

DHAMI'S PUSH FOR UNIFORM CODE STIRS DEBATE

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

Poll-bound Uttarakhand's Chief Minister Pushkar Singh Dhama's announcement on Saturday that the BJP, if voted to power, will form a committee to prepare a draft of the Uniform Civil Code (UCC) in the State, raises questions over whether an individual State can bring its own family law code and the ripples the move may create in a society with personal laws based on the customs of religious communities.

Goa's Portuguese Civil Code of 1867 is an example of a common family law prevalent in a State. The promulgation of the UCC emerges as a positive obligation and not duty of the State under Article 44 of the Constitution in the Directive Principles of State Policy (DPSP). It says "the State shall endeavour to secure a UCC for the citizens throughout the territory of India".

Again, does "State" in Article 44 mean the Union or the States? Technically, Article 12 of the Constitution defines the "State" to include the Union and State governments, Parliament and State Legislatures, and even local authorities. Besides, entry five of the Concurrent List in the Seventh Schedule of the Constitution empowers both the Union and States to make laws on marriage, divorce, infants, minors, adoption, wills, intestacy and succession.

However, Supreme Court advocate Kaleeswaram Raj argues that promulgation of a UCC by an individual State may clash with Central statutes governing marriage and succession.

"The legislature and the court should be generally slow in interfering with laws relating to inheritance and succession. The reason is that such a move can drastically alter the status quo and can even unsettle the settled claims and rights. However, the imbalance and inequity with respect to property rights for women in certain communities, including Muslims, is a serious issue to be tackled. It is ideal that such disparities are removed by Parliament or the Supreme Court," he said.

Mr. Dhama's statement comes in the backdrop of repeated exhortations over the years by the Supreme Court to frame a UCC applicable to all citizens. The *Jose Paulo Coutinho* judgment of the court in 2019, in fact, found Goa a "shining example of an Indian State which has a UCC".

But it has also questioned the wisdom of enacting a uniform law in a pluralist society in "one go". "A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counterproductive to unity and integrity of the nation. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute," it had observed in the *Pannalal Bansilal Pitti* judgment.

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