



Unveiling Legal Coercion: The Imposition of Uniformity Without a Uniform Civil Code

Introduction

India's diversity has been the hallmark of its tradition, culture, and social fabric. The varying linguistic, religious, and ethnic disparities, have contributed to the development of the modern-day heterogeneous Indian society. This Indian ethos has not only influenced the personal practices of individuals, but it has also significantly framed the legal discourse. The legal journey of the recognition and codification of personal laws bears a testimony to the fact that within the confines of this territory, various communities have the right to practice their personal laws.

For communities, personal laws and customary practices are not merely some mutable prescriptions which can be arbitrarily done away with. These laws are an essential feature of the right to life as in the words of the Supreme Court, the right to life cannot be seen in isolation with tradition, culture and heritage.ⁱ Even though there are some constitutional limits to the enforcement and practice of these laws,ⁱⁱ but a right that is recognisedⁱⁱⁱ by the legislature and is not even ultra vires the Constitution, must not be snatched away against the will of the minority community that values it. As former Chief Justice of India, D.Y. Chandrachud has appropriately described, "in a democracy, the majority will have its way but the minority must have its say."^{iv}

Recently, the State of Uttarakhand enacted the Uniform Civil Code of Uttarakhand^v on 11 March 2024 which was enforced on 27 January 2025.^{vi} People all around the globe have expressed their dissent on the Act's unjustified differentiation between religious communities and tribal communities.^{vii} Though Uniform Civil Code is not the topic of this discussion, is it the very first imposition of uniformity against the will of the community? Uniformity not only exists in the form

of law, but it also masquerades itself in the form of legislative gaps, which leaves no room for the accommodation of personal laws. In this article, we will explore this issue with a case study on Muslim marriage registration in Delhi.

Marriage Registration in India

Due to the myriad customs prevailing in India, compulsory registration of marriages was not a practical step. The Muslim Personal Law (Shariat) Application Act, 1937 (hereinafter ‘The Shariat Act’)^{viii} recognised the Islamic law of marriage, divorce, inheritance, etc., but it did not provide for the registration of marriages. As marriage in Islam was perceived as a civil contract, the solemnisation of Muslim marriages was never devoid of any evidentiary value. The witnesses and the *Nikah Nama* serve as robust records of marriage, and therefore, the need for formal registration was not felt. Section 8 of the Hindu Marriage Act also made it optional for the States to make rules with respect to registration of marriages.^{ix} Moreover, it stated that omission to register a marriage would not affect its validity.^x

India signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)^{xi} in 1980 and ratified it in 1993.^{xii} Article 16 of the CEDAW obliged State Parties to make registration of marriages compulsory.^{xiii} But India gave a declaration with respect to this provision, stating that it had a diverse population and different communities followed their personal laws.^{xiv} But as marriage was a concurrent subject^{xv} various States like Karnataka, Himachal Pradesh, and Andhra Pradesh, formally enacted laws for the registration of marriages and some States made rules to the same effect.^{xvi}

It was in 2006 that the discussion around compulsory registration of marriages gained momentum due to a landmark judgement of the Supreme Court in *Seema v. Ashwani Kumar*.^{xvii} The Supreme Court took cognizance of the fact that due to the lack of marriage records, people often denied the existence of a marriage.^{xviii} The phrase ‘vital statistics’ in entry 30 of List III of the Seventh Schedule of the Indian Constitution was interpreted to include the registration of marriages, empowering states to legislate on the same.^{xix}

The Supreme Court was of the view that non-registration would result in the denial of the presumption of marriage.^{xx} As a result of these findings, all States were directed to notify the procedure for registration of marriages within 3 months.^{xxi} Though all States did not immediately comply with the direction, enactments and rules gradually started to pour in.^{xxii} This trend

prompted the Delhi Government to come up with the Delhi (Compulsory Registration of Marriage) Order, 2014 (hereinafter ‘The Delhi Order’).^{xxiii}

What is happening in Delhi?

The Delhi Order was passed as a neutral instrument to compulsorily register marriages of all persons in Delhi irrespective of one’s caste, creed and religion. Taking a cue from the existing marriage laws, the Delhi Order prescribed a minimum age limit of 21 years for males and 18 years for females. It further gave an overriding effect to compulsory registration of marriages irrespective of any custom or practice to the contrary.^{xxiv} It clarified that registration would not be equivalent to the validity of marriage, as the question of validity would have to be determined in the light of the respective law, custom, or practice governing the parties.^{xxv} The Delhi Order obliged the Delhi government to create a portal for online application and appointment in order to facilitate marriage registration.^{xxvi}

Though the Delhi Order *prima facie* seems to be a one-stop shop for all, its inefficacy due to the Delhi government’s lack of enthusiasm to facilitate the implementation of the order has ultimately jeopardised the interests of the Muslim community. In *Dhanak of Humanity v. State of NCT*,^{xxvii} the petitioners approached the Delhi High Court in order to address the issue of non-registration of Muslim marriages under the Delhi Order. The government agreed to register the marriages and issue administrative instructions within two months. Despite the fact that this case came up in 2021 and the government gave an assurance to address these issues, the problem still persists.

In *Rehan Elahi v. Govt. of NCT of Delhi*,^{xxviii} a Muslim couple, ambitious of obtaining a parental visa to Canada, wanted to get their marriage registered under the Delhi Order. They were unable to do so as the portal did not provide for an option to register marriage under the Delhi Order. The only available options were to register the marriage under the Hindu Marriage Act or the Special Marriage Act. Furthermore, to add on to their plight, the physical application submitted by them was also not processed. The government’s reply stated that the petitioners could register their marriage under the Special Marriage Act. The court regarded this void as a systemic failure and the reason behind non-compliance of legal requirements. The High Court directed the government to register the marriage under the Delhi Order and it instructed the government to enable online marriage registration under the Delhi order.

It is evident from the above-mentioned cases that the Delhi government's casual attitude towards minority communities, pushes them towards an undesirable option. As a result of this administrative neglect, Muslims who wish to migrate to another country or attempt to comply with specific visa requirements, are compelled to register marriages under the Special Marriage Act^{xxxix} as no other avenue is open for them. Without realising the consequences of such registration, Muslims often land themselves in an unintended situation. Section 18 of the Special Marriage Act equates the registration of marriages with the solemnization of marriages under the Act.^{xxx} This consequence of registration significantly impacts the right of citizens to proceed under their personal laws. These matters may include issues such as marital separation, succession, and legitimacy of children.

A marriage solemnized under the Special Marriage Act can only be dissolved under the Act. The procedure for obtaining a divorce under the Special Marriage Act is very lengthy and cumbersome when compared to Muslim Personal Law. It restricts divorce for a period of one year^{xxxi} (except in cases of severe hardship), provides limited fault-based grounds^{xxxii}, and even in cases of mutual divorce, the parties are forced to tolerate a discord that must span at least a year and a half.^{xxxiii} Further, according to Section 21, for any marriage solemnized under the Special Marriage Act, the Indian Succession Act will automatically be applicable in respect of succession of the parties.^{xxxiv} Similarly, all children born after the date of the ceremony of marriage will be considered legitimate even if they are illegitimate according to personal law.^{xxxv}

This apprehension materialized in the case of *Faizan Ayubi v. Govt. of NCT of Delhi*.^{xxxvi} A Muslim couple who got married in October 2023 intended to travel abroad. Due to the above-mentioned problem, they were forced to register their marriage under the Special Marriage Act. In July 2024, due to some irreconcilable differences, the couple sought to execute a *Mubarat Nama* (a form of mutual divorce under Muslim law). After realising the consequences of their marriage registration under the Special Marriage Act, they approached the Delhi High Court. In November 2024, the High Court was kind enough to annul the marriage registration certificate under the SMA and it once again directed the government to ensure compliance with the order passed in *Rehan Elahi v. Govt. of NCT of Delhi*.

Months have gone by but till date, the Delhi government has not taken any step towards the online registration of marriages under the Delhi Order.^{xxxvii} Apart from this vacuum, a careful

consideration of the Delhi Order also leads to the conclusion that even if the Delhi Order is implemented, it will also reinforce the existing uniformity to a limited extent. Point 5 of Form-A of the Delhi Order mandates parties to declare their marital status before the marriage. It provides limited options such as spinster/bachelor, divorcee, and widow.^{xxxviii} This means that it does not contemplate the option of polygamy. Muslims with multiple wives, desirous of registering their multiple marriages, will not be able to register their marriage even under the Delhi Order. Therefore, the so-called 'neutrality' of this mechanism is also questionable as it seeks to pass muster marriages through a pinhole of dominant majoritarian practices.

Determining the Logic of Uniformity – Towards a Prospective Legislation

Under the Indian Constitution, marriage is a concurrent subject.^{xxxix} But there is no central law solely dealing with the registration of marriages. Due to this lacuna, the existing state laws vary from region to region. At this juncture, it becomes crucial to understand whether a uniform central law can be the solution to this problem. If yes, what can be the logic that should guide such uniformity?

In order to end the confusion and get rid of the regional variations, the central government should formally provide for the compulsory registration of marriages. The law should be made uniformly applicable to all citizens of India irrespective of religion, but at the same time, it must take into consideration the diverse customs that prevail throughout the territory of India. In a country like India, uniformity must be viewed as a procedural end and not a substantive superimposition. Cultures, traditions and personal laws of minorities should be respected and their peculiar elements must be incorporated in laws to guide the essence of uniformity.

The ultimate goal of uniformity is to end chaos. This can be achieved without interfering with the substantive element of law. Individual and community autonomy should be given paramount importance before taking any legislative step. A prospective legislation on the registration of marriages must give effect to the constitutional values of freedom of religion^{xl}, expression^{xli} and liberty.^{xlii} Once a comprehensive central law on the subject occupies the field, regional laws will become redundant, making the procedures simpler and comprehensive.

The Shariat Act recognised various Muslim practices which deal with marriage, divorce and inheritance.^{xliii} As marriage under personal law is already recognised by a central law, an ancillary law must not have the potential to obscure the effect of the privileges granted to Muslims. The

prospective law must not force a Muslim couple to be bound by a different procedure in case of other matters recognised by the Shariat Act. Similarly, it should recognise the institution of polygamy and allow for the registration of multiple marriages in case of Muslims.

A recent example of an inclusive uniform law was shown by the Bombay High Court in *Mezouar Zouaouia v. The Municipal Corporation*.^{xliv} In this case, the Bombay High Court harmonised the provisions of the personal law and the Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998. Section 7(1)(a) of the Act obliged the Registrar to ensure that the marriage was solemnised in accordance with the personal laws.^{xlv} The court observed that personal laws of the parties was an important factor to proceed with the registration and no provision of the Act hindered a Muslim male from registering a third marriage.^{xlvi}

Therefore, the central government must consider a similar law that is not only accessible for all communities but is also tolerant of their personal laws. This harmony between the individuality of a community and their existence as a part of this homogenous system is what defines the logic of uniformity in India.

Conclusion

The Supreme Court's ruling in *Seema v. Ashwani Kumar* induced various states, including the Union territory of Delhi, to take legislative measures to provide for the compulsory registration of marriages. It is evident that people generally do not register their marriages unless they have to comply with the laws of another nation. These pressing circumstances compel married couples to register their marriages.

As limited avenues are available to go about this process, persons belonging to minority communities often unintentionally bind themselves by secular law. This legal coercion subtly imposes a uniform law even in the absence of a uniform civil code. Moreover, this uniformity is predominantly defined by majoritarian practices. Not being an affirmative legal step, legislative gaps often superimpose a substance foreign to a particular community. This unfortunate situation attacks the individuality of minorities.

In order to remedy this situation, personal laws and other customary practices must be given effect through a uniform procedure. Uniformity must be contemplated in a procedural sense rather than a substantive sense. For instance, marriage registration should be made compulsory irrespective of

any religion or custom. But the registration process must incorporate the nuances of personal laws and customs of different communities. The current mechanism in Delhi deprives the Muslim community of this basic right. A comprehensive central law will hopefully bridge the existing gaps and pave a more inclusive legal path for minorities.

ⁱ *Kaushal Kishore v. State of Uttar Pradesh*, 2023 SCC OnLine SC 6.

ⁱⁱ The Constitution of India, 1950, art. 25(1).

ⁱⁱⁱ *ibid.*

^{iv} Sheryl Sebastian, “In A Democracy, The Majority Will Have Its Way But The Minority Must Have Its Say’: CJI DY Chandrachud” (*Livelaw*, 2 December 2023) <<https://www.livelaw.in/top-stories/in-a-democracy-the-majority-will-have-its-way-but-the-minority-must-have-its-say-cji-dy-chandrachud-243546>> accessed 26 July 2025.

^v The Uniform Civil Code, Uttarakhand, 2024.

^{vi} Sachin Bhandawat and Vatsal Singh, ‘Introduction of Uniform Civil Code in Uttarakhand’ (*Bar and Bench*, 10 March 2025) <<https://www.barandbench.com/view-point/introduction-of-uniform-civil-code-in-uttarakhand>> accessed 26 July 2025.

^{vii} Aishwarya Raj, ‘As Uttarakhand gear up to implement UCC, minority outfits prepare for a legal battle’, *The Indian Express* (Dehradun, 18 January 2025) <<https://indianexpress.com/article/political-pulse/uttarakhand-ucc-minority-outfits-legal-battle-muslim-tribals-9784003/>> accessed 26 July 2025.

^{viii} The Muslim Personal Law (Shariat) Application Act, 1937.

^{ix} The Hindu Marriage Act, 1955, s. 8(1).

^x *ibid* s 8(5).

^{xi} Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

^{xii} Anne Hellum and Henriette Sindig Aasen (eds.), *Women’s Human Rights: CEDAW in International, Regional and National Law* (Cambridge University Press, 2015) 386.

^{xiii} CEDAW (n 11) art 16.

^{xiv} CEDAW Committee, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/IND/2-3 (October 19, 2005).

^{xv} The Constitution of India, 1950, Schedule VII, List III, Entry 5.

^{xvi} Law Commission of India, ‘270th Report on the Compulsory Registration of Marriages’ 15 (July, 2017).

^{xvii} 2006 SCC OnLine SC 177.

^{xviii} *ibid* para 3.

^{xix} *ibid* para 5.

^{xx} *ibid* para 13.

^{xxi} *ibid* para 18.

^{xxii} Law Commission of India (n 16) 13.

^{xxiii} The Delhi (Compulsory Registration of Marriage) Order, 2014, NO.F.1(12)/DC/MC/2014/4392.

^{xxiv} *ibid* s 2.

^{xxv} *ibid* s 8.

^{xxvi} *ibid* s 9.

^{xxvii} W.P. (C) 7341/2021.

-
- xxviii W.P. (C) 9348/2023.
- xxix The Special Marriage Act, 1954.
- xxx *ibid* s 18.
- xxxi *ibid* s 29.
- xxxii *ibid* s 27.
- xxxiii *ibid* s 28.
- xxxiv *ibid* s 21.
- xxxv *ibid* s 18.
- xxxvi 2024 SCC OnLine Del 7838.
- xxxvii Department of Revenue – Marriage Registration, India, <<https://revenue.delhi.gov.in/revenue/marriage-registration>> accessed 26 July 2025.
- xxxviii The Delhi Order (n 23), Form A.
- xxxix The Constitution of India, Schedule VII, List III, Entry 5.
- xl *Ibid* art 25.
- xli *Ibid* art 19.
- xl ii *Ibid* art 21.
- xl iii Shariat Act (n 8) s 2.
- xl iv 2024 SCC OnLine Bom 3399.
- xl v The Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998, s 7(1)(a).
- xl vi *Mezouar Zouaouia* (n 44) para 4.