

Personal Law Reform in Uttarakhand: Negotiating Cultural Autonomy

Keerti Singh

LL.M. (Constitutional Law)

Amity Law School,

Amity University, Lucknow

Email: keerti02singh@gmail.com

Abstract

Can the stories of a thousand cultures be re-written with the ink of uniformity? In India, the Uniform Civil Code (UCC), has been a topic of legal and political discourse, by representing an intersection of constitutional ideas, social reality, and innate cultural identities¹. After the implementation of UCC in Uttarakhand the long-debated principle regarding it has now seen a shift from being a theoretical discussion to an existing legislative reality. Regardless of the legal implications, the legislative language of the UCC could be seen to carry immense power which could shape perceptions or influence its acceptance in the society, determining the very core nature of uniformity which it pursues to achieve. This paper aims to examine how the linguistic framing of UCC has affected its perception amongst diverse communities, raising doubts about whether the terminology of the law fosters inclusivity or imposes a homogenized identity in the society.

The research paper also explores judicial and legislative discourse with the aim of analyzing whether the UCC's language neutralizes the distinctions among cultures or marginalizes their traditional practices. It further investigates community responses, highlighting concerns raised by various religious and tribal groups regarding the potential erosion of their identity. The paper further highlights a comparative study of UCC-like legislation in other legal systems providing insight into how a language used in a legislation plays a vital role in shaping legal adaptation.

Additionally, the paper also tries to highlight the historical evolution, tracing how the Indian society has reacted to the attempts at legal uniformity.

As India stands at the T-point of modern secularism and traditions, the paper argues that the success of the UCC pivots in accordance with how effectively the legal language has been framed, balancing uniformity with cultural sensitivity. The paper finds its conclusion by proposing ways to craft the legislative language in a way that does justice to India's pluralistic ethos, while achieving the objective of secularism and legal uniformity, ensuring that the law integrates diverse voices and does not alienate them.

Keywords:

Pluralism, UCC, Cultural Sensitivity, Legal Identity, Personal Laws.

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Keerti Singh

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Introduction

Do the echoes of diversity fade away when the language of law speaks in one voice? The debate on cultural pluralism vs. legal uniformity in India's personal laws has been rekindled in Uttarakhand, by the implementation of the Uniform Civil Code (UCC). At the core of this debate lies the language of the personal laws which dictates not only the legal interpretation but also influences the society's acceptance. Legal language as we know it, is a construct that embodies the power, intent and ideology of the makers or legislators, the said law is designed to regulate as well as communicate values either of progress, assimilation or erasure. If we look at the terminology used in the UCC such as uniformity, justice and equal rights it raises various fundamental questions: Does its language safeguard diversity or flatten the cultural distinctions under the weight of uniformity? Does it create a framework of inclusivity or alienate communities with laws shaped by religious and customary traditions?

The present paper aims to understand the linguistic architecture of the UCC to analyze whether its legal terminology fosters under its umbrella a harmonious convergence of pluralistic identities or imposes a monolithic standard, disregarding the ethos of India's social legal diversity. The paper additionally examines the judicial interpretations, legislative debates and community responses with the aim to shed light on how language itself could become a force of either legal persuasion or cultural resistance.

Furthermore, as India moves forward towards broader pellets of secularism, the success of the UCC in India is dependent not merely on its constitutional validity but on the language that shapes it, rendering whether it will be a tool of seamless legal integration amongst the diverse identities or will it deepen the existing cracks? The paper analyses the aforementioned dynamic setting the legal language in a battleground where law, culture and one's identity converge in the making of a uniform civil code.

Legal Language and UCC Implementation: The Nexus

Laws, rather than just being rules are the narratives and stories that have been written with the ink of governance with the aim of shaping the life of whom they seek to regulate. The implementation of a uniform civil code in Uttarakhand has marked a decisive shift in India's landscape of personal law, with the embodiment of a legal vision where uniformity has taken a precedence over religious distinction, setting a stepping-stone of secularism. However, the language used in the legislation has played a vital role in shaping the perceptions of the public and different religious groups, going beyond its substantive provisions and legislative intent.

Though, the UCC implemented in Uttarakhand employs a broad and principled based terminology, rather than using faith-specific language, which has signaled an attempt at neutrality and uniformity. Regardless, this attempt at neutrality could be both an instrument of inclusion of various practices and a tool of transformation which could often be seen as an act leading towards the erosion of protected religious and cultural practices, by the groups. In this section of the paper, the linguistic framing of key provisions of the UCC in Uttarakhand has been dissected and analyzed to explore their implications for India's pluralistic society.

Uniform Civil Code: Uniformity vs. Erasure

The UCC implemented in Uttarakhand has been framed with the intent of neutrality using a rights-based language emphasizing individual freedoms over group identities. While the said legislation aligns with the constitutional vision of secularism and equality, it also raises questions regarding whether the same erases the cultural and religious rooted traditions of various groups. In this section of the paper key provisions have been examined underneath:

1. Marital Affairs: The language of the UCC replaces the religious rituals that were involved in marriages, with uniform recognition of it, disregarding customary practices and religious requirements required to solemnize a marriage. The provision lays down, "Marriage shall be a legally recognized union between two consenting adults, solemnized as per procedures prescribed under this Code, ensuring gender equality and uniform applicability"².

The use of the words "procedures prescribed under this Code", implies that the religious and customary ceremonies are second in line to the legal registration of a marriage between two consenting adults, bringing it under the authority of the State, rather than it being influenced by religion and customs.

Additionally, under the personal laws divorce is governed by distinct rules acknowledging different religious practices, in accordance with their traditional and customary practices. The UCC replaces these distinct practices with a uniform framework as the provision lays down, "A marriage may be dissolved by mutual consent or on grounds including cruelty, adultery, desertion, irretrievable breakdown, and any other reasons deemed just and fair by the Court"³.

With this the provision removes the faith-based grounds for divorce and provides judicial discretion to the courts, ensuring that the courts serve as the final arbitrators of divorce law instead of religious authorities, reinstating the commitment of UCC to the individual rights over religious customs.

2. Inheritance Laws: This aspect of the UCC is one of the most transformative ones as it dismantles the patriarchal constructions or eliminates any

religion-based discriminatory practices related to the inheritance structures. The act lays down, “All legal heirs, irrespective of gender or religious background, shall have equal rights in the succession of ancestral and self-acquired property”⁴.

With the inclusion of this provision, the Code overrides any primogeniture rules or practices and brings India in line with the International Human Rights standards, ensuring gender justice and neutrality.

3. Guardianship and Adoption: As witnessed under the personal laws, adoption and guardianship have been regulated by faith-based traditions, such as the Kafala system under the Mohammedan Law, wherein adoption just meant becoming a guardian of a child with no family, without creating an official parent-child relationship. The provision laid in the UCC regarding it introduces a universal framework stating, “Every person shall have the right to adopt and be adopted, ensuring the best interest of the child, irrespective of religious considerations”.

With this provision, the adoption process has been universalized, breaking free of any barriers which existed. However, it could be argued that it also dismantles the long traditional structures that have been followed by the Muslims even under their personal laws and impose a uniform cultural framework dismantling their traditional Islamic customs.

The aforementioned provisions reflect the linguistic choices made in the UCC and how it aims to shift from faith-based pluralism to a right-based uniform structure. The legislation has made dedicated efforts using a terminology that is secular and gender neutral ensuring legal equality and alignment with the idea of a secular state, but raises concern about cultural erasure by the religious groups because of its rejection of distinct practices.

Challenges to UCC: Community and Cultural Apprehensions

Is it necessary that when the law seeks to unite it also erases or when it grants equality does that mean that it strips away identity? The implementation of UCC in Uttarakhand has sparked dense reactions across the religious, tribal and cultural communities wherein the responses on it have ranged from celebration to resistance to it⁵. On one hand, the supporters of it barrage it as a long step towards legal uniformity and gender equality, which was overdue; while the critics argue that it undermines the cultural autonomy and religious pluralism in the nation by imposing a homogenized legal framework⁶. Henceforth, the success of it pivots not merely on the enforcement of it but also on social acceptance which is a factor largely shaped by how different communities have interpreted its implications.

Regardless of the neutral principle-based language used in the UCC it is perceived distinctly across various religious and tribal groups. Amongst the Hindu communities, the responses have been largely favorable wherein the organizations like Vishwa Hindu Parishad and Rashtriya Swayamsevak Sangh, have supported the implementation by arguing that it moves towards the path of strengthening national integration and elimination of inconsistencies with the Hindu personal laws, which have been under the codification process⁷. However, some Hindu sects, have been against it citing the loss of cultural practices with the fear that a uniform system could neglect their region-specific practices such as Mitakshara and Dayabhaga inheritance laws under the Hindu law.

As for the Muslim community, the UCC has been a long-contested issue wherein the concerns regarding it have been deeply rooted in historical anxieties over the fear of legal interventions in religious affairs⁸. The abolition of Triple Talaq by the Supreme Court had already set a precedence for the encroachment of the State in Islamic personal law and thus, the implementation of UCC further reinforces it. Henceforth, the same has been opposed by the All-India Muslim Personal Law Board and other similar organizations arguing that it would danger the autonomy of Sharia-based personal laws, removing adjudication of Islamic jurisprudence from civil and personal matters. However, a few voices within the progressive Muslim community particularly, the women's rights activists have welcomed the UCC for eliminating gender-based discriminatory practices such as polygamy and unequal inheritance rights, this divide within the community reflects the strain between religious traditionalism and legal modernity.

We witness muted reactions amongst the Christian and Parsi communities, which could be because the Christian personal laws had already undergone legislative amendments, reducing the impact of UCC. The only concern that remains is regarding the solemnization rights of Christian marriages which were historically done through religious validation, now being replaced with a state-recognized registration, under UCC.

As for the tribal groups⁹, their organizations have argued that a uniform framework would eliminate their Indigenous traditions and customs particularly¹⁰, matrilineal inheritance system in Meghalaya and Nagaland or various other customary practices across the nation, however some believe that a uniform system could also provide legal clarity on civil matters and strengthen the gender rights especially, where the patriarchy favoring customs exist¹¹.

Regardless of the resistance from various communities in Uttarakhand, the UCC has presented itself as an irreversible legal shift in lieu of the Supreme Court's past rulings which have already chipped away at the exclusivity of religious personal

law. Uttarakhand has set up a precedent for the other states, while the other States are considering its implementation, the hindrance lies in crafting a legislation such that it upholds uniformity and constitutional equality without eroding the cultural identity hence, the true taste of uniformity is not merely in the enforcement of a uniform legislation but also in its ability to foster acceptance across the pluralistic societies within the nation. It is yet to be seen whether UCC will act as a bridge between tradition and advancement or will remain a focal point for cultural resistance.

Comparative Analysis: Analysing Uniformity Across Legal Systems

The debate regarding balancing of civil law with religious/cultural diversity, is not unique to India, and has been a topic of discussion in other countries as well, where they have taken different approaches to tackle it¹². Strict secularism could be witnessed in France and Turkey, wherein the religious practices or customs hold no legal standing, ensuring rigid uniformity, which could be said to be at the cost of religious autonomy¹³. In its contrast, the United States and Indonesia, have been seen to implement a mixed approach, wherein the civil matters are governed by the State, but religious arbitration is permitted for personal matters¹⁴.

India aims to partake in a middle approach, one which is not rigid like France and Turkey, and not even the one taken by the US and Indonesia, which eliminates legal uniformity in one's personal matters, granting space for gender-based discriminatory practices¹⁵. India, with the implementation of UCC, aims to harmonize the provisions of personal laws, under a uniform framework without the intention of eroding cultural identity and the Uttarakhand UCC serves as an example of this testament¹⁶.

By the comparative analysis, it is clear that no single model has been able to bring a perfect balance between legal uniformity and cultural diversity, where France and Turkey are the examples of strict legal uniformity, this has been achieved at the cost of religious autonomy while on the other side, the US and Indonesia offer greater accommodation to cultural practice but this comes at the cost of possible gender inequalities¹⁷.

Henceforth, India's success in the implementation of a uniform system would depend on how effectively it addresses the concerns put forth by the religious and tribal communities and even though the implementation of UCC in Uttarakhand sets a precedent, its acceptance will be determined by how it aims to navigate the balance between constitutional equality and cultural sensitivity¹⁸. The question that follows is whether India trails the path of absolute legal uniformity or will it adopt a hybrid model like the US?

Concluding Remarks

Could it be possible that a nation moves forward by leaving its traditions behind? The implementation of UCC has marked a historic shift in India's approach

to secularism and uniformity, granting a legislative reality to a long-debated constitutional idea¹⁹. The success of it depends not only on the ethos of its enforcement but also other societies acceptance of it. The uniform civil code is a redefinition of the relationship between law, culture and identity, rather than it being just a legal reform thus, the rule of legal language becomes vital in shaping a uniform structure.

Despite the neutral language used in the UCC the road that is ahead of it is full of thorns wherein the community responses to it have revealed deep-rooted anxieties especially, amongst the religious minorities and the tribal groups, with the fear that a uniform system would erode their cultural autonomy. It is further seen by the comparative analysis, that the term legal uniformity could take many forms ranging from a strict secularism to the pluralistic accommodations implementing a mixed system, amongst this it is up to India to navigate its own path safeguarding the history of the nation is known for its pluralistic society and thus, uniformity could not come at the cost of alienation. The vital challenge rests in the implementation of UCC but legal literacy, gradual adaptation and a considerate dialogue amongst the stakeholders could be seen as an instrument of inclusion rather than an imposition of UCC²⁰. When framed and implemented effectively, it would create a foundation where the rights of the individuals transcend religious boundaries, becoming a symbol of progressive legal reform rather than it being a source of division and thus, India is standing at a crossroads where Uttarakhand is not the final step but the first of many yet to come. It is now to be pondered upon how the UCC could be shaped in a way that it reflects the constitutional promise of justice, equality and dignity for all in India and when the principles of legal fairness and cultural sensitivity are balanced, the uniform civil code would become one of the most transformative reforms in the history of independent and secular India.

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