what-it-looks-like-8894824/#:~:text=The%20Code%20continues%20to%20govern,civil%20code%20for%20all%20religions.>

²⁹ Kartavi Satyarthi, Namrata Mukherjee, *Hits and misses of Uttarakhand Uniform Civil Code: What the Bill does, and does not do*, Indian Express (6th February, 2024 23:08 IST) <https://indianexpress.com/article/explained/explained-law/uttarakhand-uniform-civil-code-takeaways-9147379/>

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The Code incorporates a progressive change that seeks to do away with the approach of "illegitimate children." At present, guardianship law, both secular and personal laws, which dictates the relationship between parents and children, discriminates against children born outside of marriage by deeming them to be illegitimate children and denying them the same rights at par with children born within marriage, who are considered to be legitimate. The courts, on their part, have tried to grant certain rights to children born out of marriage, specifically in matters about inheritance and maintenance. Under Hindu law, the concept of an "illegitimate" child continues to prevail³⁰. The Code has stepped even further by treating children born in live-in relationships as legitimate children. One drawback that the Code fails to address is that it doesn't address the discrimination mothers experience from guardianship laws that treat only fathers as the child's legal guardians and give them decision-making authority. In contrast, mothers are treated as the child's custodians and are essentially reduced to caretakers.

The abolition of the coparcenary system, a component of Hindu personal law—is one of the most notable features of the Code. Property may be considered self-acquired or coparcenary under the Hindu Succession Act 1956. Hindus who are coparceners have owned ancestral property for four generations. The self-acquired property belongs to the individual and is passed on upon death by intestate succession laws. A deceased's share of the coparcenary property is again included in the pool of properties. As such, the property must be divided so that each individual can get their corporate property. The Uttarakhand UCC eliminates the coparcenary system and gives everyone, regardless of faith, access to the same succession plan. As a result, everything will be transferred as separate property according to the intestate succession plan outlined in the Code.

Although marital property is not jointly owned, the distribution of the marriage estate is nevertheless subject to judicial discretion. Despite being approved, prenuptial agreements would still require a court's consideration when determining how to divide property. One of the most discussed aspects of the Code is the legalisation of "Live-in Relationships". The Code seeks to make live-in relationships equivalent to marriage. A live-in relationship is defined as a "relationship between a man and a woman cohabit in a shared household through a relationship

³⁰ Namrata Mukherjee, Kartavi Satyarhi, *Uttarakhand UCC Bill: What changes in marriage, divorce, guardianship, and adoption?*, Indian Express (8th February, 2024 08:42 IST 1) <https://indianexpress.com/article/explained/explained-law/uttarakhand-ucc-bill-what-changes-in-marriage-divorce-guardianship-and-adoption-9149384/>

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like marriage, provided that such relations are not prohibited.”³¹The Apex Court has merely recognised live-in relationship as a “domestic relationship” under the Domestic Violence Act, 2005.

The Code requires the partners to notify the “Registrar” within a month of entering into a live-in relationship and while terminating a live-in relationship. It prescribes a jail term of up to three months for not registering a live-in relationship. In case of failing to produce a certificate of live-in relationship, a term of six months is prescribed on conviction.³²

Notably, the Code provides maintenance to a woman who has been "deserted" by her partner, just like it would for a married woman. Section 388 states: *“If a woman gets deserted by her live-in partner, she shall be entitled to claim maintenance from her live-in partner, for which she may approach the competent Court having jurisdiction over the place where they last cohabited, and, in such a case, the provisions contained in chapter 5, Part 1 of the Code shall mutatis mutandis apply”*.

Section 378 of the Code requires that parties to a live-in relationship provide a statement. *“It shall be obligatory for partners to live-in relationship within the state, whether they are resident(s) of Uttarakhand or not, to submit a statement of live-in relationship under sub-section 1 of section 381 to the Registrar within whose jurisdiction they are living.”* It further states that *“Any resident(s) of Uttarakhand staying in a live-in relationship outside the territory of the state may submit a statement of live-in relationship under sub-section 1 of section 381 to the Registrar within whose jurisdiction such resident ordinarily resides”*.

The Registrar has the authority to summon "any other persons" or the live-in partners for verification as part of a "summary inquiry." If one of the partners is under 21, the Registrar will notify the parents or guardians and transmit the record to the relevant police station.³³

Although the recognition of a live-in relationship is a very progressive step in a society where moral policing is the norm, the provision of informing the state about it could lead not only to

³¹ Uniform Civil Code of Uttarakhand, 2024 Section 3 (4)(b),

³² Apurva Vishwanath, *Uttarakhand Uniform Civil Code: Registration of live-ins, jail term raise question of privacy & liberty*, Indian Express (8th February, 2024 09:22 IST) <https://indianexpress.com/article/explained/explained-law/uttarakhand-uniform-civil-code-registration-of-live-ins-jail-term-raise-questions-of-privacy-liberty-9147711/>

³³ Kuldeep Garg, *Live-in Rights Under Scrutiny: Examining Privacy Concerns in Uttarakhand UCC*, LiveLaw 13th February, 2024 12:01 PM) <https://www.livelaw.in/articles/live-in-rights-under-scrutiny-examining-privacy-concerns-in-uttarakhand-ucc-249352>

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more harassment of the persons involved by the police or society in general, it is gravely inconsiderate of the right to privacy. The Apex Court, in its landmark judgment of Justice *K.S. Puttaswamy (Retd) v. Union of India*³⁴, recognised the right to privacy and cited various precedents stating that “personal information which has no relationship to any public activity or interest”, or which would cause “unwarranted invasion of the privacy of the individual” unless the authority is “satisfied that the larger public interest justifies its disclosure”.

Conclusion

A standard civil code about personal law would be helpful on two fronts: firstly, it would aid in reforming the civil structure for all religions, and secondly, it would assist the courts in dispensing justice. It is necessary to reform personal laws and divorce them from religion. A uniform civil code being opposed to diversity is an ill-found criticism, and progressiveness on selective bases must be discouraged.

Almost all aspects of civil nature are governed by uniform laws across the country, and the time is ripe for personal laws to be legislated under one uniform umbrella. For instance, if there can be a minimum age for voting, a minimum age for driving and a minimum age for consuming alcohol, there is nothing wrong with fixing a minimum for girls who can get married (at present, the minimum age for Muslim girls to get married is the age of puberty which is generally taken to be 15 years).

The Supreme Court, in the *Shah Bano Case*, vigorously advocated for a Uniform Civil Code. It observed the following:

“Article 44 of our Constitution has remained a dead letter. There is no evidence of any official activity in framing a common civil code for the country. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws with conflicting ideologies. The State is charged with securing a uniform civil code for the country's citizens, and unquestionably, it has the legislative competence to do so. A beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered

³⁴ *K.S. Puttaswamy (Retd) v. Union of India*, 2019 (1) SCC 1

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when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal laws cannot replace a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.”

However, the aftermath of this judgment showed where the priorities of the Indian political class lay: with the “vote bank”. The Congress Government enacted to nullify the decision and keep the conservative section contented. The current political system has also been the same. Even though a Uniform Civil Code is one of the major political ideologies, they have not taken any steps to realise the same. The Uniform Civil Code passed by the Himalayan State could be like the falling of small stones that start an avalanche in the mountains. Some other states, such as Madhya Pradesh and Gujarat, have also appointed committees to formulate a Uniform Civil Code. Although whether the Central Government would propose an “India” Code is debatable, much would be decided after the general elections. Further, this renewed zeal towards a standard civil code would be impacted by the ongoing query before the Supreme Court, which deals with the “scope and ambit of the right to freedom of religion under Article 25 of the Constitution.”

Another notable aspect is that the Rashtriya Swayamsevak Sangh, the ideological fountainhead of the ruling party, has enthusiastically supported the uniform civil code. Despite the passage of ten years at the Centre, no progress has been made.

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