

Uttarakhand Uniform Civil Code: Its Strengths and Weaknesses

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Abstract

Uttarakhand, post-independence, stands as the first state in India to adopt the uniform civil code legislation. On February 7, 2024, the Legislative Assembly of Uttarakhand passed the Uniform Civil Code (UCC) Bill, receiving successive approval from President Droupadi Murmu on March 13. The Uttarakhand UCC statute is put together into four segments. The primary part pertains to pronouncement concerning marriage and divorce, the second part mark succession, covering both intestate and testamentary scenarios. The third part focuses on live-in relationships, while the fourth part deals with repeals. Its jurisdiction extent across Uttarakhand and circumscribe residents of the state residing beyond its borders.

Keywords: Uttarakhand Uniform Civil Code, Strengths, Weaknesses.

Introduction

The legislative assembly of the state of Uttarakhand passed the Uniform Civil Code (UCC) Bill on February 7, 2024. The bill was granted assent by president Droupadi Murmu on March 13, 2024. The bill claims to create a uniform and equal set of rules on personal status law including marriage, divorce, succession, and inheritance, that applies to all citizens of the state no matter of what religion. Section 2 of the Uttarakhand Uniform Civil Code, 2024, lays down that the law does not extend to the scheduled tribes of the state.

The proposal was contrived by a committee comprising five members, chaired by former Supreme Court Justice Ranjana Prakash Desai. It was presented in the legislative assembly by Chief Minister Pushkar Singh Dhami. Uttarakhand marks the developing state in India to enact a uniform civil code, considering that many communities commonly adhere to their respective religious laws and traditions regarding matters concerning personal status law.

Article 44 of the Indian Constitution's Directive Principles of State Policy outlines the Uniform Civil Code. Article 37 absolutely states that it is the duty of the state to utilize these principles while preparing laws. The implementation of the Uniform Civil Code is mandated by the state under Part IV, and Article 44 of the Indian Constitution outlines the directive principles of state policy.

The bill is divided into 4 parts: part 1- marriage and divorce, part 2- succession, part 3- live-in relationship, and part 4- miscellaneous.

Parts are subdivided further into chapters. Part 1 into 7 chapters, part 2 into 7 chapters, and total of 7 schedules.

Compulsory Registration of Marriage

The Uttarakhand uniform civil code made the registration of marriages compulsory, and if failing to do so the registration it will attract a maximum fine of Rs 25,000. The legislation behest that marriage registration must ensue within 60 days of the ceremony.

Marriages occurring after March 26, 2010, when the Uttarakhand Compulsory Marriage Registration Act was enforced, must be registered within six months of the implementation of the Uniform Civil Code (UCC). While highlighting the requirement for all marriages in the state to be registered, the UCC explicitly states that failure to register will not refute the marriage in any manner.

During marriage, both persons must be mentally capable of giving consent, without any incapacity due to unsoundness of mind. Also, neither party should be afflicted with any mental disorder leave them unsuitable for marriage.

Marriages can be administered according to religious beliefs, customs, traditional rites, and ceremonies, such as saptapadi, Ashirwad nikah, holy union, and Anand Karaj under the Anand Marriage Act of 1909. moreover, marriages can also be ceremonialize under Acts including, but not limited to, the Special Marriage Act of 1954 and the Arya Marriage Validation Act of 1937.

Section 4 addresses conditions of marriage, one of which is that “neither party has a spouse living at the time of marriage,” and requires a marriage age of 21 for a man and 18 years of age for a woman- effectively abolishing polygamy and child marriage. The code also requires compulsory registration of marriages within 60 days.

Chief Minister Pushkar Singh Dhama mentioned that the registration of marriages and divorces can be expedite through similar process as the registration of births and deaths via a web portal.

Only couples who have officially registered their marriage will be eligible to access the various benefits offered by the government. Senior advocate Rajeshwar Singh emphasized that this is a gradual process, attributing that the government will need to organize awareness campaigns to inform people about the advantages of registering their marriages.

Divorce

Under this code, both men and women have the right to file for divorce in court grounded on numerous grounds, including adultery, mental or physical cruelty by the spouse, unjustified desertion, religious conversion by either spouse, unsoundness of mind, and venereal diseases.

Also, women have been given special rights to seek divorce if their husbands are found guilty of rape, engaging in unnatural sexual activities, or having more than one wife.

The Uttarakhand uniform civil code also bans on practices like halala and iddat - which are Islamic practices that women are supposed to go through after the husband's death or divorce.

A married couple cannot petition the court for divorce within the 1st year of their marriage, except in exceptional situations.

The code commands registration not only for marriages but also for divorces. Now, divorces are required to be registered apace with prevailing a court decree. The act specifies a time within which parties with an existing divorce decree must apply for registration and proposes penalties for failure to submit.

Under section 25, both parties are equally granted the right to petition the court to dissolve the marriage through a decree of divorce, and divorce can occur only through court proceedings. Section 27 of the code has given right for divorce by mutual consent.

Succession and Inheritance Rights

Currently, succession laws in India are superintended by the Indian Succession Act of 1925, the Hindu Succession Act of 1956, and the uncodified Muslim personal law. yet, the Uttarakhand Uniform Civil Code has retrieved these laws and established uniform rules of succession applicable for all communities.

The intestate succession as per the UGCC precept that the estate of a person who expire without leaving a will should first appear their class-I heirs, then to the class-II heirs if there are no class-I heirs. If there are no heirs from both class-I and class-II, it passes to other relatives, and lastly, if no heirs are found, the estate goes to the government.

Class-I heirs inherit the estate of the deceased in the following rundowns:

- Every spouse of the intestate takes one share each.
- Every surviving child takes one share each.
- The heirs in branch of each predeceased child of the deceased take one share together.

- The division of the estate inherited by the progeny of a deceased child is to be equally apportioned among the surviving spouse, surviving child, and descendants of the deceased child's tributary.
- The share devolving to the branch of a predeceased child of a predeceased child is to be divided equally among every surviving spouse and child.
- Surviving parents of the dead together take one share in equal proportion, and in the case of only one of the parents surviving the intestate, the parent alone takes one share.
- In the case where both the parents have together taken one share and one of them subsequently dies, their interest in that one share devolves to the other.

The estate of a dead person is divided among class-II heirs as following rules:

- Heirs listed in the first entry of class-II will take priority over those in the second entry.
- Those in the second entry will have precedence over those in the third entry.
- The deceased's estate will be divided equally among the heirs specified in any single entry in class-II.

Each one of the other relatives of the nearest degree takes one share.

The code also says that a child in the womb enjoys the same right on the estate of the deceased upon his birth and his other children. moreover, posterity from void and voidable marriages are considered legitimate. Means that they have the same rights to the property of their parents as children born in a marriage or a live-in relationship.

the Uttarakhand uniform civil code inheritance rights impact different faiths and communities except for the schedule tribes as its provisions are not applicable on them.

Impact of Uttarakhand UCC on property rights are as following:

- Property right of Hindus/Sikhs/Jains/Buddhists- The Hindu Succession Act distinguishes between a self-acquired property and an ancestral property. It also recognises the concept of joint families and coparcenary rights. Additionally, as per Section 18 of the Hindu Succession Act, full-blood relatives are given precedence over half-blood relatives.

The present regulations also specify individuals who are ineligible to inherit property based on various standards. However, with the commencement of the state Uniform Civil Code (UCC), this is believed to be changed. The state UCC, in variance, establishes a uniform procedure for property division without differentiating between self-acquired and ancestral property.

It also does not recognise the concept of coparcenary. In the UCC law, estate covers “property of any kind, whether movable or immovable, self-acquired or ancestral/coparcenary/joint, tangible or intangible and includes a share, interest or right in such property.” This means that for Hindus, the indistinguishable succession groundwork will hereafter be pertinent to both ancestral and self-acquired property.

Nowhere does the Uttarakhand UCC law mention the word Hindu Undivided Families (HUFs), a recurring term in the Hindu succession Act. Another difference between the Hindu law of inheritance and the UCC is that the former offers different processes for transfer of property to the next generation for men and women.

For a Hindu male dying intestate, his property is first divided into his Class-I heirs, who include his children, his mother, his spouse, and the children of predeceased children. Next in line are Class-II heirs, who include the father, the siblings and stepmother, etc.

In case of a Hindu woman dying intestate, her estate goes firstly to her children and her husband. Secondly, it goes to the heirs of the husband. resulting this, her own mother and father, the heirs of her father, and the heirs of her mother inherit the estate in that specified order. In case of the UCC, the father and the mother are both equal heirs in the property of their children because the term ‘parents’ in the law introduces the father of a deceased man as a Class-I heir.

- Property rights of Muslims-unlike the Shariat law, which allows a Muslim to bequeath one-third of their property through a deed of Will, the Uttarakhand UCC does not put a cap on the extent to which a person can give away their property using this legal instrument’s Before the Bill became an Act on February 7, 2024, Muslims living in Uttarakhand were free only to give away a third of their property through a deed of Will while the remaining part of their estate had to be divided in a manner prescribed under their personal law. This provision, meant to safeguards the right of heirs from being

disposed of and seen as particularly helpful for women and queer people, is in practice no more.

- Property rights of Christians- The Indian Succession Act applies to Christians as well as those married under the Special marriages Act. The estate of people covered under this law goes to their lineal descendants such as children and grandchildren in case of their demise. This means their parents can claim a share only in the absence of the former. Under the new law, this does not hold true since both categories of heirs inherit together.
- The Indian succession law also creates disparity between the inheritance rights of a mother and a father, giving the father the right to exclude the mother and siblings from inheritance. According to the succession act, Christian mothers are not specified to inherit the property of their deceased children. In the UCC, both parents inherit property while the siblings are excluded from inheritance.
- Property rights of live-in partners- By making registration of live-in relationships, the state UCC also provides a legal recognition to such relationships. While it does provide women in such relationships maintenance rights in case they are deserted by the male partner, a woman will not be able to claim a share in her late partner's property unless the man has died leaving a Will and giving her a share in his assets.

However, by recognising all children born out of such arrangements as legal children of the partners, the law strengthens the position of children born out of live-in relationships in matters of inheritance. Such children will be among the Class-I heirs of their parents and will have the same right as children born out of a marriage.

Live-in Relationships

Uttarakhand uniform civil code makes it obligatory for couples to register for live-in relationship, Partners are obligatory to submit a statement of their live-in relationship to the registrar. Live-in partners must register with district officials under the state's uniform civil code or peril facing imprisonment.

The eligibility area for who can enter live-in relationship are mentioned below:

The law stipulates that live-in relationships are only sanctioned between heterosexual couples, with no provision for same-sex couples. Both partners must be at least 21 years old to severally register their relationship. If one of two or both partners are below 21 years old, their parents or guardians will be acquainted about their decision to enter a live-in relationship.

Registering a live-in relationship contain several steps:

- Submission of statement: Partners are requisite to submit a statement to the local registrar declaring their live-in relationship. This statement construes their agreement.
- Registrar's inquiry: The registrar will investigate the relationship, which may include summoning one or both partners and aggregate additional information to verify the factualness of their relationship.
- Outcome: Within 30 days, the registrar will either Favor or reject the registration. If denied, the criterion for refusal will be provided in writing.
- Non-compliance with registering a live-in relationship evoke the following sequela:
- Issuance of notice: Authorities may issue a notice to couples who have not registered their live-in relationship, serving as a solemn warning to heed to the law. The notice may be issued independently by authorities or upon receiving a complaint.
- Penalties: If the couple fails to register within 30 days of receiving the notice, they may face penalties, counting fines or imprisonment. The harshness of the penalties heightens for protracted non-registration or providing fraudulent information. The imprisonment term can extend up to 6 months, with a fine pasturing from Rs 25,000.

cessation of a live-in relationship comprises giving notice to the other party and the registrar to exemplify and recognize the terminus by the authorities. Either party may give notice of the relationship's discontinuation.

Rights of women and children in a live-in relationship are as follows:

- Maintenance for women: If a woman is derelict by her partner, she is specified to maintenance, assure financial support to help herself post-relationship.
- Legitimacy of children: Children born from live-in relationships will be considered legitimate, sanctioning them legal recognition and rights.

Exemptions

- Tribal communities have been exempted: tribal communities are approximately 3% of Uttarakhand's population. As per Section 2 of the code, "nothing within this code shall be applicable to the members of any scheduled tribes" as defined by Clause 25 of Article 366 read with Article 142 of the Constitution of India. Additionally, it does not apply to individuals or groups whose customary rights are safeguarded under Part 21 of the COI.
- No tampering: no tampering, and this is what the chief minister himself said, "no tampering with customs of any religion, caste, sect. etc."
- Hindu undivided family: HUF will continue in Uttarakhand; this is a central law and state cannot do anything. so, conveniently this has also been ignored.
- Degree of prohibited relationship: as in the Hindu marriage act, if you do not have a degree, you cannot get married but there is an exemption. The exemption is given in the Hindu marriage act and is continuing the same exemption in uucc.
- LGBTQ Community are exempted as same sex partners cannot enter live-in relationship.

Strengths and Weaknesses of UCC

Strengths

1-No concept of 'illegitimate children':

- The legal recognition of children born out of wedlock is completely removed.
- all these disgusting thing, illegitimate children, bastard child who had no status in the law;
- now, personal law, especially pertaining to inheritance, there is no existence of illegitimate.
- child born out of wedlock or in wedlock does not matter,
- children will get the same legal recognition and as far as inheritance is concerned, there will be no difference in wedlock or out of wedlock.

2- The practice of bigamy or polygamy is stringently prohibited:

- Section 4 of the Uttarakhand Uniform Civil Code bill absolutely states that neither party should have a living spouse at the time of marriage.
- It is clearly stated that you cannot have bigamy or polygamy, a person can only be married to one person.
- moreover, the minimum age for marriage is 18 years for females and 21 years for males.

3-Registration of marriages:

- now that the Uttarakhand Uniform Civil Code is enacted all the lies and scams can stop related to marriages.
- marriage registration is now compulsory regardless of any customs.
- if failed to do the marriage registration within 60 days penalty fee will be fined.

4- Divorce proceedings:

- divorce proceedings have been made very progressive.
- men and women have the given the similar rights.
- both men and women have equal rights for divorce and are also given the right to mutually divorce with both partner's consent.

5- Inheritance:

- The Uttarakhand Uniform Civil Code talks about inheritance in detail;
- Equal property rights are granted to both sons and daughters across all classes.
- disregarding of their stature as illegitimate children, adopted children, or children born through surrogacy or assisted reproductive technology, each child will have equal property rights.
- if the child is yours then the inheritance rights will be equal.
- In the crisis of someone passing away without leaving a will, this code safeguard equal property rights for the spouse, children, and parents.

6- Live-in relationship:

- it is a very controversial topic, whether it should be considered good or very controlling.
- but it has both some strengths and weaknesses towards it;
- compulsory registration for couples living in a live-in relationship.
- section 378 partners in a live- in relationship, whether domiciled or not have to give statement of live-in relationship to registrar.
- if a girl or boy are below the age of 21 and wants to enter in live-in relationship, in such case their parents will be informed and a copy of the declaration will be forwarded to the parents. and guardians.
- this leads to safety of underage children and in the true knowledge of their guardian or parents.

Weaknesses

- Violation of Privacy Rights: compulsory registration of live-in relationships may infringe upon the right to privacy and the right to live with dignity, as assured under Article 21 of the Constitution.
- LGBTQIA+ Equality: Excluding queer relationships from the Uniform Civil Code raises solicitude respecting LGBTQIA+ rights and equality. By defining live-in relationships as strictly between a man and a woman, the code may bolster discrimination against LGBTQIA+ entity and relationships.
- Lack of Inclusivity: The exemption of tribal communities from the Uniform Civil Code raises questioning about inclusivity and identical treatment under the law. While some contend for prudent tribal customary practices, others question the righteousness of applying divergent legal standards within the same communities.
- Surveillance Risks: Provisions in the Bill related to surveillance may be misused to aim and target to intimidate couples from disparate religious or caste backgrounds.
- Impact on Marginalized Women: Certain provisions of the bill could overmuch affect women from minority communities who entrust on customary support systems, raising solicitude about the safeguarding of their traditional practices and cultural integrity.

- **Legal Challenges:** Critics quarrel that the bill may contravene upon constitutional rights, such as religious freedom and equality before the law, potentially leading to legal challenges in the future.

Conclusion

The exploration of the Uttarakhand Uniform Civil Code reveals a fine distinction aspect characterized by both promise and complication. The strengths of a uniform civil code lie in its potential to raise national unity and aid gender equality by rationalizing legal processes and aligning obsolete practices with contemporary societal norms. However, the path towards implementation is filled with challenges. Critics voice concerns about potential infringements upon cultural and religious rights, while the tangled nature of personal laws poses logistical obstruction. As conclusion it is evident that a balanced approach is most important. Effective implementation requires ample negotiation, like-mindedness, and education to ensure widespread acceptance and obedience. Furthermore, legal reforms must be accompanied by comprehensive social and economic measures to address underlying inequalities and empower marginalized groups. The expedition towards a uniform civil code in Uttarakhand is guided by a commitment to respect diversity while endeavour for equality. By navigating these challenges with sensitivity and completeness, one can realize the dormant of a uniform civil code to promote unity, justice, and equality in Uttarakhand and beyond.

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