

THE UNIFORM CIVIL CODE: STRIKING A BALANCE BETWEEN SECULARISM, RELIGIOUS AUTONOMY, AND GENDER JUSTICE IN INDIA

-Prof. Sanjeev Kumar Chadha¹

-Amit Kumar Singh²

Abstract

The Uniform Civil Code (UCC) represents an on-going effort to harmonize personal laws across religious and cultural lines in India, aiming to promote equality, gender justice, and national unity. Rooted in Article 44 of the Constitution, the UCC has been widely debated, with the judiciary often emphasizing its desirability while acknowledging the complexities of its implementation. This paper explores the historical, legal, and social dimensions of the UCC, including key cases like *Narasu Appa Mali*, *Shah Bano*, and *Sarla Mudgil*, as well as regional applications like the Goa Civil Code and recent developments in Uttarakhand. The study also examines challenges in addressing marriage, divorce, inheritance, and live-in relationships within a diverse society, particularly focusing on concerns of tribal and minority communities. By analyzing the interplay between constitutional principles, political discourse, and societal needs, this paper evaluates the feasibility of a UCC that respects India's cultural diversity while advancing justice and equality.

Keywords

Directive Principles of State Policy, Gender Equality, Religious Diversity, Live-In Relationships, Family Law Uniformity

Introduction

“In modern Indian society which is gradually becoming homogenous, the traditional barriers of religion, community and caste are slowly dissipating. The youth of India belonging to various communities, tribes, castes or religions who solemnise their marriages ought not to be forced to struggle with issues arising due to conflicts in various personal laws”

-Justice Pratibha M Singh³

The Uniform Civil Code (UCC) has long been a topic of significant debate in India's socio-legal landscape, reflecting the complexities of balancing constitutional ideals with cultural diversity. Anchored in Article 44 of the Constitution, the UCC calls upon the state to strive for uniformity in personal laws across religious communities, aiming to promote equality and national integration. However, its implementation has remained elusive due to the pluralistic nature of Indian society and concerns about cultural preservation, particularly among minority and tribal groups. The ongoing discussions and judicial interventions surrounding the UCC highlight the necessity of exploring its feasibility and implications in the contemporary context.

The intersection of fundamental rights and the UCC underscores its relevance to principles such as equality, non-discrimination, and gender justice. While personal laws cater to diverse religious customs, the lack of uniformity often results in discriminatory practices, particularly against women. Simultaneously, the Directive Principles of State Policy, particularly Article 44, provide a constitutional mandate for achieving

¹ Professor of Law Department, School of Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow, Email: sk.chadha123@gmail.com

² Research Scholar of Law Department, School of Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow, Email: amitsinghrmlnu@gmail.com

³ Justice Pratibha M Singh in case of *Satprakash Meena v. Alka Meena* (AIR ONLINE 2021 DEL 925)

legal uniformity, emphasizing its importance for social harmony. The debates within the Constituent Assembly also shed light on the aspirational nature of the UCC, as framers envisioned it as a progressive step towards a unified legal framework.

Judicial pronouncements have played a pivotal role in shaping the discourse on the UCC. The landmark cases such as *State of Bombay vs. Narasu Appa Mali*⁴ and *Mohd. Ahmad Khan vs. Shah Bano Begum*⁵ have underscored the tension between personal laws and constitutional mandates, while cases like *Sarla Mudgil vs. Union of India*⁶ and *Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira*⁷ have reiterated the need for legal uniformity. The Goa Civil Code, often cited as a successful example of a UCC in practice, further illustrates the potential benefits of uniform family laws, even within India's diverse legal landscape.

Recent developments have reignited the UCC debate, particularly the Uttarakhand High Court's directive mandating an inter-faith live-in couple to register under the state's proposed UCC law within 48 hours⁸. While this decision was subsequently modified due to the non-enforcement of the law, it underscores the increasing role of state-specific initiatives in advancing the UCC agenda. Additionally, the submission of the UCC committee report in Uttarakhand and political promises for its implementation reflect a growing momentum toward legal uniformity.⁹

At the national level, the debate has also taken a political turn, with assurances that tribal communities and their cultural practices will remain unaffected by the UCC.¹⁰ However, resistance from states like Jharkhand¹¹, which prioritize preserving tribal laws such as the Chotanagpur and Santhal Pargana Tenancy Acts, highlights the challenges of achieving consensus. The Supreme Court has also weighed in on the issue, noting the aspirational nature of the UCC in cases like *Kesavananda Bharati*, while acknowledging the lack of concrete steps by successive governments.¹²

This paper explores the constitutional foundation, judicial approach, and practical implications of the UCC, delving into its impact on personal laws, marriage, divorce, inheritance, and emerging societal structures like live-in relationships. By critically analyzing judicial precedents, legislative efforts, and socio-political dimensions, the study aims to contribute to the ongoing discourse on the need, feasibility, and challenges of implementing a Uniform Civil Code in India.

Constitution and Uniform Civil Code

Fundamental Rights and the Uniform Civil Code

A constitutional framework that guarantees basic human rights inherently opposes state actions that permit or enforce discriminatory practices, even in interpersonal relations. The principles of civil liberty must

⁴ *State Of Bombay V.Narasu Appa Mali*, AIR1952 BOM 84.

⁵ *Mohd. Ahmad Khan v. Shah Bano Begam*, AIR 1985 SC 945

⁶ *Sarla Mudgil v. Union of India*, (1995) 3 SCC 635.

⁷ *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira and ors*, AIRONLINE 2019 SC 1035

⁸ Sebin James, Uttarakhand's Uniform Civil Code Not Yet Implemented: High Court Expunges Direction On Live-In Couple To Mandatorily Register Relationship, live Law (published on: 31 July 2024), WPCRL 775/2024.

⁹ Vasudha Mukherjee, Uttarakhand's Uniform Civil Code report submitted to CM: What it says, New Delhi, (published on: Oct 18 2024), available at: <https://www.business-standard.com/> (last visited on 15 November 2024)

¹⁰ Vikas Pathak, With Amit Shah's UCC pitch, why BJP has drawn a clear red line, The Indian Express, Delhi (published on: November 4, 2024), available at: <https://indianexpress.com/> (last visited on 16 November 2024)

¹¹ Press Trust of India, Ranchi, (published on: Nov 03 2024), Uniform Civil Code won't be allowed in Jharkhand, says CM Hemant Soren, available at: <https://www.business-standard.com/> (last visited on 14 November 2024)

¹² Krishnadas Rajagopal, Over the years, Supreme Court has campaigned for Uniform Civil Code but refused to enforce it, (published on: August 17, 2024), available at: <https://www.thehindu.com/> (last visited on 16 November 2024)

extend to personal domains, ensuring equality and justice. However, in India, the development of law in this regard has been insufficient, preventing the full realization of fundamental rights to establish a fair and equitable civil code. The Indian Constitution emphasizes equality and liberty through Articles 13, 14, and 21. Article 13 invalidates laws inconsistent with fundamental rights, Article 14 ensures equality before the law, and Article 21 guarantees personal liberty under a fair and just legal process. However, customs and personal laws related to marriage, succession, and maintenance that perpetuate discrimination often escape constitutional scrutiny. These contradictions highlight the need for constitutional provisions to regulate personal laws in alignment with fundamental rights.

The Constitution empowers the state to enact social reforms. Article 25(2)(b) allows the state to override religious freedom for social welfare, and Article 15(3) enables special provisions for women and children. Importantly, personal laws cannot claim protection under Article 29(1), as these are not essential aspects of religion and are subject to reform under Article 25.

The question of whether personal laws qualify as “laws” under Article 13 remains contentious. In *State of Bombay v. Narasu Appa Mali*¹³, the Bombay High Court ruled that personal laws are not “laws” under Article 13, citing their omission from the article. This decision permitted discriminatory personal laws to persist unchecked by Articles 14 or 21. The court argued that Article 17 (abolishing untouchability) and Article 25(2) implied that personal laws were intended to operate until reformed by the state. However, this reasoning has been critiqued for its restrictive interpretation of Article 13. The inclusive definition of “law” in Article 13(3) supports the view that any enforceable norm, including personal laws, falls within its scope. Articles 17 and 25(2) illustrate the framers' intent to reform discriminatory practices, not exclude personal laws from constitutional oversight. The debate surrounding the Uniform Civil Code (UCC) intersects with this issue. While the judiciary in *Narasu Appa Mali* prioritized gradual reforms tailored to community readiness, this approach has limited the application of fundamental rights in personal laws.¹⁴ The Constituent Assembly debates on Article 44, which advocates a UCC, suggest that gradual reforms must eventually converge toward equality and justice for all citizens. The *Narasu Appa Mali* decision, by excluding personal laws from Article 13, hindered the judiciary’s role in aligning personal laws with constitutional values of liberty and equality. Reforming personal laws piecemeal may be pragmatic, but it must aim at a unified civil code that respects fundamental rights. The UCC remains an essential step in ensuring that constitutional guarantees of equality and liberty extend beyond the public sphere to personal relations, fostering a society rooted in justice and fairness.

The interaction between personal laws and constitutional rights has sparked debate, particularly about their compatibility with Part III of the Indian Constitution. In *Sri Krishna Singh v. Mathura Ahir*¹⁵, the Supreme Court held that personal law does not fall within the scope of Article 13. The case arose when Krishna Singh challenged the appointment of a new mahant on grounds of alleged discrimination, arguing that a natural son’s ties to his father cease upon the latter’s renunciation and that a Shudra could not be appointed as a mahant. The court ruled against these arguments, stating that even if discriminatory, personal laws were not invalid under Article 13. However, this reasoning was not essential to the case's resolution, as the contested rule was consistent with the right to equality.

In *Gurdayal Kaur v. Mangal Singh*¹⁶, the Punjab High Court rejected the argument that caste- or race-based discrimination could invalidate personal laws, emphasizing the constitutional recognition of diverse personal laws. This reasoning has been critiqued, as discriminatory elements within personal laws can be addressed using Part III of the Constitution. Scholar Mohammed Ghouse argued that personal laws cannot be

¹³ *State of Bombay v. Narasu Appa Mali*, AIR 1950 Bom

¹⁴ *ibid*

¹⁵ *Krishan Singh v. Mathura Ahir*, AIR 1980 SC 712.

¹⁶ *Gurdayal Kaur v. Mangal Singh*, AIR 1968 Punj. 396. at 398

shielded from scrutiny if they violate fundamental rights. Several judgments have acknowledged the applicability of Part III to personal laws. In *Sheokaran Singh v. Daulatram*¹⁷, the Rajasthan High Court invalidated the Hindu law rule of *damdupat* under Article 14, deeming it a commercial custom subject to Article 13. Similarly, in *Sant Ram v. Labh Singh*¹⁸, the Supreme Court examined whether the Muslim law of pre-emption violated Article 19(1)(f), determining that personal laws rooted in custom are subject to constitutional scrutiny.

Recent judicial trends show a shift from debating whether personal laws constitute “law” under Article 13 to examining their substantive compatibility with constitutional rights. For example, in *T. Sareetha v. Venkatasubbaiah*¹⁹, the Andhra Pradesh High Court found Section 9 of the Hindu Marriage Act, which enforced restitution of conjugal rights, violative of Article 21’s guarantee of personal liberty. However, the Delhi High Court upheld the provision in *Harvinder Kaur v. Hermender Singh*²⁰, prioritizing the institution of marriage. The Supreme Court later affirmed this view in *Saroj Rani v. Sudarshan Kumar Chadha*²¹, emphasizing legislative intent over constitutional conflicts.

The desirability of applying Part III to personal laws lies in its potential to ensure equality, liberty, and fairness, reducing exploitation and discrimination in personal spheres. Judicial interventions purging discriminatory elements from personal laws could pave the way for a Uniform Civil Code (UCC). This approach focuses on embedding constitutional principles within personal laws, making a UCC a natural progression rather than an abrupt imposition.

As Ghose observed²², reforms aligned with constitutional rights would address contentious issues like polygamy and unilateral divorce, fostering broader acceptance across communities. Judicial activism in this domain counters legislative inertia, ensuring justice and equity without overriding religious sentiments. By prioritizing constitutional values over rigid interpretations, courts contribute to a more inclusive legal framework that balances tradition with progressive ideals.

Uniform Civil Code and Directive Principles of State Policy

The Uniform Civil Code (UCC), articulated in Article 44 of the Indian Constitution, is part of the Directive Principles of State Policy outlined in Part IV. While these principles are not enforceable by courts, they are considered fundamental to the governance of the country and aim to guide the State in creating laws. Article 44 envisions a unified legal framework to govern personal matters, replacing diverse personal laws with a single civil code applicable across India.

The inclusion of the UCC as a directive principle reflects its significance as a long-term constitutional goal. It was recognized by the framers that social and economic infrastructure needed to evolve before implementing such reforms. By placing it under the Directive Principles, the Constitution aimed to achieve social reformation through the gradual harmonization of personal laws.

Courts have occasionally highlighted the importance of the UCC, particularly in cases like *Shah Bano*²³ and *Sarla Mudgal*²⁴, even when it was not directly relevant to the matter at hand. These observations underscore the judiciary’s acknowledgment of the UCC as a constitutional aspiration aimed at fostering

¹⁷ *Sheokaran Singh v. Daulatram*, AIR 1953 Raj.

¹⁸ *Sant Ram And Ors vs Labh Singh And Ors*, 1965 AIR 166, 1964 SCR (7) 745

¹⁹ *T. Sareetha v. Venkatasubbaiah*, AIR 1965 SC 314

²⁰ *Harvinder Kaur v. Hermender Singh*, AIR 1984 Del. 66

²¹ *Smt. Saroj Rani vs Sudarshan Kumar Chadha*, 1984 AIR 1562, 1985 SCR (1) 303

²² Mohammad Ghose, “Secularism, Society And Law In India”, *Indian law Institute* (1973).

²³ *Mohd. Ahmad Khan v. Shah Bano Begam*, AIR 1985 SC 945

²⁴ (1995) 3 SCC 635.

equality and justice, despite its current legal non-enforceability. Achieving this goal remains a complex but essential endeavor for India's socio-legal progress.

Uniform Civil Code: Judicial Approach

In democratic systems like India, the judiciary plays a crucial role in resolving conflicts, especially in upholding constitutional mandates. With the power to nullify laws or actions that violate the constitution, the judiciary ensures the balance between individual rights and state objectives. Article 44 of the Constitution advocates for a Uniform Civil Code (UCC) to promote social justice, yet it often clashes with fundamental rights such as religious freedom. The judiciary acts as a mediator, interpreting these provisions to uphold constitutional principles while respecting diversity. Its role in advancing the UCC aligns with the framers' vision of equality and justice.

State of Bombay vs. Narasu Appa Mali²⁵

The first case addressing the conflict between the right to freedom of religion and the directive for a Uniform Civil Code was *State of Bombay v. Narasu Appa Mali*. This case challenged the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, which imposed strict penalties on Hindus for entering into bigamous marriages. The court upheld the act as constitutional, despite objections to the selective abolition of polygamy for specific communities. Former Chief Justice M.C. Chagla of the Bombay High Court remarked on the matter, emphasizing the act's validity and its alignment with constitutional principles. Chief Justice M.C. Chagla, in *State of Bombay v. Narasu Appa Mali*, noted that the Indian Constitution promotes a secular state and mandates a Uniform Civil Code (UCC) under Article 44. However, the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, targeted Hindus alone, creating separate social reforms for Hindus and Muslims based on religion. Chagla relied on the U.S. Supreme Court decision in *Davis v. Beason*²⁶, which upheld the criminalization of bigamy despite claims it infringed religious freedom, emphasizing that religious practices could be subordinate to criminal law.

Justice Gajendragadkar concurred, asserting that the act's classification was reasonable and consistent with Article 14 of the Constitution. He addressed claims that personal laws permitting polygamy violated equality under Articles 15(1) and 13(1), suggesting that such provisions discriminated against women on gender grounds. Nonetheless, he upheld the act, emphasizing that legislative reforms could target specific communities as a step toward broader societal change.

Ram Prasad v. State of U.P.²⁷

In *Ram Prasad v. State of U.P.*, the Allahabad High Court addressed a challenge to Rule 27 of the Uttar Pradesh Government Servant Conduct Rules, 1946, which restricted government servants with a living wife from contracting a second marriage without government permission, even if personal law allowed it. Section 5(1) of the Hindu Marriage Act, 1955, which prohibits bigamy, was also challenged as violating Article 25 of the Constitution.

The petitioner argued that Hindu religious texts permitted a second marriage in specific circumstances, such as the inability of the first wife to bear a male child. However, Justice Mehrotra dismissed this contention, upholding both Rule 27 and Section 5(1). He reasoned that while Hinduism may allow second marriages in

²⁵ *State Of Bombay V.Narasu Appa Mali*, AIR1952 BOM 84

²⁶ *Davis v. Beason*, (1989) 133 US 637

²⁷ *Ram Prasad v. State of U.P.*, AIR 1957 All 411

certain cases, this practice could not be deemed an integral part of the religion. Justice Mehrotra concluded that religious salvation through a son does not justify second marriages, especially when alternatives like adoption exist.

Shahulameedu v. Subaida Beevi²⁸

In the above case, Justice Krishna Iyer upheld a Muslim wife's right to claim maintenance under Section 488 of the old Criminal Procedure Code, despite her husband's second marriage. He rejected the notion that Muslim husbands had absolute authority to divorce and advocated for monogamy among Muslims. Justice Iyer highlighted Islamic principles that favor monogamy, noting that polygamy is an exception and has been restricted in several Muslim countries. He also emphasized the relevance of Article 44, urging legislative and judicial attention to a uniform civil code.

Chandra Manil Kyamma v. B. Sudershan²⁹

In the above case, the Andhra Pradesh High Court addressed a case where a Hindu husband converted to Islam and remarried to bypass his first wife's objections. The court declared the second marriage void, emphasizing that both Hindu and Islamic doctrines discourage second marriages during the subsistence of the first. The court reiterated that monogamy aligns with the cultural and religious values of both communities, underscoring judicial support for monogamy as a foundational aspect of India's legal and cultural ethos.

Mohd. Ahmad Khan vs. Shah Bano Begum³⁰

The landmark case Mohd. Ahmed Khan v. Shah Bano Begum (1985) addressed the application of Section 125 of the Criminal Procedure Code to Muslim divorced women. Shah Bano, divorced by her husband, sought maintenance under Section 125, which her husband contested, arguing that Muslim personal law limited his liability to the iddat period. The trial court and the Madhya Pradesh High Court ruled in favor of Shah Bano, prompting an appeal to the Supreme Court.

The Supreme Court upheld the earlier decisions, ruling that Section 125 applied universally, irrespective of personal law. It stated that a divorced wife unable to maintain herself could seek maintenance under Section 125, beyond the iddat period. The court clarified that there was no conflict between Section 125 and Muslim personal law in such cases. This judgment reaffirmed judicial activism toward a uniform civil code, emphasizing constitutional goals over restrictive personal law interpretations.

Ms. Jorden Diengdeh v. S.S. Chopra³¹

Following the Shah Bano Begum judgment, the Supreme Court was approached to address disparities in divorce grounds under various personal laws in the case of *Ms. Jorden Diengdeh v. S.S. Chopra*. The petitioner, a Khasi Christian from Meghalaya, had married the respondent, a Sikh, under the Indian Christian Marriage Act, 1872. She sought to annul the marriage, citing her husband's impotency, and argued that their marriage had irretrievably broken down. However, the High Court denied the annulment and granted judicial separation instead. On appeal, the Supreme Court examined diverse marriage laws, including the Indian

²⁸ *Shahulameedu v. Subaida Beevi* (1970) KLT 4

²⁹ *B. Chandra Manil Kyamma v. B. Sudershan* (1989) A.P. I HLR 183

³⁰ *Mohd. Ahmad Khan v. Shah Bano Begam*, AIR 1985 SC 945

³¹ *Ms. Jorden Diengdeh v. S.S. Chopra*, AIR 1985 SC 935

Divorce Act, Hindu Marriage Act, Parsi Marriage and Divorce Act, and Special Marriage Act. Justice Chinnappa Reddy highlighted the pressing need for a unified law on marriage, divorce, and judicial separation, urging the adoption of irretrievable breakdown of marriage and mutual consent as universal grounds for divorce across all communities. The court said “*the time has now come for a complete reform of the law of marriage and to make a uniform law applicable to all people irrespective of religion or caste. It is necessary to introduce irretrievable breakdown of marriage and mutual consent as ground of divorce in all cases*”³²

Begum Subanu Alias Saira Banu v. A.M. Abdul Gafoor³³

In the above case the Supreme Court revisited the principles established in the Shah Bano Begum case. The central question was whether a Muslim wife whose husband marries another woman is worse off under the law than one whose husband takes a mistress. Muslim personal law permits a man to marry multiple wives, but the court clarified that this right does not prevent the first wife from claiming separate residence and maintenance. The court emphasized that under Section 125 of the Cr.P.C., the wife's rights take precedence, regardless of whether the husband's relationship with another woman is through marriage or otherwise. It concluded that all wives, including Muslim wives, are entitled to maintenance under Section 125 if their matrimonial rights are violated.

The court upheld its stance from Shah Bano Begum, laying a strong foundation for the uniform civil code.³⁴ However, the Shah Bano decision led to widespread public debate and criticism, prompting the government to enact the Muslim Women (Protection of Rights on Divorce) Act, 1986. This act's Section 3 was challenged in *Mangila Bibi v. Noor Hossain*³⁵, where the petitioner, empowered by her kabinnama, dissolved her marriage due to mistreatment by her husband. The magistrate rejected her claims for maintenance and dower, asserting that the divorce did not align with the kabinnama's terms. However, the Calcutta High Court overturned this decision, affirming the wife's right to divorce as delegated by her husband under personal law. The court recognized her as a divorced wife entitled to her claims and underscored that personal law permits such delegation of divorce rights.

Both cases demonstrate the judiciary's consistent efforts to interpret Section 125 of the Cr.P.C. liberally, ensuring fairness across religions. The courts have worked to balance personal laws with broader societal progress, aiming to safeguard the rights of individuals and foster a more equitable legal framework.

Sarla Mudgil v. Union of India³⁶

In the above case Justice Kuldip Singh highlighted the importance of a uniform civil code. The case dealt with several issues: whether a Hindu husband, after converting to Islam, could marry again; whether such a second marriage, without legally dissolving the first marriage, would be valid concerning the first wife who remained Hindu; and whether the husband would be guilty of bigamy under Section 494 of the Indian Penal Code. The Supreme Court observed that a marriage under Hindu law cannot be dissolved by the application of a different personal law, such as Islam, if only one spouse converts. The court stated that a marriage formed under Hindu law confers certain rights and status upon the parties, and allowing one party to dissolve the marriage by adopting a new personal law would infringe on the rights of the other spouse, who remains under Hindu law. Therefore, the Court ruled that a Hindu marriage remains valid even if one spouse converts to

³² *ibid*

³³ *Begum Subanu alias Saira Banu v. A.M. Abdul Gafoor*, AIR 1987 SC 1103

³⁴ *ibid*

³⁵ *Mangila Bibi v. Noor Hossain*, AIR 1992 Cal. p. 92.

³⁶ (1995) 3 SCC 635.

Islam, and the second marriage performed by the husband was considered void. Consequently, the husband was found guilty of bigamy. This case reaffirmed the need for a uniform civil code to address such conflicts and ensure consistency across personal laws.

Jose Paulo Coutinho v. Maria Luiza Valentina Pereira and ors³⁷

In the above case the supreme court observed that *“It is interesting to note that whereas the founders of the Constitution in Article 44 in Part IV dealing with the Directive Principles of State Policy had hoped and expected that the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard. Though Hindu laws were codified in the year 1956, there has been no attempt to frame a Uniform Civil Code applicable to all citizens of the country despite exhortations of this Court in the case of Mohd. Ahmed Khan vs. Shah Bano and Sarla Mudgal & Ors. vs. Union of India & Ors.”*

Uniform Civil Code in Goa

Goa’s civil code, rooted in Portuguese legal traditions, offers a unique model of equality and fairness, distinguishing it from the personal laws governing other Indian states. Established during Portuguese colonial rule, this code survived post-liberation in 1961 due to popular demand across communities. It emphasizes equality, mandating uniform rights and responsibilities regardless of religion, gender, caste, or ethnicity. The code, often referred to as "family laws," covers marriage, divorce, inheritance, and property rights.

Marriage under this law is a civil contract requiring mandatory registration, which prevents child and bigamous marriages. Couples can choose from four property regimes: community property, absolute separation of property, separation of pre-marital assets with communal ownership post-marriage, or a total regime. If no specific agreement is made, the default community property regime applies, ensuring joint ownership of assets acquired during the marriage. Women are protected under these laws, with automatic rights to half of all marital assets in case of divorce, ensuring economic security.

The inheritance laws under the Goan civil code are particularly progressive. Children, regardless of gender, are mandatory heirs entitled to equal shares of their parents' property. Parents cannot completely disinherit their children, as half the estate must be distributed equally among heirs, while the remaining half can be allocated by will. This system ensures just asset distribution, preventing any gender-based discrimination. Registration of births and deaths is also compulsory, further streamlining legal processes.

Goa’s divorce laws aim to balance fairness and family stability. In contested divorces, custody is often awarded to the spouse seeking to maintain the marriage. The law allows for representation from family members to mediate and ensure fair separation terms. The system also enables couples to agree on asset distribution and other terms through pre-nuptial agreements that cannot be altered post-marriage.

The Goan civil code supersedes religious laws, applying uniformly to all communities. For example, Muslim men in Goa cannot practice polygamy or unilaterally divorce their spouses through talaq. Such provisions ensure that personal laws do not override the rights established under the civil code. This egalitarian system is rooted in the principles of the Portuguese Civil Code of 1867, influenced by Napoleon’s French Civil Code. It reflects a legal philosophy that strengthens family structures and ensures fairness. By safeguarding women's and children’s rights, the code eliminates the gender and caste biases prevalent in personal laws across India. The uniformity of laws in Goa aligns with the constitutional vision of a Uniform Civil Code for the country.

³⁷ AIR ONLINE 2019 SC 1035, (2019) 12 SCALE 338

Uniform civil code in Uttarakhand

The Uniform Civil Code (UCC) Act in Uttarakhand represents a significant milestone in aligning Indian laws with the constitutional vision outlined in Article 44. The journey to this point reflects a careful balance between respecting diversity and fostering legal uniformity. During the Constituent Assembly debates, the framers deliberately avoided making definitive laws on sensitive topics like UCC, recognizing the complexities of India's diverse societal fabric. Justice B.S. Chauhan, in the 21st Law Commission report, echoed this prudence by analyzing the UCC's potential but refraining from concrete recommendations.

The UCC Act of Uttarakhand, introduced in 2024, is a step toward addressing the gaps in personal laws. It focuses on marriage, divorce, succession, and live-in relationships, areas traditionally governed by religious texts. However, it excludes adoption, maintenance, and guardianship, as these are already covered by existing religion-neutral laws like Section 125 of the Criminal Procedure Code and the Juvenile Justice Act. These laws provide a secular framework, balancing personal beliefs with modern legal requirements, as highlighted in *Shabnum Hashmi v. Union of India* (2014)³⁸.

The exclusion of these topics in the UCC Act underscores the legislature's intent to avoid redundancy and maintain the simplicity of existing laws. Instead, the Act targets areas where no uniform legal framework exists, aiming to replace outdated personal laws with equitable, secular provisions. By addressing issues untouched by earlier legislations, the Act brings India closer to the goal of a unified civil code, as envisioned by the Constitution.

In essence, the Uttarakhand UCC Act exemplifies legislative wisdom in navigating India's cultural complexities. It demonstrates how incremental legal reforms can uphold the spirit of equality and modernity without disrupting deeply ingrained traditions, marking a progressive step in India's legal evolution.

The Uttarakhand Uniform Civil Code (UCC) Act of 2024 is a comprehensive legislative reform divided into four distinct parts, addressing personal laws such as marriage, divorce, succession, live-in relationships, and general provisions. It brings a significant shift by standardizing personal laws across communities, ensuring uniformity while sparking debates about privacy, cultural practices, and constitutional implications.

Provisions of Marriage and Divorce

Under the new law, both marriage and divorce must be registered with a competent authority³⁹, marking a departure from the earlier requirement of registering only marriages. While this adds administrative burden and costs, it formalizes divorces in official records. Marriages must comply with conditions such as monogamy, valid consent, absence of mental disorders, and adherence to the age limits of 21 for men and 18 for women.⁴⁰ Notably, while marriages can be solemnized following religious customs, their dissolution must align strictly with the Act's provisions, setting aside personal laws.

The Act elaborates on various processes, including marriage and divorce registration, appointment of registrars, appeals against registration rejections, and penalties for non-registration. Grounds for divorce include adultery, cruelty, desertion, religious conversion, and non-resumption of cohabitation for over a year.⁴¹ Women can also seek divorce on grounds such as polygamy, rape, or unnatural sexual offenses by the husband.

³⁸ *Shabnum Hashmi vs Union of India*, AIR 2014 SC 1281

³⁹ Part-1, Marriage and Divorce, Chapter 2- Registration of marriages and divorce, section 6 of the Uttarakhand Uniform Civil Code Act, 2024

⁴⁰ Part-1, Marriage and Divorce, Chapter 1- Conditions for solemnizing/contracting marriage, section 4(iii) of the Uttarakhand Uniform Civil Code Act, 2024

⁴¹ Part-1, Marriage and Divorce, Chapter 2- Registration of marriages and divorce, section 6 of the Uttarakhand Uniform Civil Code Act, 2024

Custody of children is addressed, prioritizing the mother for children under five and emphasizing timely resolution of related applications.

Succession Reforms

The Act introduces significant changes in inheritance laws, ensuring gender equality in succession rights. It provides for intestate succession, testamentary succession, and disqualifications such as remarriage or criminal activities. Under the revised rules, parents become heirs even in the presence of direct descendants. Testamentary provisions, including privileged wills for individuals in special circumstances like warfare, are defined with procedural safeguards.⁴²

Live-In Relationships

A pioneering feature of the Act is its regulation of live-in relationships. For the first time, these relationships must be registered, ensuring legal recognition and legitimacy for children born from such unions.⁴³ Strict conditions prohibit relationships involving minors, coercion, or existing marriages. Maintenance rights for deserted partners and penalties for non-registration reinforce accountability. While these measures offer security, they raise concerns about intrusion into personal privacy.

Recently the Uttarakhand High Court granted protection to an inter-religious couple in a live-in relationship, directing them to register their relationship under the Uttarakhand Uniform Civil Code, 2024, within 48 hours.⁴⁴ Under Section 378 of this law, residents in live-in relationships must register with a Registrar within one month of entering the relationship, with penalties for non-compliance, including imprisonment or fines. In response to a plea from a 26-year-old Hindu woman and her 21-year-old Muslim partner, the court instructed the police to provide them protection for six weeks after registration to safeguard them from any harm by private parties.⁴⁵

The Division Bench of Justice Manoj Kumar Tiwari and Justice Pankaj Purohit revised their earlier order, removing references to the registration requirement under the Uttarakhand Uniform Civil Code, 2024, as it has not yet come into effect.⁴⁶ The state's counsel informed the court that the Code has only received presidential assent and still requires a government notification under Section 1(2) for implementation. Acknowledging this, the court expunged the relevant paragraphs from its previous order that mandated registration under the yet-to-be-enforced Code.⁴⁷

Repeals, Savings, and Constitutional Debates

The Act repeals all conflicting customs, laws, and practices, ensuring its primacy.⁴⁸ While its retrospective elements, such as mandatory registration of past marriages or divorces, could invite scrutiny,

⁴² Part-2, Succession of the Uttarakhand Uniform Civil Code Act, 2024

⁴³ Part-3, Live-In Relationship of the Uttarakhand Uniform Civil Code Act, 2024

⁴⁴ Sparsh Upadhyay, Uttarakhand HC Grants Protection To Inter-Faith Live-In Couple With Condition To Register Under State's UCC Law In 48 Hours, Live Law (Published on:19 July 2024), *available at*: <https://www.livelaw.in/high-court/uttarakhand-high-court/uttarakhand-high-court-grants-protection-inter-faith-live-in-couple-condition-register-uniform-civil-code-48-hours-263872> (last visited on 15 November 2024)

⁴⁵ 2024 LiveLaw (UTT) 17

⁴⁶ Sebin James, Uttarakhand's Uniform Civil Code Not Yet Implemented: High Court Expunges Direction On Live-In Couple To Mandatorily Register Relationship, live Law (Published on: 31 July 2024), WPCRL 775/2024

⁴⁷ *ibid*

⁴⁸ Section 390 of the Uttarakhand Uniform Civil Code Act, 2024

other provisions apply prospectively. Prohibitions on consanguineous marriages challenge regional and religious customs, raising questions about cultural sensitivity.⁴⁹

The introduction of UCC in Uttarakhand fulfills the vision of Article 44 of the Constitution, which encourages states to strive for a uniform civil code. Proponents argue it strengthens national unity, simplifies legal adjudication, and upholds gender equality. Critics, however, view it as an encroachment on personal beliefs and traditions, particularly affecting practices like Hindu joint families and cousin marriages among Muslims. The Uttarakhand UCC raises several concerns about fairness, inclusivity, and individual rights. It fails to address existing inequalities in guardianship and adoption laws, leaving discriminatory provisions intact. By mandating intrusive registration for live-in relationships, it imposes significant privacy violations, with harsh penalties for non-compliance, while unregistered marriages face no such consequences. The Act disproportionately affects women by limiting maintenance rights in live-in arrangements and undermining their autonomy through mandatory parental involvement, exposing inter-faith and inter-caste couples to risks of violence and harassment. Its reliance on criminalization enables moral policing, privacy breaches, and potential misuse against minorities. Ambiguities around legal definitions of live-in relationships blur distinctions with marriage and exclude same-sex couples, while the exclusion of Scheduled Tribes and cultural diversity highlights its lack of inclusivity.

The Uttarakhand UCC is a bold step toward legal uniformity, blending tradition with reform. While it faces criticism for its perceived cultural invasiveness and practical challenges, it also offers a model for broader national implementation. The Act's reception and constitutional evaluation will shape its future trajectory and impact on India's legal landscape.

Conclusion

The Uniform Civil Code stands as both a constitutional aspiration and a legal necessity to ensure equality and justice in India's pluralistic society. While its implementation faces challenges due to the nation's cultural and religious diversity, the UCC has the potential to harmonize personal laws and address issues of discrimination and gender inequality. Historical debates, judicial interventions, and regional models like Goa offer valuable lessons for a balanced approach. Recent developments in states like Uttarakhand highlight the growing momentum toward its realization, though concerns from tribal and minority communities must be carefully addressed to ensure inclusivity and respect for cultural identity.

To move forward, a phased and consultative approach is essential. The government could initiate reforms by codifying optional common laws, encouraging voluntary adoption, and building trust among stakeholders. Public awareness campaigns and dialogue with community leaders can bridge misunderstandings and foster consensus. Ultimately, a well-drafted UCC must reflect the core constitutional values of justice, liberty, and equality while embracing the ethos of India's diversity, paving the way for a truly secular and unified legal framework.

⁴⁹ *ibid*